

for the future.”⁴⁸ Examples of such revenue transactions or events that the staff has asked to be disclosed and discussed in accordance with FRR 36 are:

- Shipments of product at the end of a reporting period that significantly reduce customer backlog and that reasonably might be expected to result in lower shipments and revenue in the next period.
- Granting of extended payment terms that will result in a longer collection period for accounts receivable (regardless of whether revenue has been recognized) and slower cash inflows from operations, and the effect on liquidity and capital resources. (The fair value of trade receivables should be disclosed in the footnotes to the financial statements when the fair value does not approximate the carrying amount.)⁴⁹
- Changing trends in shipments into, and sales from, a sales channel or separate class of customer that could be expected to have a significant effect on future sales or sales returns.
- An increasing trend toward sales to a different class of customer, such as a reseller distribution channel that has a lower gross profit margin than existing sales that are principally made to end users. Also, increasing service revenue that has a higher profit margin than product sales.
- Seasonal trends or variations in sales.
- A gain or loss from the sale of an asset(s).⁵⁰

Question 2

Question: Will the staff expect retroactive changes by registrants to comply with the accounting described in this bulletin?

Interpretive Response: All registrants are expected to apply the accounting and disclosures described in this bulletin. The staff, however, will not object if registrants that have not applied this accounting do not restate prior financial statements provided they report a change in accounting principle in accordance with APB Opinion No. 20, *Accounting Changes*, no later than the first fiscal quarter of the fiscal year beginning after December 15, 1999. In periods subsequent to transition, registrants should disclose the amount of revenue (if material to income before

income taxes) recognized in those periods that was included in the cumulative effect adjustment. If a registrant files financial statements with the Commission before applying the guidance in this bulletin, disclosures similar to those described in Staff Accounting Bulletin Topic 11–M, *Disclosure of the Impact that Recently Issued Accounting Standards Will Have on the Financial Statements of a Registrant When Adopted in a Future Period*, should be provided. With regard to question 10 of Topic 13–A and Topic 8–A regarding income statement presentation, the staff would normally expect retroactive application to all periods presented unless the effect of applying the guidance herein is immaterial.

However, if registrants have not previously complied with generally accepted accounting principles, for example, by recording revenue for products prior to delivery that did not comply with the applicable bill-and-hold guidance, those registrants should apply the guidance in APB Opinion No. 20 for the correction of an error.⁵¹ In addition, registrants should be aware that the Commission may take enforcement action where a registrant in prior financial statements has violated the antifraud or disclosure provisions of the securities laws with respect to revenue recognition.

Topic 8: Retail Companies

A. Sales of Leased or Licensed Departments

Facts: Department stores and other retailers customarily include the sales of leased or licensed departments in the amount reported as “total revenues.”

Question: Does the staff have any objection to this practice?

Interpretive Response: In November 1975 the staff issued staff accounting bulletin number 1 that addressed this issue. In that bulletin the staff did not object to retailers presenting sales of leased or licensed departments in the amount reported as “total revenues” because of industry practice. Subsequently, in November 1976 the FASB issued SFAS No. 13. In June 1995, the AICPA staff amended its Technical

⁵¹ APB Opinion No. 20, ¶13 and ¶36–37 describe and provide the accounting and disclosure requirements applicable to the correction of an error in previously issued financial statements. Because the term “error” as used in APB Opinion No. 20 includes “oversight or misuse of facts that existed at the time that the financial statements were prepared,” that term includes both unintentional errors as well as intentional fraudulent financial reporting and misappropriation of assets as described in Statement on Auditing Standards No. 82, *Consideration of Fraud in a Financial Statement Audit*.

Practice Aid (TPA) section 5100.16, *Rental Revenue Based on Percentage of Sales*, based upon an interpretation of SFAS No. 13 that leases of departments within a retail establishment are leases of tangible assets within the scope of SFAS No. 13.⁵² Consistent with the interpretation in TPA section 5100.16, the staff believes that SFAS No. 13 requires department stores and other retailers that lease or license store space to account for rental income from leased departments in accordance with SFAS No. 13. Accordingly, it would be inappropriate for a department store or other retailer to include in its revenue the sales of the leased or licensed departments. Rather, the department store or other retailer should include the rental income as part of its gross revenue. The staff would not object to disclosure in the footnotes of the amount of the lessee’s sales from leased departments. If the arrangement is not a lease but rather a service arrangement that provides for payment of a fee or commission, the retailer should recognize the fee or commission as revenue when earned. If the retailer assumes the risk of bad debts associated with the lessee’s merchandise sales, the retailer generally should present bad debt expense in accordance with Regulation S–X article 5–03 (b)(5).

B. * * *

This Staff Accounting Bulletin is not intended to change current guidance in the accounting literature. For this reason, adherence to the principles described in this Staff Accounting Bulletin should not raise the costs associated with record-keeping or with audits of financial statements.

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

RIN 3095–AA81

Agency Records Centers; Correction

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule; correction.

SUMMARY: NARA published in the *Federal Register* of December 2, 1999, a final rule revising the standards that

⁵² SFAS No. 13, ¶1 defines a lease as “the right to use property, plant, or equipment (land or depreciable assets or both) usually for a stated period of time.”

⁴⁸ FRR 36, also see In the Matter of Caterpillar Inc., AAER No. 363 (March 31, 1992).

⁴⁹ SFAS No. 107, *Disclosures about Fair Values of Financial Instruments*.

⁵⁰ Gains or losses from the sale of assets should be reported as “other general expenses” pursuant to Regulation S–X, Article 5–03(b)(6). Any material item should be stated separately.

records center storage facilities must meet to store Federal records. This document corrects several editorial and printing errors in that final rule. Two of the corrections substantively affect the final rule. The date in the definition of "Existing records storage facility" is corrected to read January 2, 2000. The text following the first sentence of § 1228.228(n)(4) should have been part of paragraph (n)(4).

DATES: Effective January 3, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at 301-713-7360, ext. 226.

SUPPLEMENTARY INFORMATION: In the document FR 99-30973 published on December 2 1999 (99 FR 67634), make the following corrections:

1. On page 67635, in the second column, correct the second heading to read: "**Definitions (§ 1228.226)**".

2. On page 67637, in the first column, correct the last line of that column to read "source of water leakage, but to permit".

§ 1228.226 [Corrected]

3. On page 67643, in the third column, in § 1228.226, in the definition of "Existing records storage facility", 4th line, correct the date "September 30, 1999," to read "January 2, 2000,".

§ 1228.228 [Corrected]

4. On page 67644, in the third column, in § 1228.228(k), 4th and 5th lines, add quotation marks at the beginning and end of the title "Vulnerability Assessment of Federal Facilities".

5. On page 67645, in the first column, in § 1228.228(n)(4), the undesignated paragraph following paragraph (n)(4) is correctly designated as the second and third sentences of paragraph (n)(4).

Dated: December 6, 1999.

Nancy Y. Allard,

Federal Register Liaison.

[FR Doc. 99-31985 Filed 12-8-99; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GC Docket No. 95-21; FCC 99-322]

Ex Parte Presentations in Commission Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission denies petitions for reconsideration and amends on its own motion its

regulations concerning ex parte presentations in Commission proceedings, which were comprehensively revised in 1997. The current amendments modify the rules in minor respects based on the Commission's experience with the revised rules since 1997. The intended effect of the current amendments is to further make the rules simpler and easier to comply with, to enhance the fairness of the Commission's processes, and to facilitate the public's ability to communicate with the Commission.

DATES: Effective January 10, 2000.

FOR FURTHER INFORMATION CONTACT: David S. Senzel, Office of General Counsel (202) 418-1720.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, GC Docket No. 95-21, adopted on October 28, 1999, and released November 9, 1999. The full text of the memorandum opinion and order is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW, Washington DC 20554. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., Room CY-B400, 445 12th Street, SW, Washington DC 20554, telephone (202) 314-3070.

Summary of Memorandum Opinion and Order

1. In 1997, the Commission revised its rules governing ex parte presentations in Commission proceedings. *Report and Order*, 62 FR 15852 (April 3, 1997). The revision was intended to make the rules simpler and clearer, and thus more effective in ensuring fairness in Commission proceedings. The Commission stressed that the ex parte rules are important and that full compliance is expected.

2. Two law firms, Hogan & Hartson and Lukas, McGowan, Nace & Gutierrez, seek reconsideration of the revised rules. Hogan & Hartson contends that the Commission should treat all proceedings as "permit-but-disclose" except for certain quasi-judicial proceedings. Lukas, McGowan, Nace & Gutierrez proposes that informal complaints under 47 U.S.C. 208 should be treated as "restricted." The Commission finds both petitions for reconsideration without merit and denies them.

3. The Commission, however, finds that, although its experience with the revised rules has generally been positive, certain areas warrant further consideration. The Commission

therefore takes the opportunity to modify the revised rules in certain minor respects. The modifications are:

A. Parties

1. In proceedings designated for hearing, only persons formally given party status will be treated as parties for ex parte purposes.

2. The "viewer/listener" exception, under which viewers or listeners do not become parties because they comment on a pending broadcast application and do not have to serve the broadcaster, is clarified.

3. Members of Congress and other governmental officials will not become parties merely by serving a presentation; they will be made parties only if that is warranted based on an affirmative request for party status.

4. Petitions to revoke and petitions for orders to show cause will be treated the same as complaints.

B. Classification of Proceedings

1. Requests for modification of payment arrangements under 47 CFR 64.1001 will be treated as permit-but-disclose instead of restricted.

2. BOC applications to provide in-region interLATA services pursuant to 47 U.S.C. 271(d), petitions for Commission preemption of authority to review interconnection agreements under 47 U.S.C. 252(e)(5), and petitions for preemption under 47 U.S.C. 253 will be treated as permit-but-disclose instead of restricted.

3. Persons filing petitions for declaratory rulings or rulemakings that seek Commission preemption will be required to serve any state or local government, the actions of which are cited as a basis for requesting preemption. Such pleadings that are not served will be dismissed without consideration as a defective pleading and treated as a violation of the ex parte rules unless the Commission determines that the matter should be entertained by making it part of the record under 47 CFR 1.1212(d) and the parties are so informed.

C. Exempt Presentations

1. Presentations between Commission staff and administrators, such as the Universal Service Administrative Company, will be exempt.

D. Status Inquiries

1. The newly-adopted exemption for oral status inquiries requesting action by a particular date or giving reasons that a proceeding should be expedited other than to avoid administrative delay will apply only in non-hearing proceedings.