Accordingly, the Board amends 14 CFR Part 385, *Delegations and Review of Action Under Delegation: Nonhearing Matters*, as follows:

1. The authority for Part 385 is:

Authority: Sec. 204(a), 1001, Pub. L. 85-726, as amended, 72 Stat. 743, 788, 49 U.S.C. 1324(a), 1481; Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989, 49 U.S.C. 1324 (note), unless otherwise noted)

2. A new paragraph (g) is added to § 385.22 to read:

§ 385.22 Delegation to the Director, Bureau of Consumer Protection.

The Board hereby delegates to the Director, Bureau of Consumer Protection, the authority to:

* * * * *

(g) Grant or deny applications for waivers filed under § 252.6 of this chapter in order to allow a carrier to experiment with methods of protecting nonsmokers from tobacco smoke to the maximum possible degree.

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-39254 Filed 12-17-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[Order No. 919-80]

Production and Disclosure in Federal and State Proceedings

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order amends Subpart B of Part 16 of Title 28, Code of Federal Regulations, to prescribe procedures with respect to the production or disclosure of material or information in response to subpoenas or demands of courts or other authorities, except Congress, in state and federal proceedings. The purpose of this amendment is to clarify the procedures to be followed by Department of Justice employees in responding to demands for Department information in state and Federal proceedings.

EFFECTIVE DATE: December 4, 1980.

FOR FURTHER INFORMATION CONTACT: John M. Harmon, Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, Washington, D.C. 20530 (202-633-2041).

SUPPLEMENTARY INFORMATION:

Section-by-Section Analysis and Discussion

§ 16.21 Purpose and scope.

This section sets forth the purpose and scope of the regulation that follows. Subsection (a) indicates both the types of information covered and the proceedings in which the regulation applies. The kinds of information identified are the same as in the current regulation. Subsection (a) has been revised, however, to indicate that the regulation applies not only in federal and state proceedings in which the United States is not a party, but also in federal and state proceedings in which the United States is a party.

Subsection (b) retains the same definition for "employee of the Department" that appears in the current regulation. Subsection (c) indicates that the regulation is not intended to impede the appropriate disclosure, in the absence of a demand, of information by Department law enforcement agencies to federal, state, local and foreign law enforcement, prosecutive, or regulatory agencies. Subsection (d) specifies that this regulation does not create any right or benefit, substantive or procedural, enforceable by any party against the United States.

§ 16.22 General prohibition of production or disclosure in Federal and State proceedings in which the United States is not a party.

Subsection (a) specifies the same general rule with respect to federal or state cases or matters in which the United States is not a party that now appears at 28 CFR 16.22. Subsections (a)-(b) indicate where, in the regulation, the applicable procedures for responding to demands for information in these cases are to be found, and subsection (c) retains the requirement that parties seeking oral testimony provide to the U.S. attorney a summary of the testimony sought and its relevance to the proceeding in question, a requirement that now appears at 28 CFR 16.23(c). Subsection (d) authorizes United States attorneys to seek similar summaries with respect to information demanded other than oral testimony.

§ 16.23 General disclosure authority in Federal and State proceedings in which the United States is a party.

Subsection (a) provides that, subject to the general standards set forth in § 16.26 of the new regulation, every attorney in the Department of Justice in charge of any case or matter in which the United States is a party is authorized to disclose information as the attorney deems necessary or desirable to the discharge of the attorney's official duties. Neither this subsection nor § 16.21(a)(1) relates this authority specifically to "demands"; as indicated in subsection (b), attorneys may seek higher level review, prior to a court order, when they forsesee that disclosure will require higher level approval. The only higher level review that § 16.23 itself mandates, however, occurs when, in the attorney's judgment, disclosure can not otherwise be made consistent with these regulations.

It should be noted, in this connection, that the litigating units of this Department are not precluded from issuing instructions or adopting supervisory practices that would require more frequentt higher level consultation with respect to particular demands or classes of demands. On the contrary, § 16.26(d) of the new regulation expressly authorizes Assistant Attorneys General, United States attorneys, the Director of the Executive Office for United States Trustees ("the EOUST"), and their designees, to issue any instructions or to adopt any supervisory practices consistent with the regulation that would help foster consistent application of the standards promulgated and the other requirements of the regulation. In sum, the purpose of these sections read together is to mandate higher level review in a limited class of cases, while at the same time preserving the maximum flexibility for each litigating unit to adopt policies and supervisory practices best tailored to the litigation for which it is responsible in light of each unit's practical experience.

Subsection (c) specifies that the requirement of an affidavit in connection with demands for oral testimony applies also in federal and state proceedings in which the United States is a party.

§ 16.24 Procedure in the event of a demand where disclosure is not otherwise authorized.

This section, together with § 16.25 of the new regulations, almost entirely revises the current § 16.23, indicating the applicable procedure in the case of a demand for testimony or production. The new § 16.24 applies only when Department attorneys do not themselves have authority to disclose demanded information. That is, it applies in cases in which the United States is not a party, and in the limited class of cases in which the United States is a party and trial level-attorneys determine that a higher level of review is required. In cases in which the United States is not a party, the official responding to the demand is a U.S. attorney in the district

where the issuing authority is located. When the United States is a party, higher level review must be sought, when required, from an Assistant Attorney General, the Director of the EOUST, or their designees, depending on which unit is responsible for the case or matter. These persons are collectively referred to in the regulation as "the responsible official." They are required, in the various circumstances presented, to consult with the official in charge of the bureau, division, office, or agency of the Department that was responsible for the preparation of the materials demanded or that, at the time the person whose testimony was demanded acquired the information in question, employed such person, or the designee of such an official. These Department units are collectively referred to in the regulation as the "originating component." This terminology eliminates the need for separate reference in the regulation to every component of the Department that has authority to make decisions with respect to the information in its files. *See* the current § 16.23(b).

When demands are referred to a responsible official, the responsible official is required to advise the originating component. If the originating component does not object to disclosure, and such disclosure is appropriate under the standards set forth in this regulation, then the responsible official may authorize the appearance and testimony of a present or former Department employee or the production of material from Department files without further authorization from other Department officials. It is Department policy, as explained in subsection (c), that such disclosure be authorized, consistent with the standards set forth in this regulation, whenever possible, provided that, with respect to information prepared in connection with litigation or an investigation supervised by a division of the Department or the EOUST, the Assistant Attorney General in charge of such a division or the Director of the EOUST may require the originating component to obtain the division's or the EOUST's approval before agreeing to the disclosure of that information.

If the originating component objects to disclosure, then the procedure to be followed varies with the circumstances presented. In cases in which the United States is not a party, if the originating component objects to disclosure, the responsible U.S. attorney and the originating component must determine if the information in question was collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of this Department or the EOUST. If so, the U.S. attorney must notify the Assistant Attorney General in charge of the division involved or the Director of the EOUST. Whether or not the U.S. attorney and the originating component agree as to the inappropriateness of the disclosure, the Assistant Attorney General and the Director of the EOUST are permitted to authorize disclosure, to authorize that steps be taken to limit the scope of or to obtain the withdrawal of, a demand or, after all appropriate steps have been taken to limit the scope or obtain the withdrawal of a demand, to refer the matter for final resolution to the Deputy or Associate Attorney General, as appropriate.

Under subsection (d), it should be noted that, when the originating component and the U.S. attorney either disagree concerning a disclosure or agree that disclosure should not be made, the Director of the EOUST or the appropriate Assistant Attorney General may designate a subordinate official who may authorize that disclosure be resisted. However, in cases in which the United States is not a party, the decision to disclose information in the face of either a disagreement between the U.S. attorney and an originating component or their agreement that a disclosure would not be appropriate must be made by the Director of the EOUST or, with respect to the divisions, at least at the Deputy Assistant Attorney General level, as must a decision that the matter should be referred to the Deputy or Associate Attorney General.

In cases in which the United States is not a party, and the information demanded was not collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of this Department, the originating component may determine whether disclosure is appropriate, and this decision shall ordinarily be the final decision. When especially significant issues are raised, the responsible U.S. attorney may, however, refer the matter for review to the Deputy or Associate Attorney General. The U.S. attorney is authorized by the regulation to proceed in accordance with the decision by an originating component that disclosure should be resisted.

Under subsection (e), in cases in which the United States is a party, the Assistant Attorney General or Director of the EOUST responsible for the case or matter, and their designees are ordinarily authorized to make all decisions concerning a proper response to the disclosure of Department information. The only limitation is that, if the information in question was originally collected, assembled, or prepared in connection with litigation or an investigation supervised by another division of the Department or by the EOUST, the official handling the current litigation is required to consult the other division or the EOUST, and the Assistant Attorneys General in charge of the two divisions or the Director of the EOUST and the appropriate Assistant Attorney General are authorized to refer any irreconcilable disagreements concerning disclosure to the Deputy or Associate Attorney General, depending upon which of those officials supervises the originating component.

Subsection (f) provides that, in any case or matter in which the responsible official and the originating component agree that it would not be appropriate to disclose the information demanded, even if a court were so to require, no Department attorney responding to the demand should make any representation that implies that the Department would, in fact, comply with the demand if directed to do so by a court. Further, the responsible official shall refer such cases to the Deputy or Associate Attorney General, but only after taking all appropriate steps in such cases to limit the scope or obtain the withdrawal of a demand.

Finally, subsection (g) provides that, in cases or matters in which the Attorney General is personally involved in claiming privilege, the responsible official may consult with the Attorney General and proceed in accord with the Attorney General's instructions without subsequent review by the Deputy or Associate Attorney General.

It should be noted that § 16.24 applies to demands either for the production of documents or for testimony. Thus, for example, a demand for testimony by an employee of one Department component concerning information that was prepared in connection with an investigation that a different Department component supervised should be treated in the same way as a demand for documents in one component's files that were prepared in connection with another unit's supervised investigation.

§ 16.25 Final Action by the Deputy or Associate Attorney General.

This section specifies when final Department decisions should be made by the Deputy Attorney General and when they should be made by the Associate Attorney General. Except when this regulation expressly states

otherwise, all matters referred by the Assistant Attorney General or the designee of an Assistant Attorney General for higher level review ought to be referred to the person, *i.e.*, the Deputy or Associate Attorney General, who generally supervises the Assistant Attorney General, and the Director of the EOUST and the Director's designees shall refer matters to the Associate Attorney General. An independent agency that is within the Department for administrative purposes shall refer matters to the Deputy Attorney General. All other matters are to be referred to the persons, *i.e.*, the Deputy or Associate Attorney General, who generally supervises the originating component.

§ 16.26 Considerations in determining whether production or disclosure should be made pursuant to a demand.

Subsection (a) of this new section identifies generally the areas of law that Department officials and attorneys should consider in deciding whether to make disclosures. Because the factors relevant to a particular demand vary widely with the nature of the demand, and to avoid any suggestion that, through this procedural regulation, the Department might be seeking to impose legal standards different from the ordinary rules of procedure and the substantive law concerning privilege, the regulation adopts a highly general approach in subsection (a), instead of attempting a detailed list of considerations.

Subsection (b) does, however, specifically identify certain circumstances in which disclosure ordinarily will not be made be any Department official. These standards, in essence, identify several widely acknowledged areas of privilege or legally prohibited disclosure that are most relevant to Department of Justice operations. They are intended to be compatible with the exemptions from mandatory disclosure provided by the Freedom of Information Act, 5 U.S.C. 552(b). These subsections are not intended to preclude disclosure in compliance with court orders except in cases in which, under these standards, disclosure would be inappropriate even if required by a court.

Subsection (c) describes the standards to be followed by the Deputy or Associate Attorney General in making final decisions concerning disclosure in those matters that are referred to them. Subsection (d) authorizes Assistant Attorneys General, the Director of the EOUST, and United States attorneys and trustees responsible for litigation to issue instructions and adopt supervisory practices consistent with this regulation to help foster consistent application of the standards identified in this section and the requirements of the regulations.

§ 16.27 Procedure in the event the department's decision concerning the demand is not made prior to the time the response to the demand is required.

This section recodifies the procedure currently required by 28 CFR 16.25.

§ 16.28 Procedure in the event of adverse ruling.

This section recodifies the procedure currently required by 28 CFR 16.26.

§ 16.29 Delegation by Assistant Attorneys General.

This section provides that, with respect to any action that this regulation permits a designee of an Assistant Attorney General to perform, the Assistant Attorneys General are authorized to delegate the relevant authority to any appropriate subordinate division official or U.S. attorney. Thus, for example, in those cases in which Assistant Attorneys General have otherwise delegated litigation authority to U.S. attorneys, the Assistant Attorneys General have the option of delegating their functions under this regulation also to the U.S. attorneys, if they so choose.

By virtue of the authority vested in me by 28 U.S.C. 509, 510, and 5 U.S.C. 301, there are hereby established the following procedures governing the production or disclosure of material or information in response to subpoenas or demands of courts or other authorities, except Congress. Accordingly Subpart B of Part 16, of Chapter I of Title 28, Code of Federal Regulations is as follows:

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

* * * * *

Subpart B—Production or Disclosure in Federal and State Proceedings

Sec.

Authority: 28 U.S.C. 509, 510, and 5 U.S.C. 301.

* * * * *

Subpart B—Production or Disclosure in Federal and State Proceedings

§ 16.21 Purpose and Scope.

(a) This subpart sets forth procedures to be followed with respect to the production or disclosure of any material contained in the files of the Department, any information relating to material contained in the files of the Department, or any information acquired by any person while such person was an employee of the Department as a part of the performance of that person's official duties or because of that person's official status:

(1) In all federal and state proceedings in which the United States is a party; and

(2) In all federal and state proceedings in which the United States is not a party, including any proceedings in which the Department is representing a government employee solely in that employee's individual capacity, when a subpoena, order, or other demand (hereinafter collectively referred to as a "demand") of a court or other authority is issued for such material or information.

(b) For purposes of this subpart, the term "employee of the Department" includes all officers and employees of the United States appointed by, or subject to the supervision, jurisdiction, or control of the Attorney General of the United States, including U.S. attorneys, U.S. marshals, U.S. trustees and members of the staffs of those officials.

(c) Nothing in this subpart is intended to impede the appropriate disclosure, in the absence of a demand, of information by Department law enforcement agencies to federal, state, local and foreign law enforcement, prospective, or regulatory agencies.

(d) This subpart is intended only to provide guidance for the internal operations of the Department of Justice, and is not intended to, and does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States.

§ 16.22 General prohibition of production or disclosure in Federal and State proceedings in which the United States is not a party.

(a) In any federal or state case or matter in which the United States is not a party, no employee or former employee of the Department of Justice shall, in response to a demand, produce any material contained in the files of the Department, or disclose any information relating to or based upon material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of that person's official duties or because of that person's official status without prior approval of the proper Department official in accordance with §§ 16.24 and 16.25 of this part.

(b) Whenever a demand is made upon an employee or former employee as described in paragraph (a) of this section, the employee shall immediately notify the United States Attorney for the district where the issuing authority is located. The responsible United States attorney shall follow procedures set forth in § 16.24 of this part.

(c) If oral testimony is sought by a demand in any case or matter in which the United States is not a party, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or by his attorney, setting forth a summary of the testimony sought and its relevance to the proceeding, must be furnished to the responsible United States attorney. Any authorization for testimony by a present or former employee of the Department shall be limited to the scope of the demand as summarized in such statement.

(d) When information other than oral testimony is sought by a demand, the responsible United States attorney shall request a summary of the information sought and its relevance to the proceeding.

§ 16.23 General disclosure authority in Federal and State proceedings in which the United States is a party.

(a) Every attorney in the Department of Justice in charge of any case or matter in which the United States is a party is authorized, after consultation with the "originating component" as defined in § 16.24(a) of this part, to reveal and furnish to any person, including an actual or prospective witness, a grand jury, counsel, or a court, either during or preparatory to a proceeding, such testimony, and relevant unclassified material, documents, or information secured by any attorney, or investigator of the Department of Justice, as such attorney shall deem necessary or desirable to the discharge of the attorney's offical duties: *Provided*, Such an attorney shall consider, with respect to any disclosure, the factors set forth in § 16.26(a) of this part: *And further provided*, An attorney shall not reveal or furnish any material, documents, testimony or information when, in the attorney's judgment, any of the factors specified in § 16.26(b) exists, without the express prior approval by the Assistant Attorney General in charge of the division responsible for the case or proceeding, the Director of the Executive Office for United States Trustees (hereinafter referred to as "the EOUST"), or such persons' designees.

(b) An attorney may seek higher level review at any stage of a proceeding, including prior to the issuance of a court order, when the attorney determines that a factor specified in § 16.26(b) exists or foresees that higher level approval will be required before disclosure of the information or testimony in question. Upon referral of a matter under this subsection, the responsible Assistant Attorney General, the Director of EOUST, or their designees shall follow procedures set forth in § 16.24 of this part.

(c) If oral testimony is sought by a demand in a case or matter in which the United States is a party, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or by the party's attorney setting forth a summary of the testimony sought must be furnished to the Department attorney handling the case or matter.

§ 16.24 Procedure in the event of a demand where disclosure is not otherwise authorized.

(a) Whenever a matter is referred under § 16.22 of this part to a United States Attorney or, under § 16.23 of this part, to an Assistant Attorney General, the Director of the EOUST, or their designees (hereinafter collectively referred to as the "responsible official"), the responsible official shall immediately advise the official in charge of the bureau, division, office, or agency of the Department that was responsible for the collection, assembly, or other preparation of the material demanded or that, at the time the person whose testimony was demanded acquired the information in question, employed such person (hereinafter collectively referred to as the "originating component"), or that official's designee. In any instance in which the responsible official is also the official in charge of the originating component, the responsible official may perform all functions and make all determinations that this regulation vests in the originating component.

(b) The responsible official, subject to the terms of paragraph (c) of this section, may authorize the appearance and testimony of a present or former Department employee, or the production of material from Department files if:

(1) There is no objection after inquiry of the originating component;

(2) The demanded disclosure, in the judgment of the responsible official, is appropriate under the factors specified in § 16.26(a) of this part; and

(3) None of the factors specified in § 16.26(b) of this part exists with respect to the demanded disclosure.

(c) It is Department policy that the responsible official shall, following any necessary consultation with the originating component, authorize testimony by a present or former employee of the Department or the production of material from Department files without further authorization from Department officials whenever possible: *Provided*, That, when information is collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of the Department or by the EOUST, the Assistant Attorney General in charge of such a division or the Director of the EOUST may require that the originating component obtain the division's or the EOUST's approval before authorizing a responsible official to disclose such information. Prior to authorizing such testimony or production, however, the responsible official shall, through negotiation and, if necessary, appropriate motions, seek to limit the demand to information, the disclosure of which would not be inconsistent with the considerations specified in § 16.26 of this part.

(d)(1) In a case in which the United States is not a party, if the responsible U.S. attorney and the originating component disagree with respect to the appropriateness of demanded testimony or of a particular disclosure, or if they agree that such testimony or such a disclosure should not be made, they shall determine if the demand involves information that was collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of this Department or the EOUST. If so, the U.S. attorney shall notify the Director of the EOUST or the Assistant Attorney General in charge of the division responsible for such litigation or investigation, who may:

(i) Authorize personally or through a Deputy Assistant Attorney General, the demanded testimony or other disclosure of the information if such testimony or

other disclosure, in the Assistant or Deputy Assistant Attorney General's judgment or in the judgment of the Director of the EOUST, is consistent with the factors specified in § 16.26(a) of this part, and none of the factors specified in § 16.26(b) of this part exists with respect to the demanded disclosure;

(ii) Authorize, personally or by a designee, the responsible official, through negotiations and, if necessary, appropriate motions, to seek to limit the demand to matters, the disclosure of which, through testimony or documents, considerations specified in § 16.26 of this part, and otherwise to take all appropriate steps to limit the scope or obtain the withdrawal of a demand; or

(iii) If, after all appropriate steps have been taken to limit the scope or obtain the withdrawal of a demand, the Director of the EOUST or the Assistant or Deputy Assistant Attorney General does not authorize the demanded testimony or other disclosure, refer the matter, personally or through a Deputy Assistant Attorney General, for final resolution to the Deputy or Associate Attorney General, as indicated in § 16.25 of this part.

(2) If the demand for testimony or other disclosure in such a case does not involve information that was collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of this Department, the originating component shall decide whether disclosure is appropriate, except that, when especially significant issues are raised, the responsible official may refer the matter to the Deputy or Associate Attorney General, as indicated in § 16.25 of this part. If the originating component determines that disclosure would not be appropriate and the responsible official does not refer the matter for higher level review, the responsible official shall take all appropriate steps to limit the scope or obtain the withdrawal of a demand.

(e) In a case in which the United States is a party, the Assistant General or the Director of the EOUST responsible for the case or matter, or such persons' designees, are authorized, after consultation with the originating component, to exercise the authorities specified in § 16.24(d)(1)(i)–(iii) of this part: *Provided,* That if a demand involves information that was collected, assembled, or prepared originally in connection with litigation or an investigation supervised by another unit of the Department, the responsible official shall notify the other division or the EOUST concerning the demand and the anticipated response. If two litigating units of the Department are unable to resolve a disagreement concerning disclosure, the Assistant Attorneys General in charge of the two divisions in disagreement, or the Director of the EOUST and the appropriate Assistant Attorney General, may refer the matter to the Deputy or Associate Attorney General, as indicated in § 16.25(b) of this part.

(f) In any case or matter in which the responsible official and the originating component agree that it would not be appropriate to authorize testimony or otherwise to disclose the information demanded, even if a court were so to require, no Department attorney responding to the demand should make any representation that implies that the Department would, in fact, comply with the demand if directed to do so by a court. After taking all appropriate steps in such cases to limit the scope or obtain the withdrawal of a demand, the responsible official shall refer the matter to the Deputy or Associate Attorney General, as indicated in § 16.25 of this part.

(g) In any case or matter in which the Attorney General is personally involved in the claim of privilege, the responsible official may consult with the Attorney General and proceed in accord with the Attorney General's instructions without subsequent review by the Deputy or Associate Attorney General.

§ 16.25 Final action by the Deputy or Associate Attorney General.

(a) Unless otherwise indicated, all matters to be referred under § 16.24 by an Assistant Attorney General, the Director of the EOUST, or such person's designees to the Deputy or Associate Attorney General shall be referred (1) to the Deputy Attorney General, if the matter is referred personally by or through the designee of an Assistant Attorney General who is within the general supervision of the Deputy Attorney General, or (2) to the Associate Attorney General, in all other cases.

(b) All other matters to be referred under § 16.24 to the Deputy or Associate Attorney General shall be referred (1) to the Deputy Attorney General, if the originating component is within the supervision of the Deputy Attorney General or is an independent agency that, for administrative purposes, is within the Department of Justice, or (2) to the Associate Attorney General, if the originating component is within the supervision of the Associate Attorney General.

(c) Upon referral, the Deputy or Associate Attorney General shall make the final decision and give notice thereof to the responsible official and such other persons as circumstances may warrant.

§ 16.26 Considerations in determining whether production or disclosure should be made pursuant to a demand.

(a) In deciding whether to make disclosures pursuant to a demand, Department officials and attorneys should consider:

(1) Whether such disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose, and

(2) Whether disclosure is appropriate under the relevant substantive law concerning privilege.

(b) Among the demands in response to which disclosure will not be made by any Department official are those demands with respect to which any of the following factors exist:

(1) Disclosure would violate a statute, such as the income tax laws, 26 U.S.C. 6103 and 7213, or a rule of procedure, such as the grand jury secrecy rule, F.R.Cr.P., Rule 6(e),

(2) Disclosure would violate a specific regulation;

(3) Disclosure would reveal classified information, unless appropriately declassified by the originating agency,

(4) Disclosure would reveal a confidential source or informant, unless the investigative agency and the source or informant have no objection;

(5) Disclosure would reveal investigatory records compiled for law enforcement purposes, and would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would thereby be impaired,

(6) Disclosure would improperly reveal trade secrets without the owner's consent.

(c) In all cases not involving considerations specified in paragraphs (b)(1)–(6) of this section, the Deputy or Associate Attorney General will authorize disclosure unless, in that person's judgment, after considering paragraph (a) of this section, disclosure is unwarranted. The Deputy or Associate Attorney General will not approve disclosure if the circumstances specified in paragraphs (b)(1)–(3) of this section exist. The Deputy or Associate Attorney General will not approve disclosure if any of the conditions in paragraphs (b)(4)–(6) of this section exist, unless the Deputy or Associate Attorney General determines that the administration of justice requires disclosure. In this regard, if disclosure is necessary to pursue a civil or criminal prosecution or affirmative relief, such as an injunction, consideration shall be given to:

(1) The seriousness of the violation or crime involved,

(2) The past history or criminal record of the violator or accused,

(3) The importance of the relief sought,

(4) The importance of the legal issues presented,

(5) Other matters brought to the attention of the Deputy or Associate Attorney General.

(d) Assistant Attorneys General, United States attorneys, the Director of the EOUST, United States trustees, and their designees, are authorized to issue instructions to attorneys and to adopt supervisory practices, consistent with this subpart, in order to help foster consistent application of the foregoing standards and the requirements of this subpart.

§ 16.27 Procedure in the event a department decision concerning a demand is not made prior to the time a response to the demand is required.

If response to a demand is required before the instructions from the appropriate Department official are received, the responsible official or other Department attorney designated for the purpose shall appear and furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt consideration of the appropriate Department official and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

§ 16.28 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 16.27 of this chapter pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions rendered in accordance with §§ 16.24 and 16.25 of this part not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall, if so directed by the responsible Department official, respectfully decline to comply with the demand. *See* United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951).

§ 16.29 Delegation by Assistant Attorneys General.

With respect to any function that this subpart permits the designee of an Assistant Attorney General to perform, the Assistant Attorneys General are authorized to delegate their authority, in any case or matter or any category of cases or matters, to subordinate division officials or U.S. attorneys, as appropriate.

Dated: December 4, 1980.

Benjamin R. Civiletti,

Attorney General.

[FR Doc. 80-39241 Filed 12-17-80; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 128

Transactions in Foreign Exchange, Transfers of Credit and Export of Coin and Currency; Form Revisions

AGENCY: Department of the Treasury.

ACTION: Form revisions (final rule).

SUMMARY: The Department of the Treasury is revising the titles and reporting instructions of certain Treasury International Capital (TIC) forms to capture international money market instrument statistics which are not currently reported. The amendments would require certain heretofore uncovered brokers and commercial banks to report holdings of foreign commercial paper, negotiable certificates of deposit and other foreign short-term instruments. Reporting of these data is necessary to reduce errors and omissions in U.S. balance of payments statistics.

EFFECTIVE DATE: These revisions shall become effective December 18, 1980. The revisions shall apply to all reports filed as of March 31, 1981 or for any period ending after March 31, 1981.

FOR FURTHER INFORMATION CONTACT: Gary A. Lee (202) 376-0692

SUPPLEMENTARY INFORMATION:

On July 29, 1980, there was published in the Federal Register (45 FR 50368) a notice of proposed rulemaking setting forth revisions in the titles and reporting instructions of certain Treasury International Capital (TIC) forms to capture international money market instrument statistics which are not currently reported. Interested parties were given the opportunity to submit, no later than September 29, 1980, comments on the proposed revisions. No unfavorable comments on the proposed amendments were received; however, it was suggested that the titles to specific related TIC reports be revised accordingly and that the alternative "short forms" BC(A), BQ-1(A) and BQ-2(A) were superfluous, in that they duplicated the material contained in Forms BC, BQ-1 and BQ-2, respectively. The "short forms" actually increased rather than decreased the reporting burden on the public because they required reporters to enter manually the names of individual countries, rather than use the printed list of countries in the standard forms. For this reason, the above "short forms", together with "short forms" BL-1(A) "Reporting bank's own liabilities to 'foreigners', payable in dollars"; BL-2(A) "Custody liabilities of reporting banks, brokers and dealers to 'foreigners', payable in dollars"; CQ-1(A) "Part 1—Financial liabilities to unaffiliated 'foreigners'; Part 2—Financial claims on unaffiliated 'foreigners' "; and CQ-2(A) "Part 1—Commercial liabilities to unaffiliated 'foreigners'; Part 2—Commercial claims on unaffiliated 'foreigners' ", which are alternative forms for Forms BL-1, BL-2, CQ-1 and CQ-2, respectively, are hereby revoked.

Accordingly, 31 CFR Part 128 is amended as set forth below:

1. Section 128.11 is revised to read as follows:

§ 128.11 International Capital Form BL-1: Reporting bank's own liabilities and selected liabilities of broker or dealer to "foreigners", payable in dollars.

On this form banks, banking institutions, brokers and dealers in the United States are required to report monthly to a Federal Reserve bank their own liabilities to "foreigners", payable in dollars, as of the last day of business of the month.

2. Section 128.11b is revised to read as follows:

§ 128.11b International capital form BC: Reporting bank's own claims and selected claims of broker or dealer on "foreigners", payable in dollars.

On this form banks, banking institutions, brokers and dealers in the United States are required to report monthly to a Federal Reserve bank their own claims on "foreigners", payable in dollars, as of the last day of business of each month.

3. Section 128.12 is revised to read as follows:

§ 128.12 International Capital Form BQ-1: Part 1—Reporting bank's own claims and selected claims of broker or dealer on "foreigners", Part 2—Domestic customers' claims on "foreigners" held by reporting bank, broker or dealer, payable in dollars.

On this form banks, banking institutions, brokers and dealers in the United States are required to report quarterly, as of the last business day of each March, June, September and December, to a Federal Reserve bank