

Federal Register

WEDNESDAY, NOVEMBER 16, 1977



highlights

"THE FEDERAL REGISTER—WHAT IT IS AND HOW TO USE IT"

Reservations for November are being accepted for the free Wednesday workshops on how to use the FEDERAL REGISTER. The sessions are held at 1100 L St. N.W., Washington, D.C. in Room 9409, from 9 to 11:30 a.m.

Each session includes a brief history of the FEDERAL REGISTER, the difference between legislation and regulations, the relationship of the FEDERAL REGISTER to the Code of Federal Regulations, the elements of a typical FEDERAL REGISTER document, and an introduction to the finding aids.

FOR RESERVATIONS call: Martin V. Franks, 202-523-3517.

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The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
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	CSC			CSC
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	HEW/PHS			HEW/PHS

Documents normally scheduled on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

Note: As of Nov. 3, 1977, Food Safety and Quality Service (USDA) documents are being assigned to the Tuesday/Friday schedule.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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Rules Going Into Effect Today

NOTE: There were no items eligible for
inclusion in the list of RULES GOING INTO
EFFECT TODAY.

List of Public Laws

This is a continuing listing of public bills
that have become law, the text of which is
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Copies of the laws in individual pamphlet
form (referred to as "slip laws") may be
obtained from the U.S. Government Printing
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- S. 810..... Pub. L. 95-168
Granting an extension of patent to the
United Daughters of the Confederacy.
(Nov. 11, 1977; 91 Stat. 1349). Price:
\$.50.
- S. 2208..... Pub. L. 95-167
To amend the Federal charter of the Big
Brothers of America to include Big Sis-
ters International, Incorporated, and for
other purposes. (Nov. 11, 1977; 91 Stat.
1347). Price: \$.50.
- S. 1019..... Pub. L. 95-173
"Maritime Appropriation Authorization
Act for Fiscal Year 1978". (Nov. 12,
1977; 91 Stat. 1359). Price: \$.50.
- S. 2118..... Pub. L. 95-174
To authorize the Secretary of Agriculture
to convey certain homesites within the
Chugach and Tongass National Forests,
Alaska. (Nov. 12, 1977; 91 Stat. 1361).
Price: \$.50.
- H.R. 2527..... Pub. L. 95-169
To authorize the Secretary of Agricul-
ture to convey certain lands in the Sierra
National Forest, California, to the
Madera Cemetery District. (Nov. 12,
1977; 91 Stat. 1350). Price: \$.50.
- H.R. 2849..... Pub. L. 95-170
To suspend until July 1, 1978, the rate
of duty on mattress blanks of latex rub-
ber, and for other purposes. (Nov. 12,
1977; 91 Stat. 1351). Price: \$.50.
- H.R. 3373..... Pub. L. 95-172
To extend for an additional temporary
period the existing suspension of duties
on certain classifications of yarns of silk,
and for other purposes. (Nov. 12, 1977;
91 Stat. 1358). Price: \$.50.
- H.R. 3387..... Pub. L. 95-171
To extend certain Social Security Act
provisions, and for other purposes.
(Nov. 12, 1977; 91 Stat. 1353). Price:
\$.60.

presidential documents

[3195-01]

Title 3—The President

PROCLAMATION 4540

Anniversary of the Adoption of the Articles of Confederation

By the President of the United States of America

A Proclamation

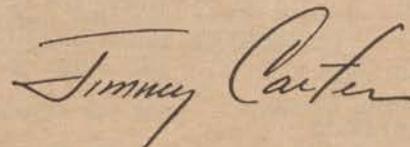
In the midst of our struggle for independence the Continental Congress, meeting in York, Pennsylvania, recognized that the new Nation would require a permanent central government. Not only was unity necessary if that struggle was to be successfully concluded, but it was essential if the new Nation was to be able to deal effectively with such matters as regulating trade, disposing of western lands, and controlling finance.

Although the colonists shared a common heritage and spoke a common language, their customs, traditions and economic needs varied. Because of this their loyalties were regional in nature. These differences were overcome and, on November 15, 1777, the Continental Congress adopted the Articles of Confederation.

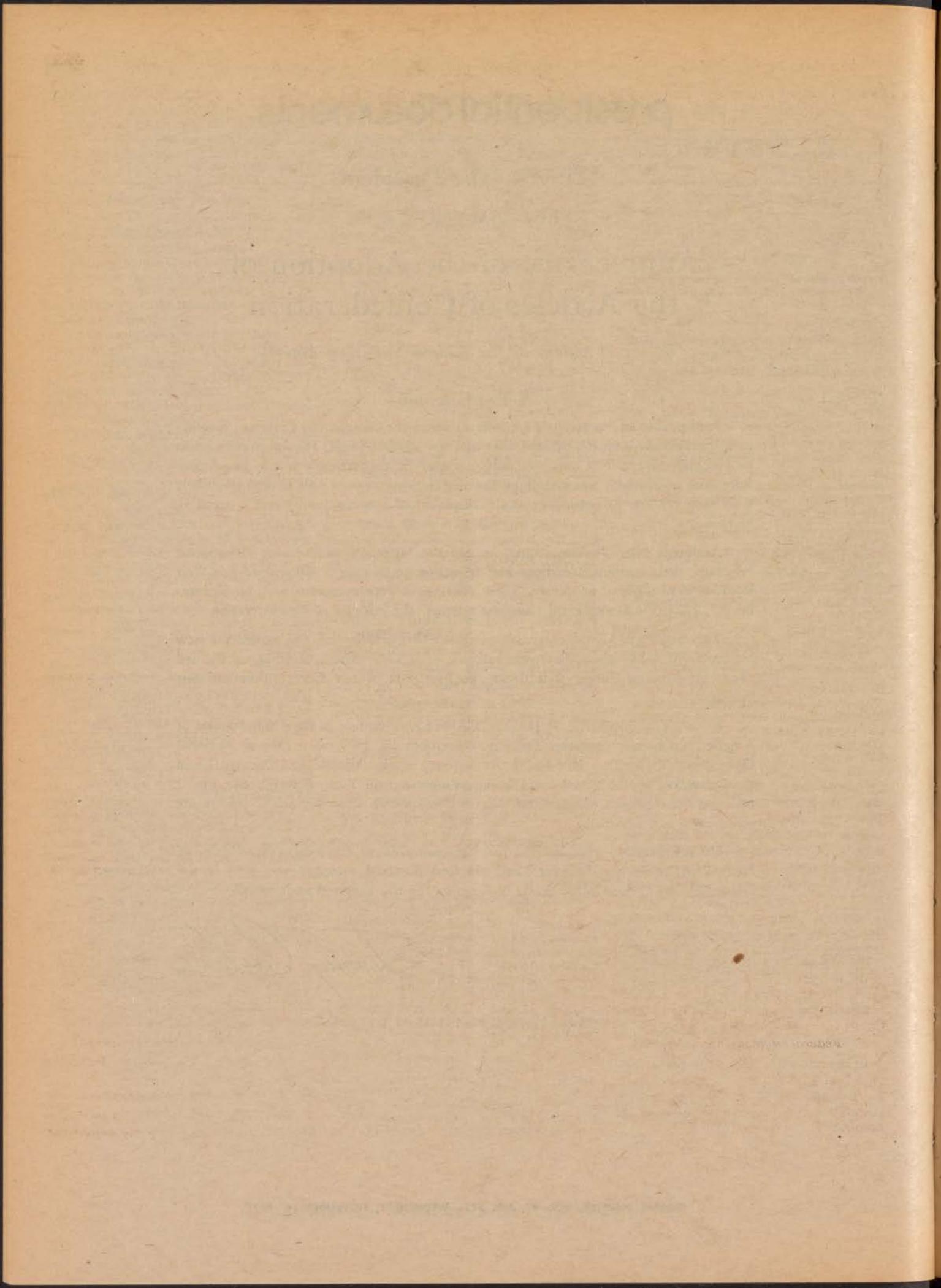
The Articles of Confederation became our first constitution and served the new Nation from 1781, when they were ratified, until 1789. Much of what we learned about government during that period became part of our Constitution and our heritage.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby proclaim Tuesday, November 15, 1977, as a Day of National Observance of the Two Hundredth Anniversary of the Adoption of the Articles of Confederation by the Continental Congress convened in York, Pennsylvania, and I call upon the people of the United States to observe that day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of November, in the year of our Lord nineteen hundred seventy-seven, and of the Independence of the United States of America the two hundred and second.



[FR Doc.77-33311 Filed 11-15-77;1:07 pm]



rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[4910-22]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER B—PAYMENT PROCEDURES

PART 160—STATE FISCAL PROCEDURES AND REPORTS

Transfer of Highway Safety Funds; Revision
AGENCY: Federal Highway Administration, DOT.

ACTION: Final rule.

SUMMARY: This rule sets forth the procedures and requirements for the transfer of highway safety funds from one categorical grant program to another as permitted by the Federal-Aid Highway Act of 1976.

EFFECTIVE DATE: November 16, 1977.

FOR FURTHER INFORMATION CONTACT:

Joseph A. McCaffrey, Office of Fiscal Services, 202-426-0674; Kathleen S. Markman, Office of the Chief Counsel, 202-426-0824, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours: Monday-Friday 7:45-4:15 EST.

SUPPLEMENTARY INFORMATION:

This regulation replaces the existing regulation found at 23 CFR Part 160 Subpart C as redesignated at 41 FR 54169 (December 13, 1976). The regulation is issued in order to conform to the requirements of 23 U.S.C. 104(g), as amended by section 206 of the Federal-Aid Highway Act of 1976 (Pub. L. 94-280, May 5, 1976).

This regulation is related to a grant, benefit, or contract within the purview of 5 U.S.C. 553(a)(2), therefore, general notice of proposed rulemaking is not required.

NOTE.—The Federal Highway Administrator has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Orders 11821 and 11949 and OMB Circular A-107.

Issued on: November 7, 1977.

WILLIAM M. COX,
Federal Highway Administrator.

In consideration of the foregoing, subpart C of part 160, Subchapter B, Chapter I of title 23 of the Code of Federal Regulations is amended to read as follows:

Subpart C—Transfer of Highway Safety Funds

Sec.

160.301 Purpose.

160.303 General.

160.305 Transfers Among Trust Fund Apportionments.

160.307 Transfers Between General Fund Apportionments.

AUTHORITY: 23 U.S.C. 104(g) and 315; 49 CFR 1.48(b).

Subpart C—Transfer of Highway Safety Funds

§ 160.301 Purpose.

To prescribe the procedures for transfer of funds among highway safety programs under 23 U.S.C. 104(g), as amended by section 206 of the Highway Safety Act of 1976.

§ 160.303 General.

(a) For the purpose of 23 U.S.C. 104(g), the terms "apportioned" and "apportionment" include the terms "allocate" and "allocation".

(b) Funds apportioned from General Funds may not be transferred to funds apportioned from the Highway Trust Fund. Funds apportioned from the Highway Trust Fund may not be transferred to funds apportioned from the General Fund.

(c) The transfer provisions involve the following funds:

(1) Apportionments financed from the Highway Trust Fund:

- (i) Special Bridge Replacement,
- (ii) High Hazard Location,
- (iii) Elimination of Roadside Obstacles,
- (iv) High Hazard Locations/Elimination of Roadside Obstacles, and
- (v) Rail-Highway Crossings, On-System.

(2) Apportionments financed from the General Fund:

- (i) Rail-Highway Crossings, Off-System, and
- (ii) Safer Off-System Roads.

(d) Funds transferred to any apportionment are to be expended under the provisions of law governing expenditure of the apportionment to which the transfer is made.

(e) Funds under obligation are not eligible for transfer.

(f) Transfers may be approved only between funds apportioned for the same fiscal year.

§ 160.305 Transfers Among Trust Fund Apportionments.

(a) Not more than 40 per centum of the funds apportioned in any fiscal year to each State may be transferred from one apportionment (§ 160.303(c)(1)) to

any other apportionment if the transfer is requested by the State highway department and is approved by the Federal Highway Administration (FHWA) as being in the public interest.

(1) Not to exceed 50 percent of the amount transferred under § 160.305(a) of this part from the rail-highway crossing apportionment may be transferred from the half of the apportionment reserved for installation of protective devices.

(2) Transfers to the rail-highway crossing apportionment may be used for either protective devices or the elimination of other hazards.

(b) One-hundred percent of the funds apportioned in any fiscal year to each State may be transferred from one apportionment (§ 160.303(c)(1)) to any other apportionment if the transfer is requested by the State highway department, and is approved by FHWA as being in the public interest, if FHWA has received assurances from such State highway department that the purposes of the program from which such funds are to be transferred have been met.

§ 160.307 Transfers Between General Fund Apportionments.

(a) All or any part of the funds authorized for the rail-highway crossing program off-system (Section 203(c) of the Highway Safety Act of 1973, as amended) may be transferred to the safer off-system roads apportionment (23 U.S.C. 219) if the State highway department requests the transfer and provides satisfactory assurances that the purposes of Section 203 have been met.

(b) A transfer between General Fund apportionments does not effect a transfer of obligation authority or liquidating cash. Obligation authority and liquidating cash for the transferred funds must be provided by appropriation action before they can be obligated.

[FR Doc.77-33112 Filed 11-15-77;8:45 am]

[7545-01]

Title 29—Labor

CHAPTER I—NATIONAL LABOR RELATIONS BOARD

PART 100—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—General Provisions

AGENCY: National Labor Relations Board.

ACTION: Addition to regulations.

SUMMARY: Section 100.735 contains general provisions covering employees'

responsibilities and conduct and this addition establishes the procedure for the filing, approval and payment of claims for personal injury or death, damage or loss of property caused by the wrongful act of an agency employee while in the performance of his official duties.

EFFECTIVE DATE: November 16, 1977.

FOR FURTHER INFORMATION CONTACT:

George A. Leet, Esquire, Associate Executive Secretary, National Labor Relations Board, 1717 Pennsylvania Avenue NW., Washington, D.C. 20570.

The National Labor Relations Board hereby promulgates an addition to § 100.735, Subpart A, Chapter I, Title 29 of the Code of Federal Regulations by adding the following section:

§ 100.735-6 Claims under the Federal Tort Claims Act for loss of or damage to property or for personal injury or death.

(a) *Filing of claims.* Pursuant to 28 U.S.C. 2672, any claim under the Federal Tort Claims Act for money damages for loss of or injury to property, or for personal injury or death, caused by the negligent or wrongful act or omission of any employee of the National Labor Relations Board while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such loss, injury or death in accordance with the law of the place where the act or omission occurred, may be presented to the Director of Administration, 1717 Pennsylvania Avenue NW., Washington, D.C. 20570, or to any regional office of the National Labor Relations Board, at any time within 2 years after such claim has accrued. Such a claim may be presented by a person specified in 28 CFR 14.3, in the manner set out in 28 CFR 14.2 and 14.3, and shall be accompanied by as much of the appropriate information specified in 28 CFR 14.4 as may reasonably be obtained.

(b) *Action on claims.* The Director, Division of Administration, shall have the power to consider, ascertain, adjust, determine, compromise, and settle any claim referred to in, and presented in accordance with paragraph (a) of this section. The Chief, Security and Safety, can process and adjust claims under § 100 in accordance with delegated authority from the Director. Legal review is required by the General Counsel or designee for all claims in the amount of \$1,000 or more, 28 CFR 14.5. Any exercise of such power shall be in accordance with 28 U.S.C. 2672 and 28 CFR Part 14.

(c) *Payment of awards.* Any award, compromise, or settlement in an amount of \$2,500 or less made pursuant to this section will be paid by the Director of Administration out of appropriations available to the National Labor Relations Board. Payment of any award, compromise, or settlement in an amount in excess of \$2,500 made pursuant to this section will be obtained in accordance with 28 CFR 14.10.

Dated at Washington, D.C., November 10, 1977.

By direction of the Board.

GEORGE A. LEET,
Associate Executive Secretary,
National Labor Relations Board.

[FR Doc. 77-32929 Filed 11-15-77; 8:45 am]

[1410-03]

Title 37—Patents, Trademarks, and Copyrights

CHAPTER II—COPYRIGHT OFFICE,
LIBRARY OF CONGRESS

[Docket RM 77-5]

PART 201—GENERAL PROVISIONS

Warning of Copyright for Use by Libraries
and Archives

AGENCY: Library of Congress, Copyright Office.

ACTION: Final Regulation.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is adopting a new regulation pertaining to the use by libraries and archives of certain warnings of copyright in connection with their photo-duplication and related activities. The regulation is adopted to implement sections 108(d)(2) and 108(e)(2) of the Act for General Revision of the Copyright Law. The effect of the regulation is to prescribe the content, form, and manner of use of the warnings of copyright identified in those sections.

EFFECTIVE DATE: January 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Jon Baumgarten, General Counsel,
Copyright Office, Library of Congress,
Washington, D.C. 20559, 703-557-8731.

SUPPLEMENTARY INFORMATION: Sections 108(d) and 108(e) of the first section of Pub. L. 94-553 (90 Stat. 2541) set forth conditions under which specified libraries and archives, or their employees acting within the scope of their employment, may make and distribute single copies and phonorecords of certain copyrighted works, or parts of works, without the consent of the copyright owner. Among other conditions specified in the Act, the library or archive must "display prominently, at the place where orders (for copies or phonorecords) are accepted, and include on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation."

On March 30, 1977, we published in the FEDERAL REGISTER (42 FR 16838) an Advance Notice of Proposed Rulemaking, inviting public comment to assist the Office in considering alternative forms of warning. After considering the comments received in response to the Advance Notice, on August 17, 1977 we published in the FEDERAL REGISTER (42 FR 41387) a Notice of Proposed Rulemaking to add a new § 201.14 to the regulations of the Copyright Office.

Twelve initial and reply comments were received in response to the Notice of Proposed Rulemaking. While most comments received recommended some modification of the proposed regulation, several suggestions were technical in nature or sought clarification of the proposed language. After careful consideration, we have decided to promulgate proposed § 201.14 with few substantive changes. A discussion of the major comments follows.

1. *The short form of warning.* In the proposed rulemaking, we noted that the primary purpose of the warning is to caution a user who has acquired a copy from a library or archives under section 108 as to that users' responsibilities under the copyright law. We specifically invited comment upon our proposal for a short warning, rather than an extensive one incorporating the numerous conditions governing the library's and archive's own obligations under paragraphs (a), (d), (e), and (g) of section 108. Although one comment proposed expanding the warning in significant detail, we have decided to adhere to our original conclusion that the "warning" should be precisely that: a brief, cautionary statement alerting the user that the making of a reproduction by a library or archive, and the subsequent use of the reproduction, are subject to the copyright law. Such a warning is an inappropriate device to set out accurately or meaningfully all of the institutional limitations and requirements of § 108.

2. *Conditions under which photocopies or other reproductions can be furnished; use of reproductions.* A number of comments raised questions concerning the second paragraph in the text of the proposed warning, which read:

Photocopies or other reproductions can be furnished only under certain conditions, if they will be used solely for private study, scholarship, or research. Use of the reproduction for other purposes may make the user liable for copyright infringement.

Several questions centered around uncertainty as to whether the phrase "certain conditions" in the first sentence referred to use "for private study, scholarship, or research", or suggested additional statutory conditions not specified in the warning itself (namely, those in paragraphs (a), (d), (e), and (g) of section 108, referred to earlier). This latter interpretation is correct and the final regulation has been revised to make this clear.

A number of comments also questioned the failure to include a reference either generally to "fair use" or to certain illustrative usages set out in section 107 of the copyright law (criticism, comment, news reporting, and teaching). Since the test of user liability under section 108 (f)(2), both for request for, and later uses of, reproductions made under section 108(d) is activity which exceeds the limits of "fair use" under section 107, and not solely use for purposes "other than private study, scholarship, or research", we have also revised the second sentence of the above-quoted paragraph.

3. *Other issues.* Several comments objected to the proposed specification of type sizes and cardboard stock. However, these specifications are helpful in providing certainty to the task of designing and printing the warnings and offer appropriate assurances that the warnings will serve their purpose. We have modified the provision that the warning be reproduced on cardboard stock to require that it be reproduced on "heavy paper or other durable material". We have also adopted one suggestion that a citation to title 17 of the United States Code be included in the warning.

The proposed regulation is adopted with changes, as set forth below:

Part 201 of 37 CFR Chapter II is amended by adding a new § 201.14 to read as follows:

§ 201.14 Warnings of copyright for use by certain libraries and archives.

(a) *Definitions.* (1) A "Display Warning of Copyright" is a notice under paragraphs (d) (2) and (e) (2) of section 108 of Title 17 of the United States Code as amended by Pub. L. 94-553. As required by those sections the "Display Warning of Copyright" is to be displayed at the place where orders for copies or phonorecords are accepted by certain libraries and archives.

(2) An "Order Warning of Copyright" is a notice under paragraphs (d) (2) and (e) (2) of section 108 of Title 17 of the United States Code as amended by Pub. L. 94-553. As required by those sections the "Order Warning of Copyright" is to be included on printed forms supplied by certain libraries and archives and used by their patrons for ordering copies or phonorecords.

(b) *Contents.* A Display Warning of Copyright and an Order Warning of Copyright shall consist of a verbatim reproduction of the following notice, printed in such size and form and displayed in such manner as to comply with paragraph (c) of this section:

NOTICE

WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

(c) *Form and Manner of Use.* (1) A Display Warning of Copyright shall be printed on heavy paper or other durable material in type at least 18 points in size, and shall be displayed prominently, in such manner and location as to be clearly visible, legible, and comprehensi-

ble to a casual observer within the immediate vicinity of the place where orders are accepted.

(2) An Order Warning of Copyright shall be printed within a box located prominently on the order form itself, either on the front side of the form or immediately adjacent to the space calling for the name or signature of the person using the form. The notice shall be printed in type size no smaller than that used predominantly throughout the form, and in no case shall the type size be smaller than 8 points. The notice shall be printed in such manner as to be clearly legible, comprehensible, and readily apparent to a casual reader of the form.

(17 U.S.C. 207, and under the following sections of Title 17 of the U.S. Code as amended by Pub. L. 94-553: 108; 702.)

Dated: November 10, 1977.

WALDO H. MOORE,
Assistant Register of Copyrights
for Registration.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.

[FR Doc. 77-33111 Filed 11-15-77; 8:45 am]

[6730-01]

Title 46—Shipping

CHAPTER IV—FEDERAL MARITIME COMMISSION

SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS AND REGULATED ACTIVITIES

[Docket No. 72-19; General Order No. 13]

PART 536—PUBLISHING AND FILING TARIFFS BY COMMON CARRIERS IN THE FOREIGN COMMERCE OF THE UNITED STATES

AGENCY: Federal Maritime Commission.

ACTION: Denial of Petitions for Reconsideration and implementation of revised tariff filing regulations.

SUMMARY: Petitions seeking reconsideration of 13 sections of General Order 13 as it was revised on October 10, 1975 (40 FR 47770) are denied, but several amendments to the regulations are being made on the Commission's own initiative based upon Petitioners' comments. These modifications relax some requirements complained of as overly stringent and make numerous editorial changes which do not alter the substantive effect of the rules. The principal modification is the renumbering of most sections to conform the format of the foreign commerce tariff filing rules to the Commission's recently enacted domestic commerce regulations (General Order 38, 42 FR 54810). Further rulemaking on intermodal tariff requirements and other matters is anticipated shortly.

EFFECTIVE DATE: January 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Francis C. Hurney, Secretary, 1100 L Street NW., Washington, D.C. 20573, 202-523-5725.

SUPPLEMENTARY INFORMATION: The Commission has before it for decision five petitions seeking reconsideration of its foreign commerce tariff filing regulations, as revised on October 2, 1975 (General Order 13, 46 CFR Part 536, 40 FR 47770).¹

The new features of the 1975 Rules fall into two general categories: (1) Changes designated to regulate post-1970 developments in intermodal transportation; and (2) changes designated to clarify and update technical tariff format and filing requirements. Both types of changes were intended to aid shippers and the Commission's staff in applying ocean carrier tariffs. Petitioners seek reconsideration of 13 individual provisions, including five existing regulations which were not substantively altered by the 1975 revisions. The challenged sections of the 1975 Rules are:

1. 536.1(e). Definition of Local Rates. "Should be made expressly synonymous with a carrier's port-to-port rate; the 1975 definition could be construed as excluding port-to-port rates." ANAFC and South Atlantic Group.

2. 536.1(k). Definition of Transshipment. "Inconsistent with parts of § 536.4; the word 'relay' should be added to the basic definition (first sentence) and 'feeder' and 'relay services' should be expressly excluded, regardless of whether such services are operationally controlled by the line-haul carrier." ANAFC and South Atlantic Group.

3. 536.1(m). Definition of Substitute Service. "Needlessly complex and substantive in nature; a thinly disguised attempt to enlarge the meaning of 'through intermodal transportation' to which additional tariff filing burdens attach." ANAFC and South Atlantic Group.

4. 536.1(p). Definition of Port. "Limiting the term 'port' to the place where actual transportation by water commences or terminates as to any particular movement of cargo favors LASH barge operators at the expense of other intermodal carriers; the definition should be constant for all modes of transportation; a port should be any place having water transportation facilities at which transportation by water does commence or terminate." Sea-Land.

5. 536.15(d)(1). Intermodal tariffs must contain a precise breakout of port-to-port rates for each commodity. "This is a harsh, commercially unreasonable, potentially disastrous practice in light of current intermodal arrangements between water and land carriers; inland carrier divisions are constants, and subject to container volume discounts, and calculated on a per container basis, while the through routes are calcu-

¹ The effective date of the revised regulations (1975 Rules) was stayed pending disposition of the instant petitions. Foreign commerce carriers continue to operate under the previous General Order 13 regulations (Existing Rules).

Petitions were received from Sea-Land Service, Inc. (Sea-Land); the Association of North Atlantic Freight Conferences (ANAFC); Waterman Steamship Corp. (Waterman); five Trans-Pacific Freight Conferences (Trans-Pacific) and two U.S. West Coast/Latin America Conferences (Pacific Coast). Replies were tendered for filing by ANAFC and by a group of six U.S./Europe freight conferences (South Atlantic Group). Former § 502.261 of the Commission's Rules shall be waived to permit the filing of these replies.

lated on a weight or measurement basis." Trans-Pacific.

6. 536.4(a)(12). Tariff subscription price must include any bill of lading or rules tariff published by the carrier. "Section 18(b)(1) does not require carriers to distribute bill of lading tariffs to all their tariffs subscribers; many shippers do not need all the components of a carrier's tariff; it is sufficient that supplementary subscriptions be offered at a reasonable cost." Trans-Pacific.

7. 536.4(a)(4)(1). Tariffs listing a range of ports served must also include a specific listing of ports not served. "Section 18(b) does not provide an unequivocal answer on this point as evidenced by the Commission's long standing practice of accepting only a statement of the range of ports; the rule should at least permit carriers to serve designated ports in a range of ports with the proviso that undesignated ports may be served on an 'inducement subject to agreement' basis; the phrase 'any restriction applying at a port' should be modified to read 'any restriction under the control of or imposed by the carrier.'" ANAFC and South Atlantic Group.

8. 536.5(O). Conditional, temporary or emergency rates (including project rates) shall be listed under the appropriate commodity heading for each commodity affected. "Many projects involve hundreds of commodities and the materials shipped are often not described by the carrier in the same manner as its existing commodity descriptions; it is not enough to say that large projects may be granted special permission not to list each commodity; such a procedure is time consuming and troublesome for carriers and the present standard of 'impossibility' is unfair; it would be better to place the burden on the Commission by having the staff reject any unreasonably small or non-bona fide project filings; a new section should be inserted to read 'Project rates may be placed in a special section of the tariff providing that the Table of Contents or Commodity Index contain a specific reference to Project Rates.'" Pacific Coast and Waterman.

9. 536.6(a)(2). Amendments to dual rate contract rates may not be increased less than 90 days after a previous rate change has taken effect and before 90 days' notice has been given to contract shippers. "This rule conflicts with the pending proceeding in Docket No. 75-13." ANAFC, Sea-Land, and South Atlantic Group.

10. 536.4(b)(10)(v). Freight Forwarder compensation must be included in carrier tariffs. "The rule should be revised to state that tariffs include freight forwarder compensation 'on the ocean freight' because there is considerable confusion as to what a permissible basis for freight forwarder compensation might be." ANAFC and South Atlantic Group.

11. 536.9(c). Tariffs on imports to New York shall contain a rule which complies with General Order 8. "This rule conflicts with the pending evidentiary proceeding in Docket No. 73-55 pertaining to the application of General Order 8 to containerized imports." Sea-Land and ANAFC.

12. 536.5(L). When a dual rate system permits two rates to be employed, both the contract and the noncontract rates shall be published with each individual commodity item subject to the dual rate system. "This requirement is in the present tariff rules and was superseded by Circular Letter 10-74 upon the request of ANAFC members. The Circular Letter stated that the suspension was temporary and occasioned by the 'international paper and forestry products shortage,' a somewhat dubious basis not mentioned in ANAFC's waiver request. It should be suf-

ficient for carriers to provide a formula for calculating dual rate contract discounts rather than publishing two rates for each commodity. To do otherwise would make the use of commodity coding data more difficult." ANAFC and South Atlantic Group.

13. 536.8(a). The last sentence of the rule states that "Section 14b of the Act does not permit * * * relief from the [advance filing] requirements of that section and applications for such permission will not be entertained." "A statutory prohibition against section 14b waivers exists only if section 14b were interpreted as a notice provision. Until Docket No. 75-13 is resolved by the Commission the last sentence of the proposed rule should be deleted as it prejudices the issue in that proceeding." ANAFC and South Atlantic Group.

In light of Petitioners' arguments and the Commission's recent experience in revising its domestic tariff regulations (Docket No. 76-40, 42 FR 54810) we have determined to make certain modifications in the 1975 Rules. The following *sua sponte* amendments are either of an editorial nature or ease 1975 requirements which were complained of as burdensome.

I. Part 536 has been renumbered to coincide with Part 531; 536.12 has been consolidated with §§ 536.2; and §§ 536.13, 536.14 and 536.17 have been combined in a single section captioned "Exemptions and exclusions."

II. The definitions of "through rate", "through route", "transshipment", "interchange", "substitute service", "absorption", "equalization", "port", "feeder service", "water carrier" and "intermodal transportation" have been temporarily withdrawn from § 536.1 to avoid possible conflict with recent court cases concerning intermodal transportation and the Commission's General Order 38. The definition of "carrier" was conformed to the definition in the Existing Rules, except that an express reference to nonvessel operating carriers was added to avoid any claim that the Commission has altered its long standing recognition of nonvessel operating carriers as section 1 carriers.

III. Section 536.14 governing through intermodal transportation tariffs has been withdrawn and existing § 536.16 adopted in its place, thereby temporarily removing the requirement that tariffs contain a precise breakout of the port-to-port rates for each commodity carried. Existing § 536.16 contains its own definitions of "through rate" and "through route." The reference to "through intermodal transportation" in § 536.1(u) was also deleted in light of the withdrawal of §§ 536.14 and 536.1(r).

IV. A reference to the Commission's statutory responsibilities to police and prevent unduly discriminatory and prejudicial practices pursuant to Shipping Act sections 15, 16, and 17 has been added to § 536.0. Tariff regulations which rely upon statutory authority in addition to that of sections 18(b) and 14b is consistent with past Commission action and the purposes of the Shipping Act. "Filing of Through Rates and Through Routes." 35 FR 6394, 6397 (1970); "Report in Docket No. 875" (General Order 15), 30 FR 12682 (1965).

V. Section 536.16 establishes an effective date for the 1975 Rules which has long since passed. A new effective date is stated in the dispositive language of the instant Order and § 536.16 has been deleted.

VI. Section 536.4(a)(12) has been relaxed to permit carriers to offer individual subscriptions to bill of lading tariffs, rules tariffs, or other major components of their total tariff filing rather than charging a single subscription price which includes all tariff material on file, regardless of its usefulness to particular shippers. It is expected, however, that carriers will provide subscription information which can be readily understood by shippers and which clearly identifies the various tariff components available and the charge assessed for each.

VII. Section 536.6(a)(2) has been modified to coincide with the Commission's final decision in Docket No. 75-13, 17 SRR 305 (1977). *I.e.*, contract rates may be increased after 90 days' notice to contract shippers without regard to the length of time the rate has been in effect.

VIII. Section 536.5(O) has been mitigated by the addition of a new subsection which permits *bona fide* multiple commodity "project rates" to be printed in a special tariff section whenever the tariff contains a Table of Contents clearly identifying the existence of such a "project rates section."

IX. Section 536.8(a) has been amended to eliminate the last sentence which flatly proscribed the filing of requests for special permission to increase Merchant's Contract rates upon short notice. The Commission wishes to reserve judgment on this point until it has an appropriate opportunity to consider the matter in greater depth. In the interim, any such requests shall be entertained on an *ad hoc* basis.

These amendments moot Petitioners' stated objections to Items 1, 2, 3, 4, 5, 6, 8, 9, and 13, above. We wish to stress, however, that this action is taken only as an interim measure and does not represent the Commission's final position on the points in question—especially insofar as intermodal tariff filings are concerned. Another rulemaking proceeding proposing definitions (and other matters) which more closely parallel the domestic commerce regulations served October 4, 1977 in Docket No. 76-49 (General Order 38, 46 CFR Part 531) is contemplated.

Petitioners' remaining contentions (Items 7, 10, 11 and 12, pp. 3-4, above) are rejected for the following reasons.

Item 7. Section 536.4(a)(1). Shipping Act section 18(b) requires precision in tariff preparation, content and filing to the greatest extent practical. The Commission is responsible for interpreting what is "practical" in light of current shipping conditions. In today's containerized, highly competitive shipping environment, the Commission's staff, port interests, competing carriers and shippers can all better conduct their business when tariffs list only the individual ports or points which actually receive regular service from the publishing car-

rier(s). ANAFC has failed to demonstrate any harm which would occur from requiring carriers to amend their tariffs upon the requisite statutory notice when they wish to call at additional ports in a port range they already serve, especially since the notice period may be shortened in appropriate cases by use of the special permission process.

Item 10. Section 536.4(b)(10)(v). This requirement has long been applicable to foreign commerce carriers as § 510.24(f) of the Commission's Freight Forwarder Rules (General Order 4). The 1975 Rules restate the General Order 4 requirement purely as an organizational improvement—in order that all tariff regulations might appear together in General Order 13. The challenged rule requires carriers to accurately disclose what they pay to ocean freight forwarders. It is beyond the scope of this proceeding to determine whether modifications should be made in the nature and extent of forwarder brokerage compensation that carriers are presently paying. ANAFC's broad, conclusory contention that 1975 § 536.4(b)(10)(v) is vague and ineffective should be presented in the form of a petition or complaint directed at specific aspects of General Order 4.

Item 11. Section 536.9(c). Sea-Land misconstrues the purpose of the regulation, which is to insure that tariffs contain a rule that complies with the free time requirements of the Commission's General Order 8 (46 CFR Part 526)—regardless of what these requirements are at any particular time. The fact that possible extensions of General Order 8 are under consideration in pending Docket No. 73-55 is therefore irrelevant to the instant proceeding.

Item 12. Section 536.5(1). The requirement that both contract and non-contract rates be published immediately adjacent to each individual tariff item to which they apply long precedes the 1975 Rules. Subsequent to the initiation of this proceeding, the Commission chose to temporarily suspend this existing requirement (Circular Letter 10-74), and, as a matter of policy, believes it desirable to briefly continue both the rule and the temporary suspension to gather further operating experience concerning the value of "Conversion Tables" as a means of establishing noncontract rates. Further rulemaking on this point is anticipated shortly.

Therefore, it is ordered, That the aforesaid "Replies to Petition for Reconsideration" are accepted for filing; and

It is further ordered, That the aforesaid "Petitions for Reconsideration" are denied; and

It is further ordered, That, pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 553) and sections 14b, 15, 16, 17, 18(b), 21 and 43 of the Shipping Act, 1916 (46 U.S.C. 813a, 814, 815, 816, 817(b), 820 and 841a), the Commission's Foreign Commerce Tariff Rules (46 CFR Part 536; General Order 13) are amended as set forth in the attached Appendix; and

It is further ordered, That the aforesaid amendments shall take effect on

January 1, 1978. New or reissued tariffs tendered for filing on or after January 1, 1978 shall be fully subject to the new regulations. Tariff amendments submitted on or after the effective date will, however, continue to be accepted in the same format as the tariff being amended until January 1, 1979. On or after the latter date, all tariff material employed by common carriers by water in the foreign commerce of the United States shall fully conform to the requirements of revised Part 536. Tariffs on file January 1, 1979 which do not meet the requirements of revised Part 536 shall be cancelled; and

It is further ordered, That any existing grants of special permission excusing compliance with foreign commerce tariff filing requirements beyond the aforesaid effective date of revised Part 536 shall continue according to their original terms until further action of the Commission.

By the Commission.

FRANCIS C. HURNEY,
Secretary.

46 CFR Part 536 is revised to read as follows:

Sec.	Scope.
536.0	Exemptions and exclusions.
536.1	Definitions.
536.3	Filing of tariffs; general.
536.4	Tariff format.
536.5	Tariff content.
536.6	Statement of rates and charges.
536.7	[Reserved]
536.8	Tariffs containing through rates and through routes.
536.9	Terminal rules, charges and allowances; free time allowed at New York.
536.10	Amendments to tariffs.
536.11	Supplements to tariffs.
536.12	[Reserved]
536.13	Governing tariffs.
536.14	Transfer of operations, transfer of control, changes in carrier name, and changes in conference membership.
536.15	Applications for special permission.

AUTHORITY: Secs. 14b, 15, 16, 17, 18(b), 21, 43 of the Shipping Act, 1916 (46 U.S.C. 813a, 814, 815, 816, 817(b), 820 and 841a). The reporting requirements contained in Part 536 have been approved by the U.S. General Accounting Office under Number B-180233 (RO226).

§ 536.0 Scope.

(a) These regulations govern the publication and filing of tariffs for the transportation of property performed by common carriers by water in the foreign commerce of the United States and by combinations of such carriers, including through transportation offered in conjunction with one or more common carriers not otherwise subject to the Shipping Act, 1916.

(b) Section 18(b) of the Shipping Act, requires carriers and conferences of such carriers to file with the Commission and keep open to public inspection, tariffs showing, with as much exactitude as practical, all rates and charges for transportation between U.S. and foreign ports and between points on any through route

which is established. The regulations of this part implement the requirements of section 18(b) and of Shipping Act section 14b governing the use of "Dual Rate" or Merchant's Contracts by carriers. The tariff format and contents requirements of this Part 536 also reflect the Commission's responsibilities in identifying and preventing reasonable preference or prejudice, and unjust discrimination pursuant to Shipping Act sections 15, 16 and 17.

§ 536.1 Exemptions and exclusions.

(a) The following services are exempt from the tariff filing requirements of the Act and the rules of this part:

(1) Transportation by vessels operated by the State of Alaska between Prince Rupert, Canada, and ports in southeastern Alaska; *Provided*, That all the following conditions are met: (i) Carriage of property is limited to vehicles; (ii) tolls levied for vehicles are based solely on space utilized rather than the weight or contents of the vehicle and are the same whether the vehicle is loaded or empty; (iii) the vessel operator does not move the vehicles on or off the ship; and (iv) the carrier does not participate in any joint rates establishing through routes or in any other type of agreement with any other carrier.

(2) Transportation of passengers, commercial buses carrying passengers, personal vehicles, and personal effects by vessels operated by the State of Alaska between Seattle, Washington and Prince Rupert, Canada; *Provided*, That such vehicles, and personal effects are the accompanying personal property of the passengers, and are not services transported for the purpose of sale.

(b) The following services are subject to continuing special permission authority to deviate from the 30 day notice requirement of Section 18(b) of the Act and the form and content requirements of this part:

(1) Transportation of U.S. Department of Defense cargo by American-flag carriers under terms and conditions negotiated and approved by the Military Sealift Command; *Provided*, That all the following conditions are met: (i) Exact copies of all carrier quotations or tenders (tenders) accepted by the Military Sealift Command (MSC) are filed with the Commission as soon as possible after they are approved by MSC, but on not less than one day's filing notice prior to the effective date thereof; (ii) all tenders are filed in triplicate, one copy of which is signed and maintained at the Commission's Washington Office for public inspection; (iii) a letter of transmittal accompanies the filing stating that the documents are submitted in accordance with the requirements of Shipping Act section 18(b) and this section; (iv) tenders submitted for filing are numbered by their respective carriers as part of a distinct tariff series, with each carrier's series to begin with the number "1" and run consecutively thereafter; (v) tenders which supersede a prior tender specifically cancel the prior tender by its

series number; (vi) amendments or supplements to tenders are also approved by MSC, are filed with the Commission upon not less than one day's filing notice, and contain an appropriate reference to the original tender being amended or supplemented.

(2) Transportation of military household goods and personal effects by non-vessel operating carriers when there is also a domestic movement in the United States; *Provided*, That supplements and/or revised pages for such transportation are filed upon at least one day's notice in the form routinely submitted to the Department of Defense, together with a specification of the port-to-port segment of the applicable through rates.

§ 536.2 Definitions

The following definitions of terms shall apply unless otherwise indicated by the context of this part.

(a) *Act*. The Shipping Act, 1916, as amended.

(b) *Carrier*. A common carrier by water in the foreign commerce of the United States (including nonvessel operating carriers as defined in § 510.21(d) of the Commission's rules), as defined in section 1 of the Act.

(c) *Class rates*. Rates applicable to all articles which have been grouped or "classified" together in a classification tariff or a classification section of a rate tariff.

(d) *Commodity rates*. Rates applying on a commodity or commodities specifically named or described in the tariff in which the rate or rates are published.

(e) *Conference*. An association of carriers permitted, pursuant to an agreement approved by the Commission under section 15 of the Act to discuss, establish and file rates and practices on behalf of its member lines.

(f) *Dual rates*. That system of rating established pursuant to section 14b of the Act, in which a carrier or conference is permitted to offer a lower rate to a shipper who has contracted to give all or a fixed portion of his patronage to such carrier or conference, and at the same time offer a higher rate shippers who are not signatory to such contracts.

(g) *Joint rates*. Rates or charges established by two or more carriers by transportation over the combined routes of such carriers between a port and a port, a profit and a point, or any combination thereof.

(h) *Local rates*. Rates or charges for transportation over the route of a single carrier (or any one carrier participating in a conference tariff), the application of which is not contingent upon a prior or subsequent movement.

(i) *Open rate*. When a conference relinquishes or suspends its ratemaking authority, in whole or in part, over a specified commodity or commodities, thereby permitting each individual carrier member of the conference to fix its own rates on such commodity or commodities.

(j) *Open for public inspection*. The maintenance of a complete and current

set of the tariffs used by a carrier, or to which it is a party, in each of its offices and those of its agent in any city where it transacts business involving such tariffs.

(k) *Person*. Includes individuals, firms, partnerships, associations, companies, corporations, joint stock associations, trustees, receivers, agents, assignees and personal representatives.

(l) *Proportional rates*. Rates or charges assessed by a carrier for transportation services, the application of which are conditioned upon a prior or subsequent movement.

(m) *Tariff*. A publication containing the actual rates, charges, classifications, rules, regulations, and practices of a carrier or conference of carriers for transportation by water. For the purposes of this part, the term "practice" refers to those usages, customs, or modes of operation which in anywise affect, determine or change the transportation rates, charges or services provided by a carrier, and, in the case of conferences, must be restricted to activities authorized by the basic conference agreement.

(n) *Tariff filing*. Any tariff, or modification thereto, which is received by the Commission as filed pursuant to these rules.

§ 536.3 Filing of tariffs; general.

(a) As used in this part, the words "file", "filed", or "filing," when used with respect to the filing of tariffs with the Commission, shall mean actual receipt at the Commission's Washington, D.C. offices.

(b) Tariffs shall be published and filed by an officer or employee of the carrier, or if a conference tariff, by an officer or employee of the conference. In the alternative, publication and filing may be accomplished through an agent authorized to act for such carrier or conference by a specific written delegation of authority.

(1) A carrier or conference may delegate authority to a person, not an official or employee of such carrier or conference, for the purpose of issuing all its tariffs, or any particular tariff.

(2) Whenever there is a delegation of tariff issuing authority by a carrier or conference, there shall be filed with the Commission a written statement indicating the appointment of such agent and setting forth the exact limits of the agent's authority.

(c) No carrier or conference shall publish and file any tariff or modification thereto which duplicates or conflicts with any other tariff on file with the Commission to which such carrier is a party, whether filed by such carrier or by an authorized agent. Neither shall any carrier publish and file any tariff or modification thereto which conflicts with any other tariff on file with the Commission and which names such carrier as a participant thereto.

(d) All tariffs published in a foreign language shall be accompanied by three true copies translated into the English language when submitted for filing.

(e) All tariff matter filed with the Commission, except temporary filings

as permitted hereinafter in § 536.10(c) (1), shall be accompanied by a letter of transmittal which clearly identifies the tariff and pages involved. If the sender desires a receipt, a duplicate of such letter must be furnished together with a plain self-addressed envelope measuring approximately 4½ by 9¾ inches. The duplicate letter will be stamped with the date of receipt and mailed to the sender in the envelope provided. If a duplicate letter and self-addressed envelope are not submitted, a receipt will not be furnished.

(f) All tariff matter, including temporary filings by mail pursuant to § 536.10(c) (1), shall be filed in triplicate: *Provided, however*, That temporary filings made by telegraph or cable pursuant to § 536.10(c) (1) need not be submitted in triplicate.

(g) Tariff filings shall be addressed to:

Federal Maritime Commission, Washington, D.C. 20573.

(h) Each carrier shall keep open for public inspection all tariffs published by it or to which it is a party in the foreign commerce of the United States.

(i) Carrier participants in a conference tariff are not relieved from the necessity of complying with the Commission's regulations and the requirements of section 18(b) of the Act with regard to keeping tariffs open for public inspection.

(j) A carrier's obligation to file tariffs pursuant to section 18(b) of the Act and this part must be carried out as follows:

(1) When the carrier is not a party to an approved agreement, by filing its own tariff or tariffs; and (2) when the carrier is a party to an approved agreement, by participation in a single tariff filed by the conference. No common carrier may be shown as a participant in a tariff filed by another carrier or conference where such participation has not been approved by the Commission pursuant to section 15 of the Act, filed with the Commission pursuant to Part 524 of this Chapter, or filed with the Commission pursuant to § 536.8(b).

(k) When a carrier is admitted to membership in a conference, cancellation of the carrier's individual tariff (if any) in the trade served by the conference (see § 530.7 of this chapter), and revision of the participating carrier page of the conference tariff (naming the newly admitted carrier) shall be published and filed with the Commission and may become effective upon the date of such filing. *Provided*, that, if the carrier has an individual tariff in the trade served by the conference and cancellation of that tariff and revision of the participating carrier page of the conference tariff (naming the newly admitted carrier) would result in an increase in that carrier's rates, the carrier shall, 30 days prior to being admitted as a new conference member, cancel its individual tariff effective 30 days from date of publication, making reference to the conference tariff and where it may be examined, unless special permission to become effective in less than 30 days has

been granted by the Commission pursuant to § 536.15.

(l) Any tariff submitted for filing which fails to conform with sections 14b or 18(b) of the Act, or with the provisions of this part, is subject to rejection by the Commission and, upon rejection shall be void and its use unlawful. Rejection will be accomplished as set forth in § 536.10(d) (1).

(m) Copies of all tariffs on file with the Commission (including all subsequent revisions and changes thereto) shall be made available by carriers and conferences to any person. A reasonable charge may be made for this service.

(n) Any new or initial tariffs shall be published and filed to become effective not earlier than 30 days after publication and filing, unless special permission to become effective on less than said 30 days' notice has been granted by the Commission pursuant to § 536.15.

(o) Provisions applicable to tariffs containing rates, charges, rules and regulations for through intermodal transportation are set forth in § 536.8; they are additional requirements for use only in such circumstances and are not a substitute for any other requirements of this part.

§ 536.4 Tariff format.

(a) All tariffs which are filed and kept open to public inspection shall be clear and legible and shall be plainly printed, mimeographed, multilithed, or prepared by some other similar permanent process on durable paper of good quality.

(b) No alteration in writing or erasure shall be made in any tariff publication.

(c) Sufficient marginal space or not less than three-fourths of an inch shall be allowed at the left side of each tariff page to permit insertion in tariff binders. In addition, a margin of not less than one-half inch shall be allowed at the bottom of each tariff page for insertion of the Commission's receipt stamp.

(d) Tariffs shall be in looseleaf form and printed on pages approximately 8½ by 11 inches. If other than a looseleaf tariff is to be filed, application for permission to make such filing shall be made to the Commission. If permission to file other than a looseleaf tariff is granted by the Commission, such permission will set forth the form and manner of filing the tariff and any amendments or supplements thereto.

(e) Tariff pages shall be printed on one side only, and each page after the title page shall be numbered in the upper right-hand corner. Each tariff page must show the name of the carrier or conference for whose account the tariff is issued, the effective date, the page number, the FMC number of the tariff, etc., as illustrated by Exhibit No. 1.

(f) To the extent applicable, all tariffs filed pursuant to this part shall be arranged in the following order:

- Title Page. Check Sheet. Table of Contents.
- Participating Carrier Page. Surcharge and/or Arbitrary/Differential/Outport Differential (or other identifying term) Section.
- Rules and Regulations Section. Index of Commodities and Classifications. Commod-

ity Rate Section. Classification and Class Rate Section. Routing Section. Open Rate Section.

§ 536.5 Tariff contents.

(a) The first page of every tariff shall be a title page and shall be printed on paper heavier than that used in the body of the tariff. The title page shall contain the following information:

(1) The name of the carrier, appropriately identified as a Nonvessel Operating Common Carrier (NVOCC) or a Vessel Operating Common Carrier (VOCC), or the name of the conference. Tariffs filed pursuant to an agreement approved under section 15 of the Act shall be further identified with the agreement number.

(2) An FMC tariff number assigned by the carrier or conference. For example: Smith Line Tariff FMC-1.

The first tariff filed by a carrier or conference pursuant to this or any prior regulation shall be assigned the number FMC-1. Each tariff thereafter issued by the carrier or conference shall be assigned the next, consecutive FMC number. Beneath the FMC tariff number shall be shown the number or numbers of any FMC tariff or tariffs cancelled by the issuance of such tariff. For example:

Smith Line Tariff FMC-14 cancels Smith Line Tariff FMC-5 and Smith Line Tariff FMC-9.

or

Smith Line Tariff FMC-14 cancels Smith Line Tariff FMC-12.

(3) When an individual carrier, partnership or joint service operates under a trade name, the legal name or names of each individual carrier shall be shown as well as the trade name. Alternatively, reference may be made to an internal tariff page where this information is shown.

(4) (i) A list of the ports covered by the tariff, or reference to an internal tariff page where such ports are listed. In lieu of such listing of ports, a statement of the range of ports served will be accepted; *Provided*, That any exclusion of a port within the range or any restriction applying at a port within the range is specifically stated.

(ii) Whenever tariff application is shown by identification of a range of ports in lieu of listing individual ports, such range of ports must be within a geographical area generally served by the carrier(s) participating in the tariff.

(5) A statement showing the type of service offered by the carrier(s), e.g., direct service, transshipment, etc. When transshipment service is indicated, reference shall be made to the page in the tariff describing such service (see § 536.5(d) (13)).

(6) A statement showing the type of rates contained in the tariff. For example: Local, proportional, class, commodity, overland common point, joint, through, intermodal, etc.

(7) A reference to other publications which in any manner govern the tariff. Alternatively, reference may be made on the title page to an internal page identifying such governing publications, as prescribed in § 536.5(c) (8).

(8) The date on which the tariff will become effective. Every tariff in which any provision is to become effective upon a date different from the general effective date of such tariff shall so indicate in substantially the following form:

Effective: _____ (except as otherwise herein provided) or (except as provided in Item No. _____) or (except as provided on page _____).

(9) The name, title, and address of the person issuing the tariff, or if the carrier or conference has appointed a tariff filing agent pursuant to § 536.3(b), the name, title and address of the agent making such filing.

(10) An expiration date, if the entire tariff publication is to expire on a specified date.

(11) The names of all participating carriers in the tariff, if more than one such carrier participates. Alternatively, reference may be made to an internal page on which are listed the names of all participating carriers (see §§ 536.5(c) (2) and (3)).

(12) The subscription price of the tariff (and any major components thereof offered separately), or a statement that the entire tariff will be furnished without charge, accompanied by a reference to a tariff rule which clearly states where subscriptions may be obtained and the materials which will be furnished to subscribers.

(b) All pages after the title page shall be numbered beginning with "Original Page 1," "Original Page 2," etc. Each page as thereafter revised shall be a consecutively numbered revision of the same page in the form required by § 536.10(b). For example:

The 7th page in a tariff as originally filed would be titled "Original Page 7." The first revision of this page would be titled "First Revised Page 7, cancels original page 7."

(c) The body of the tariff shall contain the following:

(1) A table of contents containing a full and complete statement of the exact locations where information in the tariff will be found. Such statement shall list all subjects in alphabetical order and shall show the page number and number of the item, rule or unit where such subject will be found.

(2) The full legal name of each participating carrier, appropriately identified as a Nonvessel Operating Common Carrier (NVOCC) or Vessel Operating Common Carrier (VOCC), and the address of its principal office. Where a joint service participates, the FMC number of the agreement authorizing the joint service shall also be shown.

(3) All trade names, if any, under which service will be provided, and the names of the carrier or carriers operating under each such trade name, if not shown on the title page.

(4) A list of the ports or range of ports to and from which the tariff rates apply, if not shown on the title page, in conformity with § 536.5(a) (4).

(5) A statement indicating the extent of any limitation or restriction, if the application of any of the rates, charges, rules, or regulations stated in the tariff

are restricted to any particular port, pier, etc., or otherwise limited.

(6) A single, complete, alphabetically arranged index listing all commodities for which the tariff names rates, together with a reference to each item or page where a particular article is shown. If a rate item embraces two (2) or more commodities, each commodity shall be shown in the index. Class rate tariffs and tariffs containing both class and commodity rates shall contain, in addition to applicable item or page references, the ratings of commodities to which class rates apply (see Exhibit No. 6). Such index may be omitted where rates on less than 100 commodities are included in the tariff. All articles generic to different species of the same commodity should be grouped together. For example:

Paper, building; paper, printing; paper, wrapping.

(7) A full explanation of any symbols, reference marks, or abbreviations used in the tariff. If such explanation does not appear on the page where the reference marks or symbols are used, such page shall refer to the page in the tariff where the explanation is given. The symbols shown in § 536.10(b)(2) shall be used only for the purposes indicated therein.

(8) If governed in any manner by other publications, as may be permitted herein, a reference thereto substantially in the following form:

This tariff is governed, except as otherwise provided herein by Bill of Lading Tariff FMC No. ----- (or by Rules Tariff No. -----), etc.

Where such reference is fully made on the title page, reference elsewhere in the tariff is unnecessary. Governing publications must be on file with the Federal Maritime Commission.

(9) All rates applicable to the transportation of the articles or classes of articles named in the tariff. Rates shall be stated as required by § 536.6.

(10) Rules and regulations which in anywise affect the application of the tariff.

(d) Specific tariff rules shall be published to govern each of the following subjects and shall be designated in all tariffs by the numbers specified below:

(1) *Scope.* See § 536.5(c)(4).

(2) *Application of rates.* A clear statement of all the services provided to the shipper and included in the transportation rates set forth therein.

(3) *Rate applicability rule.* A clear and definite statement of the time at which a rate becomes applicable to any given shipment.

(4) *Heavy lift.*

(5) *Extra length.*

(6) *Minimum bill of lading charge(s).*

(7) *Payment of freight charges.* A clear statement of all requirements for the payment of freight charges. Currency restrictions, if any, must be specified and the basis for determining the rates of currency exchange must be set forth. If credit is extended to shippers, the rule must include the credit terms

available and the conditions upon which credit is extended. When credit applications or agreements are required, specimens of such applications or agreements shall be published as part of this rule.

(8) *Specimen Bill(s) of Lading.* Specimens of any bill of lading, contract of affreightment, or other document evidencing the transportation agreement applicable to the service offered, unless a separate bill of lading tariff is on file as permitted by § 536.13(a). Such documents shall not contain provisions inconsistent or in conflict with the rules and regulations published in any applicable tariff.

Every tariff shall also contain the following numbered rules, whenever they apply to the service offered:

(9) *Freight forwarder compensation.* A statement describing the rate or rates of compensation to be paid to licensed ocean freight forwarders on United States export shipments in accordance with § 510.24(f) of the Commission's rules.

(10) *Application of surcharge and/or arbitraries/differentials/outport differentials or other identifying term.* Tariffs imposing upon the same shipment, more than one surcharge and/or arbitrary, expressed in percentage terms, shall also clearly state the manner in which the percentages shall be applied in computing the additional charges.

(11) *Minimum quantity rates.* Tariffs naming two or more rates for different quantities of commodities covered by the same description, shall also state:

When two or more freight rates are named for carriage of goods of the same description over the same route and under similar conditions and the application is dependent upon the quantity of the goods shipped, the total freight charges assessed against the shipment shall not exceed the total charges computed for a larger quantity: *Provided, however,* That the rate noted alongside a qualification specifying a required minimum quantity, either weight or measurement per container or in containers, will be applicable to the contents of the container(s): *Provided,* The minimum set forth is met or exceeded. At the shipper's option, a quantity less than the minimum level may be freighted at the lower rate: *Provided,* The weight or measurement declared for rating purposes is increased to the minimum level.

(12) *Ad Volorem rates.* A statement specifying the exact method of computing the charge, e.g., shipper's declaration, invoice value, delivered value, etc., and the additional liability, if any, assumed by the carrier in consideration therefor.

(13) *Transshipment service.* Tariffs containing through rate for transshipment service offered under either non-exclusive agreements filed in compliance with Part 524 of the Commission's rules or agreements approved by the Commission under section 15 of the Act, shall also contain a Routing Section as illustrated by Exhibit No. 8 which includes:

(i) A clear and thorough description of the routings employed (origin, transshipment and destination ports), additional charges levied, if any (i.e., port arbitrary and/or additional transship-

ment charges), and the participating carriers (originating, delivering and/or intermediate; and (ii) a statement reading substantially as follows:

The rules, regulations and rates apply to all transshipment arrangements between the participating carriers. Participating carriers have agreed to observe the rules, regulations, rates and routings established herein as evidenced by the agreement on file with the Commission.

(14) *Application of contract rate system.* A clear and complete explanation of the contract rate system, including a true copy of the approved contract.

(15) *Open rates.* A clear and complete explanation of the extent to which conference rates have been opened pursuant to §§ 536.6 (n) and (o). Any restriction or limitation on the right of participating carriers to fix their own rate items, and the extent to which applicable rules and regulations of the conference tariff will continue to govern the rates filed by each individual line, shall also be stated.

(16) *Explosives or other dangerous articles.* A clear statement of all regulations governing the transportation of explosives, inflammable or corrosive material, or other dangerous articles, or a reference to a separate publication which contains such regulations.

(17) *Green salted hides.* A rule in accordance with Part 534 of the Commission's rules which requires that: (i) The shipping weight for purposes of assessing transportation charges be either a scale weight or a scale weight minus a deduction whose amount and method of computation are specified in said rule; and (ii) the shipper furnishes the carrier a weighing certificate or dock receipt from an inland carrier for each shipment of green salted hides at or before the time the shipment is tendered for ocean shipment.

(18) *Returned cargo.* Tariffs offering the return shipment of refused, damaged or rejected shipments, or exhibits at trade fairs, shows, or expositions, to port of origin at the rates assessed on the original movement when such rates are lower than prevailing rates, shall also provide that:

(i) The return of shipments be accomplished within a specific period not to exceed one year;

(ii) The return movement be made over the line of the same carrier performing the original movement: *Provided,* That in the case of a conference tariff, return may be made by any member line when the original shipment was carried by a conference member under the conference tariff.

(iii) A copy of the original bill of lading showing the rate assessed be surrendered to the return carrier.

(19) *Shippers requests and complaints.* Clear and complete instructions in accordance with § 526.6 of the Commission's rules stating where and by what method shippers may file their requests and complaints, together with a sample of the rate request form if one is used, or, in lieu thereof, a description of the information necessary for processing the request or complaint.

(e) Additional rules which affect the application of the tariff shall immediately follow the rules specified above and shall be numbered consecutively, commencing with number 20.

(f) Where a tariff rule affects only particular items or rates, the affected items or rates shall specifically refer to such rule.

(g) No rate tariff shall require reference to any other rate tariff for determination of any applicable rate: *Provided, however, That:*

(1) Reference may be made to another tariff for terminal and accessorial charges;

(2) Returned cargo rates accompanied by the rule specified in § 536.5(d) (18) are permitted;

(3) Reference may be made to another tariff (not containing rates) for commodity lists or generic descriptions as provided in §§ 536.6 (f) and (g); and

(4) Reference may be made to another tariff (not containing rates) covering (i) explosives, inflammable or corrosive materials, or other dangerous articles; (ii) bills of lading or contracts of affreightment; (iii) commodity classifications; and (iv) routing guides or other similar tariffs as provided in § 536.13.

§ 536.6 Statement of rates and charges.

(a) The application of all rates shall be clear and definite and explicitly stated per 100 pounds, per cubic foot, per ton of 2,000 pounds, per ton of 2,240 pounds, or some other expressly defined unit.

(b) All rates shall be stated in a simple and systematic manner. Commodities and generic commodity groupings on which rates are stated shall be listed in alphabetical order. If published in the index, item numbers shall also be shown in the body of the tariff.

(c) Where rates are stated in amounts per package, the method of packing and specifications showing size, measurement or weight of the packages on which such rates apply shall be shown.

(d) Where rates vary depending upon whether cargo is packed, crated, palletized, bundled, strapped, loose or otherwise prepared or delivered for shipment, there shall be a statement clearly and specifically governing the application of such rates. See Exhibit No. 2.

(e) Where rates to or from designated ports are determined by the adding or subtracting of arbitraries or differentials to or from rates applicable at other ports, such application shall be clearly shown.

(f) A commodity item may, by use of a generic term, provide rates on a number of articles: *Provided, That* such term contains reference to an item in the tariff which clearly defines the type of commodities contained in such generic term or which contains a complete list of such articles, or contains a reference to the FMC number of a separate tariff of the same carrier or conference containing such definition or list of such articles.

Example: Packinghouse products, as described in Item ----; or packinghouse products as described under heading "Packinghouse products" in FMC No. ----, or successive issues thereof.

(g) A separate tariff, not containing rates, may be filed by a carrier or conference showing a list of the commodities on which rates published by reference to generic terms will apply, and rate tariffs shall be made subject thereto as provided in paragraph (f) of this section.

(h) When commodity rates are established, the description of the commodity must be specific. Rates may not be applied to analogous articles.

(i) The rate section of a tariff may include a rate applicable to all commodities, or all commodities of a class, on which specific commodity rates are not stated in the tariff, to be called "cargo, n.o.s." (not otherwise specified), "general cargo", or other identifying name, or by broad generic heading such as "chemicals, n.o.s."

(j) A separate tariff naming rates on a group of related commodities may be published: *Provided, however, That* such tariff shall contain all of the rates applicable to such commodities, which are published by the same carrier or conference, to or from the same ports or points. When such tariffs are published, reference shall be made thereto in the tariff of general application for the same carrier or conference, to or from the same ports or points.

(k) Publication of rates which duplicate or conflict with the rates published in the same or any other tariff is forbidden, and, except as otherwise authorized by this part, the publication of a statement in a tariff to the effect that the rates published therein take precedence over the rates published in some other tariff, or that the rates published in some other tariff take precedence over or alternate with rates published therein, is prohibited: *Provided, however, That* where a carrier or conference publishes both commodity and class rates, a statement shall be published in the tariff clearly indicating which of the two rates shall apply on the commodity or commodities on which both class rates and commodity rates are published; or where alternate rates or charges are permitted pursuant to § 536.5(g).

(l) Where a conference or carrier uses a dual rate system approved by the Commission and states in its tariffs two rates pursuant to such system, each commodity item in the tariff subject to dual rates shall indicate such "Contract Rates" and "Noncontract Rates" as illustrated by Exhibit Nos. 3 through 7.

(m) Where a conference opens any or all rates, each tariff item so opened shall be amended to indicate the word "open" in place of the previously stated rates, and shall indicate a reference to a published rule in the tariff clearly defining the word "open" as used in each tariff and indicates where the rates of

the individual conference member lines on such items will be found.

(n) Where a conference opens rates pursuant to paragraph (m) of this section, an individual conference member shall not charge rates on such an item unless and until the individual member files a proper tariff rate covering such item as required by these rules. This may be accomplished by the individual carrier (or its tariff agent) filing a complete tariff pursuant to this part, or by the conference (or its tariff agent) filing a separate supplement at the end of the conference tariff indicating the rates which will be charged by each individual carrier and the governing rules and provisions of the conference tariff applicable to each carrier. Separate open rate tariffs may also be published by a conference (or its tariff agent). When conference members publish their open rates in a separate tariff, such tariffs must reference, on the title page, the conference tariff in which the open rated condition is reflected.

(o) Temporary, special or emergency rates, or rates conditioned upon an expiration date or other factor, shall be shown under the same commodity item, generic heading, or class, in the same place in the tariff, as the ordinarily applicable rates. See Exhibit No. 5.

(1) If only a portion of particular rates or other provisions will expire with a special date, a notation to that effect shall clearly be shown in connection with such items as indicated in Exhibit No. 2.

(2) Project rates may be placed in a special section of the tariff: *Provided, however, That* the Table of Contents or Commodity Index contains a specific reference to "Project Rates."

(p) All rate pages shall be filed in the form and manner shown in Exhibit Nos. 1 through 7. Where space permits, contract and noncontract rates, properly identified, may be shown in column form (side-by-side) rather than the manner shown in Exhibit No. 3.

(q) The number of rate columns may be varied as required to state rates to one or more ports, port groupings or port ranges. The width of all columns in the rate block section of tariff rate pages may be varied as required.

§ 536.7 [Reserved]

§ 536.8 Tariffs containing through rates and through routes.

(a) *Definitions.* The following definitions shall apply for purposes of this section.

(1) *Through route.* An arrangement for the continuous carriage of goods between points of origin and destination, either or both of which lie beyond port terminal areas;

(2) *Through rate.* A rate expressed as a single number representing the charge to the shipper by a carrier or carriers holding out to provide transportation over a through route;

(3) *Joint rate.* A through rate in which two or more carriers participate by

agreement for the offering of through transportation service over a through route.

(4) *Participating carrier.* Any carrier holding out to perform a transportation service over a through route.

(b) *Filing requirements.* Every carrier or conference shall file tariffs stating all through rates, charges, rules, and regulations governing the through transportation of freight between ports or points in the United States and ports or points in a foreign country in which such carrier or conference participates. Such tariffs shall include the names of all participating common carriers, the established through route, a description of the service to be performed by each participating common carrier, and clearly indicate the division, rate or charge to be collected by the water carrier subject to the Act for its port-to-port portion of the through service, which division, rate or charge shall be treated as a proportional rate subject to the provisions of the Act. Such tariffs will be filed and maintained in the manner provided in section 18(b) of the Act, and the rules of this part. A memorandum of every arrangement to which a carrier subject to the Act, or conference of such carriers, is or becomes a party, for transportation between a port or point in the United States and a port or point in a foreign country, establishing any joint rate which is offered in connection with any common carrier, shall be filed concurrently with the filing of the through rate tariffs.¹

§ 536.9 Terminal rules, charges and allowances; free time allowed at New York.

(a) Every tariff filed pursuant to this part shall state separately all terminal or other charges, privileges, or facilities under the control of the carrier or conference which are granted or allowed to shippers.

(b) Wherever a tariff includes charges for terminal services, canal tolls, or additional charges not under the control of the carrier or conference, which merely acts as a collection agent for the charges, and the agency making such charges to the carrier increases the charges without notice to the carrier or conference, such charges may be increased in the carrier or conference tariff without being subject to the 30 day advance filing requirement of this part or separately stated on the bill of lading.

(c) Every tariff naming rates on import traffic shipped through the port of New York, or to a range of ports which includes New York, shall contain a rule in the compliance with Part 526 of the Commission's rules (General Order 8).

(d) Every tariff naming rates on export traffic shipped through the port of New York or the port of Philadelphia, or through a range of ports which includes

either of those ports, shall contain a rule in compliance with Part 541 of the Commission's rules (General Order 26).

§ 536.10 Amendments to tariffs.

(a) *General tariff amendments.* (1) All changes in, additions to, or deletions from a tariff shall be known as amendments. All tariff amendments shall be in permanent form as set forth hereafter.

(2) Amendments which provide for new or initial rates, or amendments which provide for changes in rates, charges, rules, or other provisions resulting in an increase in cost to the shipper shall be published and filed to become effective not earlier than 30 days after the date of publication and filing, unless special permission to become effective on less than said 30 days' notice has been granted by the Commission pursuant to § 536.15. Amendments to tariffs containing contract rates which result in an increase in cost to the shipper shall be published and filed to become effective not earlier than 90 days after giving notice to contract shippers by filing the amendments with the Commission, except as otherwise provided in the approved Merchant's Contract.

(3) Amendments which provide for changes in rates, charges, rules, regulations, or other provisions resulting in a decrease in cost to the shipper, or amendments which result in no change in cost to the shipper may become effective upon publication and filing.

(4) An amendment containing a rate on a specific commodity not previously named in a tariff which is a reduction or no change in cost to the shipper may become effective upon publication and filing: *Provided, however,* That (i) the tariff contains a "cargo, n.o.s." or similar general cargo rate which would otherwise be applicable to the specific commodity, and (ii) the specific commodity rate is equal to or lower than the previously applicable general cargo rate.

(5) An amendment which deletes a specific commodity and rate applicable thereto from a tariff, thereby resulting in the application of a higher "cargo, n.o.s." or similar general cargo rate, is a rate increase and shall be published and filed to become effective not earlier than 30 days after the date of filing in the absence of special permission for an earlier effective date pursuant to § 536.15.

(b) *Permanent tariff amendments.* (1) Looseleaf tariffs shall be amended by reprinting the entire page upon which any modification is made. An amended tariff page shall be designated in the upper right-hand corner as a "revised page" in the manner illustrated by Exhibit Nos. 1 through 7. For example:

First revised page 1, or
First revised page 21.

(2) The revised page filed to accomplish a tariff amendment shall reprint the page to be replaced in its entirety, changing only the matter on the page which is modified. Changes in existing rates, charges, classifications, rules, or other provisions accomplished by an amendment shall be indicated on the

revised page by the following uniform symbols:

- (R) To denote a reduction.
- (A) To denote an increase.
- (C) To denote changes in wording which result in neither an increase nor a decrease in charges.
- (D) To denote a deletion.
- (E) To denote an exception to a general change.
- (N) To denote reissued matter.
- (I) To denote new or initial matter.

An explanation of such symbols shall be set forth in the tariff as required by § 536.5(c) (7).

(3) Each revised tariff page shall cancel the previously issued page upon which a change is made. The previous page being cancelled shall be indicated immediately under the designation of the new revised page number as illustrated by Exhibit Nos. 1 through 7. For example:

First revised page 1 cancels original page 1 or;
Fifth revised page 21 cancels fourth revised page 21.

All matter on this cancelled page which is not being changed shall be reissued on the revised page as it appeared on the page being cancelled.

(4) Each revised page shall, in the upper right-hand corner, state the effective date of the changes made on that page. Such effective date shall be subject to the requirements of section 18(b) of the Act and of this section. Revised pages may also state the issue date.

(5) When a revised page cancelling a previous page deletes any matter contained in the previous page, the deletion shall be indicated by the symbol (D) and any other § 536.10(b) (2) symbol applicable to the effect of the deletion upon the carrier's rates or charges.

(6) Every tariff amendment effective upon less than statutory notice pursuant to special permission granted by the Commission, shall show in connection with such change the notation required by § 536.15(f).

(7) Increased rates brought forward from a previously filed page prior to their effective date, shall be designated with the symbol (N) as "reissued" and state their original effective date.

(8) If, on account of expansion of matter on any page, it becomes necessary to add an additional page in order to accommodate said new matter, such additional page (except when it follows the final page) shall be given the same number as the previous page with a letter suffix unless all subsequent pages are reissued and renumbered. For example:

Original page 4-A, Original Page 4-B, etc. If it is necessary to change matter on Original page 4-A, it may be done by issuing First Revised Page 4-A, which shall indicate the cancellation of Original Page 4-A.

(9) When a revised page deletes rates, rules or other provisions previously published on the page which it cancels, and such rates, rules, or provisions are published on a different page, the revised page shall make a specific reference to the page on which the rates, rules, or

¹ Arrangements subject to section 15 of the Act must also be filed and approved in accordance with the requirements of General Order 24 (Part 522 of the Commission's rules).

provisions will be found, and the page to which reference is made shall contain the following notation in connection with such rates, rules or other provisions;

For (here insert rates, rules, or other provisions in question) in effect prior to the effective date hereof see page -----

Subsequently revised pages of the same number shall omit this notation insofar as this particular tariff matter is concerned.

(10) The following method shall be used in identifying and checking revised pages:

(i) When the original tariff is filed, the page following the title page shall be designated a "check sheet."

(ii) The check sheet shall contain correction numbers which shall be in consecutive numerical order beginning with number one (1), with a blank space provided with each correction number. A correction number shall be placed in the upper right-hand corner of each revised page. This procedure will provide a cross reference and a permanent record of all corrections made to the tariff.

(c) *Temporary tariff amendment.* In order to facilitate the filing of rate changes as quickly as possible, without the delay necessitated by preparation and filing of permanent revised pages as required above, temporary filings by telegram, cable, or mail (in the form of letters, rate circulars, etc.), will be permitted, subject to the following conditions:

(1) The information received is clear and legible and contains the following information:

(i) The legal and operating name of the carrier or conference;

(ii) The FMC number and description of the tariff being amended;

(iii) An exact description of the commodities upon which rates are being changed;

(iv) The number of the previously issued page upon which the item being changed is located;

(v) The new rate being implemented;

(vi) The effective date of the rate change;

(vii) A statement identifying the change as a rate increase, decrease, or initial filing.

(2) If the temporary filing is pursuant to special permission authority already granted, reference must be made to the special permission number.

(3) Temporary amendments accepted for filing cannot be withdrawn or rescinded in any manner.

(4) Any carrier or conference making a temporary filing shall at the same time furnish all subscribers to the tariff all the information furnished to the Commission pursuant to § 536.10(c) (1).

(5) All temporary filings shall be followed by the filing of a permanent revised page covering the same tariff changes which fully complies with § 536.10(b). Such permanent filing shall state the method by which the temporary filing was submitted (letter, telegram, rate advice, etc.) and the date it was submitted. Such permanent amendments must be filed within twenty (20) days after receipt of the temporary filing for carriers

or conferences making such filing from within the continental United States, and within thirty (30) days after receipt of the temporary filing when the carrier or conference is located outside the continental United States.

(6) A permanent filing is unnecessary where a temporary filing is rejected; however, all tariff subscribers must be notified that the temporary filing has been rejected.

(7) In the event a carrier or conference filing a temporary tariff amendment does not file a permanent tariff amendment within the time period and in the manner prescribed in § 536.10(c) (6), a warning letter or collect telegram shall be sent by the Commission to such carrier or conference. Immediate steps shall be taken by the carrier or conference to correct the deficiency. If a carrier or conference fails to submit the proper permanent filing after one warning, or, after having once received a written warning, should subsequently fail a second time to file a permanent tariff modification within the prescribed time period, the Commission shall notify such carrier or conference that it no longer has the privilege of making rate changes by temporary filing. Thereafter, said carrier or conference shall amend its tariff only by filing permanent amendments until further notice of the Commission.

(d) *Rejection of tariff amendments or other tariff publications.* (1) Any amendment (or other tariff publication) submitted for filing which fails in any respect to conform with sections 18(b) and 14b of the Act, or with the provisions of this part, is subject to rejection. When tariff matter is rejected, the Commission, acting through a designated official, will inform the person tendering the material for filing of the rejection by telegram, cablegram, or letter.

(i) Upon receipt of notice of a rejection, the filing party shall immediately remove such rejected material from its effective tariff and immediately notify all subscribers to affected tariffs that the rejected material is void.

(ii) The number assigned to an amendment (or other tariff publication) which has been rejected may not be used again. The rejected material may not be referred to in any subsequent amendment (or other tariff publication) in any manner whatsoever, except that a notation shall appear at the bottom of any new tariff matter issued to replace rejected matter which reads substantially as follows:

Issued in lieu of ---- Page No. ---- (Correction No. ----) rejected by the Federal Maritime Commission.

(2) Any amendment (or other tariff publication) submitted for filing which contains more than one change, one or more, but not all, of which fails to conform with sections 18(b) or 14b of the Act, or with the provisions of this part, is subject to partial rejection. When tariff matter is partially rejected, the Commission, acting through a designated official, will inform the person tendering the material for filing of the partial rejection by telegram, cablegram, or letter.

(i) Upon receiving notice of a partial

rejection, the filing party shall immediately notify all subscribers to affected tariffs of the partial rejection and file a revised amendment (or other tariff publication) deleting the partially rejected matter or otherwise conforming such matter to the applicable provisions of the Act or this part.

(ii) The number assigned to an amendment (or other tariff publication) which has been rejected in part may not be used again. Revised tariff matter issued following a partial rejection shall also bear the notation prescribed in § 536.10(d) (1) (ii).

§ 536.11 Supplements to tariffs.

(a) Supplements to tariffs may be filed only to accomplish the following:

(1) To cancel a tariff in whole or in part.

(2) To provide for a general rate decrease applicable to all, or substantially all, the commodities listed in a tariff.

(3) To provide for a general rate increase applicable to all, or substantially all, the commodities listed in a tariff.

(4) To indicate reasonable discontinuance or temporary suspension or reinstatement of service covered by a tariff.

(5) To provide for change in name of the publishing carrier or its tariff agent.

(b) Supplements filed pursuant to §§ 536.11(a) (2) and 536.11(a) (3) which do not change the rates applicable to all listed commodities shall bear one of the following notations:

(1) The general rate increase/decrease provided for on this page applies to all commodities stated herein except the following: (here list the excepted commodities or commodity item numbers); or

(2) The general rate increase/decrease provided for on this page applies to all commodities stated herein except those noted on page ----

(c) General rate change supplements (paragraphs (a) (2) and (3) of this section) shall bear an expiration date that coincides with the date the changes will be reflected in the rates and charges in the tariff. Such date shall not be more than 90 days after the date of filing. No more than one such supplement may be in effect at any time.

(d) Additional supplements to other than looseleaf tariffs shall be filed as provided by any special permission authority granted by the Commission pursuant to §§ 536.4(d) and 536.15.

(e) Supplements shall be numbered consecutively on the upper right-hand corner of each page. For example:

Supplement No. 1 to FMC Tariff No. ----

§ 536.12 [Reserved]

§ 536.13 Governing tariffs.

(a) If it is undesirable or impractical to include tariff rules or bills of lading/contracts of affreightment in a rate tariff as required by §§ 536.5(c) (10) and 536.5(d) (8), such materials may be separately published and filed as a "rules tariff" and/or "bill of lading tariff." Classifications of freight, routing guides, and similar tariff matter may also be published and filed as separate "governing tariffs." Rate tariffs affected by such governing publications shall be made expressly sub-

RULES AND REGULATIONS

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EXHIBIT No. 3

Name of carrier or conference and tariff number		Orig./Rev.	Page			
		Cancel	Page			
From: (Range or ports) To: (Range or ports)		Effective date				
		Correction				
Except as otherwise provided herein, rates apply per ton of (2,240 lb.) or (40 ft ³) whichever produces the greater revenue.		Type ¹	Rate basis	(Ports or range)	(Ports or range)	Item ²
Commodity Code	Commodity description and packaging					
	Alcohols (effective May 10, 197...) ³ (I) ³	C.....	100#.....	3.80	3.55	
		NC.....		3.68	4.17	
	Canned Goods:					
	Fish..... (A) ³	C.....	100#.....	2.15	2.15	
		NC.....		2.65	2.65	
	Vegetables:					
	48/9 oz. tins..... (A) ³	C.....	Case.....	.08	.06	
		NC.....		1.01	1.08	
	48/7 oz. tins..... (A) ³	C.....	Case.....	.70	.75	
		NC.....		.85	.90	

¹ As applicable.
² Issued under earlier effective date than other changes on page.
³ Change symbols must be shown in the commodity description column either to the left or right of the commodity.
 Explanation of the use of this exhibit: Conference or Carrier; Dual rate system; two ranges of destination ports; rates per case or per 100 lb.

EXHIBIT No. 4

Name of carrier or conference and tariff number		Orig./Rev.	Page		
		Cancel	Page		
From: (Range or ports) To: (Range or ports)		Effective date			
		Correction			
Except as otherwise provided herein, rates apply per ton of (2,240 lb.) or (40 ft ³) whichever produces the greater revenue.		Type ¹	Rate basis	Rate	Item ²
Commodity Code	Commodity description and packaging				
	Fans, electric.....	C.....	W/M.....	63.75	
		NC.....		70.75	
	Glasses, sun; (I) ³	C.....	M.....	63.75	
		NC.....		70.75	
	Lime, hydrated, packs.....	C.....	W.....	23.75	
		NC.....		20.50	
	Liquors.....		M.....	Open	
	Liquors, medicinal: Transferred to Medicines, patent preparations; (D) ³ (I) ³				
	Scotch, in barrels: Transferred to Liquors; (D) ³ (A) ³				

¹ Change symbols must be shown in the commodity description column either to the left or right of the commodity.
² As applicable.
 Explanation of this Exhibit: Conference or Carrier; Dual-rate system; One range or ports; deletion of rates showing reduction and increase due to deletion.

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EXHIBIT No. 5

Name of carrier or conference and tariff number		Orig./Rev.	Page
		Cancel	Page
From: (Range or ports)		To: (Range or ports)	
		Effective date	
		Correction	

Except as otherwise provided herein, rates apply per ton of (2,240 lb.) or (40 ft ³) whichever produces the greater revenue.		Type ¹	Rate basis	(Ports or range)	(Ports or range)	Item ²
Commodity Code	Commodity description and packaging					
	Iron and steel:					
	Turnbuckles		W	29.50	32.50	
	Emergency rate effective temporary 8-1-77 to special 9-1-77 (R) ³		W	26.00	28.50	
	Medicines, patent preparations:					
	Value up to \$200 per 40 ft ³	(C)	M	34.00	37.50	
		(NC)		37.25	41.00	
	Value exceeding \$200 but not exceeding \$500 per 40 ft ³	(C)	M	52.75	58.00	
		(NC)		57.75	65.50	
	Value exceeding \$500 per 40 ft ³	(C)	M	67.75	74.00	
		(NC)	M	74.25	81.50	

¹ As applicable.² Change symbols must be shown in the commodity description column either to the left or right of the commodity.

Explanation of the use of this exhibit: Conference or Carrier: Dual-rate system; Valuation rates and emergency, temporary or special rates.

EXHIBIT No. 6

Name of carrier or conference and tariff number		Orig./Rev.	Page
		Cancel	Page
From: (Range or ports)		To: (Range or ports)	
		Effective date	
		Correction	

Commodity Index					
Commodity Code	Commodity	Class or Item No. ¹	Commodity Code	Commodity	Class or Item No. ¹
	Abrasive	2		Iron or steel articles viz:	
	Absorbent cotton	100		Hulls, grinding	6
	Ale, ginger	8 M		Forgings	240
	Cotton, absorbent	100			

¹ Where tariff publishes both class and commodity rates, as above, the commodity item numbers should begin with the next counting unit; example—If class rates are in twelve classes then the commodity rates should not be numbered lower than 100.

Explanation of the use of this exhibit: Conference or Carrier; single level or dual-rate system; class or class and commodity tariff.

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Exhibit No. 7

Name of carrier or conference and tariff number		Orig./Rev.	Page
		Cancels	Page
From: (Range or ports) To: (Range or ports)		Effective date	
		Correction	

Class rates

Except as otherwise provided, rates apply per ton of (2,240 lb) or (40 M ³) whichever produces the greater revenue.	Class					
Ports to which rates apply	1	2	3	4	5	6
Ports A, B, C:						
Contract.....	80.00	85.00	70.00	62.50	50.00	57.50
Noncontract.....	100.50	97.75	60.50	72.00	57.50	45.25
Ports D, E, F:						
.....	65.00	42.50	85.00	81.25	25.00	18.75

¹ As applicable to dual-rate or single level rate systems.

Explanation of the use of this exhibit: Conference or carrier; single level or dual-rate system; class rate tariff or class rate section of class and commodity tariff.

Exhibit No. 8

Name of carrier or conference and tariff number		Orig./Rev.	Page
		Cancels	Page
From: (Range or ports) To: (Range or ports)		Effective date	
		Correction	

ROUTING SECTION

The rules, regulations and rates apply to all transshipment arrangements between the participating carriers. Participating carriers have agreed to observe the rules, regulations, rates and routings established herein as evidenced by the agreement on file with the Commission.

Agreement No. Carriers: Originating: ABC S.S. Co. Delivering: XYZ Line, Inc.	From: Japanese Ports Manila Additional Charges: None	To: Manila U.S. Pacific Coast Ports
Agreement No. Carriers: Originating: ABC S.S. Co. Intermediate: XYZ Line, Inc. Delivering: DEF Maritime Co.	From: Naha, Okinawa Kobe/Yokohama U.S. Pacific Coast Ports Additional Charges: \$4.50 W/M	To: Kobe/Yokohama U.S. Pacific Coast Ports U.S. North Atlantic Ports
Agreement No. Carriers: Originating: XYZ Line, Inc. Intermediate: PQR Line, Inc. Delivering: ABC S.S. Co.	From: Anchorage Seattle Singapore	To: Seattle Singapore Brunei

[FR Doc.77-33118 Filed 11-15-77;8:45 am]

[7035-01]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES & REGULATIONS

[Service Order No. 1285]

PART 1033—CAR SERVICE

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY AUTHORIZED TO OPERATE OVER TRACKS OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD CO.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Service Order No. 1285).

SUMMARY: The State of Wisconsin has constructed a railroad bridge over a major highway in the vicinity of Schofield, Wisconsin, for use by the Chicago, Milwaukee, St. Paul and Pacific Railroad (MILW). A parallel line of the Chicago and North Western Transportation Company (CNW) also crosses this highway near Schofield. These two railroads have agreed to joint use of the Milwaukee bridge in this area. Service Order No. 1285 authorizes the CNW to use the tracks of the MILW between Schofield, Wisconsin, and Rothschild, Wisconsin, pending disposition of the application of the CNW for permanent authority to operate over these tracks of the MILW. No shippers will be deprived of service by this rerouting of CNW trains.

DATES: Effective 11:59 p.m., November 14, 1977. Expires 11:59 p.m., May 31, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone: 202-275-7840, Telex 89-2740.

SUPPLEMENTARY INFORMATION: The order is printed in full below.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 11th day of November, 1977.

The Chicago and North Western Transportation Co.'s (CNW) and the Chicago, Milwaukee, St. Paul, and Pacific Railroad Co.'s (MILW) parallel lines intersect a major highway at Schofield, Wis. To improve public safety and reduce congestion, the State of Wisconsin (State) is completing a highway underpass under the line of MILW. To avoid the necessity of constructing a similar structure for the passage of CNW trains over this highway, the State has requested and the railroads have agreed to joint use of the MILW's tracks at this point. Rerouting of CNW trains over these tracks of the MILW will eliminate the hazards inherent in the operation of

CNW trains over its present intersection with this highway without loss or reduction of railroad service to any shipper. It is the opinion of the Commission that operation by the CNW over these tracks of the MILW is necessary in the interest of the public pending disposition of the application of the CNW seeking permanent authority to operate over these tracks of the MILW; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1285 Chicago and North Western Transportation Company authorized to operate over tracks of Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

(a) The Chicago and North Western Transportation Co. (CNW) is authorized to operate over tracks of the Chicago, Milwaukee, St. Paul, and Pacific Railroad Co. (MILW) between MILW milepost 86.88 at Schofield, Wis., and milepost 88.03 at Rothschild, Wis.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Rates applicable.* Inasmuch as this operation by the CNW over tracks of the MILW is deemed to be due to carrier's disability, the rates applicable to traffic moved by the CNW over the tracks of the MILW shall be the rates which were applicable on the shipments at the time of shipment as originally routed.

(d) Nothing herein shall be considered as a pre-judgment of the application of the CNW seeking authority to operate over tracks of the MILW.

(e) *Effective date.* This order shall become effective at 11:59 p.m., November 14, 1977.

(f) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., May 31, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

(49 U.S.C. 1(12), (15), (16), and 17(2).)

It is further ordered, That copies of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael. Member John R. Michael not participating.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-33143 Filed 11-15-77;8:45 am]

[4310-55]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 32—HUNTING

Opening of Swanquarter National Wildlife Refuge, N.C., to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special Regulation.

SUMMARY: The Director has determined that the opening to hunting of Swanquarter National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: Noon December 7, 1977 through January 20, 1978. Hunting permitted each day of the week except Sunday.

FOR FURTHER INFORMATION CONTACT:

James H. Roberts, Refuge Manager, Mattamuskeet National Wildlife Refuge, Rt. 1, Box N-2, Swanquarter, N.C. 27895, telephone: 919-926-4021.

SUPPLEMENTARY INFORMATION:

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Hunting is permitted on the Swanquarter National Wildlife Refuge, N.C., only on the areas designated by signs as being open to hunting. These areas comprising 7,055 acres are delineated on maps available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, N.E., Atlanta, Ga. 30329. Hunting shall be in accordance with all applicable State regulations subject to the following conditions:

1. A refuge hunt permit will be required of everyone wishing to hunt on the refuge.

2. Only ducks and coots may be taken in accordance with State and Federal regulations. Shooting of geese, swan, scoter, eider, old squaw, canvas back, red heads, or any other wildlife is prohibited.

3. Hunting is restricted to 12 gauge shotguns and steel shot shells only. No lead or other toxic shells or other gauge shotguns will be permitted.

4. Hunting season: Noon December 7, 1977 through January 20, 1978. Hunting permitted each day of the week except Sunday.

5. Shooting Hours: One half hour before sunrise until sunset. Hunters may enter hunting area one hour prior to legal shooting time.

6. Guns must be dismantled or encased while traveling to and from the hunt area.

7. No permanent or seasonal blinds will be allowed on the hunt area. Temporary blinds, carried in and out daily,

or made of native vegetation are permissible.

8. Hunters will not be permitted to hunt closer than 100 yards apart.

9. The use of dogs as retrievers is permissible and encouraged, but dogs must be under firm control at all times.

10. Each hunter under age 18 must be under the close supervision of an adult. For safety reasons the ratio should be one adult to one juvenile, but in no case should one adult have more than two juveniles under his/her supervision.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 on OMB Circular A-107.

Dated: October 28, 1977.

RAY R. VAUGHN,
Deputy Regional Director.

[FR Doc.77-33083 Filed 11-15-77;8:45 am]

[4310-55]

PART 32—HUNTING

Opening of Swanquarter National Wildlife Refuge, N.C.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule adds Swanquarter National Wildlife Refuge to the list of refuge areas open for the hunting of migratory game birds. The Director has determined that this action is compatible with the major purpose for which this refuge was established, with the principles of sound wildlife management and is in the public interest. Hunting, subject to annual special regulations, will provide additional public recreational opportunity.

EFFECTIVE DATE: December 6, 1977.

FOR FURTHER INFORMATION CONTACT:

Donald G. Young, Division of National Wildlife Refuges, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone: 202-343-4305.

SUPPLEMENTARY INFORMATION:

Donald G. Young is the principal author of this final rule. On September 21, 1977, there was published (42 FR 47572) a notice of proposed rulemaking adding Swanquarter National Wildlife Refuge, N.C., to the list of refuge areas which are open for the hunting of migratory game birds. As a general rule, most areas within the National Wildlife Refuge System are closed to hunting until officially opened by regulation.

The public was provided a brief comment period and was advised that an environmental assessment has been prepared on the proposal and was available for public inspection. Three favorable comments were received on the proposed rulemaking.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

Accordingly, 50 CFR Part 32 is amended by the addition of Swanquarter National Wildlife Refuge as follows:

§ 32.11 List of open areas; migratory game birds.

NORTH CAROLINA

SWANQUARTER NATIONAL WILDLIFE REFUGE

Dated: November 9, 1977.

LYNN A. GREENWALT,
Director, United States
Fish and Wildlife Service.

[FR Doc.77-33084 Filed 11-15-77;8:45 am]

[4310-55]

PART 33—SPORT FISHING

Opening of Kirwin National Wildlife Refuge, Kans. to Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special Regulation.

SUMMARY: The Director has determined that the opening to sport fishing on the Kirwin National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: January 1 through December 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Keith S. Hansen, Kirwin, Kans. 67644, telephone: 913-646-2373.

SUPPLEMENTARY INFORMATION:

§ 33.5 Special regulations; sport fishing for individual wildlife refuge areas.

Sport fishing on the Kirwin National Wildlife Refuge, Kans. is permitted from January 1 through December 31, 1978, inclusive, on all areas not designated by signs as closed to fishing. These open areas, comprising 5,000 acres, are delineated on maps available at refuge headquarters, 5 miles west of Kirwin, Kans., and from the Area Manager, Fish and Wildlife Service, Suite 106, Rockcreek Office Building, 2701 Rockcreek Parkway, North Kansas City, Mo. 64116. Sport fishing shall be in accordance with all applicable State regulations.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1978. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: October 26, 1977.

KEITH S. HANSEN,
Refuge Manager.

[FR Doc.77-33055 Filed 11-15-77;8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

[Release No. 34-14157; Filed No. S7-728]

SHORT TENDERING RULE

Proposed Amendment of Rule 10b-4 Under Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission proposes to amend its rule regulating the practice of "short tendering" during tender and exchange offers. If adopted, the proposed amendments would provide definitions, and substantive antifraud provisions for the purpose of protecting investors, with respect to practices during tender offers for any securities.

DATES: Comments should be submitted on or before January 13, 1978.

ADDRESSES: Persons wishing to submit written views, data and arguments should file six copies of their comments with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to File No. S7-728 and will be available for public inspection at the Commission's Public Reference Room, room 6101, 1100 L Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Mary Sebek, Office of Market Structure and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, 202-755-8748.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission announced today that it has published for comment a proposal to amend Rule 10b-4 (17 CFR 240.10b-4) under the Securities Exchange Act of 1934 (the "Act") (15 U.S.C. 78a et seq., as amended by Pub. L. 94-29, 89 Stat. 97 (June 4, 1975)). The Commission is also soliciting comment on certain policy questions relating to the tender process in connection with tender and exchange offers. Rule 10b-4 was adopted by the Commission on May 28, 1968,¹ for the purpose of prohibiting "short tendering," i.e., tendering more shares than a per-

son owns in order to avoid or reduce the risk of pro rata acceptance in tender and exchange offers for less than all the outstanding securities of a class ("partial offers"). The proposed amendments to Rule 10b-4 (the "Proposed Amendments"), if adopted, would be promulgated pursuant to Sections 10(a), 10(b), 14(e) and 23(a) of the Act (15 U.S.C. 78j(a), j(b), n(e) and w(a)).

BACKGROUND

A tender offer can be for cash, for an exchange of the offeror's securities or a combination of cash and securities, and is usually open for a specified period of time. Partial offers are characterized by the risk that not all shares tendered will be accepted.

Prior to 1968, tender offers and the conduct of the participants in such offers were largely unregulated. As the number of tender offers increased, it became apparent that the tender process was susceptible to a number of abuses tending to disrupt the fairness and orderliness of the trading markets for the securities of both the person making a tender offer (the "offeror") and the person whose securities were sought in the tender offer (the "target shareholder"). Congressional awareness of these abuses and the increasing popularity of the tender offer as a technique for acquiring control of public companies² resulted in the introduction of federal legislation intended to provide comprehensive and evenhanded protection to all participants in the tender offer process.³ After extensive hearings, legislation, adding Sections 13(d), 13(e), 14(d), 14(e) and 14(f) to the Act⁴ was adopted in 1968 (the "Williams Act") (15 U.S.C. 78m(d), m(e), n(d), and n(f)). Section 14(e) of the Act makes it unlawful for "any person * * * to engage in any fraudulent, deceptive or manipulative acts or practices in connection with any tender offer or request or invitation for tenders * * *." In 1970, Section 14(e) was amended to give the Commission rulemaking author-

² Although the legislation which eventually was enacted was directed at takeover bids, tender offers are not necessarily limited to those undertaken for the purpose of acquiring control. Thus, a tender offeror may include the issuer of the subject securities as well as an unrelated individual, group, or corporation.

³ The original tender offer legislative proposal was introduced by Senator Harrison A. Williams in 1965. Subsequently, the bill was substantially revised and S. 510, the legislative proposal which formed the basis for the bill which was eventually enacted, was introduced in the Senate in 1968.

⁴ Pub. L. 90-439, 82 Stat. 455 (July 29, 1968).

ity to define and prohibit such acts and practices.⁵

In order to reduce or eliminate the risks of partial acceptance during tender offers, a person who desired to have his securities accepted in full at the tender offer price (and who, for example, estimated 50 percent acceptance by the offeror) would indicate a desire to tender twice as many shares as he actually owned. Assuming his calculations (and estimates) were correct, the result would be that the offeror accepted all the shares the tendering person actually owned. This practice became known as short tendering.

In testimony before the Subcommittee on Securities of the Senate Banking and Currency Committee in 1967 on the legislation which became the Williams Act, the Commission indicated its belief that short tendering represented an abuse of the tender process.⁶ In particular, the Commission noted that, by tendering a greater number of securities than were owned, market professionals were able to secure acceptance of a disproportionately larger number of the securities tendered by them than other persons, tendering only securities which they owned, could obtain.⁷ The Senate Banking and Currency Committee agreed with the concern expressed by the Commission with respect to the abuses caused by short tendering but concluded that the Commission had "adequate power to deal with the abuse of short tendering under the antifraud provisions of the Securities Exchange Act."⁸

Thereafter, pursuant to Section 10(b) of the Act, the Commission published proposed Rule 10b-4 for comment⁹ and, after reviewing the comments received, adopted Rule 10b-4 on May 28, 1968,¹⁰ for

⁵ Pub. L. 91-567, 84 Stat. 1497 (December 22, 1970).

⁶ See Hearings on S. 510 Before the Subcomm. on Securities of the Senate Comm. on Banking and Currency, 90th Cong., 1st Sess. at 198-199 (1967) ("Hearings").

⁷ This practice was facilitated by the willingness of offerors to accept guarantees of delivery by banks and members of national securities exchanges in lieu of actual delivery of certificates representing securities tendered. The Commission indicated that while this guarantee procedure was a "simple and reasonable provision commonly included in tender offers for the protection of certain stockholders," the practice of short tendering which it facilitated was a "perversion" of the guarantee process. Hearings at 198-199.

⁸ S. Rep. No. 550, "Report to Accompany S. 510," 90th Cong., 1st Sess. (1967) at 5.

⁹ Securities Exchange Act Release No. 8224 (January 3, 1968), 33 FR 513 (1968).

¹⁰ See note 1 supra. Rule 10b-4 was adopted prior to the passage of the Williams Act on July 29, 1968.

¹ Securities Exchange Act Release No. 8321 (May 28, 1968), 33 FR 8269 (1968).

specific purpose of prohibiting short tendering. Rule 10b-4 makes it a "manipulative or deceptive device or contrivance as used in Section 10(b) of the Act, for any person, in response to a tender offer for or a request or invitation for tenders of, any security" to tender securities which he does not own. The Rule applies to all cash tender and exchange offers whether made by a third party or by the issuer of the securities sought.¹¹ Paragraph (a) of Rule 10b-4 requires that, if a person tenders a security (or causes it to be tendered on his behalf, directly or indirectly, by means of a guarantor) he must own that security, as ownership is defined in paragraph (b) of the Rule.

THE NEED FOR AMENDMENT

Since its adoption in 1968, Rule 10b-4 has contributed to the prevention of fraud and deception in connection with tender offers by promoting equality of opportunity and risk for all tendering securityholders. The Commission, however, believes that short sales of securities sought in a tender offer ("subject securities"), loans of subject securities for purposes of facilitating such short sales and guarantees of delivery, in combination, can frustrate achievement of the Rule's objectives.¹²

As more fully discussed below, the Commission is concerned that these practices in connection with partial tender offers can have much the same effect as short tendering, adversely affecting the fairness of the markets during and immediately after such offers and thwarting the goal of assuring equal

treatment for all participants in tender offers.¹³

In addition to publishing the Proposed Amendments for comment, the Commission is soliciting comment on a number of policy questions and certain alternative approaches to the appropriate regulation of short tendering and other trading practices in connection with tender offers.

SUMMARY OF PROPOSED AMENDMENTS

Paragraph (b)(1) of the Proposed Amendments would require persons who tender (as defined in paragraph (a)(6)) subject securities to own the securities tendered or an equivalent security (as defined in paragraph (a)(3)) from the time of tender through the earlier of (i) the last date on which tenders may be made pursuant to the terms of the offer or (ii) the date on which the tender is rejected or withdrawn. Paragraph (b)(1) would also require tendering persons to deliver or cause to be delivered the subject securities tendered (or equivalent securities) to the tender offeror within the period specified by the offer.¹⁴

Paragraph (b)(2) would prohibit a person from tendering a security on behalf of another person unless he reasonably believes that such person is and will continue to be in compliance with the requirements which would be imposed by paragraph (b)(1) of the Proposed Amendments.

Paragraph (b)(3) would require a person guaranteeing the tender of securities (a "facilitating person")¹⁵ to (i) maintain a long position in the subject securities (or equivalent securities) for those on whose behalf guarantees are given equal to the amount of subject securities delivery of which is guaranteed, and (ii) have in his possession or under his control sufficient subject securities (or equivalent securities) to cover the aggregate amount of such securities as to which he has given guarantees. These obligations would continue throughout the period during which tenders may be made, or until a tender made by means of a guarantee has been rejected or withdrawn, whichever first occurs.

Paragraph (b)(4) would prohibit any person from lending any security to another person during a tender offer unless the person lending the security reason-

ably believes that such loan is not for the purpose of facilitating a tender by the person borrowing such securities for his own account.

Paragraph (b)(5) would impose withdrawal obligations on a person who tendered on behalf of another and later learned that the person on whose behalf the tender was made did not own, or no longer owned, the subject security.

Paragraph (b)(6) would prohibit a person from effecting a short sale of a subject security during a tender offer unless he delivered the subject security to the purchaser (or his agent) by the last date on which tenders may be made pursuant to the offer.

Paragraph (b)(7) makes it a manipulative or deceptive device or contrivance and a fraudulent, deceptive or manipulative act or practice for a person to effect, directly or indirectly, any transaction in subject securities or equivalent securities with the intent or purpose of evading the provisions of the Rule.

Paragraph (a)(1) would alter the concept of ownership presently used in Rule 10b-4. The new approach would abandon the concept of title¹⁶ and of ownership based upon purchases and contracts to purchase presently embodied in Rule 10b-4(b)(2). The proposed test of ownership for purposes of the Rule contemplates that a person must (i) have acquired the security for his own account otherwise than by borrowing the security, (ii) have the right to dispose of the security (or to direct its disposition), and (iii) have the security owned and in his possession or "under his control," as the latter term would be defined in paragraph (a)(2) of the Proposed Amendments. Subject securities would be considered under a person's control only when those securities are in that person's custody or in the custody of an agent (e.g., a broker) or a sub-agent (e.g., a clearing corporation) free and clear of any lien, or are in the possession of a creditor of such person (e.g., a broker or a bank) or of a creditor of such a creditor (e.g., a lender to the broker), as collateral for such person's or his creditor's indebtedness under circumstances where delivery of the securities can be compelled upon payment of the indebtedness or substitution of collateral.

The term "equivalent security" would be defined in paragraph (a)(3) as any security (including any option, warrant or other right to purchase) issued by the person whose securities are the subject of the offer which is convertible into or exchangeable or exercisable for a subject security. An "equivalent security" also would include any other option or right entitling the holder to acquire a subject security, but only of the holder reasonably believes that the person obligated to deliver the subject security upon exercise of the option or right (i) owned and will continue to own the subject security from the time of any tender in reliance upon such option or right through the date on which such tender is ac-

¹¹ Although exempt from the provisions of Section 14(d), tender offers by an issuer are subject to the antifraud provisions of Section 14(e) of the Act.

¹² The Commission's concerns may be illustrated by the following example: In a partial offer, A, the owner of 400 shares of the subject securities, tenders all of his securities by means of a guarantee of delivery from the broker. Immediately thereafter, A sells short to B 200 shares of the subject securities. B, having entered into an unconditional contract to purchase the subject securities from A, but prior to receiving those securities, tenders the 200 shares which he is deemed to own by securing a guarantee of delivery from his broker. Before A is required to deliver securities to B in settlement of his short sale, the tender offer expires, and the offeror announces that only 50 percent of the stock tendered (physically or through guarantees) will be accepted. A delivers 200 shares to B, who delivers 100 shares to the offeror in satisfaction of the guarantees. In effect, A has successfully tendered all of his 400 shares while other tendering securityholders have been prorated. Whether A receives a net price equivalent to what he would have received if the 400 shares had been accepted in full by the offeror will depend on the price which he was able to receive for selling the 200 shares and the price at which he covers his short sale.) Moreover, A's short sale process created a new long position which resulted in a double tender of the same shares by both A and B.

¹³ See note 16 supra, at 70-71; see also, 113 Cong. Rec. 854-855 (1967).

¹⁴ The Commission understands that it is customary for the terms of an offer to permit delivery of securities which have been tendered through a guarantee after the offer closes, i.e., the date after which no shares can be tendered. The Commission specifically solicits comments on the appropriateness of this practice and would like to receive examples of time periods used in particular offers, how and when offerors determine to return oversubscriptions and procedures followed by offerors between the close of an offer and the guarantee date.

¹⁵ Paragraph (a)(8) of the Proposed Amendments would define a facilitating person as any person giving a guarantee that subject securities will be delivered to the person making an offer.

¹⁶ See Uniform Commercial Code §§ 1-201 (32), 8-320 et seq.

cepted, rejected, or withdrawn and, (ii) upon exercise of such option or right, will deliver the subject security within a period consistent with normal delivery times in the securities business. Options not issued by the issuer of the subject securities, e.g., options traded on national securities exchanges, would be excluded from the definition of equivalent securities by paragraph (a) (3) (i) of the Proposed Amendments.¹⁷ Paragraphs (a) (4) and (a) (5) of the Proposed Amendments would define the terms "offer" and "subject securities," respectively. Additionally, the term "tender" would be defined for purposes of the Rule in paragraph (a) (6) of the Proposed Amendments to encompass all methods by which a person can affirmatively respond to a request or invitation for tenders. Finally, a "tendering person" would be defined in paragraph (a) (7) of the Proposed Amendments as the person making a tender or on whose behalf a tender is made.

Paragraph (c) would provide for exemptive relief in appropriate cases (e.g., where adequate factual representations as to ownership and inaccessibility of the

OWNERSHIP

Rule 10b-4's concept of ownership based on title, purchases or contracts to purchase no longer appears adequate to assure that abuse of the acceptance mechanism utilized in tender offers does not occur. In particular, permitting a person to satisfy the ownership standard solely by entering into a contract to purchase may result, under certain circumstances, in securities being tendered twice (e.g., a securityholder may tender and thereafter engage in a short sale, thus entitling the person to whom he sold to tender on the basis of his agreement to purchase even before the purchase had been consummated by payment and delivery). To avoid this problem, the Proposed Amendments would require tendering securityholders to have the subject securities tendered in their possession or under their control (as that term is defined in paragraph (a) (2)) at the time of tender through the earlier of the time of acceptance, withdrawal or rejection. In addition, the Proposed Amendments would require short sellers of subject securities during a tender offer to make delivery to the purchaser (or his agent) no later than the last day of the offer. This latter provision is intended to assure that purchasers of subject securities from short sellers during a tender offer will be in a position to take advantage of the offer by qualifying as "owners" of the subject securities within the meaning of the Rule.

¹⁷ While paragraph (a) (3) (ii) of the Proposed Amendments includes "any other option" within the definition of "equivalent security," holders of exchange traded call options could not, under existing circumstances, meet the test to be established by that paragraph, i.e., that they have a reasonable belief that the person obligated to deliver the underlying security owns it. See note 21 *infra* and accompanying text.

subject securities or equivalent securities can be secured).

TENDERS ON BEHALF OF OTHERS, LOANS AND GUARANTEES

Although the Commission has concurred in the view that, in appropriate circumstances, guarantees of delivery can perform a salutary function in connection with tender offers,¹⁸ the Commission is concerned that such guarantees are utilized in instances where it is neither necessary nor appropriate to do so in view of the purposes of Rule 10b-4. In addition, it appears that guarantors do not always take adequate steps to ascertain whether persons for whom they tender by means of guarantees in fact own the subject securities and will be able to deliver them within the time specified in the offer. The Proposed Amendments are intended to remedy these problems.

Paragraph (b) (2) would require persons tendering on behalf of others to have a reasonable basis for believing that other persons are in compliance with the ownership requirements of the Rule. The Rule's present provision, permitting those tendering on behalf of other persons to rely solely upon information provided by such persons to establish their right to tender, seems susceptible to abuse since guarantors are not required specifically to consider all relevant circumstances. The Proposed Amendments would substitute a "reasonable belief" test to ensure appropriate inquiry by guarantors.

Loans of subject securities where the lender knows he is facilitating a tender by the borrower for the borrower's own account would be expressly proscribed by paragraph (b) (4) in order to prevent lenders from aiding short tendering schemes. Loans for other purposes, including loans to permit brokers to tender for margin customers by guaranteeing delivery in accordance with paragraph (b) (3), would not be affected by the prohibition.¹⁹ Commentators are specifically requested to address the impact this proposal, if adopted, would have on the practices currently in effect regarding loans of securities by broker-dealers, institutional investors, and others, during the duration of a tender offer.

Guarantors would be required by paragraph (b) (3) of the Proposed Amendments to (i) maintain a long position in the subject securities for those on whose behalf guarantees are given equal to the amount of subject securities guaranteed, and (ii) have in their possession or under their control sufficient subject securities to cover the aggregate amount of such securities as to which they have given guarantees. These obligations with respect to each guarantee would con-

¹⁸ See note 7 *supra*.

¹⁹ The allocation of securities in the possession or control of a broker to a customer who is long on the broker's books is not considered a loan by the broker, even though the broker may have had to borrow those securities for that purpose (e.g., to cover a "fail to receive").

tinue through the period during which tenders may be made (or until the tender made by means of a guarantee has been rejected or withdrawn, whichever first occurs). In tandem with the operation of paragraph (b) (2), this limitation on a guarantor's ability to give a guarantee is intended to preclude the giving of guarantees which the guarantor has no reasonable basis for believing that the person for whom the guarantee is given owns the securities tendered or that delivery can be made as and when required otherwise than by acquiring securities in the market after the offer closes. In addition, this provision is intended to restrict the amount of securities available for loans to short sellers where the activities of short sellers can generate long positions which may give rise to tenders of the same securities more than once.

In combination, the new restrictions on loans and guarantees contained in paragraphs (b) (3) and (b) (4) preclude persons whose securities are inaccessible (i.e., not in the possession or control of a person able to guarantee delivery) from tendering such securities unless, upon a proper showing of need, an exemption from the Rule is obtained.

Paragraph (b) (5) would impose withdrawal obligations on persons who tender on behalf of others and later learn that a person on whose behalf a tender was made did not own, or no longer owns, the subject security. This provision is intended to assure that facilitating persons (as defined) respond to changes in the tendering securityholders' ownership of the subject securities by withdrawing, to the extent necessary, their guarantees.

SHORT SELLING

Paragraph (b) (6) would make it unlawful for a person to effect a short sale of the subject security during a tender offer unless delivery is made to the purchaser (or his agent) no later than the last day on which tenders can be made. In most instances, except during the last few days of a tender offer, this requirement would not impose greater delivery obligations on short sellers than those to which they are presently subject.²⁰ During the last days of a tender offer, however, paragraph (b) (6) subjects short sellers to new delivery constraints. This limitation on short selling during an offer would help to assure that tendering securityholders who acquired subject securities from short sellers have possession of the subject securities.

²⁰ Commentators are specifically requested to address the question of whether a different time period would be desirable. See, e.g., NYSE Rule 2440C.10; NASD Uniform Practice Code, Section 12 Paragraph 3512. The Commission has previously cautioned broker-dealers that, in connection with short sales, delays in the delivery of the securities which are the subject of the short sale generally involve a violation of the antifraud provisions of the Federal securities laws. See Securities Exchange Act Release No. 6778 (April 16, 1962), (27 FR 3991).

EQUIVALENT SECURITIES

The provisions of the Proposed Amendments governing equivalent securities would codify certain existing practices and interpretations with respect to tenders based upon rights to acquire subject securities and, in the case of standardized options, impose additional limitations upon tenders by persons exercising such securities. It should be noted that, for purposes of the Rule, standardized call options would not be deemed to be equivalent securities since the holder of such an option cannot know that the Options Clearing Corporation ("OCC") (the entity responsible for fulfilling the option contract by delivering the underlying security in the event of exercise) "owns" the underlying security within the meaning of the Rule.²¹ Because an unlimited number of options can be written on an uncovered basis, the Commission believes that Rule 10b-4 should not permit option holders to tender unless they have irrevocably exercised those options and reduced the underlying securities to possession or control.²² Since "double tendering" is intended to be precluded, any other result would be inappropriate unless persons who have written options on subject securities were required to count the securities underlying those options against their "net long" positions for purposes of the Rule (a harsh result where exercise of such options cannot be predicted).

MISCELLANEOUS

Paragraph (b)(7) of the Proposed Amendments would make explicit that any transaction in a subject security effected, directly or indirectly, for the purpose of evading the provisions of the Rule constitutes a separate violation of the Rule.

Provision for exemptive relief from the Rule has been added in paragraph (c) of the Proposed Amendments. If the Proposed Amendments are adopted, exemptive relief would be granted sparingly, and then only upon written request, in those instances where, for example, factual representations make the need

²¹ OCC never "owns" securities underlying options but, instead, is the obligor on every option contract. See Prospectus, Options Clearing Corporation (October 31, 1977).

²² The Commission specifically requests commentators to address the questions raised by the existence, in certain offers, of exchange traded options for subject securities. Inasmuch as exchange trading in options did not exist when Rule 10b-4 was adopted in 1968, the Commission is soliciting comments on, and examples of, the effect option transactions have had during tender offers for underlying subject securities, with particular reference to partial tender offers and the purpose underlying Rule 10b-4. Commentators should address the problems associated with tender offers for a substantial portion of an issuer's securities where those securities are the subject of underlying exchange traded call options and holders of substantial numbers of options exercise them with the intent of tendering the securities expected to be obtained upon such exercise.

for and appropriateness of such relief apparent.

ALTERNATIVE REGULATORY APPROACHES

In addition to publishing the Proposed Amendments for comment, the Commission wishes to solicit comment on certain policy issues relating to tendering practices and market transactions during tender offers. In particular, the Commission is soliciting comment on the desirability of pursuing such alternative measures as (i) prohibiting all short selling during the tender offer period; (ii) prohibiting all tenders by means of guarantees or barring "self-guarantees" of delivery; or (iii) permitting short tendering, but only under circumstances precluding "double-tendering."

1. PROHIBITING ALL SHORT SELLING DURING THE TENDER OFFER PERIOD

It seems apparent that the extent to which offerors find it necessary to pro-rate acceptance of securities tendered in response to partial offers is affected by the amount of short selling activity in those securities during the tender period (because many of the securities purchased from short sellers are tendered in response to the offer). Under the provisions of paragraph (b) of the present Rule, an unlimited number of potential tendering securityholders can be created by short sale activity during an offer since every purchaser from a short seller has entered into an unconditional binding contract to purchase the subject securities and thus is deemed to own the securities for purposes of the Rule.

Under the Proposed Amendments, the Commission would impose limited restrictions on short sellers during the offering period (primarily upon their delivery obligations within last few days of an offer) and, in addition, would rely on the possession and control concepts contained in subparagraph (a)(2) of the Proposed Amendments to preclude double tendering (and possibly short tendering) generated by short sales. Commentators are invited to submit views as to whether this objective could be achieved more simply and appropriately by prohibiting all short sales of subject securities in a partial offering during the offer period.²³ Persons submitting arguments in support of this view should address the potential impact on the market for, and price of, the subject security if this alternative approach were implemented. The Commission is particularly interested in receiving comment regarding the benefits, if any, which insure to investors and the trading markets as a result of short sale activity during tender and exchange offers.

²³ Commentators may wish to submit their views concerning this limited prohibition against short selling in the broader context of the Commission's previously announced determination to consider an experiment involving the deregulation of all short selling. See Securities Exchange Act Release No. 13091 (December 21, 1976), (41 FR 56530).

2. GUARANTEES OF TENDER

The practice of permitting tenders to be effected by means of guarantees (i.e., without physical delivery of securities to the offeror) was intended to accommodate "security holders who may be out of town or otherwise may be unable to deposit the securities at the time of tender."²⁴ However, it appears that the guarantee process is utilized primarily by market professionals to effect tenders for their own accounts rather than to facilitate tenders by investors who are unable, during an offer, to make physical delivery of their securities within the time required by the offer.²⁵ Commentators are asked to consider whether, in light of the potential for abuse of the tender process inherent in the use of guarantees, all tenders by means of guarantees should be prohibited or, alternatively, whether guarantees should be permitted only on behalf of persons other than the guarantor or persons other than brokers or dealers.

If tendering by means of a guarantee were to be prohibited, such a prohibition would substantially alter the dynamics of the trading market for securities sought in a tender or exchange offer since persons wishing to purchase securities in order to participate in an offer would have to be certain that they would receive the securities purchased in time to be able to effect physical delivery to the offeror. As a practical matter, the Commission believes that existing clearing and settlement practices, and the fact that certificates may be temporarily unobtainable as a result of pledges or while in transit, make it necessary to permit tenders by means of guarantees. Nevertheless, the Commission wishes to receive comment on whether it is appropriate to continue to permit tenders by means of guarantees and the feasibility of limiting use of the guarantee device to guarantees on behalf of persons other than a broker-dealer.

3. PERMITTING SHORT TENDERING IN LIMITED CIRCUMSTANCES

Rule 10b-4 is intended, among other things, to ensure equality of opportunity for tendering securityholders in partial offers where subject securities are accepted on a pro rata basis. At the time the Rule was published for comment,²⁶ however, some commentators suggested that prohibiting short tendering would be harmful to public securityholders. They argued that, so long as market professionals engaging in arbitrage during tender offers were able to short tender to hedge their risks, they would make market purchases of subject securities at higher prices than would otherwise be the case, and that such purchases benefit holders of subject securities who did not wish to accept the

²⁴ See note 1 supra.

²⁵ See, e.g., "SEC v Weisberger," [1974-75 Transfer Binder] CCH Fed. Sec. L. Rep. 195,108 (S.D.N.Y., 1975).

²⁶ See note 9 supra.

risk of proration in tender offers or the risk that such offers will not be successful.²⁷ It also was argued that the risk of "double tendering" rather than short tendering was responsible for the potentially disparate and inequitable treatment of tending shareholders during partial offers and, therefore, that regulation should be designed only to prevent "double tendering."²⁸

If a mechanism can be developed to prevent a person who lends his securities from also tendering those securities (e.g., by means of the ownership tests set forth in the Proposed Amendments), it might be argued that short tendering (without the harmful effects of double tendering) should be available for all persons.

Commentators who believe that short tendering should be permissible if mechanisms can be developed to prevent double tendering should specifically comment on whether allowing such short tendering would adversely affect the opportunity for security holders to have their tendered securities accepted on a fair basis (e.g., by pro rata acceptance).

The Commission has not solicited public comment on the mechanical aspects of tender and exchange offers since the Williams Act was adopted in 1968.²⁹ For that reason, in addition to the specific proposals and questions raised herein, commentators are specifically invited to submit their views on the general practice of short tendering, problems which have arisen as a direct or indirect result of guarantees of tender (particularly self-guarantees), short selling practices during tender offers, and any other aspects of the tender and exchange offer process which would assist the Commission in its consideration of the Proposed Amendments.

MUNICIPAL SECURITIES

Rule 10b-4 is applicable to an offer for, or a request or invitation for tenders of, any security, including municipal securities. Although Rule 10b-4 has, by its terms, applied to municipal securities since its adoption in 1968, the Commission has not until recently become aware that transactions contemplated by Rule 10b-4 may occur during tender offers for

²⁷ See Letter dated February 3, 1968, from Sullivan & Cromwell to the Securities and Exchange Commission in response to Securities Exchange Act Release No. 8224.

²⁸ *Id.*

²⁹ The Commission considered certain collateral issues during the 1974 tender offer hearings. See "Public Fact-Finding Investigation in the Matter of Beneficial Ownership, Takeovers and Acquisitions by Foreign and Domestic Persons, Securities Act Release Nos. 5529 (September 9, 1974), (39 FR 33835) (1974) and 5538 (November 5, 1974), (39 FR 41233) (1974). More recently, the Commission solicited comment on proposals to amend the tender offer rules under the Act, see Securities Exchange Act Release No. 12676 (August 2, 1976), (41 FR 33004) (1976) and subsequently adopted a new Schedule 14D-1 setting forth disclosure requirements for persons making certain tender offers, see Securities Exchange Act Release No. 13787 (July 21, 1977), (42 FR 38341) (1977).

municipal securities.³⁰ It has recently been suggested to the Commission that, in response to invitations for tenders of their securities by municipalities, market professionals often tender more securities than they actually own in the expectation that, in view of the supply of securities being sought by the municipality, and the range of prices at which tenders will be accepted, such short tenders will yield a satisfactory profit. Since invitations for tenders of their securities by municipalities generally specify that tenders will be accepted at the lowest price first until the desired amount has been purchased, a certain amount of the securities tendered in response to such invitation often is returned (in a manner roughly analogous to returns of excess securities in tender offers where acceptance is pro rated by the offeror).

By letter dated September 7, 1977, the Municipal Securities Rulemaking Board ("MSRB") urged that Rule 10b-4 not be applied to tender offers by municipal securities issuers. According to the MSRB, "although there is scant opportunity for abuse in connection with short tendering in municipal securities, there would be adverse consequences from a prohibition of short tendering. In particular, short tendering enhances competition in pricing offers to municipal securities issuers and thus tends to lower the price or prices to be paid by such issuers.

The Commission specifically solicits comments on the appropriateness of applying Rule 10b-4 to tender offers for municipal securities. Commentators are requested to: (1) Provide examples of short tendering practices during tender offers for municipal securities; (2) address whether Rule 10b-4 should be amended to exempt municipal securities, in whole or in part, from its application and (3) consider, assuming that the Rule does apply to municipal securities, the effects which compliance with the Proposed Amendments would have on tender offers for municipal securities by the issuers of these securities. Commentators should address the potential conflict be-

³⁰ In Securities Exchange Act Release No. 11876 (November 26, 1975), (40 FR 60084), (1975), the Commission adopted temporary Rule 28a-1(T) (17 CFR 240.28a-1(T)) under the Act, relating to the regulation of municipal securities brokers, municipal securities dealers and transactions in municipal securities in accordance with the summary rulemaking provisions of the Administrative Procedure Act. (5 U.S.C. 553(b)(3)(B)). The purpose of temporary Rule 28a-1(T) was to suspend the operation of certain rules under the Act, pending consideration of certain proposed amendments to those rules to prevent their application to municipal securities professionals who would otherwise have become subject to those rules on December 1, 1975 (pursuant to the provisions of the Securities Acts Amendments of 1975). In that release, the Commission indicated that there was no need to temporarily suspend the operations of Rule 10b-4 since it did not appear to have any application to the way in which municipal securities were distributed or traded. That view appears to have been incorrect.

tween the objectives of permitting municipal issuers to purchase their own securities at the lowest possible prices (particularly through the "lowest price first" acceptance procedure sometimes utilized in municipal issuer tender offers) and ensuring equality of opportunity for all tendering securityholders in such offers.

EFFECTS ON COMPETITION

The Commission is not aware of any burden on competition imposed by the Proposed Amendments that would not be necessary or appropriate in furtherance of the purposes of the Act; however, comments on the impact of the Proposed Amendments on competition in light of the purposes of the Act are specifically requested.

REQUEST FOR COMMENT

In consideration of the foregoing, it is proposed to amend 17 CFR Chapter II by revising § 240.10b-4 pursuant to the authority under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29, 89 Stat. 97 (June 4, 1975)). The amendments to Rule 10b-4 are proposed pursuant to Sections 10(a), 10(b) 14(e) and 23(a) of the Act (15 U.S.C. 78j(a), j(b) n(e) and w(a)). The text of Rule 10b-4 has been completely revised as follows and, accordingly, deletions from or additions to the present Rule are not indicated:

§ 240.10b-4 Short tendering of securities.

(a) For the purposes of this section:

(1) A person shall be deemed to own a subject security or an equivalent security only if: (i) He has acquired the security for his own account, otherwise than by borrowing the security, has the right to dispose of it or direct its disposition, and has such security in his possession or under his control, or (ii) in the case of a subject security, he has converted, exchanged or exercised an equivalent security owned (within the meaning of subparagraph (1) (i) of this paragraph) by such person; *Provided, however,* That a person shall be deemed to own a security only to the extent that he has a net long position in such security;

(2) A person shall be deemed to have a security under his control only if such security; (i) Is in his custody or in the custody of his agent (or a sub-agent of such agent), is held for such person's account, free of any charge, lien or claim of any kind in favor of any other person, and delivery of such security to such person can be required without the payment of money or value, or (ii) is in the possession of a creditor of such person (or in the possession of a creditor or an agent of either of them) as collateral for such person's or his creditor's indebtedness pursuant to an arrangement entitling such person and his creditor to obtain delivery of such security upon payment of the indebtedness or substitution of other collateral; and

(3) The term "equivalent security" shall mean: (i) Any security (including any option, warrant or other right to purchase) issued by the person whose securities are the subject of the offer which is immediately convertible into or exchangeable or exercisable for a subject security, or (ii) any other option or right entitling the holder thereof to acquire a subject security, but only if the holder thereof reasonably believes that the person obliged to deliver the subject security upon exercise of such option or right owns and will continue to own the subject security from the time of any tender in reliance upon such option or right through the date on which such tender is accepted, rejected or withdrawn and, upon exercise of such option or right, will deliver the subject security within a period consistent with normal delivery times in the securities business.

(4) The term "offer" shall mean any tender for or request or invitation for, tenders of any security;

(5) The term "subject security" shall mean any security which is the subject of any offer;

(6) The term "tender" shall mean delivery of a subject security pursuant to an offer, causing such delivery to be made, guaranteeing delivery of a subject security pursuant to an offer, causing a guarantee of such delivery to be given by another person, or any other method by which acceptance of an offer by a tendering person may be made;

(7) The term "tendering person" shall mean the person making a tender or on whose behalf a tender is made; and

(8) The term "facilitating person" shall mean any person giving a guarantee that subject securities will be delivered to the person making an offer.

(b) It shall constitute a "manipulative or deceptive device or contrivance" and a "fraudulent, deceptive or manipulative act or practice" as those terms are used in Sections 10(b) and 14(e) of the Act, respectively, for any person acting alone or in concert with others, directly or indirectly, in connection with an offer for any subject security:

(1) To tender any subject security for his own account unless, from the time of such tender through either the last date on which tenders may be made pursuant to the offer or rejection or withdrawal of such tender (whichever shall first occur), he owns and will continue to own (i) the subject security and will deliver or cause to be delivered such security for the purpose of tender, to the person making the offer within the period specified in the offer, or (ii) an equivalent security and, upon the acceptance of his tender, will acquire the subject security by conversion, exchange or exercise of such equivalent security to the extent of such acceptance and, within the period specified in the offer, will deliver or cause to be delivered the subject security so acquired for the purpose of tender to the person making the offer;

(2) To tender any subject security on behalf of any tendering person unless he reasonably believes that such person

is and will continue to be in compliance with subparagraph (1) of this paragraph (b);

(3) To guarantee delivery of any subject security for the purpose of facilitating a tender by or on behalf of any tendering person for such tendering person's own account unless the facilitating person, from the time of such guarantee through either the last date on which tenders may be made pursuant to the offer or rejection or withdrawal of the tendering person's tender (whichever shall first occur), (i) carries and continues to carry for such tendering person, a net long position in the subject securities (or in equivalent securities convertible into or exchangeable or exercisable to the amount of subject securities) at least equal to the amount of subject securities with respect to which the facilitating person has guaranteed delivery by the tendering person, and, (ii) has and continues to have in his possession or under his control an amount of subject securities (or equivalent securities convertible into or exchangeable or exercisable for an amount of subject securities) at least equal to the aggregate amount of subject securities with respect to which such facilitating person has guaranteed delivery;

(4) To lend any subject security to any person unless the person lending such security reasonably believes that such loan is not for the purpose of facilitating a tender by the person borrowing such security for his own account; or

(5) Having tendered any subject security on behalf of another person, to fail to withdraw such tender in the event such person knows or should know, during the period withdrawal of such tender is permitted by the terms of the offer, that the person on whose behalf the tender was made is not in compliance with subparagraph (1) of this paragraph; or

(6) To effect a short sale of a subject security unless delivery of the subject security sold is made to the purchaser (or his agent) no later than the close of business on the last date on which tenders may be made pursuant to the offer;

(7) To effect, directly or indirectly, any transaction in subject securities or equivalent securities with the intent or purpose of evading the provisions of this rule.

(c) This rule shall not prohibit any transaction or transactions if the Commission, upon written request or upon its own motion, exempts such transaction or transactions, either unconditionally or on specified terms and conditions, as not constituting a manipulative or deceptive device or contrivance or a fraudulent, deceptive or manipulative act or practice comprehended within the purpose of this rule.

(Secs. 10(a), 10(b), 14(e), 23(a), 48 Stat. 891, 901; sec. 8, 49 Stat. 1379; sec. 3, 82 Stat. 455; sec. 5, 84 Stat. 1497; Sec. 18, 89 Stat. 155; (15 U.S.C. 78j(a), 78j(b), 78n(e), 78w(a)).)

The Commission hereby proposes for comment amendments to Rule 10b-4 pursuant to Sections 10(a), 10(b), 14(e) and 23(a) of the Act.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 9, 1977.

[FR Doc.77-33085 Filed 11-15-77;8:45 am]

[7708-01]

PENSION BENEFIT GUARANTY CORPORATION

[29 CFR Part 2617]

EMPLOYEE RETIREMENT INCOME SECURITY ACT

Reporting and Notification Requirements for Reportable Events

AGENCY: Pension Benefit Guaranty Corp.

ACTION: Proposed rule.

SUMMARY: This proposed rule prescribes the reporting and notification requirements for reportable events imposed by the Employee Retirement Income Security Act of 1974 (the "Act"). The Act requires a plan administrator of any plan covered by the plan termination insurance provisions of the Act ("covered plan") to notify the Pension Benefit Guaranty Corp. (the "PBGC") within 30 days after he knows or has reason to know of the occurrence of certain events that may indicate a possible danger of plan termination. The PBGC is authorized to waive these reporting obligations and instead require notification of the event(s) to be included in the plan's annual report to the PBGC.

DATES: Comments by: January 30, 1978.

ADDRESSES: Comments should be addressed to the Office of the General Counsel, Pension Benefit Guaranty Corp., Suite 7200, 2020 K Street NW., Washington, D.C. 20006. Each person submitting comments should include his or her name and address, identify this notice and give reasons for any recommendations.

Copies of written comments will be available for examination in the Office of Communications of the Pension Benefit Guaranty Corp., Suite 7100, at the above address, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT:

David Weingarten, Staff Attorney, Office of the General Counsel, Pension Benefit Guaranty Corp., 2020 K Street NW., Washington, D.C. 20006, 202-254-3010.

SUPPLEMENTARY INFORMATION:

INTRODUCTION

Important to a satisfactory understanding of this part is an understanding

of the terms "employer" and "plan," and the difference between them.

Under section 4001(b) of the Act, all trades or businesses (whether or not incorporated) under common control, within the meaning of Part 2612 of this chapter, are considered to be a single employer for purposes of Title IV of the Act. This definition of the term "employer" is contained in proposed § 2617.2. (It should be noted that the term "employer", when used in certain sections of other Titles of the Act, does not necessarily have this meaning. For example, the term "employer", as used in the definition of plan sponsor in section 3(16)(B), is defined by section 3(5) not section 4001(b)).

Under proposed § 2617.2, there is one plan, (whether it be one single employer plan, multiple employer plan, or multi-employer plan), as opposed to a number of plans, only if, on a going concern basis, all of the plan assets are available to pay all participants' benefit entitlements. A plan will not fail to be one plan solely because:

1. The plan has two or more distinct benefit structures that apply either to the same or different groups of participants;
2. The plan has several plan documents;
3. Several employers, whether or not "affiliated" contribute to the plan;
4. The assets of the plan are invested in several trusts or annuity contracts;
5. The plan has purchased irrevocable commitments from an insurer to pay all or part of the participants' benefits; or
6. Separate accounting is maintained for purposes of cost allocation, but not for purposes of providing benefits under the plan.

This definition is consistent with the IRS definition of "single plan" contained in proposed Treas. Reg. § 1.414(1)-1(b)(1) (42 FR 33770, 33771, July 1, 1977).

Under the proposed definition of "plan", the PBGC would view a multiple employer plan—a plan to which more than one employer makes contributions, which does not meet the full statutory definition of a multiemployer plan—as a single plan if, on an on-going basis, all plan assets are available to satisfy all participants' benefits, even though the plan contains restrictions on its obligations to participants in the event their employer withdraws from the plan. However, such restrictions, depending upon how they apply, may be a violation of Title II's minimum vesting standards or section 414(1) of the Code.

A multiemployer plan will not fail to be one plan solely because it provides, in accordance with Code section 414(f)(1)(D) that "benefits are payable with respect to each participant without regard to the cessation of contributions by the employer who employed that participant except to the extent that such benefits accrued as a result of service with the employer before such employer was required to contribute to such plan."

In contrast, more than one plan exists if, on a going concern basis, a portion

of the assets is not available to pay some of the benefits, irrespective of whether each plan has the same benefit structure or plan document or if all or part of the assets are involved in one trust.

The definition of plan contained in proposed § 2617.2 is the result of an exchange of correspondence with the IRS and the PBGC's desire that there be a uniform definition of the term "plan." Earlier, the PBGC had taken the position that there is one plan, as opposed to a number of plans, only if all of the plan assets are available to pay all participants' benefit entitlements, irrespective of any cessation of contributions to or withdrawal of participation from such plan by any employer. The PBGC invites specific comments from the public on the proposed definition of plan.

REPORTABLE EVENTS

GENERAL

The reporting requirements of section 4043 are intended to inform the PBGC of the occurrence of certain events that may result in plan termination and that may necessitate monitoring or termination by the PBGC of a covered plan. H.R. REP. NO. 1280, 93d Cong., 2d Sess. 373 (1974). These requirements are designed to protect participants and the PBGC. The reportable events described in proposed §§ 2617.4-2617.11 are those set forth by Congress in paragraphs (b)(1)-(8) of section 4043 of the Act. Additionally, section 4043(b)(9) gives the PBGC authority to prescribe other reportable events. The PBGC proposes to establish three more reportable events, which are described in proposed §§ 2617.12, 2617.13 and 2617.14. Consistent with the Congressional purpose noted above, the definitions of the reportable events in proposed §§ 2617.4-2617.14 include only those situations that are indicative of plan or employer financial problems or possible need for plan termination.

The IRS and the Department of Labor (the "DOL") are required to notify the PBGC whenever certain events occur (Act, sections 4043(c) and (d)). In addition, under some circumstances, the occurrence of certain events will have only a minimal impact on the plan, the employer, or the PBGC's potential liability. Generally, in such situations, the PBGC proposes to exercise its authority under § 4043(a) to waive the plan administrator's obligation to file a 30-day notice, i.e., to notify the PBGC within 30 days after he knows or has reason to know of the occurrence of a reportable event. Notification of these events will be made in the plan's annual report (proposed § 2617.3(a)(2)). This use of the PBGC's authority to waive the 30-day notice requirement, to the extent specified in this proposal, will reduce the plan administrator's reporting obligations and enable the PBGC to direct its primary attention only to those events that need to be reviewed on a priority basis.

Because, for example, the PBGC should receive timely notification from the IRS and/or the DOL of the following events, it is proposed that a plan

administrator will not be required to notify the PBGC within 30 days after he knows or has reason to know about the occurrence of these events:

- (1) IRS notice that a plan has ceased to be a plan described in (4021(a)(2) of the Act (4043(b)(1));
- (2) DOL determination of non-compliance with Title I of the Act (section 4043(b)(1));
- (3) IRS determination of a termination or partial termination within the meaning of (section 411(d)(3) of the Internal Revenue Code of 1954 section 4043(b)(4)); and
- (4) Alternative method of compliance prescribed by the Secretary of Labor under section 110 of the Act (section 4043(b)(8)).

In addition, with respect to most other reportable events, a plan administrator will be required to file a 30-day notice with the PBGC only under certain circumstances. Finally, the PBGC has reserved the right, in any individual case, to waive the requirement that a 30-day notice be filed and to waive the filing of any of the information required to be submitted with the notice (proposed § 2617.3(f)).

It should be noted that the proposed waiver of the 30-day notice requirements as set forth herein, will not eliminate the need to file an annual report, as required by Part 2606 of this chapter. Furthermore, the public should expect that the form prescribed by Part 2606 of this chapter for filing an annual report will be revised to conform to this part.

DESCRIPTION OF REPORTABLE EVENTS AND 30-DAY FILING REQUIREMENTS

Proposed § 2617.4(a) provides that a reportable event occurs upon the determination by the IRS that a plan has ceased to be qualified or upon the determination by the DOL that a plan is not in compliance with Title I of the Act. However, under proposed § 2617.4(b), a 30-day notice need not be filed for these events, since the PBGC expects to receive information concerning these events from the IRS under section 4043(c)(1), and from the DOL pursuant to section 4043(d)(1).

A reportable event under proposed § 2617.5(a) occurs, generally, when an amendment to a plan is adopted that eliminates any type of retirement benefit or decreases or may decrease the amount of any accrued retirement benefit or retirement benefit that would accrue in the future to any participant or increases the age, service or other requirements for benefit entitlement. However, if a plan amendment changes the retirement age and/or form of the retirement benefit, the amount of the accrued retirement benefit (or the retirement benefit that would accrue in the future) provided by the plan immediately before the amendment must be converted to an actuarially equivalent amount of accrued retirement benefit (or retirement benefit that would accrue in the future) for the retirement age and form of the benefit under the amendment to determine

whether the adoption of the plan amendment has resulted in a reportable event under proposed § 2617.5(a). Examples of this event include a reduction in accrued benefits, a reduction in retirement benefits that would accrue in the future, or an increase in age or service requirements for vesting. A change in the actuarial factors used to compute optional forms of payment of retirement benefits is not a reportable event under proposed § 2617.5(a). In addition, an increase in the rate of interest on employee contributions is not a reportable event, if the retirement benefit has not been decreased. However, a change in the actuarial factors used to compute early retirement benefits that may result in a lower normal form of payment at any age is a reportable event under proposed § 2617.5(a). Also, a reportable event occurs under proposed § 2617.5(a) when a plan is amended to cease benefit accruals, perhaps as an alternative to termination. See generally, PBGC, "Guidelines on Voluntary Termination," Publication No. 503 (January, 1977).

A retirement benefit for purposes of proposed § 2617.5(a) is a benefit payable upon normal, early or disability retirement, other than a welfare benefit described in section 3(1) of the Act to a participant who leaves, or has left covered employment.

The 30-day notice requirement for this event does not apply unless the plan has at least 100 participants on the date an amendment is adopted (rather than its effective date), and the amendment decreases or may result in a decrease, with respect to more than 10 percent of plan participants, of more than 10 percent of the amount of the normal retirement benefit provided by employer contributions. (For purposes of this regulation only, a normal retirement benefit is defined as the benefit payable at the earliest age at which a participant is eligible for immediate commencement of full accrued retirement benefits under the plan and for which age and/or service are the only requirements.) Accordingly, no 30-day notice need be filed as a result of the adoption of an amendment that reduces early or disability retirement benefits only, or that reduces normal retirement benefits provided by employer contributions only. Further, the notice requirement is not applicable when the amendment is adopted to prevent the plan from violating the non-discrimination rules under the Code.

The PBGC proposes to adopt this system of reporting, which requires a 30-day notice only for certain decreases or potential decreases in normal retirement benefits, because it believes that the most significant benefits from a Title IV perspective provided by most covered plans are normal retirement benefits. Thus, substantial decreases in the amount of such benefits provided by employer contributions generally will have the most significant impact on the plan. The adoption of an amendment that reduces normal retirement benefits by a small amount, that affects a limited

number of participants, that is due solely to decreases in employee contributions, that is offset by increased employer contributions to certain other pension plans, or that reduces retirement benefits other than normal retirement benefits, would not appear to indicate a serious problem with the plan or the employer or a possible need for plan termination.

Proposed § 2617.6(a) provides that a reportable event occurs when the number of active participants is less than 80 percent of the number of such participants at the beginning of the plan year, or is less than 75 percent of the number of such participants at the beginning of the previous plan year. The purpose of reporting this event is to identify plans experiencing significant declines in covered employment since such declines may indicate employer economic problems. Thus, in single employer plans, the event is tied directly to declines in employment due to factors other than temporary or seasonal layoffs. An active participant in a single employer plan is defined in proposed § 2617.2 as an employee participating in the plan who is either receiving compensation for work performed, or who is on an authorized absence, i.e., a paid or unpaid temporary absence granted by an employer for non-economic reasons, such as military service, vacation, jury duty, illness, or union functions. However, if an employee is not performing work for the employer for economic reasons, including layoff, strike, and voluntary or involuntary termination of employment, that employee is still considered to be an active participant if his absence from work has lasted or reasonably may be expected to last less than 30 days or is due to annually or periodically recurring reductions in employment (e.g., retooling or seasonal declines in demand for a product or supply of materials).

In a plan to which more than one employer contributes, the use of the concept of active employment as described above could create excessive administrative burdens. Consequently, an active participant in such a plan is defined in proposed § 2617.2 as a participant who currently is accruing benefits or earning or retaining credited service for purposes of vesting under the plan, i.e., has not incurred a break in service for vesting purposes for a period of one year or the period specified in the plan, whichever is longer.

A 30-day notice is required to be filed, in the event of a reduction in the number of active participants as described above, pursuant to proposed § 2617.6(b), for plans with 100 or more participants as of the beginning of the current or previous plan year. However, proposed § 2617.6(b) also contains a special rule whereby a single employer plan need not file a 30-day notice if the employer maintains more than one covered plan and there is not more than a 20 percent reduction since the beginning of the current plan year (or a 25-percent reduction since the beginning of the previous plan year) in the total number of active par-

ticipants in all of the employer's covered plans. This rule eliminates detailed reporting of small reductions in total employment that would not appear to indicate employer economic problems.

Proposed § 2617.7(a) provides that a reportable event occurs when the Secretary of the Treasury determines that there has been a termination or partial termination of the plan within the meaning of section 411(d)(3) of the Code. As a practical matter, the PBGC does not expect to receive any notices that the Secretary of the Treasury has determined that there has been a termination, since an IRS regulation provides that a covered plan " * * * is considered terminated on a particular date if, as of that date—(i) the plan is voluntarily terminated * * * " under section 4041 of the Act, or (ii) the plan is involuntarily terminated by the PBGC under section 4042 of the Act. Treas. Reg. section 1.411(d)-2(c)(2) (42 FR 42318, 42339-40, August 23, 1977). Because, pursuant to section 4043(c)(1), the PBGC expects to be informed of an IRS determination of the partial termination of a plan, by the IRS, proposed section 2617.7(b) provides that non 30-day notice need be submitted concerning this event.

A reportable event occurs under proposed section 2617.8(a) when a plan fails to meet the minimum funding standards under section 412 of the Code or under section 302 of the Act. Even though the IRS and the DOL are required, pursuant to sections 4043(c)(1) and 4043(d)(1) of the Act, to notify the PBGC about the occurrence of this event, all plans must file a 30-day notice with the PBGC. Because the occurrence of this event may indicate serious plan and employer financial problems, the PBGC believes that the 30-day notice is necessary.

Proposed § 2617.9(a) provides that a reportable event occurs when a plan is unable to pay full promised benefits when due in the form prescribed by the plan for financial or other reasons. Generally, an event described in proposed § 2617.9(a) occurs when a plan currently has inadequate assets to pay full promised benefits as they come due, or when full promised benefits are not paid because of asset liquidity problems. Administrative delays or difficulties caused by, for example, the absence for fewer than two full benefit payment periods of the person authorized to make or approve benefit payments, or the need to verify participants' eligibility to receive benefits, will not result in a plan being considered unable to pay full promised benefits when due. Special rules are included in § 2617.9(b) for determining when a plan is unable to pay full promised benefits when due when the benefits are provided: (1) In a manner such that the plan is primarily and directly liable, e.g., an insurer has not undertaken the direct irrevocable obligation to pay all of the benefits, such as in a trusted or split-funded plan; or (2) solely through a group insurance con-

tract, e.g., a deposit administration contract or an immediate participation guarantee contract.

Proposed § 2617.9(b) requires all plans to file a 30-day notice for this event since the inability of a plan to meet its benefit commitments when due in the form prescribed by the plan indicates serious plan financial problems and is one of the statutory bases for action under section 4042.

Proposed § 2617.10(a) defines as a reportable event a plan distribution having a value of \$10,000 or more to a participant who was a substantial owner within 60 months prior to the distribution, if the distribution is not a benefit payable on account of the death of the participant and if, immediately after the distribution, the plan has nonforfeitable benefits which are not funded. The term "distribution" includes a direct or indirect benefit payment in any form from a plan to a participant, including monthly annuity payments, a lump-sum payment, the purchase of an annuity, and a direct distribution of a plan asset other than cash. In determining whether this reportable event has occurred, all distributions within a 24-month period are to be treated as a single distribution and their values aggregated in order to compute the amount of the distribution. The occurrence of this event authorizes the PBGC to initiate involuntary termination proceedings under section 4042(a) (3) of the Act. However, a 30-day notice for this event need only be filed when there has been a distribution or distributions with a value of \$10,000 or more, to a substantial owner within a 12-month period, all or a portion of which is attributable to a benefit which is in excess of the maximum guaranteeable benefit for substantial owners under Part 2609 of this chapter for the year in which it is made. Thus, proposed § 2617.10(d) requires a 30-day notice only for those large distributions which may have a significant impact on the PBGC's exposure, or which may be subject to recapture under section 4045 of the Act.

Proposed § 2617.11(a) provides, in part, that a reportable event occurs when a plan merges, consolidates or transfers its assets or liabilities under § 208 of the Act or § 414(1) of the Code. Even though section 4043(b)(8) of the Act does not include the phrase "or liabilities", Congress clearly intended such phrase to be included in the description of this event. See H.R. Rep. No. 1280, 93d Cong., 2d Sess. 374 (1974). Since the provisions of section 208 of the Act and section 414(1) of the Code are substantially identical, the PBGC believes that it is an appropriate interpretation of section 4043(b)(8) to include events under section 414(1) of the Code as well as section 208 of the Act. In addition, even if the PBGC interpreted section 4043(b)(8) not to include events under section 414(1) of the Code, the PBGC still could receive notification of such events simply by prescribing a reportable event under section 4043(b)(9) to cover Code section 414(1) events. Whether such a re-

portable event has occurred is dependent upon the DOL and the IRS delineation of the types of events that are within the meaning of section 208 of the Act and section 414(1) of the Code. A spinoff governed by Code section 414(1) will occur when an employer ceases contributions to a multiple employer plan, if the plan segregates the assets attributable to a withdrawing employer and limits the original plan's liability for the benefits of the participants who worked for that employer to that segregated portion of the fund. See definition of "plan" discussion, supra. A change in the funding agent or funding medium of the plan is not considered a reportable event under proposed § 2617.11(a).

In general, a 30-day notice is only required, pursuant to proposed § 2617.11(b), when one or more multiemployer plans (within the meaning of section 414(f) of the Code) merge or consolidate with or transfer (or receive) assets or liabilities to (or from any other plan, or when a single employer plan with 100 or more participants merges or consolidates with or transfers assets or liabilities to a plan maintained by a different employer (i.e., an employer who is not a member of the same group of trades or businesses under common control within the meaning of Part 2612 of this chapter). Proposed § 2617.11(b) contains a special rule under which a 30-day notice need not be filed if there is a transfer of assets or liabilities pursuant to a reciprocity or portability agreement, until the total of such asset or liability transfers during the plan year exceeds 3 percent of the value of the plan assets at any point during the plan year. When the 30-day notice is required to be filed in such a situation, the notice need only be submitted by the plan administrator of the plan transferring assets or assuming liabilities in excess of the 3 percent limit.

The 30-day notice for mergers, consolidations and transfers involving a multiemployer plan is necessary to enable the PBGC, pursuant to sections 208, 1015(1) and 1021(b) of the Act, to determine the extent to which these sections shall apply to multiemployer plans. With respect to mergers, consolidations and transfers involving single employer plans of different employers, a 30-day notice must be filed because the transfer to a different employer's plan may increase the PBGC's risk of loss if, for example, the statutory net worth of the second employer is lower than that of the first employer. This, of course, is not a problem when the same employer maintains all of the plans involved in the transaction. No 30-day notice need be filed for other occurrences covered by this reportable event because the PBGC expects to receive pertinent information from the IRS.

Proposed § 2617.11(a) also provides that a reportable event occurs when an alternative method of compliance with any of the reporting and disclosure requirements, under Part I of Title I of the Act, is prescribed by the Secretary of Labor under section 110 of the Act. Since the DOL is required to advise the

PBGC when such an alternative method of compliance is prescribed and the PBGC expects to receive pertinent information concerning this event from the DOL, proposed § 2617.11(b) does not require the filing of a 30-day notice of this event.

As noted above, proposed §§ 2617.12, 2617.13 and 2617.14 contain reportable events prescribed by the PBGC pursuant to section 4043(b)(9) of the Act. Under proposed § 2617.12(a) a reportable event occurs when, with respect to a single employer plan, the employer maintaining the plan (assuming it is not a member of a group of trades or businesses under common control within the meaning of Part 2612 of this chapter) or, in the case of a single employer plan maintained by one or more members of such a group, any member of the group (whether or not contributing to the plan), is the subject of bankruptcy, insolvency, or similar proceedings or settlements of indebtedness (whether judicial or nonjudicial). Timely notification regarding the above-mentioned events is necessary for the PBGC to protect itself against potential increases in its exposure as a result of such events. Accordingly, proposed § 2617.12(b) requires a 30-day notice with respect to all such events.

Proposed § 2617.13(a) provides, generally, that a reportable event occurs when, with respect to a single employer plan, the employer maintaining the plan (assuming it is not a member of a group of trades or businesses under common control within the meaning of Part 2612 of this chapter) or, in the case of a single employer plan maintained by one or more members of such a group, any member of the group (whether or not contributing to the plan), is in the process of being completely liquidated or dissolved. A reportable event under proposed § 2617.13(a) occurs when dissolution proceedings are instituted or there is a dissolution, or, upon any transaction to implement the complete liquidation, whichever occurs first. Proposed §§ 2617.13(b) and (c) contain special rules exempting from this event certain reorganizations specified in section 4062(d) of the Act and bankruptcy, insolvency or similar settlements under proposed § 2617.12(a). A 30-day notice is required for a reportable event under proposed § 2617.13(a).

Proposed § 2617.14 provides, generally, that a reportable event occurs when, with respect to a single employer plan with 100 or more participants and with nonforfeitable benefits which are not funded, there is a transaction involving the assets of or an ownership interest in the plan sponsor and as a result the plan sponsor will be no longer a member of the same commonly controlled group, or, there will be or is a change of plan sponsor. A reportable event under proposed § 2617.14(a) occurs, for example, when a corporation maintaining a single employer plan for 100 of its employees at a facility, with nonforfeitable benefits which are not funded, executes an agreement to sell the assets of that facility to an unaffiliated

corporation that agrees to assume the plan. Note that in the preceding example, if there was no preliminary sale agreement, the reportable event would have occurred upon the consummation of the sale. Other "transactions" subject to proposed § 2617.14(a) include legally binding agreements whether or not written and changes in ownership that occur as a matter of law or through the exercise or lapse of preexisting rights. Proposed § 2617.14(a) is necessary because certain changes of plan sponsor and situations in which the plan sponsor will be or is no longer a member of the same commonly controlled group may seriously increase the PBGC's loss in the event of a subsequent plan termination. Accordingly, a 30-day notice is required for this event.

This event does not cover a change in corporate structure that involves a mere change in identity, form, or place of organization, however affected. Nor does it cover a situation in which there is a change in the plan sponsor but no change in the identity of the employer, as defined in proposed § 2617.2. Thus, proposed § 2617.14 does not apply if the plan sponsor after the transaction, is a member of the same group of trades or businesses under common control as the plan sponsor before the transaction. Proposed § 2617.14 contains a special rule under which no reportable event under proposed § 2617.14 occurs, for example, upon a sale where the seller's plan is to be merged or consolidated with a plan of the buyer, or, where assets or liabilities are transferred from the seller's plan to a plan of the buyer.

REPORT FORM AND DOCUMENTATION REQUIRED

The plan administrator will be required to notify the PBGC of the occurrence of a reportable event for which a 30-day notice is required by filing Form PBGC-2, the form proposed to be prescribed by this part. Copies of the proposed form have been filed with and are available for inspection at the Office of the Federal Register. Additional copies are available upon request from the PBGC. This report form contains plan identification information, data on the number of participants, and check boxes for the type of event which occurred and the type of documentation submitted. Proposed § 2617.3(c) specifies the items a plan administrator will be required to submit in the notice with the report form. This information includes a copy of the current plan and all amendments adopted within the preceding five years, a copy of all documents under which the plan was established and is operated (e.g., the collective bargaining agreement, group insurance contract, trust agreement) and the two most recent actuarial valuations. Proposed § 2617.3(d) sets forth additional information that must be provided for certain events.

OPTIONAL CONSOLIDATED FILING

Although a notice generally will be required to be filed for each event de-

scribed in this Part, proposed § 2617.3(h) permits the plan administrator to satisfy what otherwise might be multiple filing requirements by filing only one report form and one set of required documentation and information in certain situations.

OBLIGATION OF EMPLOYER

Section 4043(a) provides that "whenever an employer making contributions under a plan to which section 4021 applies knows or has reason to know that a reportable event has occurred, he shall notify the plan administrator immediately." This rule is contained in proposed § 2617.16.

In consideration of the foregoing, it is proposed to amend Chapter XXVI of Title 29, Code of Federal Regulations by adding a new Part 2617 to read as follows:

PART 2617—REPORTING AND NOTIFICATION REQUIREMENTS FOR REPORTABLE EVENTS

- Sec.
- 2617.1 Purpose and scope.
- 2617.2 Definitions.
- 2617.3 Requirement of notice.
- 2617.4 Tax disqualification or Title I non-compliance.
- 2617.5 Amendment, decreasing benefits payable.
- 2617.6 Active participant reduction.
- 2617.7 Termination or partial termination.
- 2617.8 Failure to meet minimum funding standards.
- 2617.9 Inability to pay benefits when due.
- 2617.10 Distribution to a substantial owner.
- 2617.11 Plan merger, consolidation or transfer or alternative compliance with reporting and disclosure requirements of Title I.
- 2617.12 Bankruptcy, insolvency, or similar settlements.
- 2617.13 Liquidation or dissolution.
- 2617.14 Change in employer-sponsor of single employer plan.
- 2617.15 Obligation of employer.
- 2617.16 Form.
- 2617.17 Date of filing.
- 2617.18 Computation of time.
- 2617.19 Mailing address.
- Appendix A Examples.

AUTHORITY: Secs. 4002(b)(3), 4043, 4065, Pub. L. 93-406, 88 Stat. 1004, 1024-25, 1032 (29 U.S.C. 1302(b)(3), 1343, 1365).

§ 2617.1 Purpose and scope.

(a) The purpose of this part is to prescribe the specific reporting and notification requirements imposed by section 4043 of the Act.

(b) This part applies to all covered plans.

§ 2617.2 Definitions.

For purposes of this part (unless otherwise required by the context):

"Act" means the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq. (Supp. V, 1975)).

"Active participant" means:

(a) With respect to a single employer plan, a participant who:

- (1) Is receiving compensation for work performed;
- (2) Is on authorized absence;
- (3) Is absent from work for a period of time which has lasted or reasonably

may be expected to last less than 30 days; or

(4) Is absent from work due to annual or other periodic recurring reductions in employment.

(b) With respect to a plan to which more than one employer contributes, a participant who currently is accruing benefits or retaining or earning credited service for purposes of vesting under the plan, i.e., a participant who has not incurred a break in service for vesting purposes for a period of one year or the period specified in the plan, whichever is longer.

"Authorized absence" means a paid or unpaid temporary absence granted by an employer for noneconomic reasons.

"Code" means the Internal Revenue Code of 1954, as amended.

"Commonly controlled group" means a group of trades or businesses (whether or not incorporated) under common control within the meaning of Part 2612 of this chapter.

"Covered plan" means a plan to which Section 4021 of the Act applies.

"Distribution" means direct or indirect benefit payments made in any form from a plan to a participant including, but not limited to, monthly annuity payments, a lump-sum payment or a direct distribution of a plan asset other than cash. The receipt of an irrevocable commitment to pay benefits or their equivalent, made by an insurer pursuant to an insurance contract purchased with funds contributed to or under a plan, shall be considered to be a distribution on the effective date of the insurer's irrevocable commitment: *Provided, however,* That any cash payments made by an insurer pursuant to an irrevocable commitment shall not be considered a "distribution". A cash distribution shall be considered to be a distribution on the date it is received by the participant. The date of all other distributions shall be when the plan relinquishes control over the assets transferred directly or indirectly to the participant.

"Employer" means all trades or businesses (whether or not incorporated) under common control within the meaning of Part 2612 of this chapter.

"Insurance contract" means a valid written agreement pursuant to which an insurer agrees to perform services including the payment of specified benefits in return for the payment of premiums or other consideration.

"Insurer" means a company authorized to do business as an insurance carrier under the laws of a State or the District of Columbia.

"Irrevocable commitment" means an obligation by an insurer to pay benefits to a named plan participant or surviving beneficiary, which cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and which is legally enforceable by the participant or beneficiary.

"IRS" means the Internal Revenue Service.

"Money purchase plan" means an individual account plan, as defined in section 3(34) of the Act, in which the employer's contributions are fixed, often as a percentage of compensation.

"Multiemployer plan" means a multi-employer plan as defined in section 414 (f) of the Code.

"Multiple employer plan" means a plan, other than a multiemployer plan, under which more than one employer makes contributions.

"Nonforfeitable benefits which are not forfeitable" means when the value of nonforfeitable benefits as defined in § 2605.6 of this chapter exceeds the value of plan assets (valuing benefits in accordance with reasonable actuarial assumptions and valuing plan assets in accordance with the valuation standards contained in Part 2611 of this chapter). For this purpose, reasonable actuarial assumptions are the actuarial assumptions used by the PBGC, the actuarial assumptions used by the plan for purposes of § 302 of the Act, or the purchase price of an irrevocable commitment.

"Normal retirement benefit" means the benefit payable at the earliest age at which a participant is eligible for immediate commencement of full accrued retirement benefits under the plan and for which age and/or service are the only requirements.

"Participant" means:

(a) Any individual currently accruing benefits or retaining or earning credited service under the plan (not including non-vested former employees who have incurred a break in service of the greater of one (1) year or the break in service period specified in the plan);

(b) Former employees with vested rights to immediate or deferred benefits or retirees receiving or eligible to receive benefits from the plan, other than former employees or retirees to whom an insurance company has made irrevocable commitments to pay the benefits to which they are entitled under the plan;

(c) Decreased participants whose survivors are receiving benefits from the plan; or

(d) Any other individuals defined as participants under the terms of the plan.

"Plan" means one plan (whether it be a single employer, multiemployer or multiple employer plan), as opposed to a number of plans, only if, on a going concern basis, all of the plan assets are available to pay all participants' benefit entitlements.

"Plan administrator" means the plan administrator, as defined in section 3 (16) of the Act, or a duly authorized representative of such person. For this purpose, the term "employer" as used in section 3(16), is defined in section 3(5) of the Act.

"Plan to which more than one employer contributes" means a multiple employer plan or a multiemployer plan.

"Plan year" means the calendar, policy or fiscal year on which the records of the plan are kept.

"Post-funding rider" means a provision in an insurance contract that au-

thorizes the insurer to pay full benefits to a retired participant while the participant's irrevocable annuity from the insurer is being purchased.

"Retirement benefit" means a benefit payable upon normal, early or disability retirement, other than a welfare benefit described in section 3(1) of the Act, to a participant who leaves or has left covered employment.

"Single employer plan" means a plan to which one employer, as defined above, contributes.

"Substantial owner" means an individual who within the 60 months preceding the date on which the determination is made:

(a) Owns or owned the entire interest in an unincorporated trade or business;

(b) In the case of a partnership, is or was a partner who owns or owned, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership; or

(c) In the case of a corporation, owns or owned, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation. For this purpose, the constructive ownership rules of section 1563(e) of the Code shall apply (determined without regard to section 1563(e)(3)(C)).

"PBGC" means the Pension Benefit Guaranty Corp.

"Title IV" means Title IV of the Act.

§ 2617.3 Requirement of notice.

(a) *Obligation to file.* Except as provided in paragraph (a)(2) of this section, the plan administrator shall file with the PBGC a notice of any and all reportable events described in §§ 2617.4-2617.14, occurring on or before a Notice of Intent to Terminate is filed in accordance with 29 CFR Part 2604.

(1) *Filing by plan administrator's representative.* A notice submitted pursuant to this section by a plan administrator's duly authorized representative, other than an attorney at law, shall be accompanied by a notarized power of attorney, signed by the plan administrator, which authorizes the said representative to sign and submit such a notice and, if desired, to act on behalf of the plan administrator in connection with the notice.

(2) *Waiver of notice of reportable event.* A notice of a reportable event is not required when filing of the 30-day notice is expressly waived by §§ 2617.4-2617.14 or when the PBGC waives the filing requirement pursuant to paragraph (f) of this section; however, the plan administrator shall report the occurrence of the event in the annual report filed pursuant to Part 2606 of this chapter.

(b) *When to file.* A notice of a reportable event, unless expressly waived by this Part, shall be filed no later than 30 days after the plan administrator knows or has reason to know such an event has occurred.

(c) *Contents of notice—General.* Each notice required to be submitted under this section shall be filed on the form

prescribed by this part, in accordance with the instructions therein, and shall contain the information listed in this paragraph, and, when applicable, the information specified in paragraph (d) of this section. The response to each numbered item shall be identified by item number. If any requested information is included in an IRS form or submission attached to the notice, that information need not be repeated in the body of the notice. Instead, the information may be incorporated by reference to the number, date, and page or pages of the IRS form or submission where it appears. Each document required to be filed with the PBGC shall contain, if available, an adoption and effective date and an executed signature page. Each such document that does not contain an adoption or effective date shall be accompanied by a statement containing the missing information. Any required documentation previously filed with the PBGC need not be refiled, but may be incorporated by reference to the previous submission. Each notice shall contain:

(1) A copy of the current plan, i.e., a copy of the last restatement of the plan and all subsequent amendments;

(2) A copy of all amendments to the plan, adopted or effective within the 5-year period preceding the event;

(3) A copy of the document or documents establishing the plan;

(4) A copy (or copies) of any trust agreement providing for management of the assets of the plan, its administration, or the payment of benefits under the plan or any group insurance contracts;

(5) The name, address, and telephone number of each labor organization (if any) that represents plan participants and/or negotiates over matters relating to the plan, the name and title of the principal officer (or officers) of each such organization and of a labor organization of which it is a subordinate body;

(6) A complete copy of the most recent collective bargaining agreement (if any) that contains provisions relating to the plan;

(7) Copies of the two most recent actuarial statements and opinions (if any) relating to the plan;

(8) A statement of any material change in the liabilities of the plan occurring after the date of the later of the two actuarial statements referred to in subparagraph (7) of this paragraph; and

(9) Complete copies of any letters of determination issued by the IRS relating to the establishment of the plan, any disqualification of the plan and the most recent subsequent requalification.

(d) *Contents of notice—additional information.* Each notice filed with respect to the following events shall contain, in addition to the information required by paragraph (c) of this section, the information listed below:

(1) A § 2617.5(a) event. The percentage decrease in normal retirement benefits, and the percentage of participants affected.

(2) A § 2617.6(a) event. For all plans, as of the beginning of the immediately

preceding plan year and as of the date of the event, the total number of participants currently accruing benefits or retaining or earning credited service for purposes of vesting under the plan, such participants with fully vested rights, such participants with partially vested rights, such participants without vested rights, retired participants receiving benefits, former employees with vested rights, and deceased participants whose beneficiaries are receiving or entitled to receive benefits. For single employer plans, as of the beginning of the current and immediately preceding plan years and the date of the event, the number of active participants.

(3) *A § 2617.8(a) event.* A statement of the current funding standard account, or its alternative, showing the balance at the beginning of the plan year and the charges and credits to the account for the plan year that are required under section 302 of the Act and section 412 of the Code.

(4) *A § 2617.9(a) event.* The reason(s) why the plan is unable to pay benefits, the amount of the benefits due, the normal date of benefit payment, the amount and date of the last payment, and the value of plan assets as determined consistent with the evaluation standards contained in Part 2611 of this chapter.

(5) *A § 2617.10(a) event.* The amount and form of the distribution, the total value of nonforfeitable benefits which are not funded (separately stating the total amount of nonforfeitable benefits and of plan assets), the actuarial assumptions used to value benefits and whether an indemnity agreement has been entered into between the participant receiving the distribution and the plan trustee, concerning lump sum distributions to the 25 highest paid employees of the benefits subject to the early termination restrictions of Treas. Reg. § 1.401-4(c).

(6) *A § 2617.11(a) event.* A copy of Form 5310 and the actuarial data submitted to the IRS.

(7) *A § 2617.12(a) event.* Copy of papers filed in relevant proceedings, e.g., bankruptcy petition and supporting schedules, or other similar documents, showing name of court date of filing, docket number, type of proceeding and names, addresses and telephone numbers of attorneys involved. The last date for filing claims, if known, and the name, address and telephone number of any trustee or receiver of the employer.

(8) *A § 2617.14(a) event.* If there is a change of plan sponsor, the name, address, telephone number, and employer identification number (EIN) of the new plan sponsor, and the name, address, telephone number, and employer identification number (EIN) of each member of the commonly controlled group of the former plan sponsor, and of the new plan sponsor. If there is no change of plan sponsor but the plan sponsor is no longer a member of the same commonly controlled group, the name, address and telephone number of each member of the plan sponsor's former group, and, the

plan sponsor's new group. The total value of nonforfeitable benefits which are not funded (separately stating the total amount of nonforfeitable benefits and of plan assets), and the actuarial assumptions used to value benefits.

(e) *Effect of failure to file.* Except as provided in paragraph (f) of this section, failure to file a notice required by this section or failure to include all information required in the notice constitutes a violation of Title IV of the Act.

(f) *Waiver of obligation to file.* The PBGC may, in any case, waive the requirement imposed by § 2617.3(a) of this section that a notice be filed with respect to the occurrence of any event described in §§ 2617.4-2617.14 and also may waive the filing of any information required to be submitted by this section.

(g) *Requests for additional information.* The PBGC may, in any case, request the submission of additional information.

(h) *Optional consolidated filing.* A single notice may be filed with respect to the occurrence of more than one event set forth in paragraph (a) of this section or by more than one plan administrator required to file a notice pursuant to paragraph (a) of this section in the situations described in paragraphs (h) (1) and (2) of this section.

(1) More than one event for which a notice is required by this section has occurred and the plan administrator intends to give the PBGC simultaneous notification of the events.

(2) In the case of an event described in §§ 2617.11 or 2617.12, all plan administrators who are required to file a notice pursuant to this section sign the same notice.

§ 2617.4 Tax disqualification or Title I noncompliance.

(a) *Reportable event.* A reportable event occurs when the Secretary of the Treasury issues notice that a plan has ceased to be a plan as described in section 4021(a)(2) of the Act, or when the Secretary of Labor determines that the plan is not in compliance with Title I of the Act.

(b) *Waiver.* The 30-day notice requirement contained in § 2617.3(a) is waived for the events described in this section.

§ 2617.5 Amendment decreasing benefits payable.

(a) *Reportable event.* A reportable event occurs when an amendment to a plan is adopted if, under the amendment, the retirement benefit payable with respect to any participant may be decreased.

(1) Except as provided in paragraph (a)(2) of this section, a decrease in the retirement benefit payable with respect to any participant includes the elimination of any type of retirement benefit, a decrease or potential decrease in the amount of any accrued retirement benefit or the retirement benefit that would accrue in the future, and an increase in the age, service or other requirements for benefit entitlement.

(2) A plan amendment will not be considered to have decreased the retirement benefit payable with respect to any participant if the amendment changes the retirement age and/or the form of the retirement benefit, and the actuarially equivalent amount of the accrued retirement benefit or the retirement benefit that would accrue in the future immediately before the amendment does not exceed the amount of the accrued retirement benefit or the retirement benefit that would accrue in the future for the retirement age and form of the benefit provided by the plan after the amendment, computed in accordance with paragraph (d) of this section.

(b) *Waiver.* The 30-day notice requirement contained in § 2617.3(a) is waived for the event described in this section, unless:

(1) The plan has 100 or more participants as of the date the amendment is adopted;

(2) The amendment decreases or may decrease the amount of the normal retirement benefit (computed in accordance with the provisions of paragraph (c) of this section, where applicable) provided by employer contributions by more than 10 percent for more than 10 percent of plan participants; and

(3) The amendment is not adopted in order to avoid or to correct discrimination prohibited by the Code.

(c) In computing the decrease in the amount of the normal retirement benefit for purposes of paragraph (b)(2) of this section, the following rules shall apply:

(1) When a plan amendment changes the normal retirement age and/or the form of the benefit, the decrease, if any, in the amount of the normal retirement benefit shall be computed by converting the amount of the normal retirement benefit provided by the plan immediately before the amendment to the actuarially equivalent amount of the benefit for the normal retirement age and form of benefit after the amendment, computed in accordance with paragraph (d) of this section, and subtracting the amount of the normal retirement benefit after the amendment from the amount of the actuarially equivalent normal retirement benefit immediately before the amendment.

(2) When a decrease in the amount of the normal retirement benefit provided by employer contributions with respect to 10 percent or more of the plan participants is accompanied by an increase for such participants in the amount of the normal retirement benefit provided by the same employer's contributions to a second covered plan, or to a money purchase plan, the increase in the amount of the projected normal retirement benefit under the second plan shall be deducted from the amount of the decrease in the normal retirement benefit provided under the first plan. The increase in the projected normal retirement benefit under the money purchase plan shall be determined by using the interest and

other appropriate assumptions of the covered plan.

(d) For purposes of this section, in order to compare the amount of the retirement benefit provided by a plan after a plan amendment that changes the retirement age and/or form of the benefit with the amount of the retirement benefit provided by the plan before the amendment, convert the amount of the retirement benefit provided by the plan immediately before the amendment to the actuarially equivalent amount of the benefit for the retirement age and form of the benefit under the amendment using the applicable conversion factors prescribed by the plan. If no such factors are prescribed by the plan, the applicable conversion factors prescribed by Part 2609 of this chapter for computing maximum guaranteeable benefits shall be used.

§ 2617.6 Active participant reduction.

(a) *Reportable event.* A reportable event will occur when the number of active participants is less than 80 percent of the number of such participants at the beginning of the plan year, or is less than 75 percent of the number of such participants at the beginning of the previous plan year.

(b) *Waiver.* The 30-day notice requirement contained in § 2617.3(a) is waived for the event described in this section, unless:

(1) The plan has 100 or more participants as of the beginning of the current or previous plan year; or

(2) With respect to a single employer plan, the employer maintains one or more other covered plans and the total number of active participants covered by all such plans as of the date of the event is less than 80 percent of the total number of active participants in all such plans determined as of the beginning of each plan's current year, or 75 percent of the sum of the number of active participants in each such plan determined as of the beginning of each plan's previous plan year.

§ 2617.7 Termination or partial termination.

(a) *Reportable event.* A reportable event occurs when the Secretary of the Treasury determines that there has been a termination or partial termination of the plan within the meaning of section 411(d)(3) of the Code.

(b) *Waiver.* The 30-day notice requirement contained in § 2617.3(a) is waived for the events described in this section.

§ 2617.8 Failure to meet minimum funding standards.

(a) *Reportable event.* A reportable event occurs when the plan fails to meet the minimum funding standards under § 412 of the Code or under § 302 of the Act.

(b) *Waiver.* The 30-day notice requirement contained in § 2617.3(a) is not waived for the event described in this section.

§ 2617.9 Inability to pay benefits when due.

(a) *Reportable event.* Except as provided in paragraph (c) of this section, a reportable event occurs when a plan is unable to pay benefits thereunder when due. A plan is unable to pay benefits thereunder when due if the plan asserts currently are inadequate to pay full promised benefits when due in the form prescribed under the terms of the plan (as described in paragraph (b) of this section) or, if the plan assets are sufficient to pay such benefits but, the plan, as a practical matter, is unable to do so.

(b) For purposes of § 2617.9, a plan is unable to pay full promised benefits when due if all participants in pay status or entering pay status do not receive the full promised benefits to which they are entitled under the plan because:

(1) The plan does not pay the full monthly or periodic benefit for which it is primarily and directly liable;

(2) An insurer from which the plan has purchased a group insurance contract that does not contain a post-funding rider is unable to issue an irrevocable commitment to pay the full benefit to which a participant is entitled under the plan because the amounts held under the contract are not adequate to cover the cost of the commitment; or

(3) An insurer from which the plan has purchased a group insurance contract that contains a post-funding rider does not pay the full monthly or periodic benefit to which a participant is entitled under the plan because the amounts held under the contract are not adequate to support such payments.

(c) A plan will not be considered to be unable to pay benefits thereunder when due if its inability to pay benefits is caused solely by administrative delays or difficulties, including, but not limited to, verification of participants' eligibility to receive benefits or the absence for fewer than two full benefit payment periods of the person authorized to make or approve benefit payments.

(d) *Waiver.* The 30-day notice requirement in § 2617.3(a) is not waived for the event described in this section.

§ 2617.10 Distribution to a substantial owner.

(a) *Reportable event.* A reportable event occurs when there is a distribution, valued in accordance with paragraph (b) of this section, under the plan to a participant who is a substantial owner if:

(1) Such distribution has a value of \$10,000 or more;

(2) Such distribution is not made by reason of the death of the participant; and

(3) Immediately after the distribution, the plan has nonforfeitable benefits which are not funded.

(b) *Valuation of distribution.* A distribution described in paragraphs (a) or (d) of this section shall be valued in accordance with the provisions of this paragraph, except that paragraph (b)(iv) of this section does not apply to the

valuation of a distribution described in paragraph (d) of this section.

(1) The value of a distribution shall be determined as of its date.

(2) The value of a distribution, other than an insurer's irrevocable commitment, equals the sum of the cash amounts actually received by the participant and the fair market value determined in accordance with Subpart B of Part 2611 of this chapter as of the distribution date, of any assets distributed in a form other than cash.

(3) The value of an insurer's irrevocable commitment is the value, determined in accordance with reasonable actuarial assumptions, of the benefits payable pursuant to that irrevocable commitment. For this purpose, reasonable actuarial assumptions are the actuarial assumptions used by the PBGC, the actuarial assumptions used by the plan for purposes of section 302 of the Act, or the purchase price of the irrevocable commitment.

(4) The value of all distributions to a participant within any 24-month period shall be aggregated to determine whether there has been a distribution with a value of \$10,000 or more.

(c) *Determination date.* The determination of whether a participant is a substantial owner is made on the date when there has been a distribution or distributions with a total value of \$10,000 or more.

(d) *Waiver.* The 30-day notice requirement contained in § 2617.3(a) is waived for the event described in this section, unless:

(1) A plan makes a distribution or a series of distributions within a 12-month period to a substantial owner having a total value of \$10,000 or more; and

(2) A distribution or a series of distributions, in whole or part, is attributable to a benefit that exceeds the value of the maximum guaranteeable benefit for a substantial owner determined under § 2609.7 of this chapter for the year in which the distribution was made.

§ 2617.11 Plan merger, consolidation or transfer or alternative compliance with reporting and disclosure requirements of Title I.

(a) *Reportable event.* A reportable event occurs when a plan merges, consolidates or transfers its assets or liabilities under section 208 of the Act or section 414(1) of the Code, or when an alternative method of compliance is prescribed by the Secretary of Labor under section 110 of the Act.

(b) *Waiver.* Except as provided in paragraphs (b)(1) and (b)(2) of this section, the notice requirement contained in § 2617.3(a) is waived for the events described in this section.

(1) The notice requirement contained in § 2617.3(a) is not waived if the plan merger, consolidation or transfer of assets or liabilities involves one or more multiemployer plans, or the plan is a single employer plan with 100 or more participants and it merges or consolidates with or transfers its assets or lia-

bilities to a single employer plan maintained by a different employer.

(2) *Special rule for transfers of assets or liabilities.* Paragraph (b) (1) of this section does not apply in the case of transfers of assets or liabilities pursuant to reciprocity or portability agreements until the sum of the assets transferred from the plan or the liabilities assumed by the plan during the plan year pursuant to such agreements exceeds three percent of the value of the plan assets, determined in accordance with the valuation standards contained in Part 2611 of this chapter, on any date during the plan year. When paragraph (b) (1) applies to such transfers, the notice need only be submitted by the plan administrator of the plan transferring assets or assuming liabilities in excess of the three percent limit.

§ 2617.12 Bankruptcy, insolvency or similar settlements.

(a) *Reportable event.* A reportable event occurs with respect to a single employer plan, when the employer or any member of the commonly controlled group that is treated as the employer whether or not contributing to the plan:

- (1) Commences a case under the Bankruptcy Act, 11 U.S.C. 1 et seq., or has a case commenced against it;
- (2) Commences or has commenced against it, any other type of insolvency proceeding (including, but not limited to the appointment of a receiver);
- (3) Commences, or has commenced against it, a proceeding to effect a composition, extension or settlement with creditors;
- (4) Executes a general assignment for the benefit of creditors; or
- (5) Undertakes to effect any other nonjudicial composition, extension or settlement with creditors.

(b) *Waiver.* The 30-day notice requirement contained in § 2617.3(a) is not waived for the event described in this section.

§ 2617.13 Liquidation or dissolution.

(a) *Reportable event.* A reportable event occurs with respect to a single employer plan, when the employer or any member of the commonly controlled group that is treated as the employer whether or not contributing to the plan:

- (1) Is involved in any transaction to implement its complete liquidation; or
- (2) Institutes or has instituted against it a proceeding to be dissolved, or is dissolved, whichever occurs first.

(b) *Reorganizations described in § 4062(d).* This section does not apply if there is or will be any one of the reorganizations described in section 4062 (d).

(c) *Bankruptcy, insolvency or similar settlements.* This section does not apply to a bankruptcy, insolvency or similar settlements under § 2617.12(a).

(d) *Waiver.* The 30-day notice requirement contained in § 2617.3(a) is not waived for the event described in this section.

§ 2617.14 Change in employer-sponsor of single employer plan.

(a) *Reportable event.* Except as provided in paragraphs (b) and (c) of this section, a reportable event occurs with respect to a single employer plan that has 100 or more participants and nonforfeitable benefits which are not funded when, as a result of any transaction involving the assets of the plan sponsor or an ownership interest in the plan sponsor, including a legally binding agreement to sell or, in the absence of an agreement to sell, a sale:

(1) The plan sponsor will be or is no longer a member of the same commonly controlled group; or

(2) There will be or is a change of plan sponsor.

(b) *Certain reorganizations and transactions within commonly controlled group.* This section does not apply if, as a result of any transaction described in paragraph (a) (2) of this section, there is a reorganization described in § 4062 (d) (1), or, the employer liable to the PBGC before the transaction.

(c) *Plan merger, consolidation or transfer.* This section does not apply to a plan merger, consolidation or transfer of assets or liabilities under § 2617.11(a).

(d) *Waiver.* The 30-day notice requirement contained in § 2617.3(a) is not waived for the event described in this section.

§ 2617.15 Obligation of employer.

Whenever an employer making contributions under a covered plan knows or has reason to know that a reportable event has occurred, he shall notify the plan administrator immediately.

§ 2617.16 Form.

The form prescribed by this part is PBGC-2.

§ 2617.17 Date of filing.

Any notice or document required to be filed under the provisions of this part shall be deemed to have been filed on the date on which it is received by the PBGC.

§ 2617.18 Computation of time.

In computing any period of time prescribed or allowed by the rules of this part, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday.

§ 2617.19 Mailing address.

A notice or supplemental information required to be filed with the PBGC under the provisions of this Part may be submitted by mail or by hand to the Office of Program Operations, Pension Benefit Guaranty Corp., Suite 5200, 2020 K Street NW., Washington, D.C. 20006.

APPENDIX A—EXAMPLES

1. The following examples illustrate the application of § 2617.6; assume, for these examples, that all employees are "active participants":

(A) Plans A, B and C are calendar year plans maintained by three unaffiliated employers. On January 1, 1975, each of the plans covered 500 employees. Through February 28, 1975, the following changes in employment occurred under each of the plans:

Plan	Total employees covered on Jan. 1, 1975	Separated from employment Jan. 1, 1975 to Feb. 2, 1975	New plan entrants and reemployed participants	Employees covered on Feb. 28, 1975	As a percent total Jan. 1, 1975
A.....	500	150	0	350	70
B.....	500	150	100	450	90
C.....	500	200	120	420	84

A reportable event under § 2617.6(a) would have occurred with respect to Plan A on February 28, 1975, since the number of active employees under the plan was 70 percent of the number at the beginning of the plan year (350 ÷ 500). Plans B and C did not incur a reportable event under § 2617.6(a) because although more than 20 percent of the employees on January 1, 1975 were separated from employment, the number on February

28, 1975 exceeded 80 percent of the number at the beginning of the plan year because of recalls and new entrants.

(B) Employer A has two covered plans, an hourly plan and a salaried plan, both of which are calendar year plans. The following table shows the number of employees covered by each of the plans on January 1, 1975, and changes in employment as of February 28, 1975:

Plan	Total employees covered on Jan. 1, 1975	Separated from employment Jan. 1, 1975 to Feb. 28, 1975	Employees covered on Feb. 28, 1975	As a percent of total Jan. 1, 1975
Hourly.....	1,000	100	900	90
Salaried.....	100	40	60	60
Total.....	1,100	140	960	87

Although there has been a more than 20 percent reduction in employment under the salaried plan, a 30-day notice described in § 2617.3(a) would not be required because the number of employees covered by all of the employer's covered plans is more than 80 percent of the number at the beginning

of each plan's plan year (960 ÷ 1,100). However, a reportable event described in § 2617.6 (a) would have occurred with respect to the salaried plan, and so the plan administrator must include that event in the plan's annual report.

(C) Same situation as in (B), except that the number of employees under the hourly plan on February 28, 1975 was 750. In this case, both plans would have to file a 30-day notice described in § 2617.13(a) since each had a more than 20 percent reduction and, in addition, the number of employees covered by all of the employer's covered plans is less than 80 percent of the number at the beginning of each plan's plan year (810+1,100)).

2. The following examples illustrate the application of § 2617.10:

(A) Assume that a covered plan has non-ferable benefits which are not funded, and that benefits have not been increased by amendment. A substantial owner with 35 years participation in the plan, and average earnings of \$24,000 in his highest five consecutive years, retires on October 1, 1975 at age 65 and receives a benefit in the form of a life annuity of \$850 per month or \$10,200 per year. An event described in § 2617.10(a) will occur when the 12th monthly payment is made. However, the plan administrator, pursuant to § 2617.10(b), would not be required to file a notice described in § 2617.3(a) because, although the sum of distribution in a 12-month period exceeds \$10,000, no portion of the distribution was for non-guaranteed benefits since:

(1) The \$850 per month benefit is less than the maximum insurance amount for 1976 (the lesser of

(a) \$869—(\$750 × \$15,300/\$13,200—or (b) \$24,000/12); and

(2) The substantial owner was an active participant for at least 30 years.

(B) Same situation as in (A), except that the substantial owner has 20 years of participation at retirement. In this case, the plan administrator, pursuant to § 2617.10(b), would be required to file a 30-day notice described in § 2617.3(a) after 12 payments because, although the monthly benefit of \$850 does not exceed the applicable maximum guaranteeable benefit, it does exceed the value of guaranteed benefits. In this example, the participant's guaranteed benefits are only \$567 per month (\$850 × 20/30).

Issued in Washington, D.C., this 10th day of November 1977.

RAY MARSHALL,
Chairman, Board of Directors,
Pension Benefit Guaranty Corp.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this Notice of Proposed Rulemaking.

HENRY ROSE,
Secretary, Pension Benefit
Guaranty Corp.

[FR Doc.77-33024 Filed 11-15-77;8:45 am]

[4310-68]

DEPARTMENT OF THE INTERIOR

Mining Enforcement and Safety Administration

[30 CFR Parts 11, 70, 71, 75, 90]

"RESPIRABLE DUST"

Coal Mine Health Standards and Redefinition

AGENCY: Department of the Interior, Mining Enforcement and Safety Administration (MESA).

ACTION: Proposed Rules.

SUMMARY: The proposed amendments will: (1) Revise standards for silica dust

and other airborne contaminants to conform with improved standards recently developed by the National Institute for Occupational Safety and Health, Center for Disease Control, Public Health Service, and recommended by the American Conference of Governmental Industrial Hygienists; (2) provide for increased training in the maintenance and calibration of sampling equipment and in the collection of samples of respirable coal mine dust and other airborne contaminants; (3) substitute area sampling for periodic sampling of miners working in areas not directly associated with removal of coal from its seam; (4) revise sampling schedules and procedures to remove ambiguities and extraneous requirements; and (5) revise the definition of respirable dust to conform with section 202(e) of the Federal Coal Mine Health and Safety Act of 1969.

DATES: Comments, suggestions, objections, and requests for hearing on such objections, must be received by December 16, 1977.

ADDRESS: Comments, suggestions, objections, and requests for hearing on such objections should be sent to: The Assistant Administrator, Coal Mine Health and Safety, Mining Enforcement and Safety Administration, Department of the Interior, room 818, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203.

FOR FURTHER INFORMATION CONTACT:

Joseph Lamonica, Chief, Division of Health, Coal Mine Health and Safety, Mining Enforcement and Safety Administration, room 830, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, 703-235-1358.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior, under section 101(d) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 811(d)), has authority to publish proposed mandatory health standards which have been developed and transmitted to him by the Secretary of Health, Education, and Welfare. Based on that authority, it is proposed that Part 70, Title 30, Code of Federal Regulations, be amended as set forth below.

Under 30 CFR 70.250, respirable coal mine dust samples are presently collected at periodic intervals from the mine atmosphere to which each individual underground coal miner is exposed. Experience has shown that it is difficult to track individual miners in a highly mobile work situation. Further, except in cases where samples were sometimes helpful in indicating those occupations which might incur greater exposure to respirable coal mine dust, records of individual exposures have not served to increase the protection afforded miners.

It is proposed that the present individual sampling requirements be replaced with an area sampling concept, except for the miner whose medical examinations show evidence of the development of pneumoconiosis and who elects to transfer to a less dusty occupation.

The area samples would be collected at locations designated in the mine operator's MESA-approved respirable dust control plan and would include areas such as haulageways and dumping points. Individual miners would not be required to wear the coal mine dust personal samplers used to determine area dust concentrations. Notices of violation would be issued when area samples establish excessive concentrations of respirable coal mine dust.

Provisions for the maintenance of sampling devices have been added. The proposed amendments also would require sampling devices to be calibrated by a certified person. The certified person must, among other requirements, complete a MESA program of instruction in maintenance and calibration of dust sampling equipment and pass a MESA written examination at least every 2 years. These new provisions are intended to ensure greater reliability and accuracy in the sampling of contaminants. Procedures would be established for a qualified person to inspect sampling pumps between the first and second hours of operation underground to assure proper operation. The qualified person would also inspect sampling pumps during the last hour of operation for the purpose of voiding samples if the sampling pump has not been maintained at a proper flow rate.

The proposed regulations would reduce the standards for respirable dust when free silica is present to 0.07 milligram of free silica per cubic meter of air, the standard recommended by the National Institute for Occupational Safety and Health (NIOSH).

Standards for airborne contaminants, other than respirable coal mine dust, carbon dioxide, and free silica, are now contained in 30 CFR 75.301-2. The proposal would transfer the standard for these airborne contaminants from Part 75, which deals mainly with safety related issues, to Part 70. The existing standards refer to threshold limit values specified by the American Conference of Governmental Industrial Hygienist (ACGIH). The proposed amendments would revise, in part, these ACGIH values by substituting threshold limit values based upon criteria recommended by NIOSH. These changes are proposed to reflect the latest toxicologic evidence in the development of NIOSH recommendations.

Existing regulations establish a very complicated schedule for the collection of high-risk samples (samples collected in the breathing zone of the miner who was exposed to the greatest concentration of respirable coal mine dust). The proposed amendments will simplify sampling procedures, reduce the total number of samples an operator must collect without reducing the amount of necessary data obtained, eliminate much paperwork, and reduce the time lag in present procedures for collecting and processing data and thus aid in achieving more timely enforcement.

Coal mine operators will collect and submit to MESA five (5) samples for the

"designated occupation" in each "mechanized mining unit" during the first month of each two-month period. The terms "designated occupation" and "mechanized mining unit", as well as many others, have been defined under proposed § 70.2. Procedures for determining compliance and for noncompliance sampling have also been simplified.

Respirable dust is redefined in terms of average concentration, a method of determining the amount of dust in a mine atmosphere. Redefinition is necessary because the Interior Board of Mine Operations Appeals has held in "Eastern Associated Coal Corporation," IBMA Nos. 75-25 and 76-54 that under 30 U.S.C. 878(k) and 30 CFR 70.2(i), coal dust particulates in excess of 5 microns in size are not "respirable dust". Since all devices approved by the Secretary of the Interior and the Secretary of Health, Education, and Welfare measure respirable dust on the basis of weight, rather than particle size, the amendment in Part 70 makes the definition of respirable dust conform to the approved method of sampling.

30 CFR Parts 11, 71, 75, and 90 also contain definitions of "respirable dust" and amendments will be made to those Parts to conform to the definition of respirable dust contained in proposed Part 70.

DRAFTING INFORMATION

The principal persons responsible for preparation of these proposed rules are: Joseph Lamonica, Chief, Division of Health, Coal Mine Health and Safety, MESA; Robert H. McPhillamey, Assistant Solicitor, Coal Mine Health and Safety, Office of the Solicitor; and Vernon E. Rose, Director of the Division of Criteria Documentation and Standards Development, NIOSH.

NOTE.—It has been determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

It is therefore proposed to amend Part 70, and Parts 11, 71, 75, and 90 of Title 30, Code of Federal Regulations, as set forth below.

Dated: November 11, 1977.

JOAN M. DAVENPORT,
Assistant Secretary of the Interior.

It is proposed that Part 70 and Parts 11, 71, 75, and 90 of Title 30, Code of Federal Regulations, be amended and revised as follows:

PART 11—RESPIRATORY PROTECTIVE DEVICES TESTS FOR PERMISSIBILITY; FEES

2. Paragraph (ee) of § 11.3 will be revised to read as follows:

§ 11.3 Definitions.

(ee) "Respirable dust" means dust collected with an MRE instrument or any

other sampling device approved in accordance with Part 74 of this title.

PART 70—MANDATORY HEALTH STANDARDS—UNDERGROUND COAL MINES

1. Part 70 will be amended by revising Subparts A, B, C, and E, and by adding a new Subpart G which read as follows:

Subpart A—General

Sec. 70.1 Scope.
70.2 Definitions.

Subpart B—Dust Standards

70.100 Dust standards; respirable dust.
70.101 Respirable dust standard when free silica is present.

Subpart C—Sampling Procedures

70.201 Sampling; general requirements.
70.202 Sampling; qualified person.
70.203 Approved sampling devices.
70.204 Approved sampling devices; maintenance requirements.
70.205 Approved sampling devices; certified person; maintenance and calibration requirements.
70.206 Approved sampling devices; operation; rates of air flow.
70.207 Approved sampling devices; equivalent concentration.
70.208 Mechanized mining unit; designated occupation samples; establishment of bimonthly series.
70.209 Designated area samples; bimonthly sampling requirements.
70.210 Respirable dust samples; transmission by operation.
70.211 Respirable dust samples; analysis by the Secretary; report of data.
70.212 Report to operator.
70.213 Sampling procedures; portal to portal.
70.214 Mechanized mining unit identification numbers; designated occupation.
70.215 Sampling of individual miners.
70.250 Status change reports.

Subpart E—Dust from Drilling Rock

70.400-1 Dust from drilling rock; approved devices.
70.400-2 Dust from drilling rock; water.
70.400-3 Dust from drilling rock; ventilation.

70.700 Inhalation hazards; threshold limit values for gases, dust fumes, mists and vapors; requirements.

Subpart A—General

§ 70.1 Scope.
This Part 70 sets forth mandatory health standards for each underground coal mine subject to the Federal Coal Mine Health and Safety Act of 1969.

§ 70.2 Definitions.
For the purpose of this Part 70, the term—

(a) "Accurate respirable dust sample" means a sample collected from the mine atmosphere that is representative of the concentration of respirable dust to which miners in the active workings are exposed.

(b) "Act" means the Federal Coal Mine Health and Safety Act of 1969, as amended.

(c) "Active workings" means any place in a coal mine where miners are normally required to work or travel.

(d) "Area sample" means an accurate respirable dust sample collected in the atmosphere of a designated area of the nonface active workings of the mine.

(e) "Average concentration" means a determination which accurately represents the atmospheric conditions with regard to respirable dust to which each miner in the active workings of a mine is exposed.

(f) "Bimonthly series" means the required number of valid respirable dust samples taken and submitted every 2 months.

(g) "Certified person" means a person certified by the Secretary as having successfully completed a MESA program of instruction in maintenance and calibration for respirable dust sampling equipment.

(h) "Concentration" means a measure of the amount of a substance contained per unit volume.

(i) "Designated occupation" means the occupation on a mechanized mining unit that has been determined by results of respirable dust samples to have the greatest respirable dust concentration and is considered to be the occupation most directly affected by the primary dust generation sources in a mechanized mining unit.

(j) (1) "Mechanized mining unit" means a unit of mining equipment which a production crew utilizes in a series of working places for the production of coal as characterized by a single loading machine in a conventional working section or a single continuous mining machine in a continuous mining section.

(2) A specialized mining unit which utilizes mining equipment other than specified in paragraph (j) (1) of this section shall be identified as a mechanized mining unit.

(3) Where two sets of mining equipment are provided in a series of working places and only one production crew is employed at any given time or either set of mining equipment, the two sets of equipment shall be identified as a single mechanized mining unit. When two or more mechanized mining units are engaged in the production of coal within the same working section, each such mechanized mining unit shall be identified separately.

(k) "MESA" means the Mining Enforcement and Safety Administration of the Department of the Interior.

(l) "MRE instrument" means the gravimetric dust sampler with a four channel horizontal elutriator developed by the Mining Research Establishment of the National Coal Board, London, England.

(m) "NIOSH" means the National Institute for Occupational Safety and

Health, Center for Disease Control, Public Health Service of the Department of Health, Education, and Welfare.

(n) "Normal production shift" means a shift during which the amount of material produced is equal to, or greater than, 60 percent of the average production reported during sampling shifts which constitute the last five-sample bi-monthly series.

(o) "Permissible" as applied to equipment used in the operation of a coal mine, means equipment, other than permissible electric face equipment, to which an approval plate, label, or other device is attached as authorized by the Secretary and which meets specifications which are prescribed by the Secretary for the construction and maintenance of such equipment and are designed to assure that such equipment will not cause a mine explosion or a mine fire.

(p) "Production shift" with regard to designated areas of a mine means a shift during which any activity is conducted or occurring in non-working face active workings and is not under the effect of an Order of Withdrawal.

(q) "Qualified person" means an in-terary to take respirable dust samples individual considered qualified by the Secretary.

other tests or examinations required by or noise level measurements, or to make

(r) "Free silica" means quartz, tridymite, cristobalite, and any other form of free silica which, upon analysis, is found to have crystalline structure as part of its composition.

(s) "Respirable dust" means dust collected with an MRE instrument or any other sampling device approved by the Secretary and the Secretary of Health, Education, and Welfare in accordance with Part 74 of this title.

(t) "Secretary" means the Secretary of the Interior or his delegate.

(u) "Threshold limit value" means the airborne concentration of a substance to which a person may be exposed 8 hours per day, 40 hours per week.

(v) "Toxic compound" means any substance, regardless of physical form which produces bodily injury resulting from exposure via the respiratory tract, skin absorption or any other route of entry into the body.

(w) "Valid respirable dust sample" means an accurate respirable dust sample collected and submitted in accordance with the procedures prescribed in this part.

(x) "Working face" means any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle.

(y) "Working place" means the area of a coal mine in by the last open cross-cut.

(z) "Working section" means all areas of the coal mine from the loading point of the section to and including the working faces.

Subpart B—Dust Standards

§ 70.100 Dust standards; respirable dust.

(a) Each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of the mine is exposed at or below 2.0 milligrams of respirable dust per cubic meter of air.

(b) Each operator shall continuously maintain the average concentration of respirable dust in the intake air at the entrance to all working sections at or below 1.0 milligram of respirable dust per cubic meter of air (mg/m³).

§ 70.101 Respirable dust standard when free silica is present.

When the average full shift concentration of respirable dust in the mine atmosphere of the active workings contains more than 0.070 milligram of free silica per cubic meter of air, as measured with an MRE instrument or other approved devices which provide equivalent concentrations, the operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere of the active workings at or below a concentration of respirable dust, expressed in mg/m³ of air, computed by dividing the number of mg/m³ free silica into the number 0.14: *Provided*, That the application of this formula shall not result in a concentration in excess of any standard for respirable dust established under the Act.

Example: Given the concentration of free silica in a particular working place is 0.09 mg/m³. The respirable dust limit for that working place must be maintained at or below 1.5 milligrams of respirable dust per cubic meter of air (0.14/0.09=1.5 mg/m³).

Subpart C—Sampling Procedures

§ 70.201 Sampling; general requirements.

(a) Each operator of a coal mine shall, as prescribed in this part, take accurate samples of the concentration of respirable dust in the active workings of the mine.

(b) (1) The operator shall submit, upon request from the District Manager in whose District the mine is located, the date on which collecting any series of respirable dust samples required by this part will begin.

(2) Respirable dust sampling shall begin within 30 calendar days of the re-activation of an existing mine, or within 30 calendar days of the start of mining in the coalbed that is to be mined.

§ 70.202 Sampling; qualified person.

(a) The dust sampling required by this part shall be done by a qualified person, designated by the mine operator.

(b) The qualified person shall be required to—

(1) Have at least 12 months experience working underground in a coal mine during the preceding 3 years;

(2) certify in writing to the District Manager that he or she is thoroughly familiar with the mining equipment in use, the respirable dust control system, and the mine ventilation system on the working sections and at other locations where respirable dust samples are collected;

(3) Have a working knowledge of the operation and maintenance of the respirable dust sampling equipment;

(4) Successfully complete a course approved by the Secretary in sampling and evaluation of respirable coal mine dust concentrations with the sampling devices specified in § 70.203. Such course shall be offered by MESA in each Coal Mine Health and Safety District as demand requires. Courses established and maintained by any operator, coal mine industry group, labor organization representing miners, or any other person shall be approved by the Secretary. At the conclusion of any respirable dust sampling course, before a person is to be qualified, that person shall pass a written examination, to be conducted by MESA; and

(5) At least every 2 years pass a written examination conducted by MESA.

(c) A person may be temporarily qualified to take respirable dust samples if the person meets the requirements of paragraphs (b) (1), (b) (2), and (b) (3) of this section, and receives instructions from an authorized representative of the Secretary in the methods of taking and submitting samples. The temporary qualification shall be withdrawn if the person does not successfully complete the next scheduled course in sampling and evaluation of respirable coal mine dust offered in the Coal Mine Health and Safety District in which the person is employed.

(d) The Secretary may revoke for cause any certificate of qualification.

§ 70.203 Approved sampling devices.

The samples which this subpart C requires to be taken shall be collected only with an MRE instrument or any other sampling device approved by the Secretary and the Secretary of Health, Education, and Welfare under Part 74 of this title.

§ 70.204 Approved sampling devices; maintenance requirements.

(a) A program to provide for the maintenance and care of approved sampling devices shall be established and maintained.

(b) Approved sampling devices shall be examined and tested by a qualified or certified person before each sampling shift and necessary maintenance performed to assure that the sampling devices are clean and in proper working condition. This examination and testing shall include the following:

(1) A battery voltage test made under actual load while the sampler is operating. The battery voltage shall not be lower than 1.3 volts times the number of

cells in the battery pack for nickel cadmium cells. When cells other than nickel cadmium are used, the manufacturer's nominal voltage per cell value shall be used in determining the acceptable voltage.

(2) Examination of all components of the cyclone, to assure that they are clean and free of dust and dirt.

(3) Examination of the inner surface of the cyclone on the personal sampler unit to assure that it is free of scoring.

(4) Examination of the external tubing on the personal sampler unit to assure that it is clean and free of leaks.

(5) Examination of the clamping and positioning of the cyclone body, vortex finder and cassette to assure that they are rigid, in alignment, and firmly in contact.

(6) Examination of the elutriator on the MRE instrument to determine that it is clean and free of dust and dirt.

(7) A test of the MRE instrument to assure that it is free of leaks.

(c) Batteries used to power approved sampling devices shall be fully charged, with an approved charger before each use, in accordance with the manufacturer's recommendations.

§ 70.205 Approved sampling devices; certified person; maintenance and calibration requirements.

(a) Approved sampling devices shall be calibrated by a certified person.

(b) The certified person shall be required to—

(1) Have a working knowledge of the operation and maintenance of respirable dust sampling equipment;

(2) Successfully complete a MESA program of instruction in maintenance and calibration procedures for respirable dust sampling equipment. The program shall be offered by MESA in each Coal Mine Health and Safety District, as demand requires; and

(3) At the conclusion of the maintenance and calibration procedure course, such person shall pass a written examination to be conducted by MESA.

(c) A person may be temporarily certified to maintain and calibrate approved sampling devices if the person meets the requirements of paragraph (b) (1) of this section, and has received instructions from an authorized representative of the Secretary in the maintenance and calibration procedures for respirable dust sampling equipment. The temporary certification shall be withdrawn if the person does not successfully complete the next scheduled course in maintenance and calibration procedures offered in the Coal Mine Health and Safety District in which the person is employed.

(d) A certified person shall be required at least every 2 years, to pass a written examination conducted by MESA.

(e) The Secretary may revoke for cause any certificate of certification.

(f) Coal mine dust personal sampler units shall be calibrated at the flowrate specified in the approval before they are put into service and at intervals not to exceed 200 hours of operating time thereafter.

(g) MRE instruments shall be calibrated to 2.5 ± 0.1 liters of air per minute before they are put into service and at intervals not to exceed 200 hours of operating time thereafter.

(h) A calibration mark shall be placed on the flowmeter of each personal sampler unit to indicate the proper position of the ball when the sampler is operating at its approved flowrate. The standard to denote proper flow is when the lowest part of the ball is tangent to the top of the calibration mark.

(i) Approved sampling devices shall be calibrated in accordance with Informational Report No. —¹ Standard Calibration Procedures for Wet Test Meters and Coal Mine Respirable Dust Sampling Pumps.

§ 70.206 Approved sampling devices; operation; rates of air flow.

(a) An MRE instrument shall be operated at a flowrate of 2.5 liters of air per minute. Sampling devices approved under Part 74 of this title shall be operated at the flowrate specified in the approval for sampling of respirable coal mine dust.

(b) Each approved sampling device shall be examined each shift by a qualified person between the first and second hours after being put into operation to assure that the pump is operating properly and at the proper flowrate. If the proper flowrate is not maintained, necessary adjustments shall be made. During the last hour of operation, the qualified person shall examine each sampling device, and if the proper flow rate is not maintained the sample shall be voided.

§ 70.207 Approved sampling devices; equivalent concentrations.

The concentration of respirable dust, expressed in milligrams per cubic meter of air, shall be determined by dividing the weight of dust, in milligrams, collected on the filter of the approved sampling device by the volume of air, in cubic meters, passing through the filter. To convert a concentration of respirable dust as measured with an approved personal sampling device to an equivalent concentration of despirable dust as measured with an MRE instrument, the concentration of respirable dust measured with the approved sampling device shall be multiplied by the constant factor of 1.38, and the product shall be the equivalent concentration as measured with an MRE instrument.

§ 70.208 Mechanized mining unit; designated occupation samples; establishment of bimonthly series.

(a) Five designated occupation samples shall be submitted for each mechanized mining unit during each bimonthly period.

(b) Respirable dust samples shall be taken with respect to the designated occupation in each mechanized mining unit during the first month of each bimonthly period, beginning with the

bimonthly period of -----, 197...² These samples shall be taken on five consecutive normal production shifts or five normal production shifts each of which is worked on consecutive days. MESA may allow the samples to be taken during the second month of the bimonthly period if the mine operator provides an acceptable reason that five designated occupation samples could not be submitted during the first month of the bimonthly period.

(c) When a new or reactivated mining unit is placed in production status, respirable dust sampling shall begin on the first production day with respect to the designated occupation in the unit and continue on consecutive production shifts or days until at least five samples have been taken and transmitted.

(d) Replacement samples for voided designated occupation samples submitted during the first month of the bimonthly period shall be taken by the end of the second month.

(e) Upon receipt of the first designated occupation sample from a mechanized mining unit taken in the current bimonthly period, all samples taken for that mechanized mining unit in the previous bimonthly period shall be discarded.

(f) A designated occupation sample shall be taken on a normal production shift. If a normal production shift is not achieved, the sample for that shift may be voided by MESA. Regardless of production, a valid sample with a concentration greater than 2.5 milligrams per cubic meter of air will be used to determine the average concentration. The operator should notify the District or Subdistrict Manager of events or conditions of long-term nature (e.g., adverse mining conditions, faults, bad roof, etc.) that result in a consistent reduction of normal production from a mechanized mining unit, and the record of normal production of that unit will be reduced accordingly.

(g) If the data recorded under § 70.211 for a bimonthly series with respect to a mechanized mining unit establishes an average concentration of respirable dust in excess of that listed in the table below, the 2.0 mg/m³ standard is exceeded.

Number of Samples:	Average Concentration (mg/m ³)
1 -----	10.4
2 -----	5.2
3 -----	3.5
4 -----	2.6
5 -----	2.0

(h) Upon issuance of a notice of violation of § 70.100(a) with respect to the designated occupation of a mechanized mining unit, paragraphs (a), (b), and (d) of this section shall not apply to that unit until the violation is abated. Until the violation is abated, the operator shall

¹ Report No. will be inserted at time of final rulemaking.

² Date will be inserted at time of final rulemaking.

take respirable dust samples of the designated occupation in the unit during each production shift during the reasonable time period establish for abatement as required by section 104(i) of the Act.

(i) Respirable dust samples taken during each production shift as required by section 104(i) of the Act shall be transmitted in accordance with § 70.210. Any determination of compliance or continuing noncompliance with § 70.100(a) shall be made only after receipt of at least five valid respirable dust samples.

(j) Upon receipt of a notice of abatement of a violation with respect to the designated occupation in a mechanized mining unit for which a notice of violation has been issued, the provisions of paragraphs (a), (b), and (d) of this section shall again apply to such unit. Any respirable dust samples taken, as required by section 104(i) of the Act, during the current bimonthly period shall be used to satisfy the sampling requirements of § 70.208 for that unit.

§ 70.209 Designated area samples; bi-monthly sampling requirements.

(a) A designated area respirable dust sample shall be taken during the first month of each bimonthly period, beginning with the bimonthly period of _____, 197² with respect to each of the designated sampling points in areas of the active workings of a mine. MESA may allow the samples to be taken during the second month of the bimonthly period if the mine operator provides an acceptable reason that samples could not be submitted during the first month of the bimonthly period.

(b) The approved respirable dust control plan required by 30 CFR 75.316 shall show locations where designated area samples will be collected to monitor environmental dust concentration in all non-working face active workings, such as along haulageways and travelways; transfer, loading and dumping points; at underground crushers. Each designated area will be assigned a four digit identification number by the District Manager.

(c) Where a new or reactivated designated area is placed in production status, the respirable dust sample shall be taken on the first production day.

(d) Replacement samples for invalid designated area samples submitted during the first month of the bimonthly period shall be taken by the end of the second month.

(e) A valid respirable dust sample shall be submitted for each of the designated sampling points during each bimonthly period.

(f) Upon receipt of the first sample from a designated area taken in the current bimonthly period, all samples taken in such designated area during the previous bimonthly period shall be discarded.

(g) If any respirable dust sample taken from a designated area in accordance with paragraphs (a), (c), and (d) of this section, and analyzed in accordance

with § 70.211, exceeds the applicable limit specified in § 70.100(a), MESA shall require the operator to submit five valid samples of that designated area within 15 calendar days to determine whether there is compliance with the respirable dust limit. Upon receipt of notification that such additional sampling is required, the operator shall begin such sampling on the first day on which there is a production shift following the day of receipt of notification and continue sampling on five consecutive production shifts or five production shifts each of which is worked on consecutive days until the required samples are collected and submitted.

(h) If the data recorded under § 70.211 for the additional designated area samples required by paragraph (g) of this section establishes an average concentration of respirable dust in excess of that listed in the table below, the 2.0 mg/m³ standard is exceeded.

Number of Samples:	Average concentration (mg/m ³)
1	10.4
2	5.2
3	3.5
4	2.6
5	2.0

(i) Upon issuance of a notice of violation of § 70.100(a) with respect to designated area samples, paragraphs (a), (d) and (e) of this section shall not apply to that area until the violation is abated. Until the violation is abated, the operator shall take respirable dust samples from the area during each production shift during the reasonable time period established for abatement as required by section 104(i) of the Act.

(j) Respirable dust samples taken during each production shift as required by section 104(i) of the Act shall be transmitted in accordance with § 70.210. Any determination of compliance or continuing noncompliance with § 70.100(a) shall be made only after receipt of at least five valid respirable dust samples.

(k) Upon receipt of a notice of the abatement of a violation with respect to designated area samples, the provisions of paragraphs (a), (d), and (e) of this section shall again apply to the designated area. Any respirable dust samples taken, as required by section 104(i) of the Act, during the current bimonthly period shall be used to satisfy the sampling requirement of § 70.209 for that area.

§ 70.210 Respirable dust samples; transmission by operator.

(a) Except as provided in paragraph (c) of this section, the operator shall transmit within 24 hours all samples collected to fulfill the requirements of this part in containers provided by the manufacturer of the filter cassette to:

Respirable Dust Sampling Laboratory, Pittsburgh Technical Support Center, 4800-D Forbes Avenue, Pittsburgh, Pa. 15213.

or to any other address designated by MESA.

(b) The filter cassettes used to fulfill the requirements of this part shall not

be opened nor the seal tampered with prior to transmitting the cassettes as prescribed in paragraph (a) of this section.

(c) Respirable dust samples collected by the operator, which are required under section 104(i) of the Act, shall be transmitted within 24 hours to an address designated by the District Manager of the District in which the mine is located.

(d) Each sample shall be accompanied by a completed data card provided for this purpose by the filter cassette manufacturer. The card shall have an identification number identical to that on the cassette used to take the sample. Each data card accompanying a sample required by this part shall be signed by the qualified person responsible for the dust sampling procedure and shall include the person's qualification number.

(e) All samples collected by the operator shall be considered to be taken to fulfill the sampling requirements of this part unless a filter cassette has been declared by the appropriate District Manager prior to the intended sampling shift as a sample to be used for purposes other than required by this part.

(f) Respirable dust samples received by MESA in excess of those required by this part shall be considered invalid samples.

§ 70.211 Respirable dust samples; analysis by the Secretary; report of data.

Upon receipt of the respirable dust samples by MESA, each sample will be analyzed and the following data, where applicable, shall be recorded:

(a) The mine identification number;

(b) The mechanized mining unit or designated area within the mine from which the samples were taken;

(c) The concentration of respirable dust, expressed in milligrams per cubic meter of air, for each valid sample and;

(d) The average concentration of respirable dust for all valid designated occupations or area samples expressed in milligrams per cubic meter of air.

§ 70.212 Report to operator.

(a) The Secretary shall provide the operator with a report of the data recorded under § 70.211 as soon as practicable.

(b) Upon receipt, the operator shall post this data on the mine bulletin board for at least 31 days.

§ 70.213 Sampling procedures; portal to portal.

(a) The sampling procedures set forth in this part are designed to determine the average concentrations of respirable dust to which miners are exposed. Accordingly, a provision that samples of respirable dust be taken with respect to a mechanized mining unit means that an approved sampling device shall be attached to the miner or carried into and out of the working section to which the miner is assigned, and that the device shall remain operative during the entire shift—portal to portal.

(b) The sampling procedures for collecting designated area samples are designed to determine the average concen-

² Date will be inserted at time of final rule-making.

trations of respirable dust in the atmosphere of the non-working face active workings. Accordingly, a provision that samples of respirable dust be taken with respect to a designated area of the non-working face active workings means that an approved sampling device shall be carried into and out of the designated areas in the active workings, and that the device shall remain operative during the entire shift—portal to portal.

§ 70.214 Mechanized mining unit identification numbers; designated occupations.

(a) Each operator of a coal mine shall assign a 4 digit identification number to each mechanized mining unit, commencing with the numbers 001-0, 002-0, 003-0, etc., and numbering consecutively through all units. Each mechanized mining unit shall be considered as a unit and the identification number shall remain with that unit regardless of where the unit relocates within the mine. When a unit relocates within a mine, the District or Subdistrict office in which the mine is located shall be notified promptly of the new location.

(b) Unless otherwise directed by an authorized representative of the Secretary, the designated occupation samples shall be taken by placing the sampling device as follows:

(1) *Conventional section using cutting machine.* On the cutting machine operator or on the cutting machine within 36 inches inby the normal working position;

(2) *Conventional section shooting off the solid.* On the loading machine operator or on the loading machine within 36 inches inby the normal working position;

(3) *Continuous mining section (other than auger-type).* On the continuous mining machine operator or on the continuous mining machine within 36 inches inby the normal working position;

(4) *Continuous mining machine (auger-type).* On the jacksetter who works nearest the working face on the return air side of the continuous mining machine;

(5) *Scoop section using cutting machine.* On the cutting machine operator or on the cutting machine within 36 inches inby the normal working position;

(6) *Scoop section, shooting off the solid.* On the coal drill operator or on the coal drill within 36 inches inby the normal working position;

(7) *Longwall section.* On the miner who works nearest the return air side of the longwall working face or at a point in the return air current no farther than 48 inches from the corner of the return air side of the longwall working face;

(8) *Hand loading section with a cutting machine.* On the cutting machine operator or on the cutting machine within 36 inches inby the normal working position;

(9) *Hand loading section shooting off the solid.* On the coal drill operator or on the coal drill within 36 inches inby the normal working position;

(10) *Anthracite mine sections.* On the hand loader (MESA mining code 039)

or laborer (016) exposed to the greatest dust concentration and the sampling unit shall remain on the miner, or the device shall be placed at sites which represent the maximum concentration of dust to which the miner is exposed in the working section.

§ 70.215 Sampling of individual miners.

(a) One sample of respirable dust shall be taken at least once every 90 days from the mine atmosphere to which each individual miner, who has exercised the option to transfer in accordance with the provisions of section 203(b)(2) of the Act, is exposed.

(b) The samples required under the provisions of this section shall be taken during any shift where the miner is working in his or her usual occupation or in the occupation to which he or she has been transferred.

§ 70.250 Status change reports.

(a) If there is a change in operational status that affects the sampling requirements of this part, each operator of an underground coal mine shall report the change in operational status of the mine, mechanized mining unit, or designated area to a MESA office designated by the District Manager. Status changes shall be reported in writing within 3 working days after the status change has occurred.

(b) Each specific operational status is defined as follows:

(1) *Underground mine*—(i) *Producing mine* is an underground mine which has at least one mechanized mining unit producing material or utilizes hand loading.

(ii) *Nonproducing mine* is an underground mine in which no material is being produced.

(iii) *Abandoned mine* is one in which the work of all miners has been terminated and production activity has ceased.

(2) *Mechanized mining unit*—(i) *Producing mechanized mining unit* is one which is producing material from a working section of an underground mine.

(ii) *Nonproducing mechanized mining unit* is one which has temporarily ceased production of material.

(iii) *Abandoned mechanized mining unit* is one which has permanently ceased production of material.

(3) *Designated area*—(i) *Producing designated area* is one in which activity is conducted or is occurring in non-face areas of the mine where miners are required to work or travel.

(ii) *Nonproducing designated area* is one in which activity has ceased.

(iii) *Abandoned designated area* is one in which the dust generating source has been withdrawn and activity has ceased.

Subpart E—Dust From Drilling Rock

§ 70.400 Dust from drilling rock; control.

The dust resulting from drilling in rock shall be controlled by use of permissible dust collectors, or by water, or water with a wetting agent, or by ventilation, or by any other method or device approved by the Secretary which is as effective in controlling such dust.

§ 70.400-1 Dust from drilling rock; approved devices.

Dust collectors approved under Part 33 of this title or under Bureau of Mines Schedule 25B are permissible dust collectors for the purposes of § 70.400.

§ 70.400-2 Dust from drilling rock; water.

Water used to control dust from drilling rock shall be applied through a hollow drill steel or stem or by the flooding of vertical drill holes in the floor.

§ 70.400-3 Dust from drilling rock; ventilation.

To adequately control dust from drilling rock, the air current shall be so directed that the dust is readily dispersed and carried away from the drill operator or any other workers in the area.

Subpart G—Airborne Contaminants

§ 70.700 Inhalation hazards; threshold limit values for gases, dust fumes, mists and vapors; requirements.

(a) The operator of an underground coal mine shall not permit any person to be exposed to contaminate in excess of the exposure limits listed in Table 2.

Substance:	Exposure limit
Acetylene -----	No exposure in excess of 2,500-ppm.
Allyl chloride ----	1-ppm TWA; 3-ppm ceiling (15-minute).
Ammonia -----	50-ppm ceiling (5-minute).
Arsenic, inorganic -----	2 µg As/cu m ceiling (15-minute).
Asbestos -----	2 fibers/cc greater than 5 microns; 10 fibers/cc ceiling (15-minute).
Benzene -----	1-ppm ceiling (120-minute).
Beryllium -----	2 µg/cu m TWA; 25 µg/cu m ceiling (30-minute).
Boron trifluoride -----	0.25 mg/cu m TWA,
Cadmium -----	40 µg Cd/cu m TWA; 200 µg Cd/cu m ceiling (15-minute).
Carbaryl -----	5 mg/cu m TWA.
Carbon monoxide -----	35-ppm TWA; 200-ppm ceiling.
Carbon tetrachloride -----	2-ppm ceiling (60-minute).
Chlorine -----	0.5-ppm ceiling (15-minute).
Chloroform -----	2-ppm ceiling (60-minute).
Chronic acid -----	0.05 mg CrO ₃ /cu m TWA; 0.1 mg CrO ₃ /cu m ceiling (15-minute).
Chromium (VI) --	1 µg/cu m for carcinogenic Cr (VI); 25 µg/cu m TWA for other Cr (VI); 50 µg/cu m ceiling (15-minute).
Cyanide, hydrogen, and cyanide salts -----	5 mg CN/cu m ceiling (10-minute).
Epichlorohydrin --	2 mg/cu m TWA; 19 mg/cu m ceiling (15-minute).

Substance:	Exposure limit
Ethylene dichloride.	5-ppm TWA; 15-ppm ceiling (15-minute).
Hydrogen fluoride.	2.5 mg F/cu m TWA; 5.0 mg/cu m ceiling (15-minute, fluoride ion).
Isopropyl alcohol.	400-ppm TWA; 800-ppm ceiling (15-minute).
Kepon	1 µg/cu m ceiling (15-minute).
Malathion	1 µg/cu m ceiling
Mercury, inorganic.	15 mg/cu m TWA.
Methyl alcohol	0.05 mg/cu m TWA. 200-ppm TWA; 500-ppm ceiling (15-minute).
Methyl parathion.	0.2 mg/cu m TWA.
Methylene chloride.	75-ppm TWA; 500-ppm ceiling (15-minute); TWA to be lowered in presence of carbon monoxide.
Nitric acid	2-ppm TWA.
Nitrogen oxides	NO: 1-ppm ceiling; NO ₂ : 25-ppm TWA.
Parathion	0.05 mg/cu m TWA.
Phenol	20 mg/cu m TWA; 60 mg/cu m ceiling (15-minute).
Phosgene	0.1-ppm TWA; 0.2-ppm ceiling (15-minute).
Sodium hydroxide.	2 mg/cu m ceiling (15-minute).
Sulfur dioxide	2-ppm TWA.
Sulfuric acid	1 mg/cu m TWA.
Tetrachloroethylene.	50-ppm TWA; 100-ppm ceiling (15-minute).
Toluene	100-ppm TWA; 200-ppm ceiling (10-minute).
Toluene diisocyanate.	0.005-ppm TWA; 0.02 ceiling (20-minute).
1,1-trichloroethane.	350-ppm ceiling (15-minute).
Trichloroethylene.	100-ppm TWA; 150-ppm ceiling (10-minute).
Ultraviolet radiation.	1.0 mW/cm for over 1,000 sec; 100 mW sec/cm for periods under 1,000 sec.
Vinyl chloride	Minimum detectable level; 1-ppm ceiling (15-minute).
Xylene	100-ppm TWA; 200-ppm ceiling (10-minute).
Zinc oxide	5 mg/cu m TWA; 15 mg/cu m ceiling (15-minute).

ppm=parts per million (parts of air). ceiling means no person shall be exposed to concentrations greater than that limit for the amount of time listed. When no time limit is listed, exposure greater than the ceiling limit shall never be permitted.

µg=microgram=0.001 milligram.

mg=milligram.

cu m=cubic meter (of air).

cc=cubic centimeter.

NOTE.—NIOSH time-weighted average (TWA) recommendations based on up to a 10-hour exposure unless otherwise noted.

(b) Except for those substances listed in Table 2 of paragraph (a) of this section, the operator of an underground

coal mine shall not permit any person to be exposed to airborne contaminants (other than respirable coal dust and respirable dust containing free silica) in excess of the threshold limit values (TLVs) and Short Term Exposure Limits (STELs) adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in "Threshold Limit Values for Chemical Substances and Physical Agents in the Workroom Environment with Intended Changes for 1976" which is hereby incorporated by reference and made a part hereof. This document is available for examination at the Mining Enforcement and Safety Administration, Department of the Interior, Ballston Towers No. 3, 4015 Wilson Boulevard, Arlington, Va.; at every Coal Mine Health and Safety District and Subdistrict Office; and at the National Institute for Occupational Safety and Health, 5600 Fishers Lane, Rockville, MD. Copies of the document may be purchased from the Secretary-Treasurer, American Conference of Governmental Industrial Hygienists, P.O. Box 1937, Cincinnati, OH 45201.

(c) (1) Table 2 shall take precedence in those instances where the ACGIH document contains differing standards for exposure limits.

(2) Table 2 shall take precedence in those instances where the ACGIH document contains differing ceiling limits.

(d) All persons shall be withdrawn from any active workings of a coal mine in which it is determined that the concentration of any airborne contaminant exceeds the applicable ceiling limit in Table 2 or in the ACGIH document.

(e) The mine operator shall identify by trade name and prepare a list of each compound or material used at the mine. This list shall be maintained in the mine office and shall be available for inspection by representatives of the Secretary and by authorized representatives of the miners at the mine.

(f) The mine operator shall post and maintain on the mine bulletin board a legible list of trade names or common names of all known toxic compounds used at the mine and the safety precautions to be taken by miners when using these compounds.

(g) Contaminants shall be removed by exhaust ventilation and shall be vented into the return air course without contaminating any miner's environment.

(h) Where painting operations are performed, a suitable respirator jointly approved by MESA and NIOSH shall be provided to the miner(s) and sufficient dilution ventilation shall be provided to control exposures to mists and vapors so as not to exceed the relevant exposure limits.

PART 71—MANDATORY HEALTH STANDARDS—SURFACE WORK AREAS OF UNDERGROUND COAL MINES AND SURFACE COAL MINES

3. Section 71.2 will be amended by adding a new paragraph (n) to read as follows:

§ 71.2 Definitions.

(n) "Respirable dust" means dust collected with an MRE instrument or any other sampling device approved in accordance with Part 74 of this title.

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

4. Paragraph (k) of § 75.2 will be revised to read as follows:

§ 75.2 Definitions.

(k) "Respirable dust" means collected with an MRE instrument or any other sampling device approved in accordance with Part 74 of this title.

5. Section 75.301-2 will be revised by deleting the first sentence and will read as follows:

§ 75.301-2 Harmful quantities of gases; determination of concentrations.

Detectors or laboratory analysis of mine air samples shall be used to determine the concentrations of harmful, noxious or poisonous gases.

PART 90—PROCEDURES FOR TRANSFER OF MINERS WITH EVIDENCE OF PNEUMOCOONIOSIS

6. Paragraph (g) of § 90.2 will be revised to read as follows:

§ 90.2 Definitions.

(g) "Respirable dust" means dust collected with an MRE instrument or any other sampling device approved in accordance with Part 74 of this title.

[FR Doc. 11-33139 Filed 11-15-77; 8:45 am]

[4310-68]

[30 CFR Part 75]

UNDERGROUND COAL MINES

Use of Filter Type and Self-Contained (Oxygen Generating) Self-Rescuers

AGENCY: Department of the Interior, Mining Enforcement and Safety Administration (MESA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Comments, suggestions, data, objections and requests for hearing are solicited by the Secretary of the Interior on proposed revisions to the regulations relating to the availability, use and location of self-rescue devices in underground coal mines.

The proposed revisions will require that a self-rescue device be made available to each person who goes underground and that such person be instructed and trained in the use and location of the self-rescue device or devices which are used at the mine.

The revised standards will permit the use of self-contained (oxygen generating) self-rescuers and for the phasing out of the filter type self-rescue device in two years, and in addition will provide

several alternatives for the use and location of a self-contained self-rescuer or combination of self-rescuers.

DATES: Comments, suggestions, objections and requests for hearing must be submitted no later than January 3, 1978.

ADDRESSES: The Administrator, Mining Enforcement and Safety Administration, Department of the Interior, room 618, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Va., 22203.

FOR FURTHER INFORMATION CONTACT:

Mr. Herschel H. Potter, Chief, Division of Safety, Coal Mine Health and Safety, MESA, Room 803, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, (703) 235-1284.

SUPPLEMENTARY INFORMATION:

FILTER TYPE SELF-RESCUER LIMITATIONS

The limited capability of the filter type self-rescuer presently in use in underground coal mines has long been recognized. The main limitations of such self-rescuers are:

Limited protection in oxygen-deficient air. Filter type devices have the capability only of converting carbon monoxide (CO) in contaminated atmospheres resulting from a mine fire or explosion into carbon dioxide (CO₂). The user of the device must rely upon the oxygen which is in the air. Should the mine air contain less than 15 percent oxygen (O₂), dizziness, shortness of breath, quickened pulse, and deeper and more rapid respiration occur even when a miner is at rest. During heavy exertion, which can be expected to occur in emergency escape, a 15 percent (or less) oxygen level may lead to loss of consciousness. Thus, even though the self-rescuer may protect the wearer against carbon monoxide (CO), the lack of oxygen reduces a miner's chance of survival.

Limited protection against carbon dioxide (CO₂). Inhalation of CO₂ occurs in three ways: if present in the mine air the CO₂ passes through the rescuer and is inhaled by the wearer; when the catalyst converts CO to CO₂, any CO in the mine air is also inhaled as CO₂; and re-breathing of exhaled air takes place when there is trapped gas in the self-rescuer. Levels of CO₂ as low as 6 percent can cause severe problems in emergency escape situations, and the combination of low oxygen (O₂) and high CO₂ can be fatal even while using the filter type self-rescuer.

High inhalation temperatures. The catalytic oxidation of CO to CO₂ produces a large amount of heat. The higher the CO content in the air, the higher the air temperature will be. Data derived from British studies show that at the CO levels which may be present after a fire or explosion, the inhaled air could be hot enough to burn the mouth and throat. If the unit is removed because of the high heat temperatures, only a few breaths of the contaminated air are necessary to reduce the miner's chance

of survival. Unconsciousness could occur within 1 minute and death shortly thereafter (perhaps 2-3 minutes).

Protection against other toxic gases. The filter type self-rescuer is specifically designed to prevent only CO from being inhaled. It is not designed, as some miners believe, as protection against other toxic gases from being inhaled.

SELF-CONTAINED (OXYGEN GENERATING) SELF-RESCUERS

There are two main ways to obtain oxygen (O₂) in a self-contained breathing apparatus: by storing O₂, or by producing O₂ chemically.

To meet the weight and size requirements called for in underground mining, the Bureau of Mines sponsored the development of a closed-loop breathing apparatus using the chemical potassium superoxide to produce O₂. The closed-loop system keeps all inhaled and exhaled air within the system, thus conserving the available oxygen for re-use.

A closed-loop system requires that the CO₂ produced by the body be absorbed or else it will quickly affect respiration. This is why potassium superoxide (KO₂) is extremely useful—it not only produces O₂, but also reacts with, and thus eliminates, CO₂. Moisture from the wearer's breath reacts with KO₂ to produce potassium hydroxide (KOH) and oxygen (O₂). The KOH then reacts with the user's exhaled CO₂ to produce potassium carbonate (K₂CO₃) and water or potassium bicarbonate (KHCO₃). Thus, O₂ is generated and CO₂ is absorbed in this same chemical bed.

Of special significance is that KO₂ is demand responsive. That is, when a wearer needs more oxygen as a result of running or other emergency exertion, the KO₂ will supply it. This occurs because the wearer will breathe more often with increased exertion and thus produce more moisture which in turn reacts with the KO₂ to produce O₂. When the wearer is walking or inactive his breathing rate slows down, less moisture reaches the KO₂, and less O₂ is produced. Therefore, while the amount of time a wearer can use the self-rescuer depends upon his work rate, the O₂ is not wasted when it is not needed.

DESCRIPTION OF APPROVED OXYGEN-GENERATING DEVICES

Three types of KO₂ self-rescuers have been developed which have received approval for use underground. These are: (1) Long duration KO₂ units which are approved for 60-minutes; (2) a short duration (10-minute) complete unit; and (3) a short duration (10-minute) complete unit which can be coupled with a special long duration (60-minute) KO₂ canister. The 60-minute KO₂ canister cannot be used without the 10-minute unit.

All of the approved KO₂ devices operate on the same principle. A miner exhales air into the breathing tube, then through the chemical bed where it removes CO₂ and adds O₂, and finally into the breathing bags. On inhalation, the wearer breathes the clean air either di-

rectly from the breathing bags or after it has passed through the KO₂ bed again. Check valves direct the flow and separate the inhaled and exhaled gases. The inhaled air temperature is controlled by conduction cooling through the breathing bags, or by heat exchangers in the apparatus. A pressure relief valve is provided on all units because the units slightly overproduce O₂. These valves are one-way valves designed to prevent toxic gases from entering the bag.

Since KO₂ does not provide oxygen instantly, oxygen is supplied immediately by a chlorate (NaClO₃) candle in all the units. The candle is triggered automatically.

The 10-minute and 60-minute service lives are defined for hard work situations. In those cases where a miner must sit quietly while awaiting transportation, the KO₂ units will last about four to five times the rated service life. In other words a 60-minute unit will last approximately four hours, and a 10-minute unit will last about 40 minutes minimum. The combined 10/60 system will thus last at least four hours and 40 minutes for a miner who is sitting quietly.

MESA approval requirements provide that a unit provide inhaled breathing air not hotter than 135° F., and therefore the 10-minute unit has four heat exchanger springs inside the breathing tube and other design features to reduce heat.

In consideration of the foregoing and pursuant to authority under section 101 of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 811) it is proposed to amend and revise §§ 75.1714 through 75.1714-2 of Part 75, Title 30, Code of Federal Regulations, as set forth below.

DRAFTING INFORMATION

The principal persons responsible for preparation of these proposed amendments and revisions are: Joseph O. Cook, Assistant Administrator, Coal Mine Health and Safety, MESA; Herschel H. Potter, Chief, Division of Safety, Coal Mine Health and Safety, MESA; and Robert H. McPhillamey, Assistant Solicitor, Coal Mine Health and Safety, Office of the Solicitor.

NOTE.—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Dated: November 9, 1977.

JOAN M. DAVENPORT,
Assistant Secretary of the Interior.

Sections 75.1714 through 75.1714-2 of Part 75, 30 CFR, will be amended and revised as follows:

§ 75.1714 Availability of approved self-rescue devices; instruction in use and location.

(a) Each operator shall make available to each person who goes underground a self-rescue device or devices approved by the Secretary and which shall be adequate to protect such person for one hour or longer.

(b) Before any person goes underground the operator shall instruct and train such person in the use and location of the self-rescue device or devices made available at the mine.

§ 75.1714-1 Approved self-rescue devices.

(a) The requirements of § 75.1714 shall be met by making available to each person who goes underground a self-rescue device or devices as follows:

(1) Until [two years from effective date] a self-rescue device or devices which have been approved under:

(i) Bureau of Mines Schedule 14F, Gas Masks, April 23, 1955, as amended, (Part 13, 30 CFR, 1972 ed); or

(ii) Subpart I of Part 11 of this chapter; or

(iii) Subpart H of Part 11 of this chapter as follows:

(A) A one hour self-contained self-rescue device; or

(B) A ten minute self-contained self-rescue device and a one hour self-contained self-rescue device; or

(C) Any other self-contained breathing apparatus approved under Subpart H which provides protection for a period of one hour or longer and which is approved for use by MESA for the purpose of a self-rescue device or devices when used and maintained as prescribed by MESA.

(2) After [two years from effective date] a self-rescue device or devices which have been approved under Subpart H of Part 11 of this chapter as follows:

(i) A one hour self-contained self-rescue device; or

(ii) A ten minute self-contained self-rescue device and a one hour self-contained self-rescue device; or

(iii) Any other self-contained breathing apparatus approved under Subpart H which provides protection for a period of one hour or longer and which is approved for use by MESA for the purpose of a self-rescue device or devices when used and maintained as prescribed by MESA.

§ 75.1714-2 Self-rescue devices; use and location requirements.

(a) Self-rescue devices shall be used and located as prescribed in paragraphs (b) through (e) of this section.

(b) Except as provided in paragraphs (c), (d), or (e) of this section, self-rescue devices shall be worn or carried at all times by each person when underground.

(c) Where the wearing or carrying of the self-rescue device is hazardous to the person, the self-rescue device shall be located at a distance no greater than 25 feet from such person.

(d) Where a person works on or around equipment, the self-rescue device may be placed in a readily accessible location on such equipment.

(e) Where ten minute and one hour self-contained self-rescue devices are made available in accordance with § 75.1714-1(a)(1)(iii)(B) or § 75.1714-1(a)(2)(ii) such devices shall be used and located as follows:

(1) Except as provided in paragraphs (c) and (d) of this section, the ten minute self-contained self-rescue device shall be worn or carried at all times by each person when underground, and

(2) The one hour self-contained self-rescue device shall be available at all times to each person when underground in accordance with a plan submitted by the operator of the mine and which has been approved by the District Manager. When the one hour self-rescue device is placed in a cache or caches a sign with the word "SELF-RESCUERS" shall be conspicuously posted at each cache and direction signs shall be posed leading to each cache.

(f) Eye protection, approved by MESA, shall be worn or carried at all times by each person when underground.

§ 75.1714-3 Self-rescue devices; inspection, test, maintenance and repair.

(a) Each operator shall provide for the proper inspection, testing, maintenance, and repair of self-rescue devices by a person trained to perform such functions.

(b) After each time a self-rescue device is worn or carried by a person, such device shall be inspected for damage and for the integrity of its seal by a person trained to perform such function. Self-rescue devices with broken seals or which are damaged so that the device will not function properly shall be removed from service.

(c) All self-rescue devices, except devices utilizing vacuum containers as the sole method of sealing, approved under Bureau of Mines Schedule 14F or under Subpart I of Part 11 of this chapter shall be tested at intervals not exceeding 90 days by weighing each device on a scale or balance which shall be accurate to within ± 1 gram. A device which weighs more than 10 grams over its original weight shall be removed from service.

(d) All self-contained self-rescue devices approved under Subpart H of Part 11 of this chapter shall be tested in accordance with instructions approved by MESA. Any device which does not meet the specified test requirements shall be removed from service.

(e) Results of the tests required by paragraphs (c) and (d) of this section shall be recorded for each self-rescue device in a book which shall be made available to an authorized representative of the Secretary.

(f) Self-rescue devices removed from service shall be repaired for return to service only by a person trained to perform such work and only in accordance with the manufacturer's instructions.

[FR Doc. 77-33146 Filed 11-15-77; 8:45 a.m.]

[1410-03]

LIBRARY OF CONGRESS

Copyright Office

[37 CFR Part 202]

[Docket: RM 77-11]

DEPOSIT REQUIREMENTS

Proposed Rulemaking

AGENCY: Library of Congress, Copyright Office.

ACTION: Proposed Rules.

SUMMARY: This notice of proposed rulemaking is issued to inform the public that the Copyright Office of the Library of Congress is considering adoption of new regulations implementing the deposit requirements of sections 407 and 408 of the Act for General Revision of the Copyright Law. These requirements involve the mandatory deposit of copies or phonorecords of published works for the collections of the Library of Congress, and the deposit of material to accompany applications for copyright registration of both unpublished and published works. The effect of the proposed regulations is: (a) To exempt certain categories of published works from mandatory deposit for the Library of Congress under section 407; (b) to establish requirements governing the nature of the mandatory deposit to be made in all other cases under section 407; and (c) to establish the nature of the deposit to be made as part of copyright registration.

DATES: All comments should be received on or before December 12, 1977.

ADDRESSES: Interested persons should submit five copies of their written comments, if by mail to:

Office of the General Counsel, Copyright Office, Library of Congress, Caller No. 2999, Arlington, Va. 22202.

or if by hand to:

Office of the General Counsel, Copyright Office, Library of Congress, room 519, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va. 22202.

FOR FURTHER INFORMATION CONTACT:

Jon Baumgarten, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559, 703-557-8731.

SUPPLEMENTARY INFORMATION: Under section 407 of the first section of Pub. L. 94-553 (90 Stat. 2541), the owner of copyright, or of the exclusive right of publication, in a work published with notice of copyright in the United States is required to deposit two copies (or, in the case of sound recordings, two phonorecords) of the work in the Copyright Office for the use or disposition of the Library of Congress. The deposit is to be made within three months after such publication. Failure to make the required

deposit does not affect copyright in the work, but may subject the copyright owner to fines and other monetary liability if the failure is continued after a demand for deposit is made by the Register of Copyrights. Qualifying these general provisions, section 407 also provides that the Register of Copyrights "may by regulation exempt any categories of material from the deposit requirements of this section, or require deposit of only one copy or phonorecord with respect to any categories."

Under section 408 of the Act deposit of material is also required in connection with applications for copyright registration of both unpublished and published works. After establishing general rules governing the nature of the required deposit, this section also authorizes the Register of Copyrights to prescribe qualifying regulations governing "the nature of the copies or phonorecords to be deposited" and to "require or permit * * * the deposit of identifying material instead of copies or phonorecords (or) the deposit of only one copy or phonorecord where two would normally be required * * *"

The deposit requirements of sections 407 and 408 are theoretically independent of each other. For example, mandatory deposit of a non-exempt work under section 407 may be required for the collections of the Library of Congress even if the copyright owner does not seek registration for the work under section 408. Under certain conditions, however, copies or phonorecords used to satisfy the mandatory deposit provisions of section 407 may simultaneously be used to serve as the deposit accompanying an application for registration under section 408.

We propose to implement sections 407 and 408 by the addition of three new sections to the regulations of the Copyright Office. Proposed § 202.19 would exempt certain works which the Library of Congress neither needs nor wants from the mandatory deposit requirements of section 407, and would also establish requirements governing the nature of the deposit to be made in non-exempt cases. Proposed § 202.20 would establish requirements governing the nature of the deposit to be made in all cases for the purpose of copyright registration under section 408. Proposed § 202.21 would set forth special requirements governing the nature of photographs or similar identifying material required or permitted to be deposited in lieu of actual copies in certain cases.¹

The proposed regulations are generally self-explanatory but a few provisions deserve special comment:

¹ Concurrent with the proposed addition of § 202.21 we propose to revoke § 202.16 of the current Copyright Office regulations, which deals with the same subject. Revocation of portions of other current regulations to be replaced by proposed § 202.19 and § 202.20 will be made in a later proceeding.

1. "Best Edition". The Act generally requires that deposits of published works under both sections 407 and 408 represent the "best edition" of the work. The "best edition" is defined in section 101 of the statute as "the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes." It is important to recognize that this represents a change from the current law under which the deposit for a published work is to represent the best edition as first published. Under the new definition of "best edition", the appropriate deposit for a published work may represent a choice from among a larger number of varying "editions" of a work all published before the date of deposit.

In order to assist the public in complying with the "best edition" requirements of the new law, the Library of Congress has adopted a policy statement entitled "Best Edition of Published Copyrighted Works for the Collections of the Library of Congress". This statement, which will become effective on January 1, 1978, establishes specific criteria for selecting the "best edition" from among two or more published editions of the same version of the same work. Although the Library's determination of these criteria is not a part of this proceeding, a copy of the statement is reproduced as an appendix to this notice in order to give a complete picture of the proposed deposit requirements.

In an effort to avoid any confusion concerning the word "edition", the proposed regulations (§ 202.19(b) (1) (iii)) specify that "where differences between two or more 'editions' of a work represent variations in copyrightable content, each edition is considered a separate version, and hence a different work * * * and criteria of 'best edition' based on such differences do not apply."

2. *Motion Picture Deposits*. Because of special problems related to cost, number of available copies, and security from unauthorized performance, under current law applicants for registration of motion pictures have had the option of entering into a special written agreement with the Library of Congress. Under this so-called "Motion Picture Agreement", most deposits are returned to the applicant for registration, subject to recall by the Library during a specified term. After further consideration of its motion picture acquisition practices, and experience with the agreement, the Library of Congress has concluded that it will be able to make definitive selections for its collections within thirty days from deposit, that copies not selected can be returned promptly, and that it will be unnecessary to require that returned copies be held for a period of possible recall. These conclusions are reflected in proposed §§ 202.19(d) (2) (ii) and 202.20(c) (2) (ii). The proposed regulations will not affect previously registered motion pictures still covered by existing Motion Picture Agreements.

As an additional change from current requirements, the proposed regulations do not require that deposits of videotape copies be accompanied by photographic reproductions.

3. *Certain Pictorial and Graphic Works*: Section 407(c) of the Act provides:

[Copyright Office] regulations shall provide either for complete exemption from the deposit requirements of this section, or for alternative forms of deposit aimed at providing a satisfactory archival record of a work without imposing practical or financial hardships on the depositor, where the individual author is the owner of copyright in a pictorial, graphic, or sculptural work and (1) less than five copies of the work have been published, or (2) the work has been published in a limited edition consisting of numbered copies, the monetary value of which would make the mandatory deposit of two copies of the best edition of the work burdensome, unfair, or unreasonable.

Sculptural works are completely exempt from the mandatory deposit requirements of section 407 under proposed § 202.19(c) (6) (and are subject to the deposit of photographs or like reproductions instead of actual copies for copyright registration under proposed § 202.20(c) (2) (ix)). A problem arose, however, in establishing special deposit provisions for pictorial and graphic works where, as specified in the statute, "the work has been published in a limited edition consisting of numbered copies, the monetary value of which would make the mandatory deposit of two copies * * * burdensome, unfair, or unreasonable." After careful consideration, we concluded that it would not be practical or reasonable to establish specific "monetary values" as a condition for special treatment. Instead, proposed § 202.19(d) (2) (iv) provides for the deposit of only one copy or, alternatively, photographs or like reproductions in lieu of an actual copy, in any case where an individual author is the owner of copyright in a pictorial or graphic work and the work is published and sold or offered for sale in a limited edition consisting of no more than one hundred numbered copies. In order not to discourage the artist-copyright owner from seeking the benefits of copyright registration for works of this sort, a similar provision is made in proposed § 202.20(c) (2) (iv), although not required by the Act. In individual or particular cases not falling within this one-hundred copy category, paragraph IV. C. 2 of the Library of Congress Best Edition Statement (permitting deposit of one copy outside of a numbered series) or, in appropriate cases, special relief under proposed §§ 202.19(e) and 202.20(d) may also lessen the burden of deposit.

4. *Secure Tests*. In developing the proposed regulations we have considered the special problems of confidentiality faced by creators and administrators of so-called "secure tests", that is, testing materials which are not marketed and which are administered, returned, and retained

under secure conditions.² This category encompasses numerous tests used in connection with admission to educational institutions, high school equivalency, placement in or credit for undergraduate and graduate course work, awarding of scholarships, and professional certification. The Library of Congress does not require such works for its collections and, together with other tests, they are exempt from mandatory deposit by proposed § 202.19(c) (8).

We have also concluded that, although secure tests should be deposited in the Copyright Office for examination incident to registration under section 408, their retention by the Office and availability for public inspection could severely prejudice the future utility, quality, and integrity of the materials. Accordingly, proposed § 202.20(c) (2) (vi) provides that only one copy of any test need be deposited for registration, and that "[i]n the case of any secure test the Copyright Office will return the deposit to the applicant promptly after examination, provided that sufficient portions, description, or the like are retained so as to constitute a sufficient archival record of the deposit". Additionally, as a matter of practice, special arrangements can be made for the examination of such materials under strict conditions of security and in the presence of a representative of the copyright owner.

5. *Special Relief.* In developing the proposed regulations it became apparent that it would not be possible to establish categorical rules, exemptions, or alternatives to cover all cases where the general deposit provisions of the statute might cause unnecessary hardship. In individual cases the specific acquisition policies of the Library of Congress, or the examining and archival requirements of the Copyright Office, may not be such as to require deposit of a non-exempt work, or to demand strict compliance with the general "two copy", "complete" and "best edition" standards of the statute, where to do so would impose an undue burden or cost on a copyright owner. As a clear example, a photocopy or "lesser" edition of a work may be sufficient where the "best edition" is no longer available.

In order to allow proper disposition of these cases without undermining the copyright owner's obligation to comply with section 407 or 408, proposed §§ 202.19 (e) and 202.20(d) permit specified requests to be made for "special relief." These provisions are intended primarily to benefit the public. They are in keeping with legislative direction that the deposit provisions be kept flexible "so that there

will be no obligation to make deposit where it serves no purpose, so that only one copy or phonorecord may be deposited where two are not needed, and so that reasonable adjustments can be made to meet practical needs in special cases." H.R. Rep. 94-1476, 94th Cong., 2d Sess., Sept. 3, 1976 at 151; S. Rept. No. 94-473, 94th Cong., 1st Sess., Nov. 20, 1975 at 134.

6. *Phonorecords as Deposits of Recorded Literary, Dramatic, or Musical Works.* Under the new Act, where a musical, dramatic, or literary work has been fixed by means of the sounds embodied in an audio disk or audio tape, the disk or tape is a "phonorecord", rather than a "copy", of the recorded musical, dramatic, or literary work. (It is also a "phonorecord" of the separate sound recording resulting from the fixation.) Additionally, the public distribution of phonorecords, in the United States or abroad,³ is a publication of the recorded work (and of the sound recording).

This terminology has particular significance under section 407 of the Act. Under that section, the mandatory deposit requirements extend only to "copies" of all types of works except sound recordings, and to "phonorecords" of sound recordings; they do not apply to "phonorecords" of literary, dramatic, or musical works. Accordingly, where a musical, dramatic, or literary work is published in the United States only as embodied in phonorecords, it is not subject to mandatory deposit. Although this exclusion results from operation of the statute rather than from discretionary or regulatory action, it is included as an "exemption" in proposed § 202.19 (c) (4) for the purposes of clarity and completeness. The proposed section also makes clear that there is no "exemption" from the mandatory deposit requirements for the owner of copyright in the sound recording as a separate work. For example, the composer or publisher of a musical composition published only in the form of phonorecords is not subject to mandatory deposit for the work under section 407, but the record company claiming copyright in the sound recording also embodied in the phonorecord is required to make a deposit.

In the case of copyright registration under section 408, we considered whether to exercise our authority to regulate the "nature of the deposit" by requiring

² For the purpose of deposit (and registration), the public distribution of phonorecords is a publication of the recorded work even if the work is created by a national of a foreign country belonging to the Universal Copyright Convention ["UCC"] or if the distribution occurs in such a country. A contrary definition of "publication" in Article VI of the Convention applies only to that term "as used in this Convention". The rule that public distribution of phonorecords is a publication of the recorded work for the purpose of determining the nature of the deposit (and for registration generally) is not inconsistent with any use of "publication" under the Convention, or any Convention obligation to treat published or unpublished works in a specified manner.

visually-perceptible copies to be deposited in all cases. We have decided not to do so.

In recent years, and with increasing frequency, certain musical, dramatic, and narrative works are initially fixed in the form of phonorecords. For example, tape studio music (electronic, "concrete", and tape-music), synthesizer music, and computer-produced music, all creations of the past two decades, are created directly or indirectly on tape. A large number of "pop" artists and jazz musicians compose by performing the work and simultaneously recording it. Dramatic works and literary works, including lectures and other instructional materials, are often initially preserved on tape. The phonorecord is frequently the initial, and sometimes the only, fixation. While these works theoretically can be transcribed into some kind of visually perceptible copy for the purpose of deposit, the transcription is extremely difficult and unsatisfactory in some cases and impractical in others. For some songwriters and small audio-visual producers, for example, it is a substantial financial burden to require a work to be notated or transcribed.

Accordingly, the deposit required for copyright registration of recorded literary, dramatic, or musical works is left by proposed § 202.20 to follow the general requirements of the statute pertaining to the deposit of "copies or phonorecords". Specifically:

(a) If the work is unpublished and has been fixed in phonorecords, but has not been transcribed or notated in the form of copies, the deposit of a phonorecord will be accepted (§ 202.20(c) (1) (i)).

(b) If the work is unpublished and has been fixed in both copies and phonorecords, the deposit of either a phonorecord or a copy will be accepted (§ 202.20(c) (1) (i)). In such cases applicants will be encouraged to deposit whatever form best represents the work of authorship for which copyright is being claimed.

(c) If the work was first published outside of the United States, the deposit should represent the form (copy or phonorecord) in which the work was first published (§ 202.20(c) (1) (iv)).

(d) If the work was first published in the United States and, at the time of deposit, has been published in this country only in the form of phonorecords, the deposit of the "best edition" of the phonorecord will be accepted (§ 202.20(c) (1) (iii)).⁴

(e) If the work was first published in the United States and, at the time of deposit, has been published in this country in the form of both copies and phonorecords, the appropriate deposit depends upon which is the "best edition" (§ 202.20(c) (1) (iii)). In such cases, the Library of Congress Best Edition Statement (paragraph VIII.B.) requires deposit of the copy as the "best edition".

⁴ Criteria for selection of the "best edition" from among varying phonorecord configurations are set forth in paragraph V of the Library of Congress Best Edition Statement.

³ Our consideration of this matter was prompted by correspondence from Educational Testing Service. Their position has been supported by the American College Testing Program, The College Entrance Examination Board, The American Council on Education, and nineteen other examining boards and councils including, for example, the Law School Admission Council, the National Board of Medical Examiners, the Federation of State Medical Boards, and the National Conference of Bar Examiners.

7. *Deposit, for Copyright Registration, of Works First Published Before January 1, 1978.* As noted earlier, the deposit provisions of the current copyright law generally require the deposit of the work as first published. This results from the principle that copyright is currently secured upon first publication in compliance with certain formalities. Under the new Act, however, "first publication" is not relevant to securing copyright (which attaches upon creation) and failure to comply with formalities can later be cured. Accordingly, except in the case of works first published abroad, the new Act generally requires deposits for copyright registration to represent the "best edition" published at any time before the date of application and deposit.

This general requirement is, however, qualified by Transitional and Supplementary Sec. 103 of Pub L. 94-553: "This Act does not provide copyright protection for any work that goes into the public domain before January 1, 1978." Under section 410(b) of the Act, the Copyright Office is charged to refuse applications for registration of public domain works. Accordingly, in order to give the Office an adequate opportunity to examine applications for registration of works published before January 1, 1978 to determine if they have entered the public domain (for example, by reason of publication without notice), proposed § 202.20(c)(1)(ii) requires that the deposit in such cases represent the work as first published.

8. *Mandatory Deposit and Acquisition of Unpublished Transmission Programs.* Although the mandatory deposit provisions of section 407 of the Act are generally limited to published works, section 407(e) does permit the Register of Copyrights to establish regulations governing the acquisition of copies or phonorecords of unpublished transmission (broadcast) programs for the Library of Congress. These regulations will be the subject of a separate proceeding.

APPENDIX.—"BEST EDITION" OF PUBLISHED COPYRIGHTED WORKS FOR THE COLLECTIONS OF THE LIBRARY OF CONGRESS

The Copyright Law (Title 17, United States Code) requires that copies of phonorecords deposited in the Copyright Office be of the "best edition" of the work. The law states that "The 'best edition' of work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes."

When two or more editions of the same version of a work have been published, the one of the highest quality is generally considered to be the best edition. In judging quality, the Library of Congress will adhere to the criteria set forth below in all but exceptional circumstances.

Where differences between editions represent variations in copyrightable content, each edition is a separate version and "best edition" standards based on such differences do not apply. Each such version is a separate work for the purposes of the Copyright Law.

Appearing below are lists of criteria to be applied in determining the best edition of each of several types of material. The criteria are listed in descending order of importance.

In deciding between two editions, a criterion-by-criterion comparison should be made. The edition which first fails to satisfy a criterion is to be considered of inferior quality and will not be an acceptable deposit. For example, if a comparison is made between two hardbound editions of a book, one a trade edition printed on acid-free paper and the other a specially bound edition printed on average paper, the former will be the best edition because the type of paper is a more important criterion than the binding.

Under regulations of the Copyright Office, potential depositors may request authorization to deposit copies or phonorecords of other than the best edition of a specific work (e.g., a microform rather than a printed edition of a serial).

I. PRINTED TEXTUAL MATTER

A. *Paper, Binding, and Packaging:*

1. Archival-quality rather than less-permanent paper.
2. Hard cover rather than soft cover.
3. Library binding rather than commercial binding.
4. Trade edition rather than book club edition.
5. Sewn rather than glue-only binding.
6. Sewn or glued rather than stapled or spiral-bound.
7. Stapled rather than spiral-bound or plastic-bound.
8. Bound rather than looseleaf, except when future looseleaf insertions are to be issued.
9. Slipcased rather than nonslipcased.
10. With protective folders rather than without (for broadsides).
11. Rolled rather than folded (for broadsides).
12. With protective coatings rather than without (except broadsides, which should not be coated).

B. *Rarity:*

1. Special limited edition having the greatest number of special features.
2. Other limited edition rather than trade edition.
3. Special binding rather than trade binding.

C. *Illustrations:*

1. Illustrated rather than unillustrated.
2. Illustrations in color rather than black and white.

D. *Special Features:*

1. With thumb notches or index tabs rather than without.
2. With aids to use such as overlays and magnifiers rather than without.

E. *Size:*

1. Larger rather than smaller sizes. (Except that large-type editions for the partially-sighted are not required in place of editions employing type of more conventional size.)

II. PHOTOGRAPHS

A. Size and finish, in descending order of preference:

1. The most widely distributed edition.
2. 8 x 10-inch glossy print.
3. Other size or finish.

B. Unmounted rather than mounted.

C. Archival-quality rather than less permanent paper stock or printing process.

III. MOTION PICTURES

A. Film rather than another medium. Film editions are listed below in descending order of preference.

1. Preprint material, by special arrangement.
2. Film gauge in which most widely distributed.

3. 35 mm rather than 16 mm.
4. 16 mm rather than 8 mm.
5. Special formats (e.g., 65 mm) only in exceptional cases.
6. Open reel rather than cartridge or cassette.

B. Videotape rather than videodisc. Videotape editions are listed below in descending order of preference.

1. Tape gauge in which most widely distributed.
2. Two-inch tape.
3. One-inch tape.
4. Three-quarter-inch tape cassette.
5. One-half-inch tape cassette.

IV. OTHER GRAPHIC MATTER

A. *Paper and Printing:*

1. Archival quality rather than less-permanent paper.

2. Color rather than black and white.

B. *Size and Content:*

1. Larger rather than smaller size.
2. In the case of cartographic works, editions with the greatest amount of information rather than those with less detail.

C. *Rarity:*

1. The most widely distributed edition rather than one of limited distribution.

2. In the case of a work published only in a limited, numbered edition, one copy outside the numbered series but otherwise identical.

3. A photographic reproduction of the original, by special arrangement only.

D. *Text and Other Materials:* 1. Works with annotations, accompanying tabular or textual matter, or other interpretative aids rather than those without them.

E. *Binding and Packaging:*

1. Bound rather than unbound.
2. If editions have different binding, apply the criteria in I.A.2-I.A.7, above.
4. Rolled rather than folded.
5. With protective coatings rather than without.

V. PHONORECORDS

A. Disc rather than tape.

B. With special enclosures rather than without.

C. Open-reel rather than cartridge.

D. Cartridge rather than cassette.

E. Quadraphonic rather than stereophonic.

F. True stereophonic rather than monaural.

G. Monaural rather than electronically rechanneled stereo.

VI. MUSICAL COMPOSITIONS

A. *Fullness of Score:* 1. *Vocal music:* a. With orchestral accompaniment—

1. Full score and parts, if any, rather than conductor's score and parts, if any.
- ii. Conductor's score and parts, if any, rather than condensed score and parts, if any.

b. Unaccompanied: Open score (each part on separate staff) rather than closed score (all parts condensed to two staves).

2. *Instrumental music:*

- a. Full score and parts, if any, rather than conductor's score and parts, if any.
- b. Conductor's score and parts, if any, rather than condensed score and parts, if any.

B. *Printing and Paper:* 1. Archival-quality rather than less-permanent paper.

C. *Binding and Packaging:*

1. Special limited editions rather than trade editions.
2. Bound rather than unbound.
3. If editions have different binding, apply the criteria in I.A.2-I.A.12, above.
4. With protective folders rather than without.

VII. MICROFORMS

A. *Related Materials*: 1. With indexes, study guides, or other printed matter rather than without.

B. *Permanence and Appearance*:

1. Silver halide rather than any other emulsion.

2. Positive rather than negative.

3. Color rather than black and white.

C. *Format (newspapers and newspaper-formatted serials)*: 1. Reel microfilm rather than any other microform.

D. *Format (all other materials)*:

1. Microfiche rather than reel microfilm.

2. Reel microfilm rather than microform cassettes.

3. Microfilm cassettes rather than micro-opaque prints.

E. *Size*: 1. 35 mm rather than 16 mm.

VIII. WORKS EXISTING IN MORE THAN ONE MEDIUM

Editions are listed below in descending order of preference.

A. Newspapers, dissertations and theses, newspaper-formatted serials:

1. Microform.

2. Printed matter.

B. All other materials:

1. Printed matter.

2. Microform.

3. Phonorecord.

(Effective: January 1, 1978.)

PROPOSED REGULATIONS

We propose to amend Part 202 of 37 CFR, Chapter II as follows:

§ 202.16 [Revoked]

1. By revoking § 202.16; and
2. By adding new §§ 202.19, 202.20, and 202.21, to read as follows:

§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.

(a) *General*. This section prescribes rules pertaining to the deposit of copies and phonorecords of published works for the Library of Congress under section 407 of title 17 of the United States Code, as amended by Pub. L. 94-553. The provisions of this section are not applicable to the deposit of copies and phonorecords for purposes of copyright registration under section 408 of title 17, except as expressly adopted in § 202.20 of these regulations.

(b) *Definitions*. For the purposes of this section:

(i) The "best edition" of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.

(ii) Criteria for selection of the "best edition" from among two or more published editions of the same version of the same work are set forth in the statement entitled "Best Edition of Published Copyrighted Works for the Collections of the Library of Congress" (hereafter referred to as the "Best Edition Statement") in effect at the time of deposit. Copies of the Best Edition Statement are available upon request made to the Acquisitions and Processing Division of the Copyright Office.

(iii) Where no specific criteria for the selection of the "best edition" are estab-

lished in the Best Edition Statement, that edition which, in the judgment of the Library of Congress, represents the highest quality for its purposes shall be considered the "best edition". In such cases: (A) When the Copyright Office is aware that two or more editions of a work have been published it will consult with other appropriate officials of the Library of Congress to obtain instructions as to the "best edition" and (except in cases for which special relief is granted) will require deposit of that edition; and (B) when a potential depositor is uncertain which of two or more published editions comprises the "best edition", inquiry should be made to the Acquisitions and Processing Division of the Copyright Office.

(iv) Where differences between two or more "editions" of a work represent variations in copyrightable content, each edition is considered a separate version, and hence a different work, for the purpose of this section, and criteria of "best edition" based on such differences do not apply.

(2) A "complete" copy includes all elements comprising the unit of publication of the best edition of the work, including elements that, if considered separately, would not be copyrightable subject matter or would otherwise be exempt from mandatory deposit requirements under paragraph (c) of this section. In the case of sound recordings, a "complete" phonorecord includes the phonorecord, together with any printed or other visually perceptible material published with such phonorecord (such as textual or pictorial matter appearing on record sleeves or album covers, or embodied in leaflets or booklets included in a sleeve, album, or other container).

(3) The terms "copies", "collective work", "device", "fixed", "literary work", "machine", "motion picture", "phonorecord", "publication", "sound recording", and "useful article", and their variant forms, have the meanings given to them in section 101 of title 17.

(4) "Title 17" means title 17 of the United States Code, as amended by Pub. L. 94-553.

(c) *Exemptions from deposit requirements*. The following categories of material are exempt from the deposit requirements of section 407(a) of title 17:

(1) Diagrams and models illustrating scientific or technical works or formulating scientific or technical information in linear or three-dimensional form, such as an architectural or engineering blueprint, plan, or design, a mechanical drawing, or an anatomical model.

(2) Greeting cards, picture postcards, and stationery.

(3) Lectures, sermons, speeches, and addresses when published individually and not as a collection of the works of one or more authors.

(4) Literary, dramatic, and musical works published only as embodied in phonorecords. This category does not exempt the owner of copyright, or of the exclusive right of publication, in a sound recording resulting from the fixation of such works in a phonorecord from the

applicable deposit requirements for the sound recording.

(5) Literary works, including computer programs and automated data bases, published only in the form of machine-readable copies (such as magnetic tape or disks, punched cards, or the like) from which the work cannot ordinarily be visually perceived except with the aid of a machine or device. Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films and works published in any variety of microfilm), and works published in visually perceivable form but used in connection with optical scanning devices, are not within this category and are subject to the applicable deposit requirements.

(6) Three-dimensional sculptural works, and any works published only as reproduced in or on jewelry, dolls, toys, games, plaques, floor coverings, wallpaper and similar commercial wall coverings, textile and other fabrics, packaging material, or any useful article. Globes, relief models, and similar cartographic representations of area are not within this category and are subject to the applicable deposit requirements.

(7) Prints, labels, and other advertising matter published in connection with the sale or advertisement of articles of merchandise or services.

(8) Tests, and answer material for tests, when published separately from other literary works.

(9) Works first published as individual contributions to collective works. This category does not exempt the owner of copyright, or of the exclusive right of publication, in the collective work as a whole from the applicable deposit requirements for the collective work.

(d) *Nature of required deposit*. (1) Subject to the provisions of paragraph (d)(2) of this section, the deposit required to satisfy the provisions of section 407(a) of title 17 shall consist of (i) in the case of published works other than sound recordings, two complete copies of the best edition; and (ii) in the case of published sound recordings, two complete phonorecords of the best edition.

(2) In the case of certain published works not exempt from deposit requirements under paragraph (c) of this section, the following special provisions shall apply:

(i) In the case of published three-dimensional cartographic representations of area, such as globes and relief models, the deposit of one complete copy of the best edition of the work will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(ii) In the case of published motion picture, the deposit of one complete copy of the best edition of the work will suffice in lieu of the two copies required by paragraph (d)(1) of this section. Any deposit for a published motion picture must be accompanied by a separate description of its contents, such as a continuity, pressbook, or synopsis. Unless selected by the Library of Congress for addition to its collections within thirty

days from the date the deposit is received in the Copyright Office, all copies of motion pictures deposited under this section will be returned to the depositor by the Copyright Office, without right of recall.

(iii) In the case of any published work deposited in the form of a hologram, the deposit shall be accompanied by: (A) Two sets of precise instructions for displaying the image fixed in the hologram; and (B) two sets of identifying material in compliance with § 202.21 of these regulations and clearly showing the displayed image.

(iv) In any case where an individual author is the owner of copyright in a published pictorial or graphic work and (A) less than five copies of the work have been published, or (B) the work has been published and sold or offered for sale in a limited edition consisting of no more than one hundred numbered copies, the deposit of one complete copy of the best edition of the work or, alternatively, the deposit of photographs or other identifying material in compliance with § 202.21 of these regulations, will suffice in lieu of the two copies required by paragraph (d) (1) of this section.

(e) *Special relief.* (1) In the case of any published work not exempt from deposit under paragraph (c) of this section, the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation: (i) Grant an exemption from the deposit requirements of section 407(a) of title 17 on an individual basis for single works or series or groups of works; or (ii) permit the deposit of one copy or phonorecord, or alternative identifying material, in lieu of the two copies or phonorecords required by paragraph (d) (1) of this section; or (iii) permit the deposit of incomplete copies or phonorecords, or copies or phonorecords other than those normally comprising the best edition.

(2) Any decision as to whether to grant such special relief, and the conditions under which special relief is to be granted, shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress, and shall be based upon the acquisition policies of the Library of Congress then in force.

(3) Requests for special relief under this paragraph shall be made in writing to the Chief, Acquisitions and Processing Division of the Copyright Office, shall be signed by or on behalf of the owner of copyright or of the exclusive right of publication in the work, and shall set forth specific reason why the request should be granted.

(f) *Submission and receipt of copies and phonorecords.* (1) All copies and phonorecords deposited in the Copyright Office will be considered to be deposited only in compliance with section 407 of title 17 unless they are accompanied by: (i) An application for registration of claim to copyright, or (ii) a clear written request that they be held

for connection with a separately forwarded application. Copies or phonorecords deposited without such an accompanying application or written request will not be connected with or held for receipt of separate applications, and will not satisfy the deposit provisions of section 408 of title 17 or § 202.20 of these regulations. Any written request that copies or phonorecords be held for connection with a separately forwarded application must appear in a letter or similar document accompanying the deposit; a request or instruction appearing on the packaging, wrapping or container for the deposit will not be effective for this purpose.

(2) All copies and phonorecords deposited in the Copyright Office under section 407 of title 17, unless accompanied by written instructions to the contrary, will be considered to be deposited by the person or persons named in the copyright notice on the work.

(3) Upon request by the depositor made at the time of the deposit, the Copyright Office will issue a Certificate of Receipt for the deposit of copies or phonorecords of a work under this section. Certificates of Receipt will be issued in response to requests made after the date of deposit only if the requesting party is identified in the records of the Copyright Office as having made the deposit. In either case, requests for a Certificate of Receipt must be in writing and accompanied by a fee of \$2. A Certificate of Receipt will include identification of the depositor, the work deposited, and the nature and format of the copy or phonorecord deposited, together with the date of receipt.

§ 220.20 Deposit of copies and phonorecords for copyright registration.

(a) *General.* This section prescribes rules pertaining to the deposit of copies and phonorecords of published and unpublished works for the purpose of copyright registration under section 408 of title 17 of the United States Code, as amended by Pub. L. 94-553. The provisions of this section are not applicable to the deposit of copies and phonorecords for the Library of Congress under section 407 of title 17, except as expressly adopted in § 202.19 of these regulations.

(b) *Definitions.* For the purposes of this section:

(1) The "best edition" of a work has the meaning set forth in § 202.19(b) (1) of these regulations.

(2) A "complete" copy or phonorecord of an unpublished work is a copy or phonorecord representing the entire copyrightable content of the work for which registration is sought. A "complete" copy or phonorecord of a published work includes all elements comprising the applicable unit of publication of the work. In the case of a contribution to a collective work, a "complete" copy or phonorecord is the entire collective work including the contribution or, in the case of a newspaper, the entire section including the contribution. In the case of published sound recordings, a "com-

plete" phonorecord has the meaning set forth in § 202.19(b) (2) of these regulations.

(3) The terms "copy", "collective work", "device", "fixed", "literary work", "machine", "motion picture", "phonorecord", "publication", "sound recording", and "useful article", and their variant forms, have the meanings given to them in section 101 of title 17.

(4) A "secure test" is a non-marketed test regularly administered under supervision at specified centers on specific dates, all copies of which are accounted for and either destroyed or returned to restricted locked storage following each administration. For these purposes a test is not marketed if copies are not sold but is distributed and used in such a manner that ownership and control of copies remain with the test sponsor or publisher.

(5) "Title 17" means title 17 of the United States Code, as amended by Pub. L. 94-553.

(c) *Nature of required deposit.* (1) Subject to the provisions of paragraph (c) (2) of this section, the deposit required to accompany an application for registration of claim to copyright under section 408 of title 17 shall consist of:

(i) In the case of unpublished works, one complete copy or phonorecord.

(ii) In the case of works first published in the United States before January 1, 1978, two complete copies or phonorecords of the work as first published.

(iii) In the case of works first published in the United States on or after January 1, 1978, two complete copies or phonorecords of the best edition.

(iv) In the case of works first published outside of the United States, whenever published, one complete copy or phonorecord of the work as first published. For the purposes of this section, any works simultaneously first published within and outside of the United States shall be considered to be first published in the United States.

(2) In the case of certain works, the special provisions set forth in this clause shall apply. In any case where this clause specifies that one copy or phonorecord may be submitted, that copy or phonorecord shall represent the best edition, or the work as first published, as set forth in paragraph (c) (1) of this section.

(i) *General.* In the following cases the deposit of one complete copy or phonorecord will suffice in lieu of two copies or phonorecords: (A) Published three-dimensional cartographic representations of area, such as globes and relief models; (B) published diagrams illustrating scientific or technical works or formulating scientific or technical information in linear or other two-dimensional form, such as an architectural or engineering blueprint, or a mechanical drawing; (C) published greeting cards, picture postcards and stationery; (D) lectures, sermons, speeches, and addresses published individually and not as a collection of the works of one or

more authors; and (E) published contributions to a collective work.

(ii) *Motion pictures.* In the case of published motion pictures, the deposit of one complete copy will suffice in lieu of two copies. The deposit for any published or unpublished motion picture must be accompanied by a separate description of its contents, such as a continuity, pressbook, or synopsis. Unless selected by the Library of Congress for addition to its collections within thirty days from the effective date of registration, all copies of motion pictures deposited under this section will be returned to the applicant by the Copyright Office, without right of recall.

(iii) *Holograms.* In the case of any work deposited in the form of a hologram, the copy or copies shall be accompanied by: (A) Precise instructions for displaying the image fixed in the hologram; and (B) photographs or other identifying material complying with § 202.21 of these regulations and clearly showing the displayed image. The number of sets of instructions and identifying material shall be the same as the number of copies required.

(iv) *Certain pictorial and graphic works.* In any case where an individual author is the owner of copyright in a pictorial or graphic work and (A) the work is unpublished, or (B) less than five copies of the work have been published, or (C) the work has been published and sold or offered for sale in a limited edition consisting of no more than one hundred numbered copies, the deposit of identifying material in compliance with § 202.21 of these regulations may be made and will suffice in lieu of actual copies. As an alternative to the deposit of such identifying material, in any such case the deposit of one complete copy will suffice in lieu of two copies.

(v) *Commercial prints and labels.* In the case of prints, labels, and other advertising matter published in connection with the sale or advertisement of articles of merchandise or services, the deposit of one complete copy will suffice in lieu of two copies. Where the print or label is published in a larger work, such as a newspaper or other periodical, one copy of the entire page or pages upon which it appears may be submitted in lieu of the entire larger work. In the case of prints or labels physically inseparable from a three-dimensional object, identifying material complying with § 202.21 of these regulations must be submitted rather than an actual copy or copies.

(vi) *Tests.* In the case of tests, and answer material for tests, published separately from other literary works, the deposit of one complete copy will suffice in lieu of two copies. In the case of any secure test the Copyright Office will return the deposit to the applicant promptly after examination: *Provided*, That sufficient portions, description, or the like are retained so as to constitute a sufficient archival record of the deposit.

(vii) *Machine-readable works.* In cases where an unpublished literary work is fixed, or a published literary

work is published, only in the form of machine-readable copies (such as magnetic tape or disks, punched cards, or the like) from which the work cannot ordinarily be perceived except with the aid of a machine or device,⁶ the deposit shall consist of:

(A) For published or unpublished computer programs, one copy of identifying portions of the program, reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. For these purposes, "identifying portions" shall mean either the first and last twenty-five pages or equivalent units of the program if reproduced on paper, or at least the first and last twenty-five pages or equivalent units of the program if reproduced in microform, together with the page or equivalent unit containing the copyright notice, if any.

(B) For published and unpublished automated data bases, compilations, statistical compendia, and other literary works so fixed or published, one copy of identifying portions of the work, reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. For these purposes, "identifying portions" shall mean either the first and last twenty-five pages or equivalent units of the work if reproduced on paper, or at least the first and last twenty-five pages or equivalent units of work if reproduced on microform, or, in the case of automated data bases comprising separate and distinct data files, representative portions of each separate data file consisting of either 50 complete data records from each file or the entire file, which ever is less. (In the case of revised versions of such data bases, the portions deposited must contain representative data records which have been added or modified.) In any case where the deposit comprises representative portions of each separate file of an automated data base as indicated above, it shall be accompanied by a typed or printed descriptive statement containing: The title of the data base; the name and address of the copyright claimant; the name and content of each separate file within the data base, including the subject matter involved, the origin(s) of the data, and the approximate number of individual records within the file; and a description of the exact contents of any machine-readable copyright notice employed in or with the work and the manner and frequency with which it is displayed (e.g., at user's terminal only at sign-on, or continuously on terminal display, or on printouts, etc.). If a visually-perceptible copyright notice is placed on any copies of the work (such

⁶ Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films, and works published in any variety of microform), and works published in visually perceptible form but used in connection with optical scanning devices, are not within this category.

as magnetic tape reels) or their container, a sample of such notice must also accompany the statement.

(viii) *Works reproduced in or on sheet-like materials.* In the case of any unpublished work that is fixed, or any published work that is published, only in the form of a two-dimensional reproduction on sheet-like materials such as textile and other fabrics, wallpaper and similar commercial wall coverings, carpeting, floor tile, and similar commercial floor coverings, and wrapping paper and similar packaging material, the deposit shall consist of one copy in the form of an actual swatch or piece of such material sufficient to show all elements of the work in which copyright is claimed and the copyright notice appearing on the work, if any. If the work consists of a repeated pictorial or graphic design, the complete design and at least one repetition must be shown. If the sheet-like material in or on which a published work has been reproduced has been embodied in or attached to a three-dimensional object, such as wearing apparel, furniture, or any other three-dimensional manufactured article, and the work has been published only in that form, the deposit must consist of identifying material complying with § 202.21 of these regulations instead of a copy.

(ix) *Works reproduced in or on three-dimensional objects.* In the following cases where the deposit of an actual copy of the work would not lend itself to shelving or flat storage, the deposit must consist of identifying material complying with § 202.21 of these regulations instead of a copy or copies: (A) Any three-dimensional sculptural work, including any illustration or formulation of artistic expression or information in three-dimensional form, including statues, carvings, ceramics, moldings, constructions, models, and maquettes (but not including works reproduced by intaglio or relief printing methods on two-dimensional materials such as paper or fabrics); and (B) any two-dimensional or three-dimensional work that, if unpublished, has been fixed or, if published, has been published only in or on jewelry, dolls, toys, games, or any three-dimensional useful article. However, where the work has been fixed or published in or on a useful article that comprises one of the elements of the unit of publication of an educational or instructional kit which also includes a literary or audiovisual work, a sound recording, or any combination of such works, the requirement of this paragraph for the deposit of identifying material shall not apply.

(x) *Oversize deposits.* In any case where the deposit otherwise required by this section exceeds ninety-six inches in any dimension, identifying material complying with § 202.21 of these regulations must be submitted instead of an actual copy or copies.

(d) *Special relief.* (1) In any case the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation: (i) Per-

mit the deposit of one copy or phonorecord, or alternative identifying material, in lieu of the one or two copies or phonorecords otherwise required by paragraph (c) (1) of this section; or (ii) permit the deposit of incomplete copies or phonorecords, or copies or phonorecords other than those normally comprising the best edition.

(2) Any decision as to whether to grant such special relief, and the conditions under which special relief is to be granted, shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress, and shall be based upon the acquisition policies of the Library of Congress then in force and the archival and examining requirements of the Copyright Office.

(3) Requests for special relief under this paragraph may be combined with requests for special relief under § 202.19 (e) of these regulations. Whether so combined or made solely under this paragraph, such requests shall be made in writing to the Chief, Examining Division of the Copyright Office, shall be signed by or on behalf of the person signing the application for registration, and shall set forth specific reasons why the request should be granted.

(e) *Use of copies and phonorecords deposit for the Library of Congress.* Copies and phonorecords deposited for the Library of Congress under section 407 of title 17 and § 202.19 of these regulations may be used to satisfy the deposit provisions of this section if they are accompanied by an application for registration of claim to copyright in the work represented by the deposit, or connected with such an application under the conditions set forth in § 202.19 (f) (1) of these regulations.

§ 202.21 Deposit of identifying material instead of copies.

(a) *General.* In any case where the deposit of identifying material is permitted or required under § 202.19 or § 202.20 of these regulations, the material shall consist of photographic prints, transparencies, photostats, drawings, or similar two-dimensional reproductions or renderings of the work, in a form visually perceivable without the aid of a machine or device. In the case of pictorial or graphic works, such material shall reproduce the actual colors employed in the work. In all other cases, such material may be in black and white or may consist of a reproduction of the actual colors.

(b) *Completeness; number of sets.* As many pieces of identifying material as are necessary to show clearly the entire copyrightable content of the work for which deposit is being made, or for which registration is being sought, shall be submitted. Except in cases falling under the provisions of § 202.19 (d) (2) (iii) or § 202.20 (c) (2) (iii) with respect to holograms, only one set of such complete identifying material is required.

(c) *Size.* All pieces of identifying material must be of uniform size. Photographic transparencies must be 35 mm.

in size, and must be fixed in cardboard, plastic, or similar mounts to facilitate identification, handling, and storage. All other types of identifying material must be not less than 5 x 7 inches and not more than 9 x 12 inches, but preferably 8 x 10 inches. Except in the case of transparencies, the image of the work must be either lifesize or larger, or if less than lifesize must be at least four inches in its greatest dimension.

(d) *Title and dimensions.* At least one piece of identifying material must, on its front, back, or mount, indicate the title of the work and an exact measurement of one or more dimensions of the work.

(e) *Copyright notice.* In the case of works published with notice of copyright, the notice and its position on the work must be clearly shown on at least one piece of identifying material. Where necessary because of the size or position of the notice, a separate drawing or the like showing the exact appearance and content of the notice, its dimensions, and its specific position on the work shall be submitted.

(17 U.S.C. 207, and under the following sections of Title 17 of the United States Code as amended by Pub. L. 94-553: §§ 407, 408, 702.)

Dated: November 9, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.

[FR Doc.77-33157 Filed 11-15-77;8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 816-8]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revisions to Rules of the Following Air Pollution Control Districts in State of California; Sacramento County, San Diego County, and Lake County

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The purpose of this notice is to advise the public of receipt of proposed revisions to the California State Implementation Plan and to request public comments concerning the revisions. The revisions provide procedures to review new or modified sources of air contaminants prior to construction.

DATES: Public comments will be received on or before December 16, 1977.

ADDRESSES: Copies of the proposed SIP revisions are available for public inspection during regular business hours at the following locations:

Environmental Protection Agency, Region IX, Enforcement Division, 215 Fremont Street, San Francisco, Calif. 94105.

State of California, Air Resources Board, 1709 Eleventh Street, Sacramento, Calif. 95814.

Sacramento County Air Pollution Control District, 3701 Branch Center Road, Sacramento, Calif. 95827.

San Diego Air Pollution Control District, 9150 Chesapeake Drive, San Diego, Calif. 92123.

Lake County Air Pollution Control District, 883 Lakeport Boulevard, Lakeport, Calif. 95453.

Public Information Reference Unit, room 2922, U.S. Environmental Protection Agency, 401 "M" Street SW., Washington, D.C. 20460.

Interested persons may participate in the rulemaking process by submitting comment to: Regional Administrator, ATTN: Enforcement Division (E-4-3), EPA Region IX (address above).

Comments received will be available for public inspection during regular business hours at:

EPA Region IX (address above).

EPA Public Information Reference Unit (address above).

FOR FURTHER INFORMATION CONTACT:

Gerald Katz, Enforcement Division, Permits Branch, telephone: 415-556-8005.

SUPPLEMENTARY INFORMATION: Since EPA's approval of portions of the California State Implementation Plan (SIP) in 1972, the State of California has submitted, periodically, proposed revisions to the SIP. These proposed revisions have been submitted as local air pollution control districts (APCD) have adopted new or amended existing regulations. Included in the submissions have been the regulations of three APCDs. These are the Sacramento County APCD, the San Diego County APCD, and the Lake County APCD. In several cases, the submissions for the three above-mentioned districts have included regulations relating to permits for new sources of air pollution. The table below summarizes the dates upon which such permit regulations were submitted for these districts.

APCD	Submission dates
Sacramento ----	July 25, 1973.
	November 10, 1976.
San Diego -----	July 25, 1973.
	July 19, 1974.
	July 22, 1975.
	June 27, 1977.
Lake -----	June 27, 1977.

As revised Sacramento County APCD Regulation V—Permits—Rules 50 thru 58, San Diego County APCD Regulation II—Permits, Rules 10 thru 20.3 and 21 thru 25 and Regulation III—Fees, Rules 40, 41 and 42, and Lake County APCD Regulations, Chapter IV—Permits, Articles I thru VII, Sections 600-607, 620, 630, 640, 650, 660, 661, 670-676 and 680-682 provide a procedure by which persons who wish to construct, erect, modify, replace, operate or use any equipment

which may cause, potentially cause, reduce, control or eliminate the emission of air contaminants may be granted a permit to do so. A permit shall be granted only after the district control officer determines that the new or modified stationary source of air contaminants will not prevent the attainment, interfere with the maintenance, or cause a violation of any state or national ambient air quality standard.

The State of California has certified, by letter of August 26, 1976, that the revisions to its SIP for all California air pollution control districts submitted prior to January 1, 1976 were adopted after public hearings were held after notice conforming to 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of Implementation Plans was given. The State of California also certified by letters of November 10, 1976 and June 27, 1977, that the revisions to its SIP for these air pollution control districts submitted on November 10, 1976 and June 27, 1977, were adopted after public hearings were held after notice conforming to 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of Implementation Plans was given.

The decision of the Administrator to approve or disapprove the proposed revisions to the SIP discussed above will be based on whether or not they meet the requirements of Clean Air Act Section 110(a)(2)(A)-(K), 129, 171, 172, 173, the requirements of 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of Implementation Plans (particularly 40 CFR 51.18) and the Interpretative Ruling (41 FR 55524, December 21, 1976).

This notice is issued under the authority of section 110 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601(a)).

Dated: November 7, 1977.

PAUL DE FALCO,
Regional Administrator.

[FR Doc. 77-33160 Filed 11-15-77; 8:45 am]

[6560-01]

[40 CFR Part 52]

[FRL 816-7]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS—MASSACHUSETTS

Proposed Rulemaking; Changes in Massachusetts Air Pollution Emergency Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This revision, which EPA proposes to approve, amends the Massachusetts Implementation Plan to conform to EPA guidelines for prevention of air pollution emergency episodes. The Significant Harm level proposed for photochemical oxidants is 1200 $\mu\text{g}/\text{m}^3$ (0.6 ppm), 1-hour average and the Emergency level is 1000 $\mu\text{g}/\text{m}^3$ (0.5

ppm), 1-hour average. The Alert level is changed to 400 $\mu\text{g}/\text{m}^3$ (0.2 ppm), 1-hour average to be consistent with the neighboring states of Connecticut and Rhode Island.

DATES: Comments must be received on or before December 16, 1977.

ADDRESSES: Copies of the Massachusetts submittal are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, room 2113, JFK Federal Building, Boston, Mass. 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460; and Massachusetts Department of Environmental Quality Engineering, Division of Air and Hazardous Materials, room 320, 600 Washington Street, Boston, Mass. 02111.

Comments should be submitted to the Regional Administrator, Region I, Environmental Protection Agency, room 2203, JFK Federal Building, Boston, Mass. 02203.

FOR FURTHER INFORMATION CONTACT:

Deborah Ikehara, Air Branch, Environmental Protection Agency, Region I, room 2113, JFK Federal Building, Boston, Mass. 02203, 617-223-5609.

SUPPLEMENTARY INFORMATION: On May 31, 1972 (37 FR 10872), pursuant to Section 110 of the Clean Air Act and 40 CFR Part 51, the Administrator approved, with exceptions, the Massachusetts Implementation Plan for the attainment of National Ambient Air Quality Standards (NAAQS).

On September 15, 1976, the Commissioner of the Massachusetts Department of Environmental Quality Engineering (the Massachusetts Department) submitted a revision to the State Implementation Plan (SIP) to amend the "Regulations for the Prevention and/or Abatement of Air Pollution Episode and Air Pollution Incident Emergencies" in all six Air Pollution Control Districts. The regulations define Significant Harm levels for air contaminants, and specify actions to be taken when pollutant concentrations reach Alert, Warning, and Emergency levels. Amendments to the regulations are described below.

The Significant Harm level for photochemical oxidants was previously defined by 1-hour, 2-hour and 4-hour average concentrations. The 2-hour and 4-hour levels have been eliminated, and the 1-hour average concentration is change from 1400 $\mu\text{g}/\text{m}^3$ (0.7 ppm) to 1200 $\mu\text{g}/\text{m}^3$ (0.6 ppm). Consequently, the Emergency level was lowered from 1200 $\mu\text{g}/\text{m}^3$ (0.6 ppm) to 1000 $\mu\text{g}/\text{m}^3$ (0.5 ppm), 1-hour concentration. These changes are consistent with EPA's revisions to 40 CFR Part 51.16, as promulgated in the August 20, 1975 FEDERAL REGISTER (40 FR 36330). EPA revised the Significant Harm and Emergency levels on the basis of medical and scientific studies which are summarized in

the March 13, 1974 FEDERAL REGISTER (39 FR 9672).

The Massachusetts Department also changed the Alert Level for photochemical oxidants from 200 $\mu\text{g}/\text{m}^3$ (0.1 ppm) to 400 $\mu\text{g}/\text{m}^3$ (0.2 ppm), 1-hour average concentration. This change is consistent with the levels established by the SIP regulations of the neighboring states of Connecticut and Rhode Island. Although the Alert level previously in effect is the level given as an example Alert level in Appendix L of 40 CFR Part 51, EPA concurs that the public health remains adequately protected with the establishment of the higher Alert level. The Pollutant Standards Index (PSI) reporting system, developed by EPA and adopted by the Massachusetts Department in May, 1977, provides for public announcement of "unhealthful" air quality when oxidant concentrations of 160-400 $\mu\text{g}/\text{m}^3$ (0.08-0.2 ppm) are monitored, so that susceptible people are aware that they may experience minor health effects at levels which are not severe enough to warrant an "alert" announcement.

In addition, action strategies specified for the Alert, Warning, and Emergency levels have been modified so as to be pollutant specific, consistent with accepted air pollution control practice.

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of sections 110(a)(2)(A)-(H) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51. This revision is being proposed pursuant to Sections 110(a) and 301 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601).

Dated: November 8, 1977.

WILLIAM R. ADAMS, JR.,
Regional Administrator.

[FR Doc. 77-33159 Filed 11-15-77; 8:45 am]

[4910-06]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[49 CFR Part 218]

[Docket No. RSOR-3, Notice 14]

RAILROAD OPERATING RULES

Blue Signal Protection of Workmen; Notice of Extension of Comment Period

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice of Extension of Comment Period.

SUMMARY: On September 28, 1977 the Federal Railroad Administration (FRA) issued a notice of proposed rulemaking (NPRM) proposing to amend the rules governing blue signal protection of railroad workmen (42 FR 49813). The NPRM proposed to amend section 218.25 (49 CFR 218.25) by deleting the present paragraph (a) and inserting new para-

graphs (a) (1) and (2) to expressly apply procedures for the control of remotely-controlled switches when such switches are located on other than hump yard tracks. The period for the filing of comments is being extended for 30 days, until December 14, 1977.

DATES: Written comments must be received on or before December 14, 1977. Comments received after that date will be considered to the extent practicable.

ADDRESSES: (1) Submission of written comments: Written comments should identify the docket number and notice number and be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590. (2) Examination of written comments: All written comments received will be available for examination, both before and after the closing date for written comments, during regular business hours in Room 5101, Nassif Building, 400 Seventh Street SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Principal Authors: Principal Program Person: John A. McNally, Office of Safety, Federal Railroad Administration, Washington, D.C., 202-426-9178. Principal Attorney: Anne Marie Hyland, Office of the Chief Counsel, Federal Railroad Administration, Washington, D.C., 202-426-8836.

SUPPLEMENTARY INFORMATION: On September 28, 1977 the Federal Railroad Administration (FRA) issued a notice of proposed rulemaking (NPRM) proposing to amend the rules governing blue signal protection of railroad workmen (42 FR 49813). The NPRM proposed to amend section 218.25 (49 CFR 218.25) by deleting the present paragraph (a) and inserting new paragraphs (a) (1) and (2) to expressly apply procedures for the control of remotely-controlled switches when such switches are located on other than hump yard tracks. It also proposed amending section 218.29 (49 CFR 218.29) by adding a new cross reference to section 218.25(a) (2).

Interested persons were invited to participate in a public hearing on November 1, 1977, and to file written comments prior to November 14, 1977.

At the public hearing on November 1, 1977 the Association of American Railroads (AAR) requested the extension of the time to file written comments for a period of 90 days. This request was also made in a written petition dated November 3, 1977. In its petition the AAR stated that the potential extension of the applicability of the rule to remotely-controlled switches on tracks outside of railroad yards will require the analysis and exposition of several additional issues not heretofore discussed in the course of blue signal proceedings. This additional analysis could not be completed prior to November 14, 1977, thus the petition for extension has been filed.

The FRA has decided to extend the period for filing written comments for 30 days. Written comments must be received on or before December 14, 1977.

Issued in Washington, D.C. on November 14, 1977.

RAYMOND K. JAMES,
Chief Counsel.

[FR Doc.77-33304 Filed 11-15-77;10:24 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-11]

DEPARTMENT OF AGRICULTURE

Forest Service

COLLECTION AND USE OF DEPOSITS FOR SALE AREA IMPROVEMENT AUTHORIZED BY KNUTSON-VANDENBERG ACT OF 1930

Adoption of Policy

AGENCY: Forest Service, USDA.

ACTION: Adoption of policy.

SUMMARY: Chief, Forest Service, adopts policy on collection and use of deposits for sale area improvement which includes deletion of direction concerning legal and administrative collection limits and new direction on expanded use of K-V funds for protecting and improving the future productivity of the renewable resources of the forest land. The Act applies to existing as well as new timber sales.

FOR FURTHER INFORMATION CONTACT:

Robert Gillespie, Timber Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013, 202-447-7495.

SUPPLEMENTARY INFORMATION: The National Forest Management Act of 1976 (Pub. L. 94-588) amends the Knutson-Vandenberg Act of June 9, 1930 (46 Stat. 527; 16 U.S.C. 576b) by eliminating the requirement of legal and administrative collection limits. The Act also adds the proviso for protecting and improving the future productivity of the renewable resources of the forest land on such sale area, including sale area improvement operations, maintenance and construction, reforestation, and wildlife habitat management.

On April 27, the Chief, Forest Service, requested comments on a proposed amendment to the Forest Service Manual which would implement this provision of the Act. Substantive comments which were received are summarized below.

DISCUSSION OF MAJOR COMMENTS

It was suggested the entire sale area be available for K-V work and not restricted to the area cut over by the purchaser. The 1930 Act contains a restriction of work to the area cut over by the purchaser which was not amended. This is also current policy. No change was made from the proposed amendment.

It was suggested priorities be established in the Manual for work to be done or at least a statement that reforestation was first priority for K-V collections. The Act states that timber will be har-

vested where there is assurance that such lands can be adequately restocked within 5 years after harvest. Line officers must consider this direction when establishing priorities of work with K-V funds. Line officers must make priority work decisions on an individual sale basis as needed. Priorities will not be established from the national office.

There were two suggestions that funds could be retained for more than 10 years after sale closure. We still believe plans should be designed to accomplish all work as soon as possible. Funds should only be collected when a need exists and that need should be accomplished while collections retain their full economic value. Policy will remain that K-V funds should not be planned for expenditure more than 10 years after sale closure.

It was suggested that the only K-V activity that could be included in base rates for stumpage be for reforestation. This was added to FSM 2477.03.

Forest Service Manual provisions setting forth policy for implementing the K-V provisions of the National Forest Management Act are set forth below:

TITLE 2400—TIMBER MANAGEMENT

2477 Collection and use of deposits for sale area improvement. In 1930 Congress passed the Knutson-Vandenberg Act. That Act as amended by the National Forest Management Act of 1976 is hereafter referred to as the K-V Act. It authorizes the collection of funds for reforestation, timber stand improvement, and other activities needed to protect and improve the future productivity of renewable resources on areas cut over by the purchaser. These activities are hereafter referred to as sale area improvement (SAI) work and apply to lands with full National Forest status and land authorized by law to be administered in accordance with the laws, rules, and regulations applicable to National Forest lands (FSM 2406.5).

2477.01 Authority. Authority for requiring purchasers of National Forest timber to make deposits to finance the cost of sale area improvement on areas cut over by them is given in the Knutson-Vandenberg Act of June 9, 1930 (46 Stat. 527; 16 U.S.C. 576-576b) as amended by the National Forest Management Act of October 22, 1976 (Pub. L. 94-588) (FSM 1021). Amounts collected under the K-V Act are considered as moneys received from the sale of National Forest timber for the purposes of payments to the States (16 U.S.C. 500).

2477.02 Objective. The objectives are to reestablish, to protect and to improve the production of the renewable resources on harvested timber sale areas as stipulated by the K-V Act, through the collection and efficient use of funds for sale area improvement.

2477.03 Policy. Within prescribed limitations, K-V funds will be used for reforestation, timber stand improvement, and other resource management activities to establish, to protect, and to improve the renewable resources as outlined in an approved

SAI plan (2477.22). SAI activities must meet the following criteria:

1. Be compatible with and meet the basic management needs identified in the land management plan for the area.

2. Be supported by timber sale Environmental Analysis Report or Compartment Prescription.

3. Be multiple use activities of mitigation and/or enhancement such as establishment and/or improvement of wildlife and fisheries habitat which can logically and efficiently be accomplished along with the silvicultural activities needed on the harvested areas.

4. Are not the responsibility of the timber purchaser or permittee under the terms of the contract or permit.

5. Includes time schedules to serve as controls in programming SAI. Controls will cover:

a. The time period after logging in which each type of work should be accomplished. Nearly all work should be completed within 3 years after sale closure. Work which involves holding K-V funds for more than 5 years after closure must be justified in Regional instructions.

b. The maximum number of years which K-V funds may be held for each type of work. In no case will the use of K-V funds be planned for more than 10 years after sale closure.

Ordinarily a sale should not be offered unless sufficient funds can be collected to reforest in accord with the Land Management Plan. Exceptions may be made where the potential benefit from harvesting the existing stand and/or establishment of a new stand has high enough priority to justify the use of appropriated funds (FSM 2403.2) or where other uses preclude the need for reforestation.

The only SAI activity to be included in base rates is regeneration costs (FSM 2421.6).

JOHN R. MCGUIRE,
Chief.

[FR Doc.77-33139 Filed 11-15-77;8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[Order 77-11-15; Docket 30332 Agreement C.A.B. 26719 R-1 through R-14, Agreement C.A.B. 26725 R-1 through R-12, Agreement C.A.B. 26848 R-1 through R-9]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 3rd day of November, 1977.

By Order 77-7-95, July 21, 1977, the Board established procedural dates for the receipt of economic justification from the affected carriers, comments and/or objections from interested persons, and comments in reply pertaining to agreements, adopted by the member carriers of the International Air Transport Association (IATA), which would establish new cargo rate structures in a number

of world markets for effect October 1977 through September 1979.¹ This order will deal with proposed structures for the Western Hemisphere (Agreement C.A.B. 26719) and Mid-Atlantic (Agreement C.A.B. 26725) markets.² The details of the agreements are as follows:

THE AGREEMENTS

WESTERN HEMISPHERE (TC1)

In the U.S.-Mexico market, the basic charge for minimum-sized shipments would be increased by \$2 to a level of \$23 except in certain instances where special circumstances have resulted in minimum charges set below the basic level. In those cases, the minimum charges would be increased by amounts ranging from \$3 to \$10. General commodity rates (GCR's) would increase by 6.1 to 13.5 percent; rates for containerized shipments would remain unchanged for certain points and be increased up to 11.2 percent at other points. Finally, specific commodity rates would be increased by 7 cents per kilogram southbound, except from New York where such rates would be increased by 7 cents per kilogram, and 10 percent northbound.

In the U.S.-Caribbean market (which includes Venezuela) the minimum charge would be increased by \$2 to a level of \$26. However, in those cases where the charge is currently \$20, the charge would be increased by \$3 to \$23. GCR's would be increased by 4.8 to 8.5 percent; rates for shipments tendered in containers would remain at current levels at certain points and take increases of up to 23.3 percent at other points. In general, all SCR's would be increased by 10 percent except at Venezuela where such rates would be increased 5 percent northbound and eliminated entirely southbound.

¹ Although under the terms of Order 77-7-95 carrier justification was to be filed with the Board's Docket Section by August 11, 1977, Pan American did not file its justification for the Western Hemisphere and Mid-Atlantic packages until August 30, 1977, and September 7, 1977, respectively. We acknowledge that Pan American participates in all IATA-ratemaking areas of concern to the Board and that an increasing number of non-IATA fare and rate action imposes burdens that other U.S. international air carriers do not have. However, we would emphasize that delays of 3 to 4 weeks in submission of required economic data by a major carrier makes timely evaluation and disposition of major agreements extremely difficult and, consequently, has delayed issuance of this order.

² We will also act upon Agreement C.A.B. 26848, which merely continues current U.S.-Africa rates, due to expire September 1977, through to September 1979. Apparently, the U.S.-Africa carriers are not willing to make rate adjustments in this area while outstanding issues in the U.S.-Europe/Middle East cargo markets remain unresolved. However, the U.S.-Africa carriers have indicated that upon resolution of these outstanding issues, they will reconvene to discuss any necessary U.S.-Africa rate adjustments and the agreement includes the necessary procedural arrangements.

Minimum charges in the U.S.-Central America market would also be increased by \$2 to a level of \$26. GCR's would be increased by 2.7 to 5.7 percent with the lesser increases applied to the lower weightbreak rates and the greater increases applied to rates at the higher weightbreaks. Container rates would be increased approximately 24 percent and SCR's would be increased by 7 percent southbound and 10 percent northbound.

For U.S.-South America, including most of Colombia, the minimum charge would be increased by \$1 to a level of \$30 through June 1978 with an additional \$1 increase to apply thereafter. To Barranquilla and Cartagena in Colombia the minimum charge would be increased by \$2 to a level of \$26. GCR's to markets in South America (excluding Colombia) would be increased by 2.8 to 4.5 percent southbound and by approximately 7 percent northbound. Container rates would take initial increases ranging from 13.5 to 24.1 percent, with further increases in 9 month intervals to levels 23.4 to 48.7 percent above those now in effect by April 1979. SCR's would be increased by an average of about 12 percent. U.S.-Colombia GCR's, however, would be increased 5.6 percent southbound and 7 percent northbound. Container rates would remain at present levels through December 1977 and take increases of 1.9 to 4.5 percent effective January 1978. Lastly, SCR's in that market would be increased an average of about 10 percent.

MID-ATLANTIC

The agreement, which applies in U.S. air transportation only insofar as Puerto Rico/Virgin Islands rates are concerned, would increase minimum charges by \$2 to a level of \$33. GCR's would be increased by approximately 5 percent and SCR's by 5 to 10 percent. Finally, the agreement would establish rates and charges for shipments tendered in containers to apply between San Juan and Madrid at levels related to the applicable 500 kilogram GCR.

Statements of justification and supporting data have been received from American Airlines, Inc. (American), Braniff Airways, Inc. (Braniff), Eastern Air Lines, Inc. (Eastern), Delta Air Lines, Inc. (Delta), Pan American World Airways, Inc. (Pan American), and Western Air Lines, Inc. (Western). No comments in opposition have been received.

CARRIER JUSTIFICATION

U.S.-MEXICO

The following table summarizes the carriers' justification of the agreement in terms of their U.S.-Mexico scheduled cargo services for the year ending September 30, 1978. The U.S. carriers expect a \$391,000 improvement in operating revenues and an overall return on investment (ROI) of 24.5 percent under the proposed rates. Although offering combination cargo services to Mexico, Pan American did not submit separate data for this market.

Carrier	Percentage gain in revenue under proposed rates (percent)	Investment (thousands)	ROI present rates (percent)	ROI proposed rates (percent)
American.....	9.4	\$622	18.7	30.1
Braniff.....	9.9	189	(4.8)	3.2
Eastern.....	8.0	1,085	1.5	6.6
Western *.....	8.3	272	75.8	97.8
Total.....	8.6	2,168	15.2	24.5

* Although not a member of IATA, Western was requested to file economic data similar to those required of the IATA carriers.

U.S.-CARIBBEAN

On U.S.-Caribbean services for the year ending September 30, 1978, the U.S.

carriers anticipate a \$1.3 million improvement in operating revenues and an overall ROI of 4.3 percent under the proposed rates, as shown in the table below.

Carrier	Percentage gain in revenue under proposed rates (percent)	Investment (000)	ROI present rates (percent)	ROI proposed rates (percent)
American *.....	8.5	\$5,109	9.3	18.0
Eastern.....	8.0	1,224	(31.0)	(21.3)
Delta ^b	5.1	441	1.8	7.7
Pan American.....	7.9	1,657	(25.5)	(20.0)
Combination only.....	8.2	607	(6.9)	(0.3)
Freighter only.....	7.7	1,050	(36.2)	(31.3)
Total.....	8.2	8,431	(3.7)	4.3

* Although offering freighter service in the area, American's economic data aggregated its freighter services with its combination services.

^b Delta provided no data for the year ending Sept. 30, 1978. Instead, the carrier assumed the increased rates has been in effect during the year ended Mar. 31, 1977, historical period.

U.S.-SOUTH/CENTRAL AMERICA (LONG HAUL)

The two U.S. carriers operating in the long-haul market expect a \$4.4 million improvement in operating revenues and

an overall ROI of 7.7 percent under the proposed rates. The following table summarizes the justification of the two carriers for the forecast year ending September 30, 1978.

Carrier	Percentage gain in revenue under proposed rates (percent)	Investment (thousands)	ROI present rates (percent)	ROI proposed rates (percent)
Braniff	6.1	\$6,310	18.4	23.4
Pan American*	6.7	31,425	(1.4)	4.5
Combination only	6.0	15,235	1.1	5.4
All cargo only	7.2	16,190	(3.8)	3.7
Total	6.6	37,735	1.9	7.7

* Includes Pan American's U.S.-Mexico traffic which it states is only 1.1 percent of that for its Central America market.

In response to the Board's request for comments on the large, staggered increases in container rates in certain long-haul markets, Braniff and Pan American both contend that container discounts in the area are unjustifiably great in relation to cost savings realized from handling containerized shipments, which, in some instances, are virtually negated by local airport requirements. Rather than cancel the entire area container program, the carriers agreed to reduce the container discounts, thereby increasing the rates, and to do so by stages in order to ease the immediate impact on shippers.

MID-ATLANTIC

Pan American is the only U.S. carrier operating in this market and offers combination cargo services only. The carrier anticipates an \$8,000 gain in revenue from the proposed rates and expects to realize ROI's of negative 45.8 percent and 43.1 percent during the forecast year ending September 1978 under present and proposed rates respectively.

FINDINGS

As we have stated in earlier orders on Western Hemisphere rates, the relatively small proportion of all-cargo services in relation to total cargo operations in this area requires us to deviate from our policy of placing greater emphasis on all cargo operations, which we follow in our review of cargo rate agreements in other IATA geographical areas. Instead, we will give equal emphasis to revenue need in both Western Hemisphere combination and all-cargo services and will review this need on a market by market basis for each geographical IATA sub-area within the Western Hemisphere.

As shown on page three, the four reporting U.S.-Mexico carriers expect a composite 24.5 percent ROI under proposed rates. However, Western's unusually high forecast return contributes greatly to this very favorable return posture. Western, which is not a member of IATA, is the only U.S. carrier serving Mexico from west coast points and, in the past, the Board has based its evaluation of IATA west coast-Mexico rate proposals on data submitted by Western. While the Board has not hesitated to disapprove IATA-agreed increases from the west coast when such increases were not warranted by Western's earnings position, the Board has, nonetheless, permitted increases from points in the U.S. other than the west coast, when such increases were justified by the ROI's of the U.S. IATA member carriers. Elimination of Western's data would, however, still

result in a composite 14.0 percent return on investment for American, Braniff and Eastern. Obviously, no requirement for added revenue exists and the increases will be disapproved.

In the long-haul U.S.-South/Central America market, the composite of both Braniff's and Pan American's operations produces a ROI of 1.9 percent under present rates and 7.7 percent under the proposed rates as shown on page four. While the composite results of both carriers includes Pan American's U.S.-Mexico combination cargo service that carrier has stated that its local U.S.-Mexico traffic is only a very small portion of the total for its Central American area. Thus, any impact that the carrier's local U.S.-Mexico services may have on the composite results for both carriers in the long-haul area is limited. Clearly, a need for added revenue exists in the long-haul area, and most of the increases will be approved on that basis.

However, we are unable to accept the proposed increases in certain long-haul container rates. As described earlier, the carriers intend to reduce container discounts by stages so that, by April 1979, the discount from the applicable 500 kilogram GCR would be only 9 cents per kilogram, or about 4 percent, in many long-haul markets, and, in the U.S.-Montevideo market, the proposed container rates would offer no discount from Miami and would actually be higher, by 4 cents per kilogram, than the 500 kilogram GCR from New York. This is unacceptable. We believe that this action will discourage tender by shippers of pre-loaded containers and is contrary to our frequently stated policy that container discounts should be made more generally available and should fully reflect cost savings.

Existing long-haul container rates offer discounts ranging from 20 to 27 percent from the applicable 500 kilogram GCR. This is not out of line with the average 25 percent offered in the North Atlantic area and is only slightly higher than the 13 to 20 percent discounts, depending upon container type, offered in North/Central Pacific markets. The container discounts in these two major markets have not been characterized by the carriers as unjustifiable. While there may be some validity to the carriers' allegations that local South American airport customs requirements negate some of the cost savings to them, they have not demonstrated or quantified this.⁵ Moreover, even were we to accept the carriers' unsupported and unquantified statements, there are still significant cost savings realized at the airport of origination

in the United States, which should be reflected fully in the proposed long-haul container rates.⁴

The Caribbean markets have been characterized by uneven earnings over the years due primarily to differing U.S. carrier operating characteristics. Under this agreement, the carriers anticipate a composite return of 4.3 percent under the proposed rates and, on this basis, there would appear to be a need for the rate increases sought. However, this earnings deficiency is preponderantly the result of the unfavorable return positions of Eastern and Pan American, who forecast negative ROI's of 31.0 percent and 25.5 percent, respectively. For the reasons set forth below we will disapprove all of the proposed increases in the U.S.-Caribbean entity with the exception of those applicable to SCR's.

As in Order 77-3-62, where the Board partially disapproved proposed fare increases in the Caribbean market, we must again express our concern with the disparity in the earnings of the U.S. carriers. Although it is difficult to identify the cause from the carriers' justifications, one problem appears to be the amount of capacity offered. American, which forecasts an ROI of 18 percent under the proposed increases, provides the major portion of its service with narrow-body aircraft, both combination and all-cargo, while Eastern is operating a considerable amount of service with L-1011 equipment, which has 83 percent more available belly capacity than a B-707.⁶ While Pan American operated a small amount of B-747 freighter service in the historical period, it forecasts only a narrow-body operation for the year ending September 30, 1978. However, given the size of the earnings deficiency projected to occur under both present and proposed rates, much of which is generated by Pan American's freighter service, the Board must question whether an all-cargo operation in this area is justified—at least based on past results. Even with the rate increases, the return on investment of Pan American's all-cargo operations will be only marginally better than without them. However, Pan American's all-cargo ROI position may ameliorate somewhat in the near future. Information supplied to the Board by the State

⁴ We note Pan American's contention that, in the domestic New York-Los Angeles market, the difference between the Type 3 container rate and the general rate is approximately 4.8 percent and, on that basis, the proposed long-haul discounts are comparable. However, inspection of various general commodity container rates in that domestic market indicates that discounts of up to 20 percent are offered depending upon carrier and container size.

⁵ Of course, to the extent disapproval of the proposed container rates results in reduced carrier revenues, then the carriers' forecast return positions in the U.S.-South/Central American long-haul area are overstated.

⁶ To illustrate, during the forecast period, American expects to operate only 13.1 percent of its total hours using wide-body equipment. By contrast, Eastern expects to operate 25.8 percent of its hours with wide-body aircraft.

Department indicates that eight weekly Pan American B-747 freighters are arriving at Maiquetia, Venezuela's major international airport, with full aircraft loads and that during the first six months of this year Pan American's air freight tonnage into Venezuela has increased by 30.4 percent over the comparable period last year. This is a reflection of the tremendous increase in total air freight tonnage flown into Venezuela by all carriers, because of congestion at Venezuelan seaports, a problem not expected to abate for some time. If the demand for air cargo remains high, it is reasonable to assume that Pan American's forecast elimination of B-747 freighter service may, in fact, not occur. More importantly, we would expect that if an increase in traffic of this size sustains itself, it will have a favorable impact on Pan American's earnings pos-

ture, especially since with the proposed cancellation of all specific commodity rates to Venezuela, all cargo moving into that country can be expected to be shipped at the higher-rated general commodity rate.

Finally, we will approve the increases proposed in Mid-Atlantic cargo rates. Pan American, the only U.S. carrier operating in this market, forecasts under the proposed rates a negative return of 43.1 percent on cargo services with combination equipment.

The Board, acting pursuant to sections 102, 204(a), and 412 of the Act, makes the following findings:

1. It is not found that the following resolutions, incorporated in the agreements as indicated, are adverse to the public interest or in violation of the Act provided that approval is subject, where applicable, to conditions previously imposed by the Board:

Agreement CAB	IATA No.	Title	Application
26719:			
R-1	001j	2-Year Effectiveness Escape—Cargo (Readopting)	1.
R-2	001s	TC1 Special Emergency Escape Resolution—Cargo (New)	1.
R-3	001x	Review of Cargo Rates (Readopting)	1.
R-5	002	Standard Revalidation Resolution	1.
R-7	521	Charges for the Use of Unit Load Devices (Revalidating and Amending)	1.
R-8	522	Charges for the Use of Member Owned Unit Load Devices (New)	1.
26725:			
R-1	001e	Cargo Tie-in Resolution—Mid-Atlantic	1/2
R-2	001j	2-Year Effectiveness Escape—Cargo (Readopting)	1/2 (Middle Atlantic)
R-3	001x	Review of Cargo Rates (Readopting)	Do.
R-4	001z	Mid-Atlantic Escape Resolution—Cargo	1/2
R-5	002	Standard Revalidation Resolution	1/2 (Middle Atlantic)
R-6	022hh	JT12 (Mid-Atlantic) Adjustment Factors for Sales of Cargo Air Transportation (New)	1/2
R-7	501	Minimum Charges for Cargo—Mid-Atlantic	1/2
R-8	521	Charges for the Use of Unit Load Devices Revalidating and Amending	1/2 (Middle Atlantic)
R-9	522	Charges for the Use of Member Owned Unit Load Devices (New)	Do.
R-10	531b	Charges for Bulk Unitization—Mid-Atlantic (Revalidating and Amending)	1/2
R-11	554b	Mid-Atlantic General Cargo Rates	1/2
R-12	590	Specific Commodity Rates Board (Revalidating and Amending)	1/2 (Middle Atlantic)
26848:			
R-1	001e	Cargo Tie-in Resolution—North Atlantic	1/2 (U.S.-Africa)
R-2	001j	2 Year Effectiveness Escape—Cargo (Readopting)	Do.
R-3	001q	Special Cargo Meeting Provision North Atlantic—Africa (New)	1/2
R-4	001rr	Special Escape for JT12 North Atlantic Agreement (Cargo)	1/2 (U.S.-Africa)
R-5	001v	North Atlantic Escape Resolution Cargo	Do.
R-6	001x	Review of Cargo Rates (Readopting)	Do.
R-7	002	Standard Revalidation Resolution	Do.
R-8	554a	North Atlantic General Cargo Rates	Do.
R-9	590	Specific Commodity Rates Board (Revalidating and Amending)	Do.

2. It is not found that the following resolution, to the extent it would establish rates and charges between points in the U.S., on the one hand, and points in the Caribbean area as defined in IATA resolution 012f, on the other hand, which

is incorporated in Agreement C.A.B. 26719 as indicated, is adverse to the public interest or in violation of the Act, provided that approval is subject, where applicable, to conditions previously imposed by the Board:

Agreement CAB	IATA No.	Title	Application
26719:			
R-11	590	Specific Commodity Rates Board (Revalidating and Amending)	1 (U.S.-Caribbean)

3. It is not found that the following resolutions, to the extent they would establish rates and charges between points in the U.S., on the one hand, and points in the long-haul South/Central America area as defined in IATA Resolution 012f, on the other hand, which are incorpo-

rated in Agreement C.A.B. 26719 as indicated, are adverse to the public interest or in violation of the Act, provided that approval is subject, where applicable, to conditions previously imposed by the Board:

[6320-01]

[Docket 30782]

CALIFORNIA-TORONTO/MONTREAL
ROUTE PROCEEDING

Change of Hearing Time

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the hearing in the above-entitled proceeding now scheduled for 10 a.m. (local time) on November 29, 1977, in Room 1003, Hearing Room A, 1875 Connecticut Avenue NW., Washington, D.C., before Administrative Law Judge William A. Kane, Jr. (42 FR 57145, November 1, 1977) will be held at 9:30 a.m. (local time).

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the prehearing conference report served on September 19, 1977, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., November 8, 1977.

WILLIAM A. KANE, JR.,
Administrative Law Judge.

[FR Doc.77-33154 Filed 11-15-77;8:45 am]

[6320-01]

[Docket 31491]

ST. LOUIS-SAN FRANCISCO/OAKLAND/
SAN JOSE NONSTOP ROUTE PROCEEDING

Change of Date of Prehearing Conference

The prehearing conference in this proceeding originally scheduled for December 13, 1977 (42 FR 57500, November 3, 1977) is hereby re-scheduled to December 8, 1977. It will be held in Room 1003, Hearing Room D, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C., at 10 a.m.

The due dates established in the October 27 notice of prehearing conference for submissions of prehearing conference materials (November 27 for the Bureau of Operating Rights and December 5 for all other parties) will remain in force.

Dated at Washington, D.C., November 9, 1977.

STEPHEN J. GROSS,
Administrative Law Judge.

[FR Doc.77-33155 Filed 11-15-77;8:45 am]

[6335-01]

CIVIL RIGHTS COMMISSION
NEW YORK ADVISORY COMMITTEE
Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the New York Advisory Committee (SAC) of the Commission will convene at 4:00 p.m. and will end at 6:00 p.m. on December 8, 1977, at Phelps Stokes Fund, 10 E. 87th Street, New York, New York 10028.

Agreement CAB	IATA No.	Title	Application
26719: R-6.....	501	Minimum Charges for Cargo (Revalidating and Amending).....	1 (U.S.-South/Central America).
R-10.....	551	TC1 General Cargo Rates.....	Do.
R-11.....	590	Specific Commodity Rates Board (Revalidating and Amending).....	Do.

4. It is not found that the following resolution, incorporated in Agreement C.A.B. 26719 as indicated, which has in-

direct application in air transportation as defined by the Act, is adverse to the public interest or in violation of the Act:

Agreement CAB	IATA No.	Title	Application
26719: R-4.....	001w	Special Effectiveness Resolution (New).....	1 (Canada-Caribbean).

5. It is found that the following resolutions, to the extent they would establish rates and charges between points in the U.S., on the one hand, and points in Mexico, on the other hand, which are incorporated in Agreement C.A.B. 26719 as indicated, are adverse to the public interest and in violation of the Act:

Agreement CAB	IATA No.	Title	Application
26719: R-6.....	501	Minimum Charges for Cargo (Revalidating and Amending).....	1 (U.S.-Mexico).
R-9.....	531	Charges for Bulk Unitization—TC1 (Revalidating and Amending)....	Do.
R-10.....	551	TC1 General Cargo Rates.....	Do.
R-11.....	590	Specific Commodity Rates Board (Revalidating and Amending).....	Do.

6. It is found that the following resolution, to the extent it would establish rates and charges between points in the U.S., on the one hand, and points in the "long haul" South/Central America area as defined in IATA Resolution 021f, on the other hand, which is incorporated in Agreement C.A.B. 26719 as indicated, is adverse to the public interest and in violation of the Act:

Agreement CAB	IATA No.	Title	Application
26719: R-9.....	531	Charges for Bulk Unitization—TC1 (Revalidating and Amending)....	1 (U.S.-South Central America).

7. It is found that the following resolutions, to the extent they would establish rates and charges between points in the U.S., on the one hand, and points in the Caribbean area as defined in IATA Resolution 012f, on the other hand, which are incorporated in Agreement C.A.B. 26719 as indicated, are adverse to the public interest and in violation of the Act:

Agreement CAB	IATA No.	Title	Application
26719: R-6.....	501	Minimum Charges for Cargo (Revalidating and Amending).....	1 (U.S.-Caribbean)
R-9.....	531	Charges for Bulk Unitization—TC1 (Revalidating and Amending)....	Do.
R-10.....	551	TC1 General Cargo Rates.....	Do.

Accordingly, *It is ordered*, That:

1. Those portions of Agreement C.A.B. 26719, C.A.B. 26725, and C.A.B. 26848 set forth in finding paragraphs one, two, three, and four above are approved, subject, where applicable, to conditions previously imposed by the Board;

2. Those portions of Agreement C.A.B. 26719 set forth in finding paragraphs five, six, and seven are disapproved;

3. The carriers are authorized to file tariffs implementing approved IATA resolutions on not less than one day's notice for effectiveness not earlier than 15 days after date of service of this order.

The authority granted in this paragraph expires 30 days after date of service of this order; and

4. Tariffs implementing the approved IATA resolutions specified in finding paragraphs one, two, and three should be marked to expire not later than September 30, 1979.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-33008 Filed 11-15-77;8:45 am]

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeastern Regional Office of the Commission, 26 Federal Plaza, 1639, New York, New York 10007.

The purpose of this meeting is to discuss the final steps on transition from SACs to RACs.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., November 11, 1977.

JOHN I. BINKLEY,
Advisory Committee
Management Officer.

[FR Doc.77-33144 Filed 11-15-77;8:45 am]

[3510-24]

DEPARTMENT OF COMMERCE

Economic Development Administration
LISK SAVORY CORP.

Notice of Petition for a Determination of Eligibility To Apply for Trade Adjustment Assistance

A petition has been submitted by Lisk Savory Corp., 901 Fuhrman Boulevard, P.O. Box 443, Buffalo, N.Y. 14240, whose U.S. Stamping Co. Division in Moundsville, W. Va., is a producer of cookware. The firm's petition was accepted for filing on November 8, 1977, pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93-618) and Section 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315). Consequently, the U.S. Department of Commerce has initiated an investigation to determine whether increased imports into the United States of articles like or directly competitive with those produced by the firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of the petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than November 26, 1977.

CHARLES L. SMITH,
Acting Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc.77-33148 Filed 11-15-77;8:45 am]

[3510-24]

OSCEOLA SHOE CO. INC.

Notice of Petition for a Determination of Eligibility To Apply for Trade Adjustment Assistance

A petition by Osceola Shoe Co., Inc., Crompton Road, P.O. Box 588, Osceola,

Ark. 72370, a producer of footwear for men, was accepted for filing on November 7, 1977, pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93-618) and Section 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315). Consequently, the U.S. Department of Commerce has initiated an investigation to determine whether increased imports into the United States of articles like or directly competitive with those produced by the firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of the petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than November 26, 1977.

CHARLES L. SMITH,
Acting Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc.77-33149 Filed 11-15-77;8:45 am]

[3510-24]

FRIER INDUSTRIES, INC.

Notice of Petition for a Determination of Eligibility To Apply for Trade Adjustment Assistance

A petition by Frier Industries, Inc., 425 Gotham Parkway, Carlstadt, N.J. 07072, a producer of footwear for men, women and children, was accepted for filing on November 7, 1977, pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93-618) and Section 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315). Consequently, the U.S. Department of Commerce has initiated an investigation to determine whether increased imports into the United States of articles like or directly competitive with those produced by the firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of the petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than November 26, 1977.

CHARLES L. SMITH,
Acting Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc.77-33147 Filed 11-15-77;8:45 am]

[3510-12]

National Oceanic and Atmospheric Administration

CERTIFICATE OF EXEMPTION

Notice of Receipt of Application

Notice is hereby given that the following applicants have applied in due and timely form for Certificates of Exemption under Pub. L. 94-359, and the regulations issued thereunder (50 CFR Part 222, Subpart B), to engage in certain commercial activities with respect to pre-Act endangered species parts or products.

Applicants:

1. Barbara Curtis, 1538 Earl Road, Wantagh, N.Y. 11793.

Period of Exemption: The applicant requests that the period of time to be covered by the Certificate of Exemption begin on the date of the original issuance of the Certificate of Exemption and be effective for a 3-year period.

Commercial activities exempted: (i) The prohibitions, as set forth in section 9(a)(1)(E) of the Act, to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity any such species part; (ii) The prohibitions, as set forth in section 9(a)(1)(F) of the Act, to sell or offer for sale in interstate or foreign commerce any such species part.

Parts or products exempted: Finished scrimshaw products consisting of approximately 27 etched sperm whale teeth and 12 pieces of etched baleen. Finished scrimshaw products to be made from approximately 60 sperm whale teeth, 25 pieces of baleen and 1 piece of sperm whale pan bone.

2. Daniel A. Krapf, 2050 Wooster Road, Apt. No. 4, Rocky River, Ohio 44116.

Period of Exemptions: The applicant requests that the period of time to be covered by the Certificate of Exemption begin on the date of the original issuance of the Certificate of Exemption and be effective for a 3-year period.

Commercial activities exempted: (i) The prohibition, as set forth in section 9(a)(1)(E) of the Act, to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity any such species part; (ii) The prohibitions, as set forth in section 9(a)(1)(F) of the Act, to sell or offer for sale in interstate or foreign commerce any such species part.

Parts or products exempted: Finished scrimshaw products to be made from approximately 85 pounds of sperm whale teeth.

3. Lesley S. Zaret and William R. Haffenreffer, Box 561, Madaket, Nantucket, Mass. 02554.

Period of Exemption: The applicant requests that the period of time to be

covered by the Certificate of Exemption begin on the date of the original issuance of the Certificate of Exemption and be effective for a 3-year period.

Commercial activities exempted: (i) The prohibitions, as set forth in section 9(a)(1)(E) of the Act, to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity any such species part; (ii) The prohibitions, as set forth in section 9(a)(1)(F) of the Act, to sell or offer for sale in interstate or foreign commerce any such species part.

Parts or products exempted: Finished scrimshaw products to be made from approximately 87 sperm whale teeth.

4. Shulton, Inc., 1725 South Third Street, Memphis, Tenn. 38106.

Period of Exemption: The applicant requests that the period of time to be covered by the Certificate of Exemption begin on the date of the original issuance of the Certificate of Exemption and be effective for a 3-year period.

Commercial activities exempted: (i) The prohibition, as set forth in section 9(a)(1)(A) of the Act, to export any such species part from the United States; (ii) The prohibitions, as set forth in section 9(a)(1)(E) of the Act, to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity any such species part; (iii) The prohibitions, as set forth in section 9(a)(1)(F) of the Act, to sell or offer for sale in interstate or foreign commerce any such species part.

Parts or products exempted: Approximately 975 pounds of hydrogenated sperm whale oil. Written comments on these applications may be submitted to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235 on or before December 16, 1977.

Dated: November 10, 1977.

ROLAND F. SMITH,
Acting Assistant Director
for Fisheries Management.

[FR Doc.77-33150 Filed 11-15-77;8:45 am]

[3510-12]

SOUTHEAST FISHERIES CENTER

Receipt of Application for Endangered Species Permit; Correction

On October 27, 1977, notice was published in the FEDERAL REGISTER (42 FR 56632) that the Southeast Fisheries Center, had applied in due form for a permit to take endangered species for scientific purposes, as authorized by the Endangered Species Act of 1973, and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

The National Marine Fisheries Service now desires to correct the notice of receipt in the following aspects:

1. The name and number of sea turtles to be taken per year should read: 75 leatherback sea turtles (*Dermochelys coriacea*); 75 Atlantic ridley sea turtles (*Lepidochelys kempi*); 75 hawksbill sea turtles (*Eretmochelys imbricata*); 75 green sea turtles (*Chelonia mydas*); and 250 loggerhead sea turtles (*Caretta caretta*).

Written views or data, or requests for a public hearing on this application as corrected should be submitted to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application as corrected are available for review in the following offices:

Director, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Fla. 33702.

Dated: November 9, 1977.

ROLAND F. SMITH,
Acting Assistant Director for
Fisheries Management, National
Marine Fisheries Service.

[FR Doc.77-33151 Filed 11-15-77;8:45 am]

[3510-12]

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

Public Meeting

The Mid-Atlantic Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet December 14-15, 1977, at Sandy Hook Laboratory, NMFS, Highlands, New Jersey 07732. The meeting will start at 9:00 a.m. on December 14, and adjourn at approximately 4:00 p.m. on December 15.

Proposed Agenda: (1) Squid, Mackerel, Butterfish Draft Fishery Management Plans; (2) Administrative Matters; (3) Other old and new business.

Meeting is open to the public. For more information on seating, changes to the agenda, and/or written comments, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, Dover, Delaware 19901, Telephone: 302-674-2331.

Dated: November 11, 1977.

WINFRED H. MEIBOHM,
Associate Director, National
Marine Fisheries Service.

[FR Doc.77-33081 Filed 11-15-77;8:45 am]

[3810-70]

DEPARTMENT OF DEFENSE

Defense Investigative Service

PRIVACY ACT OF 1974

New System of Records

AGENCY: Defense Investigative Service, DoD.

ACTION: Notification of New System of Records.

SUMMARY: The Defense Investigative (DIS) proposes the creation of a new record subject to the Privacy Act. This new system is identified as V5-05, entitled: "Subject and Reference Locator Records." It is required to permit the DIS to retain information received from systems of records maintained by DoD installations. The record system notice is published in its entirety below.

DATES: This system shall become effective as proposed without further notice in 30 calendar days from the date of this publication unless comments are received on or before December 16, 1977, which would result in a contrary determination.

ADDRESS: Send comments to the system manager identified in the record system.

FOR FURTHER INFORMATION CONTACT:

Bernard J. O'Donnell, Director, Defense Investigative Service, 1000 Independence Avenue SW., Washington, D.C. 20314, 202-693-1427.

SUPPLEMENTARY INFORMATION: The DIS systems of records notices as prescribed by the Privacy Act have been published in the FEDERAL REGISTER (FR Doc 77-28255) on September 28, 1977, at 42 FR 51425. The DIS submitted this proposed new system of records on October 13, 1977, pursuant to the provisions of the Office of Management and Budget (OMB) Circular No. A-108, Transmittal Memorandum No. 1, dated September 30, 1975, and Transmittal Memorandum No. 3, dated May 17, 1976, which provide supplemental guidance to Federal agencies regarding the preparation and submission of reports of their intention to establish or alter systems of personal records as required by the Privacy Act of 1974, 5 U.S.C. 552a(o) (Pub. L. 93-579). This OMB Guidance was set forth in the FEDERAL REGISTER (40 FR 45877) on October 3, 1975.

MAURICE W. ROCHE,
Director, Correspondence and
Directives, OASD (Comptroller).

NOVEMBER 11, 1977.

V5-05

System name:

V5-05 Subject and Reference Locator Records.

System location:

A decentralized system maintained by Defense Investigative Service field units.

Categories of individuals covered by the system:

Military personnel and civilian employees of the Department of Defense.

Categories of records in the system:

Personnel, locator, assignment rosters and housing records furnished by Army, Navy, Air Force and Marine Corps posts, bases and stations in the U.S. and Puerto Rico and retained for periods longer than they are retained by originating activities. Examples of such records are Army Locator/Organizational Rosters (A0102.03a DAAG) and Army Housing Files (A1511.01a DAPE).

Authority for maintenance of the system:

10 U.S.C. 133, E.O. 10450, E.O. 10865, DoD Directive 5105.42.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records are maintained by DIS investigative elements for use in locating supervisors, coworkers and character references of subjects of DIS investigations and to identify or verify the locations and assignments of subjects when this information cannot be obtained through other local sources. Information from this system may be provided to law enforcement agencies for the same purposes.

Policies and practices for storing, retrieving, accessing, retaining, and disposition of records in the system:

Storage:

Paper listings in files or binders, computer products, microfiche, index cards.

Retrievability:

By name and other identifying data.

Safeguards:

Maintained in locked cabinets or locked rooms and only DIS personnel have access.

Retention and disposal:

Records are retained for a maximum of five years.

System manager(s) and address:

Director, Defense Investigative Service, 1000 Independence Ave. SW., Washington, D.C. 20314.

Notification procedures:

Requests should be addressed to the Assistant for Information, Defense Investigative Service, Washington, D.C. 20314. The full name, date and place of birth, social security account number, military service numbers are required and the name and location of the post, base, or station and periods of assignment or employment so that a thorough search can be conducted. A notarized statement verifying the identify of requesters is required. The Information Office, at room 2H043, 1000 Independence Ave. S.W., Washington, D.C. may be visited by personnel making inquiries regarding this system. A check of per-

sonal identification will be required of all visitors making such inquiries.

Record access procedures:

Access may be obtained through the Information Office at the address listed above.

Contesting record procedures:

DIS rules for access to records and for contesting and appealing initial determinations are contained in 32 CFR Part 298a and DIS Regulation 28-4.

Record source categories:

Military personnel offices, training schools and housing offices for installations.

Systems exempted from certain provisions of the act:

None.

[FR Doc.77-33100 Filed 11-15-77;8:45 am]

[3810-70]

**Office of the Secretary of Defense
DEFENSE SCIENCE BOARD TASK FORCE
ON ICBMs/M-X**

Advisory Committee Meeting

The Defense Science Board Task Force on ICBMs/M-X will meet in closed session 1-3 December 1977 at the Space and Missiles Systems Organization, USAF, Los Angeles, Calif.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on overall research and engineering policy and to provide long-range guidance to the Department of Defense in these areas.

The Task Force will evaluate alternative basing modes for U.S. land-based ICBMs. Concepts will be examined against survivability, cost and SALT verification considerations.

In accordance with section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Task Force meeting concerns matters listed in section 552b(c) of Title 5 of the United States Code, specifically subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

MAURICE W. ROCHE,
*Director, Correspondence and
Directives, OASD (Comptroller).*

NOVEMBER 10, 1977.

[FR Doc.77-32932 Filed 11-15-77;8:45 am]

[3810-70]

**DEFENSE SCIENCE BOARD TASK FORCE
ON COMMAND AND CONTROL SYSTEMS
MANAGEMENT**

Advisory Committee Meeting

The Defense Science Board Task Force on Command and Control Systems Management will meet in closed session on December 8, 1977 in the Office of the Deputy Under Secretary of Defense for

Research and Engineering (Communications, Command, Control, and Intelligence) at the Pentagon.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on overall research and engineering policy and to provide long-range guidance to the Department of Defense in these areas.

The Task Force is examining possible improvements in the process by which the Department of Defense plans for, develops and acquires Defense command and control systems.

In accordance with Section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Task Force meeting concerns matters listed in section 552b(c) of Title 5 of the United States Code, specifically subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

Dated: November 11, 1977.

MAURICE W. ROCHE,
*Director, Correspondence and
Directives, OASD (Comptroller).*

[FR Doc.77-33065 Filed 11-15-77;8:45 am]

[3810-70]

**DEFENSE SCIENCE BOARD TASK FORCE
ON NATIONAL/TACTICAL INTERFACE**

Advisory Committee Meeting

The Defense Science Board Task Force on National/Tactical Interface will meet in closed session on 1 and 2 December 1977 in the Office of the Deputy Under Secretary of Defense for Research and Engineering (Communications, Command, Control, and Intelligence) at the Pentagon.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on overall research and engineering policy and to provide long-range guidance to the Department of Defense in these areas.

The Task Force is providing analyses of the major issues concerning the interface between national and tactical intelligence systems and their potential for satisfying the requirements of tactical/theater military commanders and those of national authorities and agencies.

In accordance with Section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Task Force meeting concerns matters listed in section 552b(c) of Title 5 of the United States Code, specifically subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

MAURICE W. ROCHE,
*Director, Correspondence and
Directives, OASD (Comptroller).*

NOVEMBER 8, 1977.

[FR Doc.77-33066 Filed 11-15-77;8:45 am]

[6740-02]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP78-5]

CITY OF DES ARC, ARKANSAS, COMPLAINANT v. MISSISSIPPI RIVER TRANSMISSION CORP., RESPONDENT

Complaint and Application for Increased Human Needs Natural Gas Daily Allotment and for Relief From Overrun Penalty

NOVEMBER 9, 1977.

Take notice that on October 7, 1977, the City of Des Arc, Arkansas (Des Arc) filed a complaint and application requesting that the Commission direct Mississippi River Transmission Corp. (MRT) to increase Des Arc's current human needs natural gas allotment by at least 300 Mcf per day and to exempt Des Arc from the payment of overrun penalties.

Des Arc states that its present agreement with MRT supplies it with 725 Mcf of natural gas per day and 100 Mcf per day for interruptible loads. The City is required to pay a \$10 per Mcf overrun penalty on volumes taken in excess of the aforementioned amount. Des Arc contends that notwithstanding vigorous efforts to limit usage of natural gas only to human needs, it is unable to keep the consumption of natural gas within the bounds permissible pursuant to the aforesaid agreement and that it cannot afford to pay the overrun penalty charged by MRT for any excess takes.

Des Arc avers also that the additional gas volumes requested are for Priority 1 use and that there are no existing alternate fuel capabilities.

Any person wishing to be heard or to make any protest with reference to said complaint and application should file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426 on or before November 23, 1977, a petition to intervene or protest in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the complaint and application are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-33037 Filed 11-15-77;8:45 am]

[6740-02]

[Docket No. E-9002]

COMMONWEALTH EDISON CO.

Extension of Time

NOVEMBER 8, 1977.

On October 27, 1977, the Cities of Batavia, Geneva, Naperville, St. Charles, and Rock Falls, Ill. (Cities) filed an appeal with the Federal Energy Regulatory

Commission from the rulings of the Presiding Administrative Law Judge and a request for immediate stay of all procedural dates in the above captioned proceeding. The Cities are appealing the ruling and order of the Presiding Judge in refusing Cities' October 6, 1977 request for 90 additional days in which to review Commonwealth Edison Company's seven allocated and marginal cost studies. By order issued October 18, 1977, Presiding Administrative Law Judge Samuel Kanell set November 16, 1977, as the date for filing Staff and Intervenor Testimony.

In order to give the Commission adequate time to review the merits of Cities' appeal, an extension of time to and including November 28, 1977, is granted for the filing of Staff and Intervenor Testimony.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-33033 Filed 11-15-77;8:45 am]

[6740-02]

[Docket No. CP78-38]

COLUMBIA GAS TRANSMISSION CORP.

Application

NOVEMBER 8, 1977.

Take notice that on October 21, 1977, Columbia Gas Transmission Corp. (Applicant), 1700 MacCorekle Avenue SE., Charleston, W. Va. 25314, filed in Docket No. CP78-38 an application pursuant to section 7(c) of the Natural Gas Act and § 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) for a certificate of public convenience and necessity authorizing the transportation of up to 150 Mcf of natural gas per day for Brush Wellman, Inc. (Brush Wellman), and existing distribution customer of Penn Fuel Gas, Inc. (Penn Fuel), for the months of November through March of any of the two years in which the transportation is accomplished, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant requests authorization to transport the gas for Brush Wellman pursuant to a transportation agreement dated August 25, 1977, between the two parties. Applicant states that it would receive the natural gas into its Line 0-16 in Noble County, Ohio, at a point to be mutually agreed upon. The gas would be delivered to Texas Eastern Transmission Corp. (TETCO) by a reduction in Applicant's scheduled receipts from TETCO at an existing point of delivery near Uniontown, Fayette County, Pa. Applicant further states that TETCO would make the gas available to Penn Fuel for ultimate delivery to Brush Wellman's Shoemakersville, Pa., plant through existing distribution facilities.

The application states that Brush Wellman produces beryllium copper alloys which are essential to the electronics, communications and computer industries, and that Brush Wellman's beryllium refining operations are in Elmore, Ohio, but all of its finished beryl-

lium copper strip is produced at the Shoemakersville plant. The application further states that the production of high quality beryllium copper strip involves a number of complex processing operations under highly controlled pure atmosphere environments, for which alternate fuels are not feasible. These uses are said to be in Priority 2.

It is indicated that the gas to be transported by Applicant would be produced from oil and gas leases in Noble County, Ohio, in which Brush Wellman has an 80 percent working interest and David S. Townner, d.b.a. C.T. Productions (Townner), has a 20-percent working interest. It is further indicated that the natural gas to be transported hereunder is not available to the interstate market inasmuch as 80 percent of the working interest in the leases from which the gas would be produced is owned by Brush Wellman.

The transportation agreement provides that the subject gas is subject to diversion to Applicant on a temporary basis in emergency periods when, in Applicant's sole judgment, such gas is required for the protection of Priority 1 requirements on its system. Gas so diverted would be paid back as soon as practicable after the emergency period, the agreement provides.

Applicant states that it would charge Brush Wellman a transportation charge for this service its average system-wide unit storage and transmission costs exclusive of company-use and unaccounted-for gas, which current cost is currently 20.56 cents per Mcf.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 22, 1977, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its

own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-33034 Filed 11-15-77;8:45 am]

[6740-02]

[Docket No. ER78-42]

IOWA POWER AND LIGHT CO.

Rate Scheduling Filing

NOVEMBER 9, 1977.

Take notice that Iowa Power and Light Co. (Iowa Power), on November 3, 1977, tendered for filing proposed changes in its FERC Rate Schedule No. 45, which sets forth rates for wholesale electric service to Indianola Waterworks and Electric Light and Power Board of Trustees. Iowa Power indicates that the proposed changes have been agreed to by the parties and would increase revenues from jurisdictional sales and service by \$32,259 based on the twelve month period ending August 31, 1977.

Iowa Power requests that the Commission waive its prior notice requirements and accept Proposed Supplements Nos. 14 and 16 for filing with a retroactive effective date of August 26, 1976, and proposed Supplement No. 15 with a retroactive effective date of September 23, 1977.

According to Iowa Power, copies of this filing have been sent to the Iowa State Commerce Commission.

Any person desiring to be heard or to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 21, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-33038 Filed 11-15-77;8:45 am]

[6740-02]

[Docket Nos. G-17350; G-17351; CP69-346; CP69-347]

PACIFIC GAS TRANSMISSION CO.

Petition To Amend

NOVEMBER 8, 1977.

Take notice that on October 7, 1977, Pacific Gas Transmission Co. (Petitioner), 245 Market Street, San Francisco, Calif. 94105, filed in Docket Nos.

G-17350, G-17351, CP69-346 and CP69-347 a petition to amend orders issued in said dockets pursuant to section 7(c) of the Natural Gas Act by authorizing Petitioner to continue, on a best efforts basis to transport and deliver for the account of Northwest Pipeline Corp. (Northwest) from November 1, 1977, through October 31, 1978, such quantities of natural gas as may be imported by Northwest at the Kingsgate, British Columbia, Canada, import point in excess of the 151,731 Mcf per day which Northwest is authorized to import and which Petitioner is obligated to transport, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.¹

Petitioner states that is authorized to transport and deliver a maximum of 151,731 Mcf of gas per day and approximately 136,000 Mcf on an average day for Northwest from the Canadian border to points specified by Northwest along the pipeline in the States of Idaho, Washington, and Oregon, and that the gas transported is purchased by Northwest from Westcoast Transmission Co. Limited (Westcoast) at Kingsgate. It is stated that the cost of service for the transportation and delivery of such gas is covered by Petitioner's FERC Gas Tariff, Original Volume No. 1, Rate Schedule T-1.

It is stated that in the Fall of 1973 Northwest was advised by Westcoast that due to operational difficulties in certain of its gas supply sources, Westcoast would have to reduce deliveries of its contract quantities at the Sumas, Washington, delivery point and that this necessitated a request by Northwest for authorization to import additional volumes at Kingsgate for the purpose of offsetting a portion of the anticipated curtailment at Sumas. It is further stated that Northwest was authorized to import an additional 125,000 Mcf of gas on peak days and up to 30,000 Mcf on an average day at Kingsgate with said additional quantities being made available on a best efforts basis by Alberta and Southern Gas Co. Ltd. (Alberta and Southern) to Westcoast for sale to Northwest. It is indicated that to provide for the transportation of the gas made available by Alberta and Southern, Petitioner and Northwest first entered into a letter agreement, dated November 1, 1973, whereby Petitioner agreed to transport and deliver quantities of gas for Northwest in addition to those quantities which it was previously obligated to transport for Northwest, provided, however, that Petitioner would transport

only such additional quantities as Petitioner, in its sole discretion, was able to accept in its system each day in excess of those volumes necessary to meet its existing sale and transportation obligations. It is shown that Petitioner was not obligated to accept for transportation and delivery for Northwest quantities of gas in excess of 151,731 Mcf per day unless, in Petitioner's discretion, there was sufficient pipeline capacity and operating flexibility to transport and deliver the additional quantities of gas. This additional transportation of natural gas was authorized by the FPC in the subject dockets with the latest authorization expiring October 31, 1977.

It is indicated that Alberta and Southern has again agreed to make available to Westcoast for resale to Northwest that quantity of gas that Alberta and Southern may have available from its gas supply after it has complied with its existing gas sale contract obligations and which Petitioner is able to accept in its pipeline system each day. It is anticipated that such additional quantities would not exceed 125,000 Mcf on a peak day and not exceed 30,000 Mcf on an average day basis over the life of the contract which extends until October 31, 1978.

It is indicated that by letter agreement of July 15, 1977, Petitioner has again agreed to transport and deliver quantities of natural gas for Northwest in addition to those which it is now obligated to transport for Northwest under the same terms and conditions previously authorized by the FPC and that the capacity for said additional transportation service would be available only when there are mechanical difficulties in that portion of Petitioner's pipeline system south of the Stanfield Emergency Tap or in Pacific Gas and Electric Co.'s (PG and E) intrastate pipeline system such that deliver capability in that portion of the pipeline system must be reduced. It is anticipated that the principal delivery point for the proposed additional transportation volumes would be at the Stanfield Emergency Tap, with a secondary point of delivery being at the Spokane Tap.

It is indicated that an agreement has been entered into by Petitioner and Northwest for the charges to be paid by Northwest for the proposed additional transportation service. It is stated that all natural gas tendered to Petitioner at Kingsgate by Westcoast for Northwest's account in excess of 151,731 Mcf per day, and which Petitioner in its sole discretion accepts, shall be deemed to be gas transported and delivered pursuant to the provisions of the July 15, 1977, letter agreement and that the charges for the transportation and delivery of the additional volumes would be determined in accordance with the cost of service and cost allocation procedures set forth in Rate Schedule T-1 of Petitioner's FERC Gas Tariff, Original Volume No. 1 It is further stated that in applying the provisions of Rate Schedule T-1, on days when gas is transported and delivered pursuant to said letter agreement, the

¹ A related petition was filed with the Federal Power Commission (FPC) on September 21, 1977, by Northwest for authorization under section 3 of the Natural Gas Act to continue the importation of additional quantities of natural gas at Kingsgate through October 31, 1978. That proceeding has been transferred by the Federal Energy Regulatory Commission (FERC) to the Secretary of Energy by joint rule effective October 1, 1977, promulgated by the Secretary and FERC (42 FR 55534).

maximum daily demand of Northwest to be utilized for the allocation provided by paragraph (1) of § 3.3 of said rate schedule would not exceed 151,731 Mcf.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 25, 1977, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-33035 Filed 11-15-77;8:45 am]

[6740-02]

[Docket No. CP77-224]

PANHANDLE EASTERN PIPE LINE CO.

Petition To Amend

NOVEMBER 8, 1977.

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Pub. L. 95-91, 91 Stat. 565 (August 4, 1977) and Executive Order No. 12009, 42 FR 46267 (September 15, 1977), the Federal Power Commission ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on October 1, 1977.

The "savings provisions" of section 705(b) of the DOE Act provided that proceedings pending before the FPC on the date the DOE Act takes effect shall not be affected and that orders shall be issued in such proceedings as if the DOE Act had not been enacted. All such proceedings shall be continued and further actions shall be taken by the appropriate component of DOE now responsible for the function under the DOE Act and regulations promulgated thereunder. The functions which are the subject of this proceeding were specifically transferred to the FERC by section 402(a) (1) of the DOE Act.

The joint regulation adopted on October 1, 1977, by the Secretary and the FERC entitled "Transfer of Proceedings to the Secretary of Energy and the FERC," 10 CFR ----, provided that this proceeding would be continued before the FERC. The FERC takes action in this proceeding in accordance with the above mentioned authorities.

Take notice that on October 28, 1977 Panhandle Eastern Pipe Line Co. (Petitioner), P.O. Box 1642, Houston, Tex. 77001, filed in Docket No. CP77-224 a petition to amend the order of July 19, 1977 (57 FPC ----) issued by the Federal Power Commission (FPC) in the instant docket pursuant to section 7(c) of the Natural Gas Act and § 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) so as to authorize Petitioner to provide transportation for General Motors Corp. (General Motors) pursuant to a new transportation agreement dated September 23, 1977, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is indicated that pursuant to the FPC order of July 19, 1977, Petitioner was authorized to transport natural gas for General Motors under an agreement between Petitioner and General Motors dated February 10, 1977. Petitioner states that the authorized transportation was not commenced as a result of short-term improvements in the gas supply available to General Motors from its suppliers, and that this short-term improvement in available supplies was primarily a result of the lessening of the intensity of the unprecedented cold weather experienced during the winter of 1976-77. Petitioner further states that it has now entered into a transportation agreement dated September 23, 1977, with General Motors which replaces and supersedes the said agreement dated February 10, 1977. Petitioner indicates that pursuant to the new agreement dated September 23, 1977 it would transport and deliver gas (1) to Indiana Gas Company (Indiana Gas) for General Motors' account; (2) to the General Motors plants in Danville, Ill. and Defiance, Ohio; and (3) to Michigan, Wisconsin for redelivery through Wisconsin Power and Light Co. to General Motors at its Janesville, Wis. plant.

The petition states that General Motors has made arrangements to purchase and has purchased for high priority use, certain gas supplies which are unavailable to the interstate market, from Magic Circle Gas Corp. (Magic Circle) in Oklahoma at \$1.85 per Mcf at 14.65 psia plus a 50.0 cents gathering charge, and desires to have such gas transported and delivered to the delivery points listed above. Petitioner would transport on a firm basis up to 3,600 Mcf per day and on a best efforts basis up to an additional 2,400 Mcf of natural gas per day, it is indicated. Petitioner states that it would receive the gas into its system at a measuring station located in Woods County, and would redeliver the firm gas as follows: (1) 1,600 Mcf per day, less fuel, at the Michigan Wisconsin redelivery point; (2) 1,000 Mcf per day, less fuel, at the Indiana Gas redelivery point; (3) 500 Mcf per day, less fuel, at the Danville, Illinois redelivery point; and (4) 500 Mcf per day, less fuel, at the Defiance, Ohio redelivery point.

It is stated that Petitioner would charge General Motors a monthly transportation charge of \$23,868 for the 3,600 Mcf per day firm volumes transported, and that the volumes in excess of the firm volumes would be transported at

the rate of 21.81 cents per Mcf. Additionally Petitioner would retain volumes of gas as fuel reimbursement based upon 7 percent of the volumes to be redelivered at Danville, Illinois; 8 percent of the volumes to be redelivered to Indiana Gas; and 9 percent of the volumes to be redelivered at Defiance, Ohio and to Michigan Wisconsin, it is said.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 23, 1977, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-33036 Filed 11-15-77;8:45 am]

[6740-02]

[Docket No. ER78-40]

PENNSYLVANIA ELECTRIC CO.

Filing of Revised Schedules

NOVEMBER 9, 1977.

Take notice that on November 1, 1977, Pennsylvania Electric Co. (Penn) tendered for filing revised schedules to the existing agreement among Penn, Metropolitan Edison Company, West Penn Power Company and the Potomac Edison Co., dated June 20, 1968.

Penn states that the revised schedules provide for ownership change of facilities formerly owned by the Potomac Edison Co. of Pennsylvania now assigned to the Potomac Edison Co., and for the establishment of Potter Interconnection. Penn indicates that the new interconnection point results from West Penn Power Co. tapping Penn's Farmers Valley-Mansfield 115kV line with a single circuit, three-phase transmission line, 0.05 miles in length, to West Penn Power Co.'s Potter Substation.

It is requested that the Commission waive its notice requirements so that the revised schedules changing the ownership of certain facilities and establishing the Potter Interconnection may be assigned an effective date of December 1, 1977.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before November

21, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-33039 Filed 11-15-77;8:45 am]

[6740-02]

[Docket No. ER78-43]

SOUTHERN CALIFORNIA EDISON CO.

Cancellation

NOVEMBER 9, 1977.

Take notice that Southern California Edison Co. (Company) on November 3, 1977, tendered for filing a Notice of Cancellation of Rate Schedule FPC No. 87, which went into effect March 7, 1977. Company indicates that this rate schedule is to be cancelled as of November 30, 1977, and that notice of this cancellation has been served upon Pacific Gas and Electric Co. and the Public Utilities Commission of the State of California.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 21, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-33040 Filed 11-15-77;8:45 am]

[3128-01]

Office of the Secretary

DECISIONS AND ORDERS BY THE OFFICE OF ADMINISTRATIVE REVIEW

November 2 Through November 8, 1977

Notice is hereby given that during the period November 2 through November 8, 1977, the Proposed Decisions and Orders which are summarized below were issued by the Office of Administrative Review of the Economic Regulatory Administration of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Amendments to the DOE's procedural regulations, 10 CFR, Part 205, were issued in proposed form on September 14, 1977 (42 FR 47210 (September 20, 1977)), and are currently being implemented on an interim basis. Under the new pro-

cedures any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of the new procedures, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The new procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Administrative Review, room B-120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.s.t., except federal holidays.

MELVIN GOLDSTEIN,
Acting Director,
Office of Administrative Review.

NOVEMBER 10, 1977.

PROPOSED DECISIONS AND ORDERS

Douglas Edwards; Morgan City, La.; FEE-4272; Crude oil

Douglas Edwards filed an Application for Exception from the provisions of 10 CFR, Part 210, Subpart D. The exception request, if granted, would permit Edwards to sell the crude oil which is produced from the C&C Meyers Lease located in Golden Meadow, La. at exempt prices. On November 4, 1977, the DOE issued a Proposed Decision and Order which determined that the exception request be denied.

Jim Ellis; Tyler, Tex.; FEE-4071; Crude oil producer

Jim Ellis filed an Application for Exception from the provisions of 10 CFR 212.73. The exception request, if granted, would permit Ellis to sell the crude oil which is produced from the Nay Perry Lease at upper tier ceiling prices. On November 4, 1977, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

Meason Operating Co.; Wilkinson County, Miss.; FEE-4799; Crude oil producer

Meason Operating Company filed an Application for Exception from the provisions of 10 CFR 212.73. The exception request, if granted, would permit Meason Operating Co. to sell its crude oil production at upper tier ceiling prices. On November 8, 1977, the DOE issued a Proposed Decision and Order which determined that the Meason exception request be granted.

M. J. Mitchell; Dallas, Tex.; FXE-4656; Crude oil

M. J. Mitchell filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if

granted, would result in the issuance of an Order permitting Mitchell to sell 100 percent of his working and royalty interest shares of the crude oil produced from the Pickrel Ranch Minnefusa Sand Unit in the Pickrel Ranch Field, Campbell County, Wyo. at upper tier ceiling prices. On November 4, 1977, the DOE issued a Proposed Decision and Order which determined that Mitchell's exception request be granted for the period between October 1, 1977 and March 31, 1978.

Osage Oil & Transportation, Inc.; Cleveland, Okla.; FEE-4771; Reporting Requirements

Osage Oil & Transportation, Inc. filed an Application for Exception in which it requested that it be permitted to file Schedule

C of Form P-124-M-1 ("Domestic Crude Oil Purchaser's Report") on an annual instead of on a monthly basis. On November 4, 1977, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

REQUEST FOR EXCEPTION RECEIVED FROM A
NATURAL GAS PROCESSOR

The Office of Administrative Review of the Department of Energy has issued a Proposed Decision and Order granting exception relief from the provisions of 10 CFR 212.165 to the natural gas processor listed below. The proposed exception relief permits the firm involved to increase the prices of the production of the gas plant listed below to reflect certain non-product cost increases.

Company	Case No.	Plant	Location	Amount of price increase (dollar/gallon)
Union Oil Co. of Calif.	FXE-4490	Cow Island	Vermilion Parish, La.	.0087

[FR Doc.77-33058 Filed 11-15-77;8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION
AGENCY

[FRL 816-6]

TECHNOLOGY ASSESSMENT AND POLLUTION
CONTROL ADVISORY COMMITTEE

Open Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Technology Assessment and Pollution Control Advisory Board will be held beginning at 9:00 a.m., December 16 and 17, 1977, in Room 3906, U.S. Environmental Protection Agency, Waterside Mall, 401 M Street, SW., Washington, D.C.

This meeting is a regularly scheduled meeting of the Committee. The Committee will be briefed on selected Agency activities and will discuss long range and anticipatory environmental research needs, peer review of research in pollution control technology, future committee activities, and member items of interest.

The meeting is open to the public. Any member of the public wishing to attend or submit a paper should contact Lloyd T. Taylor, Executive Secretary, Technology Assessment and Pollution Control Advisory Committee, 703-557-7720, by December 9, 1977.

RICHARD M. DOWD,
Staff Director,
Science Advisory Board.

NOVEMBER 11, 1977.

[FR Doc.77-33158 Filed 11-15-77;8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS
COMMISSION

RADIO TECHNICAL COMMISSION FOR
MARINE SERVICES

Meetings

In accordance with Pub. L. 92-463, "Federal Advisory Committee Act," the

schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Special Committee No. 70, "Minimum Performance Standards (MPS)—Marine Loran-C Receiving Equipment." Technical Specs Working Group.

Notice of 10th meeting, Thursday, December 1, 1977—10 a.m. (all-day meeting), Conference Room (second floor), U.S. Coast Guard Marine Inspection Office, Battery Park Building, Battery Park at South Ferry, New York, N.Y. Full-day meeting, November 30, 10:00 a.m., same location as December 1 meeting.

AGENDA

Attendance each day is encouraged since at these meetings the draft of the MPS is to be reviewed and considered for final approval.

1. Call to Order; Chairman's Report.
2. Confirmation of Secretary; Adoption of Agenda.
3. Acceptance of SC-70 Summary Records.
4. Reports on Work Assignments.
5. Approval of Receiver Specifications (Paper 205-77/SC 70-34).
6. Other Business.
7. Confirmation of final meeting date. (December 7-8, 1977).

Captain Alfred E. Fiore, Chairman, SC-70, U.S. Merchant Marine Academy, Kings Point, N.Y. 11024. Phone: 516-482-8200.

SC-65

SHIP RADAR, WASHINGTON, D.C.

THURSDAY, DECEMBER 1, 1977

Members of Special Committee No. 65, "Ship Radar."

Notice of 60th meeting, Thursday, December 1, 1977—1:30 p.m., Conference Room 8210, 2025 M Street NW., Washington, D.C. Agenda for SC-65 Committee meeting appears later in this notice. SC-65 Working Group schedule. To be held at 2025 M Street NW., Washington, D.C.

Working Group, Reliability; room 8210; date, December 1; time, 9:30 a.m.

If other Working Group meetings are scheduled, Group Members will be notified.

NOTE.—Meeting room location is subject to change. Check at room 8210 first.

AGENDA

1. Call to Order; Chairman's Report; Adoption of Agenda.

2. Acceptance of SC-65 Summary Records; Appointment of Rapporteur. November 10, 1977; Paper 214-77/SC 65-250.

3. Progress Report of Reliability Working Group.

4. Mini-meeting of: (a) CAWG on Evaluation and (b) REWG on Reliability.

5. Other business.

6. Establishment of next meeting date (proposed December 15, 1977).

Irvin Hurwitz, Chairman, SC-65, Federal Communications Commission, Washington, D.C. 20554. Phone: 202-632-7197.

Special Committee No. 70, "Minimum Performance Standards (MPS)—Marine Loran-C Receiving Equipment."

Notice of 11th meeting, Wednesday, December 7, and Thursday, December 8, 1977—10 a.m. each day (all-day meetings), Conference Room (second floor), U.S. Coast Guard Marine Inspection Office, Battery Park Building, Battery Park at South Ferry, New York, N.Y.

AGENDA

1. Call to Order; Chairman's Report.
2. Confirmation of Secretary; Adoption of Agenda.

3. Acceptance of SC-70 Summary Records.

4. Reports on Work Assignments.

5. Final Approval of Receiver Specifications.

6. Other Business.

7. Chairman's closing remarks.

Captain Alfred E. Fiore, Chairman, SC-70, U.S. Merchant Marine Academy, Kings Point, N.Y. 11024. Phone: 516-482-8200.

SC-65

SHIP RADAR, WASHINGTON, D.C.

THURSDAY, DECEMBER 15, 1977

Members of Special Committee No. 65, "Ship Radar."

Notice of 61st meeting, Thursday, December 15, 1977—1:30 p.m., Conference Room 8210, 2025 M Street NW., Washington, D.C. Agenda for SC-65 Committee meeting appears later in this notice. SC-65 Working Group schedule. To be held at 2025 M Street NW., Washington, D.C.

Working Group, Reliability; room 8210; date, December 15; time 9:30 a.m.

If other Working Group meetings are scheduled, Group Members will be notified.

NOTE.—Meeting Room location is subject to change. Check at room 8210 first.

AGENDA

1. Call to Order; Chairman's Report; Adoption of Agenda.

2. Acceptance of SC-65 Summary Records; Appointment of Rapporteur. December 1, 1977.

3. Progress Report of Reliability Working Group.

4. Mini-meeting of: (a) CAWG on Evaluation and (b) REWG on Reliability.

5. Other business.

6. Establishment of next meeting date.

Irvin Hurwitz, Chairman, SC-65, Federal Communications Commission, Washington, D.C. 20554. Phone: 202-632-7197.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman

or the RTCM Secretariat (phone: 202-632-6490).

FEDERAL COMMUNICATIONS
COMMISSION,
WILLIAM J. TRICARICO,
Acting Secretary.

[FR Doc.77-33114 Filed 11-15-77;8:45 am]

[6210-01]

FEDERAL RESERVE SYSTEM
PETITION OF INVESTMENT COMPANY
INSTITUTE

Reconsideration and Rescission of a Regulation of the Board, 12 CFR § 225.4(a)(5)(ii)

On January 29, 1972, the Board promulgated a regulation, 12 CFR § 225.4(a)(5)(ii), and interpretive ruling, 12 CFR § 225.125, by which it determined that the activity of serving as an investment advisor, as defined in § 2(a)(20) of the Investment Company Act of 1940, to an investment company registered under that Act is closely related to banking and thus a permissible activity for bank holding companies to engage in, subject to the procedures set out in the Board's Regulation Y, 12 CFR § 225.37 FR 1463-1464 (1972). Notice of the rulemaking had been duly given in the FEDERAL REGISTER on August 25, 1971, 36 FEDERAL REGISTER 16695, and on September 1, 1971, 36 FEDERAL REGISTER 17514; and a public hearing on the matter was held on November 12, 1971.

On December 12, 1973, the Investment Company Institute ("ICI"), Washington, D.C., the national association for the American mutual fund industry, filed with the Board a petition for reconsideration and rescission of 12 CFR § 225.4(a)(5)(ii). The Board duly considered ICI's petition and, by letter dated March 8, 1974, the Board denied the petition and responded in detail to the arguments that ICI had raised. ICI thereafter sought judicial review of the Board's order denying its petition for reconsideration. However, the United States District Court for the District of Columbia dismissed ICI's petition for review in an order dated July 30, 1975, 398 F. Supp. 725; and the Court of Appeals subsequently affirmed the District Court's order of dismissal for lack of subject matter jurisdiction, 551 F. 2d 1270 (D.C. Cir. 1977). Nevertheless, the Court of Appeals, having determined that the state of the law of jurisdiction was not clear at the time ICI filed its previous petition, determined that ICI should have the opportunity to file a second petition for reconsideration and rescission of the Board's regulation.

Pursuant to the Court's order ICI has filed a second petition for reconsideration and rescission with the Board. The petition is accompanied by a memorandum containing ICI's legal arguments and by affidavits setting out facts in support of the petition. In addition, ICI has requested that the Board convene a formal hearing pursuant to the Administrative Procedure Act and that ICI's most recent

petition be determined on the record of such a hearing. ICI has not protested or filed comments with respect to any application by a bank holding company for permission to engage in the activity described in 12 CFR § 225.4(a)(5)(ii).

The additional facts presented by ICI with the present petition are to the same effect as the facts presented with ICI's previous petition for reconsideration: a number of banking organizations are giving investment advice to investment companies registered under the Investment Company Act of 1940. However, as with ICI's previous petition to the Board, most of the investment advisors identified by ICI are commercial banks, as distinguished from bank holding companies, which did not seek the Board's prior approval pursuant to 12 U.S.C. § 1843(c)(8) and 12 CFR § 225 before commencing the subject investment advisory activities.¹ The Board's regulation governs the investment advisory activities of bank holding companies and their nonbanking subsidiaries. The conduct of commercial banks in this area is subject to administrative sanction at the Federal level by the Comptroller of the Currency (as to national banks) and the Board (as to state member banks); but such supervision is exercised without regard to the Bank Holding Company Act or the challenged regulation. ICI and courts before which ICI has argued have recognized these distinctions in *Investment Company Institute v. Camp*, 401 U.S. 617 (1971) and in *New York Stock Exchange and Investment Company Institute v. Robert Bloom*, No. 76-1235 (D.C. Cir., decided July 19, 1977). Although the national banking organizations in those cases, whose activities were alleged to be in violation of the Glass-Steagall Act, were holding company subsidiaries, it is clear that the courts as well as ICI viewed the Comptroller as the appropriate regulatory authority to consider the Glass-Steagall Act questions. Nevertheless, ICI asks the Board to rescind its regulation although the activity being complained of is being conducted chiefly by banks and the Board was not asked to approve, and in fact did not approve the activity pursuant to Regulation Y.²

¹ All seven of the open-end funds identified on page 12, footnote 6 of ICI's Memorandum are advised by banks; and the Board has no record of the filing of any application under the Bank Holding Company Act relating to these activities. In addition, 8 of 12 funds identified on page 7, footnote 2 of ICI's Memorandum are advised by banks or subsidiaries of banks.

² ICI claims that the Board's previously expressed position that the challenged regulation and interpretation do not cover the activities of commercial banks "involves, as a practical matter, an illusory distinction." However, as the United States Court of Appeals in the District of Columbia Circuit stated with respect to the Board's determination that a certain other activity is closely related to banking, "[t]he order under review does not itself authorize any particular bank holding company to engage in courier activities." *National Courier Association v. Board of Governors*, 516 F. 2d 1229, 1233 n. 4 (D.C. Cir. 1975). To give investment advice

ICI's most recent petition also suggests that the Board consider the circumstances surrounding the formation of certain open-end funds which purport to be sponsored by brokerage organizations and to receive only investment advice from various bank affiliates of bank holding companies; the circumstances surrounding the organization and subsequent open-end conversion of Advance Investors Corporation; the feasibility as a commercial matter that investment funds can and will select banks as advisors without bank participation in the creation of the fund; and the desirability of regulating and prohibiting certain relationships between bank holding company affiliates and firms which sponsor or administer funds, such as the placement of brokerage, extensions of credit, and business referrals.

In presenting the above suggestions of topics to be considered by the Board, ICI does not raise issues of material fact that are appropriate for resolution by the Board in this proceeding. ICI notes that at least seven open-end investment companies created since ICI's previous petition are advised by commercial banks and that such banks have undertaken to restrict their activities with respect to such funds to the giving of investment advice. But ICI, which suggests the banks may have illegally sponsored these funds and indicates the banks place brokerage with the nominal sponsors, does not indicate that these activities are being engaged in pursuant to the Board regulation here challenged by ICI. All seven investment advisors named are banks, and no applications for prior approval of these activities were filed with or considered by the Board under § 4(c)(8) of the Bank Holding Company Act and the related regulations.³

ICI also reiterates its previous position that bank holding companies should not

pursuant to the challenged regulation, a company must file an application pursuant to 12 CFR § 225. That the commercial bank advisors identified by ICI have failed to do so merely evidences the fact that their activities are not subject to the regulation and are not being engaged in pursuant thereto. The fact that some of the investment funds thus advised cite the Board's interpretation in their securities registration statements may indicate an acceptance of the Board's distinction between open-end and closed-end companies for purposes of determining whether affiliated investment companies "engaged principally" or "primarily engaged" in the securities business and thus whether sections 20 and 32 of the Glass-Steagall Act were violated. The logic of ICI's position would require approval under the Bank Holding Company Act of almost all corporate activities carried out by banks directly. This Congress clearly did not intend.

³ Although some of the named banks are state member banks, the Board has not been asked by ICI to determine whether such banks are violating the Glass-Steagall Act through the named activities, but only whether their activities can be viewed as closely related to banking under a statute, section 4(c)(8) of the Bank Holding Company Act, on which they have not relied in commencing these activities.

be permitted to sponsor closed-end funds. However, in support of its contention ICI indicates that a certain closed-end fund recently converted itself into an open-end fund. ICI argues that if the bank sponsor intended to open-end the fund from the day the fund was created, sections 16 and 21 would have been violated; but ICI admits "we presently have no reason to suspect that the foregoing is what actually happened."

As set forth more fully below, the Board has determined that a formal hearing is not required or appropriate in the present case. Neither the Administrative Procedure Act, 5 U.S.C. § 551, et seq., nor the Bank Holding Company Act, 12 U.S.C. § 1841 et seq., requires that the Board's rulemaking proceedings be governed by formal procedures such as those used in judicial trials and administrative adjudications. In fact the latter statute has been amended by Congress to provide that the Board's proceedings need not be held "on the record"; and this amendment has the effect of preserving the Board's ability to use informal rulemaking procedures. See, e.g., *Independent Bankers Association of Georgia v. Board of Governors*, 516 F.2d 1206 (D.C. Cir. 1975).

The Board has also determined that informal hearing procedures, like those used by the Board when it considered adoption of the challenged regulation in 1971, are not required for full and fair disposition of ICI's most recent petition for reconsideration and rescission of 12 CFR § 225.4(a) (5) (ii). ICI fully participated in the hearing held in this matter prior to adoption of the regulation. The question raised by ICI—whether the challenged regulation and interpretive ruling allow bank holding companies to violate sections 16 and 21 of the Glass-Steagall Act, 12 U.S.C. §§ 24 and 378—is a legal question and was considered in the Board's deliberations leading to adoption of the regulation and in response to ICI's previous petition for reconsideration. Finally ICI has presented no new facts which raise issues of material fact for resolution by the Board; and as discussed hereinafter the Board has concluded that the factual inquiries suggested by ICI are best left for later adjudicatory proceedings which may, depending on the circumstances, require use of formal or informal hearing procedures. Such adjudicatory proceedings must be held before any bank holding company may engage in the activity described by 12 CFR § 225.4(a) (5) (ii). See generally 12 CFR § 225.4.

In support of its request for a hearing, ICI cites several judicial decisions in which courts of appeals have determined that hearings were appropriate on applications by bank holding companies for permission to engage in activities previously determined by the Board to be closely related to banking. *Alabama Association of Insurance Agents v. Board of Governors*, 533 F.2d 224 (5th Cir., 1976); *Independent Bankers Association of Georgia v. Board of Governors*, 516 F.2d 1206 (D.C. Cir. 1975). ICI argues that it would be entitled to a hearing were it

opposing such an application, and that it should have a hearing in this case because the Court of Appeals recognized that ICI's interest in the Board's regulation extends beyond the facts of any particular application. However, these cases and ICI's argument appear to support the Board's conclusion that ICI's proposed factual inquiries should be resolved in later adjudicatory proceedings.

ICI apparently recognizes that the Board must determine two questions with respect to section 4(c) (8) and that the second question, the "public benefits" question, is the one that creates the need for a factual inquiry. Memorandum in Support of Petition for Reconsideration, pp. 32-33. In discussing its proposed factual inquiries, ICI states:

"We submit, therefore, that Section 225.4 (a) (5) (ii) requires reconsideration not only to prevent the direct sponsorship of closed-end funds in violation of the Glass-Steagall Act, as we have previously contended, but also to avoid another problem: that is, situations involving open-end funds which may not on their face demonstrate Glass-Steagall violations, but which depending on the facts, may indeed involve violations. In any event, these situations also present the possibility of a clear conflict with the Board's responsibilities under the Bank Holding Company Act to avoid 'undue concentration of resources, decreased or unfair competition [or] conflicts of interest * * *' 12 U.S.C. § 1843 (c) (8)." [Emphasis supplied.]

Memorandum, pp. 20-21. It is thus clear that ICI is asking the Board to apply the "public benefits" test of section 4(c) (8) in the context of an industry-wide rulemaking. ICI's allegations, however, go to the facts of particular operations by individual companies and how they bear on the public benefits aspects. See *National Courier Association v. Board of Governors*, 516 F.2d at 1233. Moreover, it is not clear whether the banking organizations identified in ICI's most recent petition would intervene in any hearing convened by the Board at this time, since most such organizations are not engaging in investment advisory activities pursuant to 12 CFR § 225.4(a) (5) (ii); and it is not apparent how the factual inquiries proposed by ICI can be pursued absent such intervention. None of these organizations intervened in the lawsuit that preceded ICI's filing of the present petition. The present petition for reconsideration of a rule does not involve "resolution of conflicting private claims to a valuable privilege." *Action for Children's Television v. United States*, No. 74-2006 (D.C. Cir., decided July 1, 1977). For the foregoing reasons, the request for a hearing should be, and it hereby is, denied.⁴

⁴ICI indicates it is aware of the Board's weekly press release (Form H-2) and FEDERAL REGISTER notice summarizing each action taken and application received by the Board during the week covered by these notices. See above Memorandum in Support of Petition for Reconsideration, p. 10. ICI may challenge any future application to the Board for permission to advise open-end or closed-end funds by responding to such notices or to the FEDERAL REGISTER or publication notices given on each such application to the Board. If any activity previously

The next question presented for the Board's consideration is whether the Board should reconsider and rescind 12 CFR § 225.4(a) (5) (ii). ICI argues that the challenged regulation and interpretation authorize bank holding companies to violate sections 16 and 21 of the Glass-Steagall Act. Among other things, ICI claims that bank holding companies and their banking subsidiaries are single entities, and that sections 16 and 21 are violated by the activities of such companies engaged in pursuant to the Board's regulations.

In its previous orders in this matter—37 FEDERAL REGISTER 1463-1464; letter of March 8, 1974, from the Board's Secretary to ICI's counsel—the Board dealt with ICI's contentions on the merits in considerable detail. After due consideration of the present petition and of those previous orders, and of the entire record that has been made in this proceeding, the Board believes its previous orders were legally and factually correct. Accordingly, the Board hereby reaffirms its previous orders in this matter and incorporates both orders by reference herein.

In what appears to be ICI's principal attempt to present "any relevant information which is developed in the interim" (since the Board's consideration of ICI's first petition for reconsideration), as suggested by the Court of Appeals, ICI alludes to information which suggests banks acting as investment advisors regularly place brokerage transactions with the brokerage houses which have been designated as the sponsors of the funds that they advise (Memorandum, pages 19-22). ICI then proceeds to argue that this may involve "undue concentration of resources, decreased or unfair competition [or] conflicts of interest * * *" which are factors that the Board must consider under section 4(c) (8). ICI thereupon states "If the Board were to prohibit or restrict the placement of brokerage by a bank holding company subsidiary with a firm which sponsors a mutual fund for which the subsidiary acts as investment advisor and otherwise regulate or prohibit transactions between the two entities, it would be possible to be far more confident that the selection and retention of banks as investment advisors to funds they allegedly do not 'sponsor' will be based upon proper competitive considerations."

In the Board's view ICI's argument in this regard is without merit. In the passage just cited, it would appear that ICI is admitting that the new open-end funds are sponsored and controlled by the brokerage firms, rather than the

authorized by the Board has led to Glass-Steagall Act violations in spite of the safeguards and restrictions in 12 C.F.R. §§ 225.125, ICI may petition the Board to institute cease and desist proceedings pursuant to 12 U.S.C. § 1818, or may refer alleged criminal violations of the Act directly to the appropriate United States Attorney, or may simply itself sue the offending banking organization. *New York Stock Exchange and Investment Company Institute v. Robert Bloom*, No. 76-1235 (D.C. Cir., decided July 19, 1977).

bank advisors.⁶ Furthermore, the obligations of a fund's directors with respect to selection of its investment advisor are clearly spelled out in the Investment Company Act of 1940 and Congress recently considered at length and enacted legislation dealing with the question of selection of brokerage firms by money managers as part of the Securities Acts Amendments of 1975 (15 U.S.C. 28(e) (1)); Sen. Rep. 94-75, pp. 69-71). Accordingly, the Board believes that this subject matter is fully covered by existing law and that it would serve no useful purpose to consider the matter at this time in discharging its responsibilities under the Bank Holding Company Act.

The Board has placed conditions upon the investment advisory activities of bank holding companies and their non-banking subsidiaries designed to prevent the occurrence of Glass-Steagall Act violations as a result of such activities. 12 CFR § 225.125. For example, bank holding companies may advise but may not sponsor open-end investment companies because such companies may be said to be "engaged principally" or "primarily engaged" in the securities business through the issuance of securities on a more or less regular basis. Moreover, bank holding companies may affiliate with closed-end investment companies only "as long as such companies are not primarily or frequently engaged in the issuance, sale and distribution of securities. This is consistent with—and even stricter than—the provision of section 20 of the Glass-Steagall Act which merely prohibits affiliations with a member bank where a company is "engaged principally" in securities activities.

In addition, the Board stated in its interpretive ruling that the provisions of the Glass-Steagall Act are not affected by the Bank Holding Company Act Amendments of 1970 (84 Stat. 1760), and that the Board's regulation and the interpretive ruling are consistent "with the spirit and purpose of the Glass-Steagall Act * * *."

It is clear from the legislative history of the Bank Holding Company Act Amendments of 1970 (84 Stat. 1760) that the Glass-Steagall Act provisions were not intended to be affected thereby. Accordingly, the Board regards the Glass-Steagall Act provisions and the Board's prior interpretations thereof as applicable to a holding company's activities as an investment advisor. Consistently with the spirit and purpose of the Glass-Steagall Act, this interpretation applies to all bank holding companies registered under the Bank Holding Company Act irrespective of

⁶In addition, on page 20 of its Memorandum, ICI also states "Thus, while the ranks of directors and officers of the new open-end funds may be dominated by personnel associated with the brokerage house and not with the bank, some doubt arises as to the practical likelihood that the decision to retain the bank as investment advisor to the fund will in all instances be made objectively on the basis of capabilities and performance, without consideration of the substantial benefits which the bank is in a position to confer upon the brokerage house."

whether they have subsidiaries that are member banks.

12 CFR 225.125(b). The Board also stated that bank holding companies may not undertake any activity prohibited by the Glass-Steagall Act:

The Board intends that a bank holding company may exercise all functions that are permitted to be exercised by an "investment advisor" under the Investment Company Act of 1940, except to the extent limited by the Glass-Steagall Act provisions, as described, in part, hereinafter.

12 CFR 225.125(d). Pursuant to 12 U.S.C. § 1818, the Board may issue cease and desist orders to restrain violations of law by bank holding companies, including violations of the Glass-Steagall Act. The Board is prepared to use this authority where it appears that a bank holding company has violated or is violating 12 CFR § 225.4(a) (5) (ii) or any of the limitations on investment advisory activities specified in 12 CFR § 225.125. If ICI is aware of any such violations of law which merit investigation by the Board or the institution of cease and desist proceedings pursuant to 12 U.S.C. § 1818, it should advise the Board accordingly. In addition, ICI may seek intervention in any future proceeding arising out of an application by a bank holding company for permission to give investment advice pursuant to 12 CFR § 225.4(a) (5) (ii), if it believes the applicant bank holding company may violate the Glass-Steagall Act. ICI thus has the same remedies available to it in this case as it has with respect to the bank investment service activities that it challenged in *New York Stock Exchange and Investment Company Institute v. Robert Bloom*, No. 76-1235 (D.C. Cir., decided July 19, 1977), as well as the additional remedy of being able to seek intervention in future adjudicatory proceedings under the challenged regulation.

For the foregoing reasons, ICI's petition for reconsideration and rescission of 12 CFR § 225.4(a) (5) (ii) should be, and it hereby is, denied.

By order of the Board of Governors, effective August 31, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-33137 Filed 11-15-77;8:45 am]

[6210-01]

CITIZENS BANCORPORATION

Acquisition of Bank

Citizens Bancorporation, Sheboygan, Wisconsin, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of North Shore Bank, Shorewood, Wisconsin. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

*Voting for this action: Vice Chairman Gardner, and Governors Wallch, Jackson, Partee and Lilly. Absent and not voting: Chairman Burns and Governor Coldwell.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 7, 1977.

Board of Governors of the Federal Reserve System, November 10, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-33115 Filed 11-15-77;8:45 am]

[6210-01]

MEMPHIS BANCSHARES, INC.

Formation of Bank Holding Company

Memphis Bancshares, Inc., Memphis, Missouri, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding by acquiring 90.9 percent of the voting shares of Farmers and Merchants Bank of Memphis, Memphis, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Memphis Bancshares, Inc., Memphis, Missouri, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to engage in the sale, as agent, of credit life, accident and health insurance that is directly related to extensions of credit by Farmers and Merchants Bank of Memphis. Notice of the application was published on September 8, 1977, in *The Memphis Democrat*, a newspaper circulated in Memphis, Missouri.

Such insurance agency activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Govern-

nors of the Federal Reserve System, Washington, D.C. 20551, not later than December 5, 1977.

Board of Governors of the Federal Reserve System, November 10, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 77-33116 Filed 11-15-77; 8:45 am]

[1610-01]

**GENERAL ACCOUNTING OFFICE
REGULATORY REPORTS REVIEW
Receipt of Report Proposals**

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on November 8, 1977 (NRC), and November 10, 1977 (CAB). See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipts.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed CAB and NRC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before December 5, 1977, and should be addressed to Mr. John M. Lovelady, Acting Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5033, 441 G Street NW, Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

NUCLEAR REGULATORY COMMISSION

The NRC requests an extension without change clearance of the application, reporting, and recordkeeping requirements contained in Part 20, Standards for Protection Against Radiation, sections 20.103, 20.205 (b), (c), 20.302, 20.401 (b), 20.402 (a), (b), 20.403 (a) and 20.405 of NRC regulations. The NRC estimates that respondents number approximately 8,000 and that application, recordkeeping and reporting time averages one-half hour for 20.103; one hour for 20.205 (b), (c); 24 hours for 20.302; several hours to months for 20.401 (b); three hours for 20.402 (a), (b); one hour for 20.403 (a); and six hours for 20.405.

CIVIL AERONAUTICS BOARD

The CAB requests an extension without change clearance of the reporting requirements contained in sections 207.10, 208.5, 212.14 and 214.5 of the Board's Economic Regulations. These regulations are applicable to certificated and foreign air carriers who perform

emergency charters transporting commercial traffic for another direct air carrier. Compliance with the reporting requirements is mandatory under Section 407 of the Federal Aviation Act of 1958, as amended. The CAB estimates respondents to be approximately 50 certificated air carriers and foreign air carriers and reporting time to average 45 minutes per response.

NORMAN F. HEYL,
Review Officer,
Regulatory Reports.

[FR Doc. 77-33087 Filed 11-15-77; 8:45 am]

[6820-22]

**GENERAL SERVICES
ADMINISTRATION**

**REGIONAL PUBLIC ADVISORY PANEL ON
ARCHITECTURAL AND ENGINEERING
SERVICES**

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Regional Public Advisory Panel on Architectural and Engineering Services, Region 1; Friday, December 2, 1977 starting at 9 a.m., room 812, J. W. McCormack Post Office and Courthouse, Post Office Square, Boston, Mass. 02109.

The meeting will be devoted to the initial step of the procedures for screening and evaluating the qualifications of architect-engineers under consideration for selection to furnish professional services for the following project:

"New Construction," U.S. Border Station, Fort Kent, Maine.

The meeting will be open to the public.

LAWRENCE F. BRETTE,
Acting Regional Administrator.

[FR Doc. 77-33191 Filed 11-15-77; 8:45 am]

[6820-22]

**ADVISORY COMMITTEE ON
SUBCONTRACTOR LISTING**

Establishment

Establishment of Advisory Committee. This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) and advises of the establishment of an Advisory Committee for review of subcontractor listing requirements for GSA construction contracts. The Administrator of General Services has determined that this advisory committee is in the public interest.

Designation. Advisory Panel on Subcontractor Listing.

Purpose. To provide recommendations to the Administrator of General Services on possible courses of action with respect to continuing or eliminating the contract provision for a listing of subcontractors to be submitted with bids for construction of General Services Administration (GSA) projects. The objective is to utilize the experience and expertise of various segments of industry in reaching a solution to the subcontractor listing

problems that will be mutually helpful to the construction industry and to the Government.

General information. Pursuant to OMB Circular A-63, the Office of Management and Budget has authorized a period of less than 15 days between publication of this notice and the filing of the committee charter. The meeting of the panel will be held on November 17, 1977, as published at 42 FR 57154, November 1, 1977.

Dated: November 14, 1977.

JAY SOLOMON,
Administrator of General Services.

[FR Doc. 77-33207 Filed 11-15-77; 8:45 am]

[4110-02]

**DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE**

Office of Education

**NATIONAL ADVISORY COUNCIL ON
INDIAN EDUCATION**

Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice.

SUMMARY: The notice sets forth the schedule and proposed agenda of the forthcoming meeting of the National Advisory Council on Indian Education. It also describes the functions of the Council. Notice of these meetings is required under the Federal Advisory Committee Act (5 U.S.C. Appendix 1, 10(a)(2)). This document is intended to notify the general public of their opportunity to attend.

DATES: Government Intra-Agency Committee: December 9-10, 1977, 9 a.m. to 5 p.m.

ADDRESS: Suite 326, 425 13th Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Stuart A. Tonemah, Executive Director, Office of the National Advisory Council on Indian Education, Suite 326, 425 13th Street NW., Washington, D.C. 20004, 202-376-8882.

The National Advisory Council on Indian Education is established under Section 442 of the Indian Education Act, Title IV of Pub. L. 92-318, (20 U.S.C. 1221g).

The Council is directed to:

(1) Submit to the Commissioner of Education a list of nominees for the position of Deputy Commissioner of the Office of Indian Education/OE;

(2) Advise the Commissioner of Education with respect to the administration (including the development of regulations and of administrative practices and policies) of any program in which Indian children or adults participate from which they can benefit, including Title III of the Act of September 30, 1950 (Pub. L. 81-874) and Section 810, Title VIII of the Elementary and Secondary Education Act of 1965 (as added by Title IV of Pub. L. 92-318 and amended by Pub. L. 93-

380), and with respect to adequate funding thereof;

(3) Review applications for assistance under Title III of the Act of September 30, 1950 (Pub. L. 81-874), Section 810 of Title VIII of the Elementary and Secondary Education Act of 1965 as amended and Section 314 of the Adult Education Act (as added by Title IV of Pub. L. 92-318), and make recommendations to the Commissioner with respect to their approval;

(4) Evaluate programs and projects carried out under any program of the Department of Health, Education, and Welfare in which Indian children or adults can participate or from which they can benefit, and disseminate the results of such evaluations;

(5) Provide technical assistance to local education agencies and to Indian educational agencies, institutions, and organizations to assist them in improving the education of Indian children;

(6) Assist the Commissioner in developing criteria and regulations for the administration and evaluation of grants made under Section 303(b) of the Act of September 30, 1950 (Pub. L. 81-874) as added by Title IV, Part A, of Pub. L. 92-318;

(7) Submit to the Congress not later than March 31 of each year a report on its activities, which shall include any recommendations it may deem necessary for the improvement of Federal education programs in which Indian children and adults participate or from which they can benefit, which report shall include a statement of the Council's recommendations to the Commissioner with respect to the funding of any such programs.

The meeting on December 9-10, 1977, will be open to the public. This meeting will be held at Suite 326, 425 13th Street NW., Washington, D.C.

The proposed agenda includes:

(1) BIA Interagency Agreement

Records shall be kept of all Council proceedings and shall be available for public inspection at the Office of the National Advisory Council on Indian Education located at 425 13th Street NW., Suite 326, Washington, D.C. 20004.

Dated: November 11, 1977.

STUART A. TONEMAH,
*Executive Director, National
Advisory Council on Indian
Education.*

[FR Doc.77-33082 Filed 11-15-77;8:45 am]

[4110-12]

Office of the Secretary

NATIONAL ADVISORY COUNCIL ON SERVICES AND FACILITIES FOR THE DEVELOPMENTALLY DISABLED

Notice of Meeting

The National Advisory Council on Services and Facilities for the Developmentally Disabled was established by Section 133(a)(1) of Pub. L. 91-517, which was signed October 30, 1970, to advise the Secretary with respect to any regulations promulgated or proposed to be promulgated by him in the implementation of the Act and study and evaluate programs authorized by the Act with a view to determining their effectiveness in carrying out the purposes for which they were established.

Notice is hereby given, pursuant to Pub. L. 92-463, that the National Advisory Council on Services and Facilities for the Developmentally Disabled will hold a meeting on December 5, 6, and 7, 1977. The meeting will be held in room 727-A, Hubert H. Humphrey Building, Department of Health, Education, and Welfare, 200 Independence Avenue SW., Washington, D.C. from 9 a.m. to 5 p.m.

Agenda: Annual Report to Congress; Reports from the Commission on Epilepsy and Its Consequences, President's Commission on Mental Health, and Robert Humphreys, Commissioner, Administration for Handicapped Individuals; and Activities for Fiscal Year 1978.

This meeting is open for public observation.

Further information on the Council may be obtained from Mr. Francis X. Lynch, Executive Secretary, National Advisory Council on Services and Facilities for the Developmentally Disabled, room 3070, Mary Switzer Building, 330 "C" Street SW., Washington, D.C. 20201, telephone: 202-245-0335.

NOVEMBER 2, 1977.

FRANCIS X. LYNCH,
Executive Secretary.

[FR Doc.77-33068 Filed 11-15-77;8:45 am]

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM 32048, 32049 and 32056]

NEW MEXICO

Notice of Applications

NOVEMBER 8, 1977.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Southern Union Gathering Co. has applied for six 4-inch natural gas pipelines rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 29 N., R. 8 W.,
Sec. 31, E $\frac{1}{2}$ SE $\frac{1}{4}$.
T. 30 N., R. 8 W.,
Sec. 19, lots 5, 6, 7 and SE $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 20, lots 2 and 5;
Sec. 29, lots 7 and 10;
Sec. 30, lots 8, 9, 10, 11, 12 and 13.

These pipelines will convey natural gas across 2.67 miles of public lands in San Juan County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

RAUL E. MARTINEZ,
*Acting Chief, Branch of
Lands and Minerals Operations.*

[FR Doc.77-33069 Filed 11-15-77;8:45 am]

[4310-84]

[NM 31976]

NEW MEXICO

Notice of Application

NOVEMBER 8, 1977.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for an equipment site 100'x100' right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO
T. 32N., R. 10W.,
Sec. 30, lot 17.

This equipment site will be used for natural gas pipeline operations across 0.230 acres of public land in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

RAUL E. MARTINEZ,
*Acting Chief, Branch of
Lands and Minerals Operations.*

[FR Doc.77-33070 Filed 11-15-77;8:45 am]

[4310-84]

[NM 32039 and 32064]

NEW MEXICO

Applications

NOVEMBER 8, 1977.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for two 4 $\frac{1}{2}$ -inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN,
NEW MEXICO

T. 27 N., R. 8 W.,
Sec. 35, N $\frac{1}{2}$ SW $\frac{1}{4}$.
T. 29 N., R. 9 W.,
Sec. 27, S $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 34, NE $\frac{1}{4}$.

These pipelines will convey natural gas across 0.649 of a mile of public lands in San Juan County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

RAUL E. MARTINEZ,
*Acting Chief, Branch of
Lands and Minerals Operations.*

[FR Doc.77-33089 Filed 11-15-77;8:45 am]

NOTICES

[4310-84]

[NM 32045 and 32046]

NEW MEXICO

Applications

NOVEMBER 8, 1977.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Gas Company of New Mexico has applied for two 4-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN,
NEW MEXICO

T. 29 N., R. 12 W.,
Sec. 13, NE $\frac{1}{4}$ NE $\frac{1}{4}$.
T. 31 N., R. 12 W.,
Sec. 3, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$.

These pipelines will convey natural gas across 0.396 of a mile of public lands in San Juan County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

RAUL E. MARTINEZ,
*Acting Chief, Branch of
Lands and Minerals Operations.*

[FR Doc.77-33090 Filed 11-15-77;8:45 am]

[4310-84]

[NM 32054]

NEW MEXICO

Application

NOVEMBER 7, 1977.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Natural Gas Pipeline Company of America has applied for one 4-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 21 S., R. 28 E.,
Sec. 29, E $\frac{1}{2}$ SW $\frac{1}{4}$.

This pipeline will convey natural gas across 0.249 of a mile of public land in Eddy County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, N. Mex. 88201.

RAUL E. MARTINEZ,
*Acting Chief, Branch of
Lands and Minerals Operations.*

[FR Doc.77-33091 Filed 11-15-77;8:45 am]

[4310-84]

[NM 32050]

NEW MEXICO

Application

NOVEMBER 7, 1977.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), TUCO, Inc., has applied for one 6-inch natural gas pipeline right-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 12 S., R. 30 E.,
Sec. 27, S $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 35, N $\frac{1}{2}$ N $\frac{1}{2}$.
T. 12 S., R. 31 E.,
Sec. 31, lot 2.

This pipeline will convey natural gas across 1.58 miles of public land in Chaves County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested person desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, N. Mex. 88201.

RAUL E. MARTINEZ,
*Acting Chief, Branch of
Lands and Minerals Operations.*

[FR Doc.77-33092 Filed 11-15-77;8:45 am]

[4310-84]

WYOMING

Restricted Vehicle Use

OCTOBER 28, 1977.

Notice is hereby given in accordance with the purpose of Executive Order 11644 of February 8, 1972, as amended on May 24, 1977, Title 43 CFR 6292.2, 6250.0-6(b) and 6010.3, section 603(c) of Pub. L. 94-579, and in conformance with the principles established by the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321), that public lands under the administration of the Bureau of Land Management located on Muddy Mountain are permanently closed to all motorized vehicles except: (1) Vehicles operated on designated roads and snowmobile trails, (2) any fire, military, emergency or law enforcement vehicle when used for emergency purposes, or any combat or combat support vehicle when used for national defense purposes, and (3) any vehicle whose use is expressly authorized by the Bureau of Land Management under permit, lease, license, or contract.

Review and analysis of resource data and public comment has determined that continued use of this area by motor vehicles would further alter the natural state of the land, increase vegetative damage and erosion problems, lead to further conflicts among recreation users, and would be detrimental to wildlife in the area.

All public lands administered by the Bureau of Land Management within the following described areas are hereby regulated as provided above from date of this notice:

SIXTH PRINCIPAL MERIDIAN, WYOMING

NATRONA COUNTY

T. 31 N., R. 78 W.
Sec. 5, 6, and 7.
T. 32 N., R. 78 W.
Sec. 28, 29, 30, and 31.
T. 30 N., R. 79 W.
Sec. 3, 4, and 5.
T. 31 N., R. 79 W.
all.
T. 32 N., R. 79 W.
Sec. 26, 33, 34, 35, and sec. 31, lot 3.
T. 31 N., R. 80 W.
Sec. 1, 11, 12, 13, 23, 24, 25 and Sec. 2, lot 1, SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$.

Maps showing the closed area and designated roads and trails are posted at the Casper Post Office, Natrona County Court House, and the Casper District Office of the Bureau of Land Management, Casper, Wyo. Signs will be posted on Muddy Mountain to identify designated roads and trails.

DANIEL P. BAKER,
State Director.

[FR Doc.77-33093 Filed 11-15-77;8:45 am]

[4410-01]

DEPARTMENT OF JUSTICE

Law Enforcement Assistance
AdministrationNATIONAL ADVISORY COMMITTEE FOR
JUVENILE JUSTICE AND DELINQUENCY
PREVENTION

Notice of Re-Establishment

Notice is hereby given that the charter of the National Advisory Committee for Juvenile Justice and Delinquency Prevention (the Committee) has been filed with the Director, Office of Management and Budget; the Library of Congress; the Committee on the Judiciary, U.S. Senate; and the Committee on Education and Labor, U.S. House of Representatives pursuant to section 9(c) of the Federal Advisory Committee Act (Pub. L. 92-463).

The Committee is established under the authority of section 207 (a) of Pub. L. 93-415, the Juvenile Justice and Delinquency Prevention Act of 1974 (the Act), as amended by Pub. L. 95-115, the Juvenile Justice Amendments of 1977. The Committee will operate pursuant to the provisions of Pub. L. 92-463, the Federal Advisory Committee Act; OMB Circular No. A-63; LEAA Instruction I 2100.1 and any additional orders and directives issued in implementation of the Act. The scope of its functions is limited to the duties specified in the charter. The Committee will remain in existence for the duration of Pub. L. 93-415, as amended by Pub. L. 95-115, or until September 30, 1980.

The Committee will report to and receive support from the Office of Juvenile Justice and Delinquency Prevention, (the Office), Law Enforcement Assistance Ad-

ministration (LEAA), Department of Justice, 633 Indiana Avenue NW., Washington, D.C. 20531.

The responsibilities of the Committee will be advisory in nature. In particular the Committee will: (1) make recommendations at least annually to the Associate Administrator of LEAA (hereinafter the Administrator of the Office), the President and the Congress will respect to planning, policy, priorities, operations, and management of all Federal juvenile delinquency programs as defined by the Act; and (2) advise and assist the Administrator of the Office in the preparation of an annual analysis and evaluation of Federal juvenile delinquency programs conducted and assisted by Federal departments and agencies, the expenditures made, the results achieved, the plans developed, and problems in the operations and coordination of such programs and brief but precise comprehensive plan for Federal juvenile delinquency programs, with particular emphasis on the prevention of juvenile delinquency and the development of programs and services which will encourage increased diversion of juveniles from the traditional juvenile justice system, which analysis and evaluation shall include recommendations for modifications in organization, management, personnel, standards, budget requests, and implementation plans necessary to increase the effectiveness of these programs.

Through subcommittees of the Committee shall serve as:

(1) The Advisory Committee for the National Institute for Juvenile Justice and Delinquency Prevention;

(2) The Advisory Committee to the Administrator of the Office on Standards for Juvenile Justice; and

(3) The Advisory Committee to the Administrator of the Office on particular functions or aspects of the work of the Office.

There shall be 21 regular members of the Committee. The members of the Coordinating Council on Juvenile Justice and Delinquency Prevention shall be ex-officio members of the Committee. The regular members of the Committee shall be appointed by the President from persons who by virtue of their training or experience have special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice, such as juvenile or family court judges; probation, correctional, or law enforcement personnel; and representatives of private voluntary organizations and community-based programs, including youth workers involved with alternative youth programs and persons with special experience and competence in addressing the problem of school violence and vandalism and the problem of learning disabilities. The President shall designate the Chairperson of the Committee. A majority of the members of the Committee, including the Chairperson, shall not be full-time employees of Federal, State, or local governments. At least seven members shall not have attained 26 years of age on the date of their appointment, of whom at least three shall have been or shall

currently be under the jurisdiction of the juvenile justice system. Members appointed by the President to the Committee shall serve for term of four years and shall be eligible for reappointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed, shall be appointed for the remainder of such term.

The Committee will meet at the call of the Chairperson but not less than four times a year.

Notice is also hereby given that Mr. John M. Rector, Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, U.S. Department of Justice, Room 442, 633 Indiana Avenue NW., Washington, D.C. 20531, is designated as the authorized employee of the Federal Government to perform the duties outlined in section 10(e) of the Federal Advisory Committee Act for this Committee.

JOHN M. RECTOR,
*Administrator, Office of Juvenile
Justice and Delinquency Prevention.*

[FR Doc. 77-33173 Filed 11-15-77; 8:45 am]

[4410-01]

**NATIONAL ADVISORY COMMITTEE FOR
JUVENILE JUSTICE AND DELINQUENCY
PREVENTION**

Notice of Meeting

Notice is hereby given that the National Advisory Committee for Juvenile Justice and Delinquency Prevention (the Committee) will meet Wednesday, November 30, 1977, Thursday and Friday December 1 and 2, 1977, at the Hyatt Regency Hotel, 400 New Jersey Avenue NW., Washington, D.C. The meeting will be open to the public.

On Wednesday, November 30, the full Committee is scheduled to convene at 1 p.m. The session will include the swearing-in of new Committee members and a report by the Associate Administrator of the Law Enforcement Assistance Administration (Hereinafter the Administrator of the Office of Juvenile Justice and Delinquency Prevention (the Office)) on (1) amendments to the Juvenile Justice and Delinquency Prevention Act of 1974; and (2) program directions for the Office.

On Thursday, December 1, the Committee will reconvene in plenary session to discuss (1) plans for a national meeting of State juvenile justice and delinquency prevention advisory groups; and (2) the Committee's annual report to the Administrator of the Office, the President and the Congress. Following a 12 noon executive session luncheon, the Committee will reconvene at 1 p.m. in subcommittee meetings. The subcommittees that will be meeting are: the Advisory Committee for the National Institute for Juvenile Justice and Delinquency Prevention; the Advisory Committee on the Concentration of Federal Effort; the Advisory Committee on Standards for the Administration of Juvenile Justice; and the Advisory Committee on Office Operations.

On Friday, December 2, the Committee will reconvene in plenary session at 9 a.m. The activities of the day will include subcommittee reports, further discussion of plans for a national meeting of State juvenile justice and delinquency prevention advisory groups, and public commentary. The Committee meeting is scheduled to adjourn at 12 noon.

For further information, contact Mr. John M. Rector, Administrator, Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Department of Justice, 633 Indiana Avenue NW., Washington, D.C. 20531.

JAY A. BROZOST,
*Attorney-Advisor, Office of
General Counsel, Law En-
forcement Assistance Admin-
istration.*

[FR Doc. 77-33172 Filed 11-15-77; 8:45 am]

[4710-01]

**NATIONAL COMMISSION ON THE OB-
SERVANCE OF INTERNATIONAL
WOMEN'S YEAR**

NATIONAL WOMEN'S CONFERENCE

Meeting

The National Women's Conference will be held in Houston, Texas on November 19 through 21, 1977, at the Houston Coliseum.

The opening plenary session is scheduled from 9:30 a.m. to 12:30 p.m. on Saturday, November 19. The agenda for the opening session includes opening ceremonies, greetings to the Conference, a statement of the charge of the Conference, a Keynote address and other presentations and ceremonies.

The second plenary session is scheduled from 2 p.m. to 6 p.m. on Saturday, November 19. The agenda for the session includes opening remarks, committee reports, and the presentation of the proposed National Plan of Action followed by debate and voting on the National Plan of Action.

The third plenary session is scheduled to begin at 8:30 p.m. on Saturday, November 19. The agenda for the session will include opening remarks and continued consideration of the National Plan of Action.

The fourth plenary session is scheduled from 1 p.m. to 8 p.m. on Sunday, November 19. The agenda will include opening remarks and continued consideration of the National Plan of Action.

The final plenary session is scheduled from 9:30 a.m. on Monday, November 21, until the conclusion of the meeting. The agenda will include opening remarks, consideration of the implementation of the National Plan of Action, new business, and closing remarks.

The Conference will be open to the public subject to space limitations and will be conducted in accordance with the Rules of Order adopted by the Commission and published in the FEDERAL REGISTER (42 FR 57127) on November 1, 1977.

The proposed National Plan of Action will encompass a variety of issues of con-

cern to women. A copy has been mailed to all delegates.

The National Women's Conference was established by Pub. L. 94-167 to:

(1) Recognize the contributions of women to the development of our country;

(2) Assess the progress that has been made to date by both the private and public sectors in promoting equality between men and women in all aspects of life in the United States;

(3) Assess the role of women in economic, social, cultural, and political development;

(4) Assess the participation of women in efforts aimed at the development of friendly relations and cooperation among nations and to the strengthening of world peace;

(5) Identify the barriers that prevent women from participating fully and equally in all aspects of national life, and develop recommendations for means by which such barriers can be removed;

(6) Establish a timetable for the achievement of the objectives set forth in such recommendations; and

(7) Establish a committee of the Conference which will take steps to provide for the convening of a second National Women's Conference. The second Conference will assess the progress made in achieving the objectives set forth in paragraphs (5) and (6) of this subsection, and will evaluate the steps taken to improve the status of American women.

For further information on these matters, contact the IWY Secretariat, D/IWY, Department of State, Washington, D.C. 20520.

Dated: November 11, 1977.

WILLIAM WALLACE,
Deputy General Counsel,
IWY Secretariat.

[FR Doc.77-33156 Filed 11-15-77;8:45 am]

[7536-01]

**NATIONAL FOUNDATION ON THE
ARTS AND THE HUMANITIES**

**ARCHITECTURE AND ENVIRONMENTAL
ARTS ADVISORY PANEL**

Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Architecture and Environmental Arts Advisory Panel to the National Council on the Arts will be held on November 28-30, 1977 and December 1-2, 1977 from 9:30 a.m. to 5:30 p.m. in Room 1130, Columbia Plaza Building, 2401 E Street, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of March 17, 1977, these ses-

sions will be closed to the public pursuant to subsection (c) (4), (6) and 9 (B) of section 552 of Title 5, United States Code.

For further information with reference to this meeting can be obtained from Mr. Robert M. Sims, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6378.

ROBERT M. SIMS,
Administrative Officer, National
Endowment for the Arts, National
Foundation on the Arts
and the Humanities.

NOVEMBER 11, 1977.

[FR Doc.77-33120 Filed 11-15-77;8:45 am]

[7536-01]

EXPANSION ARTS ADVISORY PANEL

Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel to the National Council on the Arts will be held on November 30, 1977 from 9:00 a.m. to 5:30 p.m. and on December 1-2, 1977 from 9:30 a.m. to 5:30 p.m. in the Columbia Plaza Building, Room 1422, 2401 E Street, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on November 30, 1977 from 9:00 a.m. to 12:30 p.m. The agenda for this meeting will include Expansion Arts reports.

The remaining sessions of this meeting on November 30, 1977 from 12:30 p.m. to 5:30 p.m., December 1-2, 1977 from 9:00 a.m. to 5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER March 17, 1977, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(B) of section 552(b) of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. Robert M. Sims, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6378.

ROBERT M. SIMS,
Administrative Officer, National
Endowment for the Arts, National
Foundation on the Arts
and the Humanities.

NOVEMBER 11, 1977.

[FR Doc.77-33121 Filed 11-15-77;8:45 am]

[7536-01]

LITERATURE ADVISORY PANEL

Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public

Law 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel to the National Council on the Arts will be held on December 1-2, 1977 from 9:00 a.m. to 5:30 p.m. and on December 3, 1977 from 9:00 a.m. to 1:00 p.m. in the Dauphine Orleans Motor Hotel, 415 Dauphine Street, New Orleans, Louisiana.

A portion of this meeting will be open to the public on December 1, 1977 from 2:00 p.m. to 5:30 p.m. and on December 2, 1977 from 1:30 p.m. to 5:30 p.m. The agenda for these meetings will include a discussion on guidelines and there will be a question and answering session for the field.

The remaining sessions of this meeting on December 1, 1977 from 9:00 a.m. to 12:30 p.m., December 2, 1977 from 9:00 a.m. to 12:00 p.m. and on December 3, 1977 from 9:00 a.m. to 1:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER March 17, 1977, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(B) of section 552(b) of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. Robert M. Sims, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6378.

ROBERT M. SIMS,
Administrative Officer, National
Endowment for the Arts, National
Foundation on the Arts
and the Humanities.

NOVEMBER 11, 1977.

[FR Doc.77-33122 Filed 11-15-77;8:45 am]

[7536-01]

MEDIA ARTS ADVISORY PANEL

Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (In Residence/Workshop) will be held on December 5, 1977 from 9:00 a.m. to 7:00 p.m. in the Columbia Plaza Building, Room 1219, 2401 E Street NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of March 17, 1977, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and

9(B) of section 552 of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. Robert M. Sims, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6378.

ROBERT M. SIMS,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

NOVEMBER 11, 1977.

[FR Doc.77-33123 Filed 11-15-77;8:45 am]

[7536-01]

MUSIC ADVISORY PANEL

Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Planning Section) will be held on December 5, 1977 from 9:00 a.m. to 6:30 p.m., December 6, 1977 from 9:00 a.m. to 6:00 p.m. and on December 7, 1977 from 9:00 a.m. to 3:00 p.m. in the Columbia Plaza Building, Room 1422, 2401 E Street NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on December 5, 1977 from 9:00-12:00 noon and 4:15 p.m.-5:15 p.m. on December 2, 1977 from 2:00 p.m.-6:00 p.m. and on December 7, 1977 from 9:00 a.m.-2:00 p.m. The agenda will include planning and policy discussion.

The remaining sessions of this meeting on December 5, 1977 from 12:00 noon-4:15 p.m. and 5:15 p.m.-6:30 p.m., December 6, 1977 from 9:00 a.m. to 2:00 p.m. and December 7, 1977 from 2:00 p.m.-3:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER March 17, 1977, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(B) of section 552(b) of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. Robert M. Sims, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6378.

ROBERT M. SIMS,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

NOVEMBER 11, 1977.

[FR Doc.77-33124 Filed 11-15-77;8:45 am]

[7536-01]

SPECIAL PROJECTS ADVISORY PANEL

Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Special Projects Advisory Panel to the National Council on the Arts will be held on December 2-3, 1977 from 9:30 a.m. to 5:30 p.m. in the Columbia Plaza Building, room 1340, 2401 E Street NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of March 17, 1977, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(B) of section 552 of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. Robert M. Sims, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6378.

ROBERT M. SIMS,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

NOVEMBER 11, 1977.

[FR Doc.77-33125 Filed 11-15-77;8:45 am]

[7536-01]

VISUAL ARTS ADVISORY PANEL

Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Works of Art in Public Places) will be held on December 1-2, 1977 from 9:30 a.m. to 6:30 p.m. in the Columbia Plaza Building, room 1115, 2401 E Street NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of March 17, 1977, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(B) of section 552 of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. Robert M. Sims, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6378.

ROBERT M. SIMS,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

NOVEMBER 11, 1977.

[FR Doc.77-33126 Filed 11-15-77;8:45 am]

[7536-01]

VISUAL ARTS ADVISORY PANEL

Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Workshops/Alternative Spaces) will be held on December 8-9, 1977 from 9:30 a.m. to 6:00 p.m. in the Columbia Plaza Building, room 1340, 2401 E Street NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applications. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of March 17, 1977, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(B) of section 552 of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. Robert M. Sims, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6378.

ROBERT M. SIMS,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

NOVEMBER 11, 1977.

[FR Doc.77-33127 Filed 11-15-77;8:45 am]

[7536-01]

National Endowment for the Humanities
ADVISORY COMMITTEE FELLOWSHIPS
PANEL

Meeting

NOVEMBER 11, 1977.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given

at a meeting of the Fellowships Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in room 1130, from 9 a.m. to 5:30 p.m. on December 2, 1977.

The purpose of the meeting is to review Summer Stipend applications in the field of Recent U.S. History submitted to the National Endowment for the Humanities for projects beginning after May 1, 1978.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Acting Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 2, 1977, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee
Management Officer.

[FR Doc. 77-33102 Filed 11-15-77; 8:45 am]

[7536-01]

ADVISORY COMMITTEE FELLOWSHIPS
PANEL
Meeting

NOVEMBER 11, 1977.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Fellowships Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in room 314, from 9 a.m. to 5:30 p.m. on December 2, 1977.

The purpose of the meeting is to review Summer Stipend applications in the field of Ancient, Medieval and Renaissance History submitted to the National Endowment for the Humanities for projects beginning after May 1, 1978.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Acting Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 2, 1977, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr.

Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee
Management Officer.

[FR Doc. 77-33103 Filed 11-15-77; 8:45 am]

[7536-01]

ADVISORY COMMITTEE FELLOWSHIPS
PANEL
Meeting

NOVEMBER 11, 1977.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Fellowships Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in room 1130, from 9 a.m. to 5:30 p.m. on December 7, 1977.

The purpose of the meeting is to review Summer Stipend applications in the field of American Studies submitted to the National Endowment for the Humanities for projects beginning after May 1, 1978.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Acting Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 2, 1977, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee,
Management Officer.

[FR Doc. 77-33104 Filed 11-15-77; 8:45 am]

[7536-01]

ADVISORY COMMITTEE FELLOWSHIPS
PANEL
Meeting

NOVEMBER 11, 1977.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Fellowships Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in room 314, from 9 a.m. to 5:30 p.m. on December 7, 1977.

The purpose of the meeting is to review Summer Stipend applications in the field of Art and Architecture submitted to the National Endowment for the Humanities for projects beginning after May 1, 1978.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Acting Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 2, 1977, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee
Management Officer.

[FR Doc. 77-33105 Filed 11-15-77; 8:45 am]

[7536-01]

ADVISORY COMMITTEE FELLOWSHIPS
PANEL
Meeting

NOVEMBER 11, 1977.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Fellowships Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in room 1130, from 9 a.m. to 5:30 p.m. on December 9, 1977.

The purpose of the meeting is to review Summer Stipend applications in the field of Early American History submitted to the National Endowment for the Humanities for projects beginning after May 1, 1978.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Acting Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 2, 1977, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee
Management Officer.

[FR Doc. 77-33106 Filed 11-15-77; 8:45 am]

[7536-01]

ADVISORY COMMITTEE FELLOWSHIPS
PANEL

Meeting

NOVEMBER 11, 1977.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Fellowships Panel will be held at 806 15th Street N.W., Washington, D.C. 20506, in room 301, from 9 a.m. to 5:30 p.m. on December 12, 1977.

The purpose of the meeting is to review Summer Stipend applications in the field of Early Modern and Modern European History submitted to the National Endowment for the Humanities for projects beginning after May 1, 1978.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Acting Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 2, 1977, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street N.W., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
*Advisory Committee
Management Officer.*

[FR Doc. 77-33107 Filed 11-15-77; 8:45 am]

[7536-01]

ADVISORY COMMITTEE FELLOWSHIPS
PANEL

Meeting

NOVEMBER 11, 1977.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Fellowships Panel will be held at 806 15th Street N.W., Washington, D.C. 20506, in room 1130, from 9 a.m. to 5:30 p.m. on December 12, 1977.

The purpose of the meeting is to review Summer Stipend applications in the field of Twentieth Century Literature and Criticism submitted to the National Endowment for the Humanities for projects beginning after May 1, 1978.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Acting Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 2, 1977, I have

determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street N.W., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
*Advisory Committee,
Management Officer.*

[FR Doc. 77-33108; Filed 11-15-77; 8:45 am]

[7536-01]

ADVISORY COMMITTEE FELLOWSHIPS
PANEL

Meeting

NOVEMBER 11, 1977.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Fellowships Panel will be held at 806 15th Street N.W., Washington, D.C. 20506, in room 314, from 9 a.m. to 5:30 p.m. on December 12, 1977.

The purpose of the meeting is to review Summer Stipend applications in the field of German, Slavic, Classics, and Chinese submitted to the National Endowment for the Humanities for projects beginning after May 1, 1978.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Acting Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 2, 1977, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street N.W., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
*Advisory Committee
Management Officer.*

[FR Doc. 77-33109 Filed 11-15-77; 8:45 am]

[7536-01]

ADVISORY COMMITTEE FELLOWSHIPS
PANEL

Meeting

NOVEMBER 11, 1977.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Fellowships Panel

will be held at 806 15th Street N.W., Washington, D.C. 20506, in room 314, from 9 a.m. to 5:30 p.m. on December 16, 1977.

The purpose of the meeting is to review Summer Stipend applications in the field of Sociology submitted to the National Endowment for the Humanities for projects beginning after May 1, 1978.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Acting Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 2, 1977, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street N.W., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
*Advisory Committee
Management Officer.*

[FR Doc. 77-33110 Filed 11-15-77; 8:45 am]

[7536-01]

ADVISORY COMMITTEE ON SCIENCE,
TECHNOLOGY AND HUMAN VALUES

Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Endowment for the Humanities announces the following meeting:

Name: Advisory Committee on Science, Technology and Human Values.

Date: December 2, 1977.

Time: 9:30 a.m. to 11:45 a.m., 12:30 p.m. to 4:30 p.m.

Place: Room 543, National Science Foundation, 1800 G Street N.W., Washington, D.C.

Type of Meeting: Open.

Contact person: Dr. Richard Hedrich, Coordinator, Program of Science, Technology and Human Values, National Endowment for the Humanities, Washington, D.C. 20506. Individuals planning to attend are requested to notify Dr. Hedrich by November 25, 202-724-0354.

Purpose of Advisory Committee: To provide advice and recommendations concerning support of scholarly activities in the field of ethical and human value relationships to developments in science and technology, in conjunction with cooperative programs of the National Endowment for the Humanities (NEH) and the National Science Foundation (NSF).

AGENDA

9:30 a.m. to 11:45 a.m.

Reports and Discussion on Status of NEH and NSF Programs.

Recommendations on Future Program Emphases.

Reports and Discussion on Activities of Selected Jointly-Funded Projects.

12:30 p.m. to 4:30 p.m.

Continuation of Reports and Discussion on Project Activities.

Continuation of Discussion on Future Program Emphases.

STEPHEN McCLEARY,
Advisory Committee
Management Officer.

[FR Doc.77-33101 Filed 11-15-77;8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

[Docket No. FRM-32-2]

OHMART CORP.

Filing of Petition for Rulemaking

Notice is hereby given that the Ohmart Corp., by letter dated October 13, 1977, has filed with the Nuclear Regulatory Commission a petition for rule making to amend the Commission's regulation "Specific Licenses to Manufacture, Distribute, or Import Certain Items Containing Byproduct Material," 10 CFR Part 32.

The petitioner states that several years ago an extensive revision of §§ 31.5 and 32.51 was made and in § 32.51 a limit of three years on leak test intervals was eliminated. The petitioner states that it has learned that the NRC, as a matter of practice, does not license any device covered by § 32.51 or subject to a specific license for a leak test interval greater than three years. The petitioner states that this is a good practice, but believes that if it is standard practice it should be part of the formal regulations.

The first sentence of § 32.51(b) reads as follows:

(b) In the event the applicant desires that the device be required to be tested at intervals longer than six months either for proper operation of the on-off mechanism and indicator, if any, or for leakage of radioactive material or for both, he shall include in his application sufficient information to demonstrate that such longer interval is justified by performance characteristics of the device or similar devices, and by design features which have a significant bearing on the probability or consequences of leakage or radioactive material from the device or failure of the on-off mechanism and indicator.

The petitioner requests that in the first sentence of § 32.51(b), the words "but not greater than three years" be inserted between the words "months" and "either". It is the view of the petitioner that leak test intervals greater than three years multiply the chances of material being lost due to lack of attention.

A copy of the petition for rule making is available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of the petition may be obtained by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

All persons who desire to submit written comments or suggestions concerning the petition for rule making should send their comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch by January 16, 1978.

Dated at Washington, D.C. this 10th day of November 1977.

For the Nuclear Regulatory Commission,

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.77-33031 Filed 11-15-77;8:45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 20253; 70-6082]

APPALACHIAN POWER CO. ET AL.

Proposed Issue and Sale of Notes to Banks and to Dealer in Commercial Paper by Holding Company, Capital Contributions by Holding Company to Subsidiaries, and Request for Exception From Competitive Bidding

NOVEMBER 10, 1977.

In the matter of Appalachian Power Company, 40 Franklin Road, Roanoke, Virginia 24009; Indiana & Michigan Electric Company, 2101 Spy Run Avenue, Fort Wayne, Indiana 46801; Ohio Power Company, 301 Cleveland Avenue, S.W., Canton, Ohio 44701; and American Electric Power Company, Inc., 2 Broadway, New York, New York 10004.

Notice is hereby given that American Electric Power Company, Inc. ("AEP"), a registered holding company, and Appalachian Power Company ("Appalachian"), Indiana & Michigan Electric Company ("I&M"), and Ohio Power Company ("Ohio Power"), its subsidiary electric utility companies, have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(b) and 12 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

AEP requests that it be authorized to issue and sell, from time to time prior to January 1, 1979, as funds may be required, short-term notes (including commercial paper) in an aggregate amount not to exceed \$165,000,000 outstanding at any one time. None of such notes or commercial paper shall mature later than June 30, 1979.

The notes to be sold to banks will be dated as of the date of the borrowing which it evidences, will mature not more than 270 days from the date of issue or reissue thereof, and will be prepayable at any time without premium or penalty. AEP proposes to issue and sell such short-term notes to 11 banks with lines of credit in an aggregate amount of \$179,000,000. The banks and their respec-

tive lines of credit which AEP has established at such banks are as follows:

Name	Amount
Chemical Bank, New York, N.Y.	\$ 45,000,000
The Chase Manhattan Bank (National Association), New York, N.Y.	40,000,000
Manufacturers Hanover Trust Company, New York, N.Y.	25,000,000
Morgan Guaranty Trust Company of New York, New York, N.Y.	22,000,000
Bankers Trust Company, New York, N.Y.	9,000,000
Irving Trust Company, New York, N.Y.	8,000,000
The Bank of New York, New York, N.Y.	4,000,000
The Cleveland Trust Company, Cleveland, Ohio	8,000,000
First Pennsylvania Bank and Trust Company, Philadelphia, Pa.	9,000,000
Mellon Bank, N.A., Pittsburgh, Pa.	6,000,000
United Virginia Bank, Richmond, Va.	3,000,000
Total	179,000,000

AEP will be required to either (1) maintain compensating balances of 10 percent of the bank lines made available and additional compensating balances of 10 percent of the amount of any borrowings, or (2) maintain compensating balances of 10 percent of the bank lines made available and pay an annual fee for the availability of the line of credit not in excess of the 10 percent of the line of credit made available. Where only compensating balances are required, borrowings under such lines will bear interest at an annual rate not greater than the bank's prime commercial rate in effect at the time of issuance. Where a combination of compensating balances and fees are required, borrowings under such lines would bear interest at a specified rate in excess of the bank's prime commercial rate in effect at the time of issuance, but such specified rate would not be greater than the equivalent rate of borrowings bearing interest at the prime rate with compensating balances equal to 10 percent of the amount borrowed. If the full amount were borrowed from the banks, the effective interest cost to AEP, based on a prime commercial rate of 7 $\frac{3}{4}$ percent, would be 9.69 percent.

The commercial paper will be in the form of promissory notes in denominations of not less than \$50,000 nor more than \$50,000,000 of varying maturities, with no such maturity more than 270 days after the date of issuance and none will be prepayable prior to maturity. The commercial paper notes will be sold directly to Lehman Commercial Paper Incorporated (the "dealer") at a discount rate not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. No commercial paper notes will be issued having a maturity of more than 90 days if such commercial paper notes would have an effective interest cost which exceeds the effective interest cost at which AEP could borrow from banks.

The dealer will reoffer the commercial paper notes to not more than 200 of such

dealer's customers identified and designated in a non-public list prepared by the dealer in advance, at a discount rate of 1/8 of 1 percent per annum less than the discount rate to AEP. It is expected that such customers of the dealer will hold the commercial paper notes to maturity, but, if any such customer wishes to resell such commercial paper prior to maturity, the dealer, pursuant to a verbal repurchase agreement, will repurchase such commercial paper sold by it and reoffer it to other customers on the list.

AEP also requests authority to make cash capital contributions from time to time prior to January 1, 1979, to its public utility subsidiary companies in the following aggregate amounts: Appalachian, \$95,000,000; I&M, \$60,000,000; and Ohio Power, \$35,000,000.

The proceeds from the sale of the short-term notes are to be applied by AEP, together with other funds, to make additional investments in its public utility subsidiary companies to assist them in financing the costs of their respective construction programs and to retire their short-term debt. The construction programs of AEP's public utility subsidiary companies for 1977 and 1978 are estimated as follows: \$265,800,000 and \$360,000,000, respectively, for Appalachian; \$230,300,000 and \$217,900,000, respectively, for I&M and its generating subsidiary; and \$195,200,000 and \$212,600,000, respectively, for Ohio Power and its generating subsidiary.

AEP requests an exception from the competitive bidding requirements of Rule 50 for the proposed issue and sale of its commercial paper pursuant to paragraph (a) (5) thereof on the grounds that the commercial paper to be issued will have maturities of not more than nine months, the current rates for commercial paper for prime borrowers such as AEP are published daily in financial publications, and it is not practical to publish invitations for commercial paper.

The application-declaration states that fees and expenses of approximately \$10,000 are to be incurred by AEP in connection with the proposed transactions. It is stated that the State Corporation Commission of Virginia and the Public Service Commission of West Virginia have jurisdiction over the proposed capital contribution by AEP to Appalachian. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than December 5, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be

served personally or by mail upon the applicants-declarants at the above stated addresses, and proof of service (by affidavit, or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 77-33072 Filed 11-15-77; 8:45 am]

[8010-01]

[File No. 4-272; Release No. 34-14153]

FILING OF AMEX/CBOE/MSE/PHLX/PSE PLAN WITH RESPECT TO RESPONSIBILITY FOR OPTIONS REGULATION

Program for Allocation of Regulatory Responsibilities

The American Stock Exchange, Inc. ("AMEX"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Midwest Stock Exchange, Inc. ("MSE"), the Philadelphia Stock Exchange, Inc. ("PHLX") and the Pacific Stock Exchange, Inc. ("PSE") have filed with the Commission a plan for the allocation of regulatory responsibilities pursuant to Rule 17d-2 (17 CFR 240.17d-2) ("section 240.17d-2") on July 8, 1977. The major provisions of the proposal are as follows.

The five participating self-regulatory organizations ("participating SRO's") would operate a coordinated program for the allocation of examination and certain other regulatory functions with respect to compliance with rules relating to transactions in options by those members qualified to conduct a non-member customer business on more than one exchange trading listed options. The program would be administered by a joint committee (the "Committee") composed of one representative of each participating SRO. Commencing on January 2, 1978, and annually thereafter, the Committee would assign a participating SRO as primary regulator for each member on the following basis: (1) where a participating SRO is the designated examining authority (the "DEA") of a member pursuant to 17 CFR 240.17d-1, the DEA would be "primary regulator" for such member; (2) where no participating SRO is the DEA, the "primary regulator" would be a participating SRO other

than the member's primary regulator during the preceding year. The Committee would make this assignment on the basis of geographical considerations, staff resources, and other pertinent criteria.

The primary regulator would conduct at least an annual sales practice examination. The primary regulator would furnish those participating SRO's of which the member is a member a report of such examination.

With respect to the processing of customer inquiries and complaints, the plan provides that (1) where the inquiry or complaint relates exclusively to the market of one participating SRO, that SRO would review it; (2) where the inquiry or complaint refers to transactions or matters having reference to markets of more than one participating SRO, the SRO receiving it would investigate the complaint but would, however, notify other involved participating SRO's prior to taking any action.

Investigation into the terminations of registered personnel for cause would be allocated on essentially the same basis as are customer inquiries and complaints except that, where the investigation refers to transactions or matters having reference to markets of more than one participating SRO, the primary regulator would review it unless the Committee assigns it to another participating SRO.

In the event that the primary regulator should determine that disciplinary action is warranted, that participating SRO would be responsible for taking the appropriate action. Where more than one participating SRO determines that formal disciplinary action is required, the Committee shall assign jurisdiction to one participating SRO based on criteria established in the plan. The participating SRO responsible for initiating the disciplinary proceedings would conduct such proceedings in accordance with its own rules and practices. All other participating SRO's would: (1) make available all relevant records, reports, and information which they have, and (2) retain the right to bring separate disciplinary proceedings should they consider such action appropriate.

The plan provides that each participating SRO would make available certain relevant information and would provide appropriate notice of actions taken with respect to examinations, customer inquiries and complaints, and terminations of personnel for cause.

In order to assist the Commission in determining whether to approve this plan, interested persons are invited to submit written data, views, and arguments concerning the submissions on or before December 16, 1977. Persons wishing to comment should file six (6) copies thereof with the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. Reference should be made to File No. 4-272.

Copies of the submission and of all written comments will be available at

the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 9, 1977.

[FR Doc. 77-33075 Filed 11-15-77; 8:45 am]

[8010-01]

[Release No. 34-14155; File No.
SE-DTC-77-11]

DEPOSITORY TRUST CO.

Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. 94-29, 16 (June 4, 1975), notice is hereby given that on October 28, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

Addition to the Fee Schedule for Major Services originally filed on Form 19b-4A, File No. SR-NYSE-75-19:

Dividend reinvest-	\$8.10 for each divi-
ments.	dent reinvestment
	instruction sub-
	mitted.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change are as follows:

The purpose of the proposed rule change is to establish a fee imposed on DTC Participants utilizing the dividend reinvestment service.

The proposed rule change relates to DTC's carrying out the purposes of Section 17A of the Securities Exchange Act of 1934 (the Act) by equitably allocating fees among DTC Participants.

Participants with whom the proposed fee was discussed indicated that they found the fee to be reasonable. All Participants will be notified of the proposed fee by a DTC Important Notice at least ten business days prior to imposition of the fee.

DTC perceives no burden on competition by reason of the proposed rule change.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions

should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to the file number referenced in the caption above and should be submitted on or before December 7, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 9, 1977.

[FR Doc. 77-33076 Filed 11-15-77; 8:45 am]

[8010-01]

[File No. 4-269; Release No. 34-14151]

FILING OF MSE/CSE PLANS

Program for Allocation of Regulatory Responsibilities

The Midwest Stock Exchange, Inc. (the "MSE") and the Cincinnati Stock Exchange (the "CSE") filed with the Commission a plan for allocation of regulatory responsibilities pursuant to Rule 17d-2 (17 CFR 240.17d-2) ("section 240.17d-2") on June 9, 1977.

The proposal provides that the self-regulatory organization designated to examine for compliance with applicable financial responsibility rules ("the designated examining authority" or "DEA") pursuant to Rule 17d-1 (17 CFR 240.17d-1) ("section 240.17d-1") would be responsible for processing and acting on certain applications submitted by members of MSE and CSE ("dual members"). The MSE would continue to be responsible, subject to further allocation pursuant to section 240.17d-2, for application for MSE registered options principals, and notification of registered representatives certified as qualified to handle accounts involving options transactions. However, the two exchanges would each retain separate responsibility for applications of persons who are, or apply to become, regular, limited, proprietary, regular equity or options members and who propose to join or become associated with a dual member.

The DEA would be responsible for reviewing advertisements, market letters, research reports, sales literature, radio, television, and writing and speaking activities of dual members except in relation to MSE listed options. It would also be responsible for taking appropriate action on all inquiries and complaints involving dual members.

The DEA would be responsible for conducting examinations for compliance with financial, operational, and sales supervision by dual members, except that the MSE would continue its responsibilities in the area of options sales practices.

It would conduct all special examinations except that both the DEA and the other exchange reserve the right to participate in any special examinations.

The DEA would be responsible for review of and subsequent action on or in respect of dual members' Financial and Operational Combined Uniform Single (FOCUS) Report and any generally applicable financial reporting requirements. The CSE would submit to the MSE for CSE members of the Midwest Clearing Corp. a summary of certain pre-defined key data from the monthly FOCUS Reports or a copy of such FOCUS Reports. The DEA would also be responsible for review, approval and retention of all partnership agreements, corporate certificates, by-laws, subordinated loan agreements, and related agreements and amendments including clearing agreements.

Further, the DEA would be responsible for disciplinary investigations and proceedings involving dual members except insofar that the other exchange may assume jurisdiction in investigations relating uniquely to the transactions of business on the other exchange.

In order to assist the Commission in determining whether to approve this plan and relieve the party not designated to the specified responsibilities, interested persons are invited to submit written data, views, and arguments concerning the submission on or before December 16, 1977. Persons wishing to comment should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. 4-269.

Copies of the submission and of all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street NW., Washington, D.C.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 9, 1977.

[FR Doc. 77-33077 Filed 11-15-77; 8:45 am]

[8010-01]

[File No. 4-268; Release No. 34-14154]

FILING OF MSE/MCC/MSTC PLANS

Program for Allocation of Regulatory Responsibilities

The Midwest Stock Exchange, Inc. ("MSE") filed with the Commission a plan for the allocation of regulatory responsibilities pursuant to Rule 17d-2 (17 CFR 240.17d-2) ("section 240.17d-2") with the Midwest Clearing Corp. ("MCC") and the Midwest Securities Trust Co. ("MSTC"), two wholly owned subsidiaries, on June 9, 1977.

The proposal provides that, for any registered broker or dealer which is a participant of MCC or MSTC, the self-regulatory organization designated to examine for compliance with applicable financial responsibility rules ("the designated examining authority" or "DEA")

pursuant to Rule 17d-1 (17 CFR 240.17d-1) ("section 240.17d-1") would be responsible for review of, and subsequent action with respect to these members' Financial and Operational Combined Uniform Single (FOCUS) Reports and any generally applicable financial reporting requirements. These responsibilities would include determination of compliance with the rules related to capital, margin, operations, books and records, reporting and filing of documents.

The MSE's plans for the allocation of regulatory responsibilities with other self-regulators will provide that each self-regulator who functions as the DEA for any participant of MCC would provide to the MSE a summary of certain key data from the monthly FOCUS Report or a copy of this report. Every member will, however, be required to send a copy of the annual audited report of financial statements to each of the self-regulators of which it is a member.

MCC and MSTC would continue to bear the responsibility for reviewing financial information for all participants who are not registered broker-dealers and for disciplinary investigations and proceedings involving MCC or MSTC participants and their associated persons for any activity having a unique reference to the clearing operations or rules of MCC/MSTC.

MCC and MSTC would reserve the right to participate in any special examination for cause with respect to a MCC/MSTC participant. In addition, MCC or MSTC may examine MSE files containing pertinent financial examination reports with respect to MCC or MSTC participants when necessary.

In order to assist the Commission in determining whether to approve his plan and relieve the party not designated to the specified responsibilities, interested persons are invited to submit written data, views, and arguments concerning the submission on or before December 16, 1977. Persons wishing to comment should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. 4-268.

Copies of the submission and of all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, NW, Washington, D.C.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 9, 1977.

[FR Doc. 77-33078 Filed 11-15-77; 8:45 am]

[8010-01]

[File No. 4-270; Release No. 34-14152]

FILING OF NYSE/CSE PLANS

Program for Allocation of Regulatory Responsibilities

The New York Stock Exchange, Inc. ("NYSE") and the Cincinnati Stock Ex-

change ("CSE") filed with the Commission a plan for allocation of regulatory responsibilities pursuant to Rule 17d-2 (17 CFR 240.17d-2) ("section 240.17d-2") on June 23, 1977.

The proposal provides that the NYSE would be responsible for processing and acting on certain applications submitted by members of NYSE and CSE ("dual members"). However, both the NYSE and the CSE would continue their separate responsibilities for those persons who are, or apply to become, regular or proprietary members and who propose to join or become associated with a dual member; and the CSE will retain responsibility for approval of applications to become limited members of the CSE.

The NYSE would be responsible for reviewing advertisements, market letters, research reports, sales literature, radio, television, and writing and speaking activities of dual members. All inquiries and complaints involving dual members received by the CSE would be referred to the NYSE who would be responsible for taking appropriate action. However, the CSE would retain responsibility for those inquiries and complaints involving trades executed and other activities on the CSE.

The NYSE would be responsible for conducting examinations for compliance with financial, operational, and sales supervision by dual members. It would conduct all special examinations except that both the NYSE and the CSE reserve the right to participate in any special examinations.

The NYSE would be responsible for review of and subsequent action on or in respect of dual members' Financial and Operational Combined Uniform Single (FOCUS) Report and any generally applicable financial reporting requirements. The NYSE would also be responsible for review, approval and retention of all partnership agreements, corporate certificates, by-laws, subordinated loan agreements and related agreements and amendments including clearing agreements.

Further, the NYSE would be responsible for disciplinary investigations and proceedings involving dual members except insofar that the CSE may assume jurisdiction in investigations relating uniquely to any activity or transaction of business on the CSE.

In order to assist the Commission in determining whether to approve this plan and relieve the party not designated to the specified responsibilities, interested persons are invited to submit written data, views, and arguments concerning the submission on or before December 16, 1977. Persons wishing to comment should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. 4-270.

Copies of the submission and of all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference

Room, 1100 L Street NW., Washington, D.C.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 9, 1977.

[FR Doc. 77-33079 Filed 11-15-77; 8:45 am]

[8010-01]

[SR-NYSE-77-25; Release No. 14147]

NEW YORK STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

NOVEMBER 7, 1977.

In the matter of New York Stock Exchange, Inc., 11 Wall Street, New York, N.Y. 10005.

On August 26, 1977, the New York Stock Exchange, Inc. ("NYSE") filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975, and Rule 19b-4 thereunder, copies of a proposed rule change to (1) lower, in part, the minimum net liquid assets requirement for specialist firms, (2) rescind a requirement that specialist firms must be comprised of at least three regular specialists, and (3) rescind a prohibition against specialists registered in the same stock maintaining a joint limit order book in that stock.

Notice of the proposed rule change was provided in Securities Exchange Act Release No. 13930 (September 2, 1977) and the proposal was published in the FEDERAL REGISTER (42 FR 46440 (September 15, 1977)). No comments were received on the proposal.

As discussed more fully below, the Commission finds that the NYSE's proposed rule change is consistent with the Act and rules and regulations thereunder in that, among other things, it removes certain impediments to a more free and open market and may serve to foster competition among specialists.

THE NYSE PROPOSALS

Under the NYSE's current rules,¹ a specialist must have minimum "net liquid assets" in the amount of \$500,000 or an amount sufficient to meet 25 percent of its position requirements,² whichever sum may be greater. The proposed rule change would generally lower this

¹ 15 U.S.C. 78s(b).

² 17 CFR 240.19b-4.

³ NYSE Rule 104.20(4). 2 CCH, NYSE Guide Para. 2104.20(4).

⁴ Position requirements, set forth in NYSE Rule 104.20 (1), (2) (2 CCH, NYSE Guide Para. 2104.20 (1), (2)), require that a specialist unit have the ability to assume a position of 50 trading units, i.e., 5,000 shares, in each of its assigned common stocks, ten trading units in assigned convertible preferred stocks, 400 shares in non-convertible preferreds traded in 100-share units, and 100 shares in non-convertible preferreds traded in 10-share units.

To bridge the difference between his net liquid assets requirements and his position requirements, a specialist may borrow or make other financing arrangements (e.g., obtaining a line of credit).

net liquid assets requirement to the greater of \$100,000 or 25 percent of the same position requirements.⁶ The proposal provides, however, that "in unusual circumstances" the NYSE may prescribe a different minimum amount.

The NYSE proposal would also rescind NYSE Rule 114 which now imposes two restrictions on specialist operations: (1) a requirement that each specialist unit must generally be comprised of at least three active specialist members and (2) a provision that prohibits a specialist unit from maintaining a joint limit order book in any specialty stock with any other specialist unit registered in that stock. As a result of this proposal, one- and two-member specialist units would be permitted on the NYSE floor and specialists registered in the same stocks would no longer be precluded from entering their customers' limit orders into one or more joint limit order repositories, while at the same time competing in their dealer capacities.

COMMISSION FINDINGS

The Commission finds that the NYSE's net liquid assets requirements is consistent with the statutory purposes of the Act, including removing impediments to a free and open market⁷ and of fostering fair competition among brokers and dealers.⁸ In particular, where new specialist firms seek, at the outset at least, to compete in only one or a small number of stocks, the current \$500,000 net liquid asset requirement could impose an unreasonably high minimum standard in comparison to the amount needed to meet 25 percent of position requirements; accordingly, the foregoing proposal would lower this entry barrier. At the same time, as required under Section 11(b) of the Act and Rule 11b-1 thereunder,⁹ the NYSE would not otherwise alter the safeguards currently in place that are designed to assure the financial and operational capabilities of new and existing specialist firms. A specialist firm will continue to be required to have sufficient capital and financing to be able to carry a 50 trading unit position in each specialty stock. Moreover, specialist firms remain subject to the requirement that they be able to meet, with

their own net liquid assets, at least 25 percent of position requirements. The only departure from current standards would require a specialist to have net liquid assets of at least \$100,000—as opposed to \$500,000—in the event that sum exceeds the amount required to carry 25 percent of position requirements.

With respect to those instances in which the NYSE may determine that "unusual circumstances" make appropriate that a specialist unit may be permitted to maintain net liquid assets at a level below the greater of \$100,000 or 25 percent of position requirements, the NYSE has advised us that it will assume the obligation to notify the Commission in writing of its determinations, identifying the particular specialist unit to which an exception has been accorded, the minimum net liquid assets requirement prescribed by the Exchange for that unit, the relevant time period involved, and the basis underlying the grant of an exception to the generally applicable net liquid assets standard.

Further, we find that the NYSE's proposal to eliminate its "three-man unit" rule is consistent with the provisions of the Act to remove impediments to a free and open market and to foster fair competition among brokers and dealers. At the same time, specialist units will continue to be subject to an NYSE rule¹⁰ requiring that adequate arrangements be made with other regular or relief specialists to assure that, in the temporary absence of an assigned specialist, another specialist will be able to maintain the limit order book and to perform the specialist's market-making functions. More generally, every specialist unit will remain subject to the requirement that it effectively execute commission orders entrusted to it and that it maintain a fair and orderly market in its specialty stocks.¹¹

As to the NYSE's proposed rescission of its rule prohibiting specialist units registered in the same specialty stock from entering customers' limit orders into a joint limit order book, it appears that continuation of the current prohibition may tend to hamper time priority protection for customers' limit orders and may render the maintenance of a fair and orderly market more difficult for each competing specialist. Accordingly, the Commission finds that elimination of this prohibition will constitute a step in removing an obstacle to enhanced protection for limit orders and, for this reason, is consistent with the Act in providing for the protection of investors.¹²

In addition, the Commission believes that rescission of a prohibition against joint limit order books may contribute to an environment more conducive to competition among specialists as dealers. The possibility that limit orders left

with specialists may be entered into joint limit order books would appear to ameliorate certain physical constraints against competition imposed by the dimensions and configuration of the NYSE's trading floor. For example, new units may be able to gain entry without the necessity of the NYSE providing additional facilities.¹³ Also, the Commission believes that the NYSE's proposal presents an opportunity for experimentation which may be useful in the formation and operation of a national market system.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to national securities exchanges and, in particular, the requirements of Section 6,¹⁴ Section 11A,¹⁵ Section 11(b),¹⁶ and Rule 11b-1¹⁷ thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change filed with the Commission on August 26, 1977, be, and it hereby is, approved.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 77-33073 Filed 11-15-77; 8:45 am]

[8010-01]

[B11-2360; Rel. No. 10006]

SOUTHERN STATES FUND, INC.

Order Declaring That Applicant Has Ceased To Be an Investment Company

NOVEMBER 10, 1977.

In the matter of Southern States Fund, Inc., 9248 Street, North Wilkesboro, North Carolina 28659.

Notice is hereby given that Southern States Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified investment company, filed an application on September 19,

¹² With respect to that aspect of the proposed rule change which would rescind the existing NYSE prohibition against the maintenance of joint limit order books by non-affiliated specialists registered in the same security, the Commission, while finding that the proposal is consistent with the Act, has requested the NYSE to furnish additional information concerning (i) the rules and procedures which currently govern the operation of multiple limit order books in situations where non-affiliated specialists are registered in the same security; (ii) how existing rules and procedures would govern the operation of one or more joint limit order books in a security and whether additional rules and procedures are needed before any such joint limit order book is established; and (iii) whether, in the NYSE's view, the purposes of the Act would be furthered by requiring that all limit orders left with NYSE specialists registered in the same security be entered into a single limit order repository.

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78k-1.

¹⁵ 15 U.S.C. 78k(b).

¹⁶ 17 CFR 240.11b-1.

⁶ The proposed rule change would also lower the minimum net liquid assets requirements for full-time relief specialists to \$50,000 from the current standard of \$100,000.

In view of its proposal to lower, in part, its net liquid assets standards, the NYSE also proposes to rescind present NYSE rules permitting a regular specialist unit to make withdrawals below the net liquid assets requirement for normal business expenditures and permitting a unit to continue to operate so long as its net liquid assets do not fall below 75 percent of original minimum net liquid assets requirements (i.e., \$375,000 or 18.75 percent of position requirements).

⁷ Section 6(b)(5) of the Act (15 U.S.C. 78f(b)(5)).

⁸ Section 11A(a)(1)(C)(ii) of the Act (15 U.S.C. 78k-1(a)(1)(C)(ii)).

⁹ 17 CFR 240.11b-1.

¹⁰ NYSE Rule 104.15. 2 CCH, NYSE Guide Para. 2104.15.

¹¹ NYSE Rule 104.10. 2 CCH, NYSE Guide Para. 2104.10.

¹² Section 6(b)(5) of the Act (15 U.S.C. 78f(b)(5)).

1977, and an amendment thereto on October 21, 1977, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that it has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations set forth therein, which are summarized below.

Applicant registered under the Act on February 26, 1973, and on the same date filed a registration statement on Form S-4 under the Securities Act of 1933 (File No. 2-47134) to authorize the public sale of shares of its common stock. Because of inadequate market response no shares of Applicant's common stock were ever sold pursuant to this registration statement, and by an order of the Commission dated May 23, 1974, the above registration statement was declared abandoned. Applicant represents that it has not for any reason within the last eighteen months transferred any assets to a separate trust, the beneficiaries of which were or are security holders of Applicant, and that it is currently inactive under the laws of the State of North Carolina. Applicant further represents that there is no pending litigation concerning its affairs outstanding.

Applicant represents that it has no outstanding assets; no current security holders; and no known liabilities outstanding except for a miscellaneous minor obligation which was incurred in connection with the filing of the above registration statement including filing fees advanced by other entities, legal fees, and accountant's fees. The Applicant further represents that it does not propose to make a public offering of securities or engage in any business activities other than those necessary for the winding-up of its affairs.

On the basis of the above information the Applicant maintains that it is not presently an "investment company" as that term is defined in the Act.

Section 3(c)(1) of the Act provides, in pertinent part, that any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons and which is not making and does not presently propose to make a public offering of its securities is not an investment company within the meaning of the Act.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order, and upon the taking effect of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than December 6, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may re-

quest that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule O-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-33074 Filed 11-15-77;8:45 am]

[8025-01]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1365; Amendment No. 2]

IOWA

Declaration of Disaster Loan Area

The above numbered Declaration (See 42 FR 44862), and Amendment No. 1 (See 42 FR 52589) are amended by adding the following counties, and adjacent counties within the State of Iowa:

Butler	Clay
Dickinson	Dubuque
Kossuth	Lyon
Muscatine	O'Brien
Plymouth	Sioux

All other information remains the same.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 18, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc.77-33042 Filed 11-15-77;8:45 am]

[8025-01]

[Declaration of Disaster Loan Area No. 1395]

NEW YORK

Declaration of Disaster Loan Area

The northwest side of Johnson Avenue (between 235th and 236th Streets) in the Riverdale Section of Bronx County, N.Y., constitutes a disaster area because of damages resulting from a fire which occurred on June 24, 1977. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on January 3, 1978, and for economic injury

until the close of business on August 3, 1978 at:

Small Business Administration, District Office, 26 Federal Plaza, room 3100, New York, N.Y. 10007.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 3, 1977.

PATRICIA M. CLOHERTY,
Acting Administrator.

[FR Doc.77-33043 Filed 11-15-77;8:45 am]

[8025-01]

[Proposed License No. 02/02-0341]

TELESCIENCES CAPITAL CORP.

Application for a License to Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (CFR 107.102 (1977)) under the name of Telescience Capital Corp., 72 East 56th Street, New York, N.Y. 10022, for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (the Act), and the Rules and Regulations promulgated therewith.

The proposed officers, directors and shareholders are as follows:

Name	Title
George Edward Carmody, 299 Riversville Road, Greenwich, C o n n. 06830.	President, General Manager, Treasurer and Director.
Kenneth Michael Curtin, 2 Cedar Island, Larchmont, N.Y. 10538.	Director.
Seymour Irwin Herness, 422 Wingate Road, Huntingdon Valley, Pa. 19006.	Secretary, Director.
Telescience, Inc., 351 New Albany Road, Monestown, N.J. 08067.	Parent company, 100 percent owner.

The Applicant proposes to commence operations with capitalization of \$1,250,000, provided by Telescience, Inc. (Tele). Tele is a publicly traded corporation whose stock is traded over the counter.

The Applicant will conduct its operations principally in the State of New York, expects to be equity rather than collateral oriented in its investment decisions, intends to render management consulting services, and does not intend to use the services of our Investment adviser.

Matters involved in SBA's consideration of the application include the general business reputation of the owner and management, and the probability of successful operations of the new company, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than fifteen (15) days from the date of publication of this notice in the Federal Register, submit to SBA, in writing, relevant comments on

the proposed licensing of this company. Any such communications should be addressed to: Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 10, 1977.

PETER F. McNEISH,
Deputy Associate Administrator
for Investment.

[FR Doc.77-30044 Filed 11-15-77;8:45 am]

[4910-06]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. RFA 505-77-6]

BOSTON AND MAINE CORP.

Purchase of Trustees' Certificates

AGENCY: Federal Railroad Administration, DOT.

ACTION: Receipt of application.

SUMMARY: On September 27, 1977, Robert W. Meserve and Benjamin H. Lacey ("Trustees"), Trustees of the Property of the Boston and Maine Corp., Debtor ("B&M"), 150 Causeway Street, Boston, Mass., 02114, submitted to the Federal Railroad Administration ("FRA") an application under section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976 ("Act"), 45 U.S.C. 825, seeking financial assistance through the sale to the United States of trustees' certificates in the principal amount of \$25,867,000. The Trustees propose to pay the certificates in twenty (20) equal annual installments of 7½ percent of the principal amount of each certificate commencing on the eleventh (11th) anniversary of the issuance date of each certificate. The proceeds of the sale of trustees' certificates are to be used to finance the rehabilitation and improvement of the B&M's main line between Willows, Miss., and Mechanicville, N.Y., a distance of approximately 155 miles. The Trustees state that the proposed project will allow the B&M to significantly lower the operation and maintenance cost of the line involved and will result in the improved ability to provide safe and efficient rail service in the Boston to Albany corridor.

DATE: Comments must be received on or before December 16, 1977.

ADDRESS: Comments should be submitted to the Associate Administrator for Federal Assistance, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

PRINCIPAL ATTORNEY

Jeffrey K. Mercer, Office of Chief Counsel, 202-426-7737; or

PRINCIPAL PROGRAM PERSON

Walter C. Rockey, Office of National Freight Assistance Programs—Rail Freight Service Division, 202-426-4950.

SUPPLEMENTARY INFORMATION:

I. DESCRIPTION OF PROJECT

The project consists of the following four major elements:

- A. Reduction of 18 miles of line from double to single track.
- B. Replacement of 83 miles of jointed rail with continuous welded rail.
- C. Installation of an in track signal system within the project limits and remote controls for interlocking plants at Ayer and Fitchburg, Mass.
- D. Repair of 38 bridges and installation of 300 feet of steel liner in the Hoosac Tunnel.

II. REQUIRED DETERMINATIONS AND FINDINGS

Before the Federal Railroad Administrator ("Administrator") may approve the application, he must determine that the requested financial assistance is in the public interest. In addition, section 505(d)(2)(B) of the Act provides that no trustees' certificate shall be purchased under the section unless and until the Administrator makes a written finding that—

- (i) Such certificates cannot otherwise be sold at a reasonable rate of interest;
- (ii) The project to be financed can reasonably be expected to be maintained as part of a financially self-sustaining railroad system; and
- (iii) The probable value of the assets of the railroad in the event of liquidation provides reasonable protection to the United States.

III. COMMENTS

Interested persons may submit written comments on the application to the Associate Administrator for Federal Assistance not later than the comment closing date indicated in this notice. Such submission shall indicate the docket number shown on this notice and state whether the commenter supports or opposes the application and the reasons therefor.

The application will be made available for inspection during normal business hours in Room 5415 at the above address of the FRA subject to the regulations of the Office of the Secretary of Transportation set forth in Part 7 of Title 49 of the Code of Federal Regulations, and the applicable regulations and rules of the FRA.

The comments will be taken into consideration by the FRA in evaluating the application. However, formal acknowledgement of the comments will not be provided.

The FRA has not approved or disapproved this application, nor has it passed upon the accuracy or adequacy of the information contained therein.

(Sec. 505 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210), as amended.)

Dated: November 10, 1977.

CHARLES SWINBURN,
Associate Administrator for
Federal Assistance, Federal
Railroad Administration.

[FR Doc.77-33086 Filed 11-15-77;8:45 am]

[4910-06]

[FRA Waiver Petition No. HS-77-16]

LENAWEE COUNTY RAILROAD CO.

Petition for Exemption From the Hours of Service Act

The Lenawee County Railroad has petitioned the Federal Railroad Administration pursuant to 45 U.S.C. 61a(e) for an exemption, with respect to certain employees from the Hours of Service Act, as amended, 45 U.S.C. 61-64(b).

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments. Communications should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Attention: FRA Waiver Petition No. HS-77-16, Room 5101, 400 Seventh Street, SW., Washington, D.C. 20590. Communications received before December 30, 1977, will be considered before final action is taken on this petition. All comments received will be available for examination by interested persons during business hours in Room 5101, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

Issued in Washington, D.C., on November 10, 1977.

DONALD W. BENNETT,
Chairman, Railroad
Safety Board.

[FR Doc.77-33153 Filed 11-15-77;8:45 am]

[4810-22]

DEPARTMENT OF THE TREASURY

Customs Service

AUDIBLE SIGNAL ALARMS FROM JAPAN

Antidumping Proceeding Notice

AGENCY: U.S. Treasury Department.

ACTION: Initiation of Antidumping Investigation.

SUMMARY: This notice is to advise the public that an antidumping investigation has been started for the purpose of determining whether or not exports of audible signal alarms from Japan are being sold at less than fair value under the Antidumping Act, 1921. (Sales at less than fair value generally occur when the price of merchandise sold for exportation to the United States is less than the price of such or similar merchandise sold in the home market or to third countries.)

EFFECTIVE DATE: November 16, 1977.
FOR FURTHER INFORMATION CONTACT:

Mr. Anthony Russo, Operations Officer, Technical Branch, Duty Assessment Division, Office of Operations, United States Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On October 11, 1977, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel acting on behalf of Delta Electric Division of Halle Industries, Inc., of Marion, Indiana, indicating the possibility that audible signal alarms from Japan are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act").

For the purposes of this notice the term "audible signal alarms" means electromechanical audible signal alarms having a signal of at least 85 dbA at 10 feet and suitable for use as a component of smoke detectors.

Petitioner submitted price information which reveals that this merchandise from Japan may have been sold at less than fair value during 1977 by margins ranging between 26 and 38 percent.

There is evidence on record concerning injury to, or likelihood of injury to, or prevention of establishment of an industry in the United States. This evidence indicates that imports of audible signal alarms from Japan of the type described in this notice have substantially increased their share of the U.S. market in recent years, due in part to significant underselling of the domestic product. The margin of underselling has been entirely accounted for by the alleged margins of sales at less than fair value. Furthermore, there is evidence showing that petitioner has suffered a significant decline in shipments, capacity utilization and employment during this year as a result, in part, of possible sales at less than fair value. Moreover, petitioner has experienced increased financial losses in its operations producing the subject merchandise.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29), and having determined as a result thereof that there are grounds for so doing, the U.S. Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

A summary of price information received from all sources is as follows:

The information received tends to indicate that the prices of the merchandise sold for exportation to the United States are less than the prices for home consumption.

This notice is published pursuant to § 153.30 of the Customs Regulations (19 CFR 153.30).

HENRY C. STOCKELL, Jr.,
*Acting General Counsel
of the Treasury.*

NOVEMBER 10, 1977.

[FR Doc.77-33113 Filed 11-15-77;8:45 am]

[4810-25]

Office of the Secretary

TREASURY SMALL BUSINESS ADVISORY COMMITTEE

Meeting

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that a meeting of the Treasury Small Business Advisory Committee will be held on December 6 and 7, 1977 in Room 4121 of the Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, D.C. On Tuesday, December 6, the Committee will meet from 11:00 a.m. to 12:30 p.m. and from 2:00 p.m. to 5:00 p.m. The Committee will reconvene on Wednesday, December 7, at 9:30 a.m. and will meet until approximately 12:00 p.m.

The Committee was formed to provide a means of communication between the small business community and Treasury officials on numerous economic issues, including capital formation, tax policy, tax administration, and governmental regulations. The agenda will include discussion and determination of organization and administrative details relating to operation of the Committee, and of substantive matters to be considered by the Committee during the forthcoming months.

The meeting will be open to the public. A limited number of seats will be available on a first come, first serve basis. In order to facilitate admittance, persons interested in attending are asked to call 566-5487 so that confirmation of space and access procedures can be provided.

Interested persons may file a written statement with the Committee before, during or after the meeting. The Chairman will, as time permits, entertain oral comments from members of the public attending the meeting. Persons interested in making oral statements are asked to call 566-5487 before 5 p.m. on December 5.

Minutes of the meeting will be available on request from the Treasury Small Business Advisory Committee thirty days after the meeting.

Inquiries may be directed to Frederic H. Sweet, Special Assistant to the Secretary (Consumer Affairs) Department of the Treasury, Main Treasury Building, Room 4453, 15th and Pennsylvania Avenue, NW., Washington, D.C. 20220, telephone (202) 566-5487.

Dated: November 11, 1977.

ROBERT CARSWELL,
Deputy Secretary.

[FR Doc.77-33145 Filed 11-15-77;8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[Notice No. 528]

ASSIGNMENT OF HEARINGS

NOVEMBER 11, 1977.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

- MC 119741 (Sub-No. 79), Green Field Transport Co., Inc., now being assigned January 26, 1978 (2 days), at Kansas City, Mo., in a hearing room to be later designated.
- MC 200 (Sub-No. 291), Riss International Corp., now being assigned January 19, 1978 (1 day), at Chicago, Ill., in a hearing room to be later designated.
- MC 119789 (Sub-No. 354), Caravan Refrigerated Cargo, Inc., now being assigned December 9, 1977, at Chicago, Ill., in a hearing room to be later designated.
- MC 22179 (Sub-No. 19), Freeman Truck Line, Inc., now being assigned November 17, 1977 (2 days), at the Admiral Benbow Conference Room, 905 N. State Street, Jackson, Miss.
- MC 114457 (Sub-No. 311), Dart Transit Company now being assigned February 7, 1978 (1 day), for hearing in Atlanta, Ga., in a hearing room to be later designated.
- MC 119777 (Sub-No. 335), Ligon Specialized Hauler, Inc., now being assigned February 8, 1978 (3 days), for hearing in Atlanta, Ga., in a hearing room to be later designated.
- MC 113678 (Sub-No. 668), Curtis, Inc., now being assigned February 13, 1978 (1 week), for hearing in Atlanta, Ga., in a hearing room to be later designated.
- MC 24784 (Sub-No. 8), Barry, Inc., now being assigned February 9, 1978 (1 day), at Kansas City, Mo., in a hearing room to be later designated.
- MC 2860 (Sub-No. 152), National Freight, Inc., now being assigned December 13, 1977 (1 day), at Atlanta, Ga., and will be held at the Atlanta American Motor Hotel, Spring Street and Carnegie Way.
- MC 108587 (Sub-No. 21), Schuster Express, Inc., now assigned December 5, 1977, at Hartford, Conn., is being postponed indefinitely.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 77-33186 Filed 11-15-77; 8:45 am]

[7035-01]

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY ELIMINATION OF GATEWAY LETTER NOTICES

NOVEMBER 11, 1977.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, al-

leviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's Gateway Elimination Rules (49 CFR Part 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission within 10 days from the date of this publication. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will not operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

No. MC 60014 (Sub-No. E4) (Correction), filed June 4, 1974, published in the FEDERAL REGISTER issues of July 2, 1975, September 23, 1977, and republished, as corrected, this issue. Applicant: AERO TRUCKING, INC., P.O. Box 308, Monroeville, Pa. 15146. Applicant's representative: A. Charles Tell, 100 East Broad St., Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities*, the transportation of which because of size or weight requires the use of special equipment, between points in Wisconsin on the one hand, and, on the other, points in New Hampshire, Rhode Island, those in Massachusetts within 35 miles of Boston and those in Connecticut east of a line beginning at the Connecticut State line and extending along U.S. Highway 5 to junction U.S. Highway 44, to junction Interstate Highway 84, to junction Connecticut Highway 72, to junction Connecticut Highway 17, to junction Connecticut Highway 77, to junction Connecticut Highway 146 to Leetes Island, Conn.

The purpose of this filing is to eliminate the gateways of Columbiana, Cuyahoga, Mahoning, Summit, and Trumbull Counties, Ohio; points in Pennsylvania on and west of a line extending from the Pennsylvania-Maryland State line north along unnumbered highway to York, Pennsylvania, thence along Interstate Highway 83 (formerly U.S. Highway 111) to Harrisburg, Pennsylvania, thence north along Pennsylvania Highway 147 (formerly portion Pennsylvania Highway 14) to junction U.S. Highway 220, (formerly portion Pennsylvania Highway 14) thence along U.S. Highway 220 to junction U.S. Highway 15 (formerly portion Pennsylvania Highway 14), thence along U.S. Highway 15 to Trout Run, Pennsylvania, thence continuing along U.S. Highway 15 to the Pennsylvania-New York State line, and New York; and Boston, Mass., and points in Massachusetts within 35 miles of Boston.

NOTE.—The purpose of this correction is to correct the territorial description.

No. MC 60014 (Sub-No. E26) (Correction), filed June 4, 1974, published in the FEDERAL REGISTER issues of July 23, 1975, and September 23, 1977, and republished, as corrected, this issue. Applicant: AERO TRUCKING, INC., P.O. Box 308, Monroeville, Pa. 15146. Applicant's representative: A. Charles Tell, 100 E. Broad St., Columbus, Ohio 45215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities*, the transportation of which, by reason of size or weight, require the use of special equipment, between those points in Indiana on and north of a line beginning at the Indiana-Illinois State line and extending along Indiana Highway 18 to junction U.S. Highway 52, thence along U.S. Highway 52 to junction U.S. Highway 18, thence along U.S. Highway 18 to junction U.S. Highway 421, thence along U.S. Highway 421 to junction U.S. Highway 25, thence along U.S. Highway 25 to junction U.S. Highway 24, thence along U.S. Highway 24 to junction National Interstate Highway 69, thence along National Interstate Highway 69 to junction U.S. Highway 6, thence along U.S. Highway 6 to the Indiana-Ohio State line, on the one hand, and, on the other, those points in Ohio on and east of a line beginning at the Kentucky-Ohio State line and extending along U.S. Highway 23 to junction U.S. Highway 22, thence along U.S. Highway 22 to junction Ohio Highway 37, thence along Ohio Highway 37 to junction U.S. Highway 40, thence along U.S. Highway 40 to junction Ohio Highway 79, thence along Ohio Highway 79 to junction Ohio Highway 13, thence along Ohio Highway 13 to junction U.S. Highway 30, thence along U.S. Highway 30 to the Ohio-Pennsylvania State line. The purpose of his filing is to eliminate the gateways of points in Ohio on, south, and east of a line beginning at the Ohio-West Virginia State line and extending along Ohio Highway 13 to junction U.S. Highway 33, thence along U.S. Highway 33, to junction U.S. Highway 30, thence along U.S. Highway 30 to the Ohio-West Virginia State line.

NOTE.—The purpose of this correction is to correct the territorial description.

No. MC 60014 (Sub-No. E40) (Correction), filed June 4, 1974, published in the FEDERAL REGISTER issues of July 9, 1975, and October 3, 1977, and republished, as corrected, this issue. Applicant: AERO TRUCKING, INC., P.O. Box 308, Monroeville, Pa. 15146. Applicant's representative: William J. Rorison (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities*, requiring special equipment, restricted so that, or provided that, the loading or unloading, which necessitate the special equipment, is performed by the consignor or consignee, or both, between points in Maryland, on the one hand, and, on the other, points in Maine,

New Hampshire, those in Vermont on and east of a line beginning at the United States-Canada International boundary line and extending along Vermont Highway 105 to junction Vermont Highway 101, thence along Vermont Highway 101 to junction Vermont Highway 100, thence along Vermont Highway 100 to junction U.S. Highway 4, thence along U.S. Highway 4 to junction Vermont Highway 100, thence along Vermont Highway 100 to junction Vermont Highway 30, thence along Vermont Highway 30 to junction U.S. Highway 5, thence along U.S. Highway 5 to the Vermont-Massachusetts State line, those in Rhode Island on and north of a line beginning at the Connecticut-Rhode Island State line and extending along Rhode Island Highway 165 to junction Rhode Island Highway 102, thence along Rhode Island Highway 102 to junction U.S. Highway 1-A, thence along U.S. Highway 1-A to Rhode Island Sound, and those in Massachusetts on and east of U.S. Highway 5. The purpose of this filing is to eliminate the gateways of points in New York within ten miles of Greenwich, Conn.; Greenwich, Conn.; and points in Massachusetts within 35 miles of Boston, and points in Massachusetts on and east of U.S. Highway 5.

NOTE.—The purpose of this filing is to correct the gateway territorial description.

No. MC 60014 (Sub-No. E46) (correction), filed June 4, 1974, published in the FEDERAL REGISTER issues of July 24, 1975, October 3, 1977, and republished, as corrected, this issue. Applicant: AERO TRUCKING, INC., P.O. Box 308, Monroeville, Pa. 15146. Applicant's representative: William J. Rorison (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities*, requiring special equipment, restricted so that, or provided that, the loading or unloading which necessitate the special equipment, is performed by the consignor or consignee, or both, between points in Delaware, on the one hand, and, on the other, points in New Hampshire, Rhode Island, and those in Vermont on and east of a line beginning at Champlain, and extending along U.S. Highway 7 to junction Vermont Highway 103, thence along Vermont Highway 130 to junction Vermont Highway 155, thence along Vermont Highway 155 to junction Vermont Highway 100, thence along Vermont Highway 100 to junction Vermont Highway 30, thence along Vermont Highway 30 to junction U.S. Highway 5, thence along U.S. Highway 5 to the Vermont-Massachusetts State line. The purpose of this filing is to eliminate the gateways of points in New York within ten miles of Greenwich, Conn.; Greenwich, Conn., and points in Massachusetts within 35 miles of Boston, Mass., and points in Massachusetts on and east of U.S. Highway 5.

NOTE.—The purpose of this correction is to state the correct gateway territory.

No. MC 60014 (Sub-No. E87) (correction), filed June 4, 1974, published in

the FEDERAL REGISTER issues of July 21, 1975, October 3, 1977, and republished, as corrected, this issue. Applicant: AERO TRUCKING, INC., P.O. Box 308, Monroeville, Pa. 15146. Applicant's representative: William J. Rorison (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, requiring special equipment, restricted so that or provided that, the loading or unloading, which necessitate the special equipment, is performed by the consignor or consignee, or both, from those points in Rhode Island on and east of a line beginning at the Massachusetts-Rhode Island State line and extending along Rhode Island Highway 24 to junction Rhode Island Highway 114, thence along Rhode Island Highway 114 to junction Rhode Island Highway 103, thence along Rhode Island Highway 103 to junction U.S. Highway 1, thence along U.S. Highway 1 to junction Rhode Island Highway 146, thence along Rhode Island Highway 146 to the Rhode Island-Massachusetts State line, to points in Tennessee. The purpose of this filing is to eliminate the gateways of points in Massachusetts within 35 miles of Boston, Greenwich, Conn., points in New York within 10 miles of Greenwich, Conn.; and Wheeling and Beechbottom, W. Va., and points in Massachusetts on and east of U.S. Highway 5.

NOTE.—The purpose of this correction is to state the correct gateway territory.

No. MC 60014 (Sub-No. E114) (Correction), filed June 4, 1974, published in the FEDERAL REGISTER issues of July 21, 1975, October 3, 1977, and republished, as corrected, this issue. Applicant: AERO TRUCKING, INC., P.O. Box 308, Monroeville, Pa. 15146. Applicant's representative: William J. Rorison (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Machinery, materials, supplies, and equipment*, incidental to, or used in the construction, development, and production of natural gas, and petroleum, the transportation of which, by reason of their size or weight, requires the use of special equipment, between points in Fulton, Hickman, Carlisle, Ballard, McCracken, Graves, Marshall, Lyon, Livingston, Crittenden, Hopkins, Union, Henderson, Daviess, McLean, Muhlenberg, Butler, Ohio, Hancock, Breckinridge, Grayson, Edmonson, Warren, Hardin, Meade, Nelson, Bullitt, Jefferson, Caldwell, Spencer, Anderson, Shelby, Oldham, Trimble, Henry, Carroll, Gallatin, Owen, Franklin, Woodford, Fayette, Scott, Grant, Boone, Kenton, Campbell, Pendleton, Harrison, Bourbon, Clark, Nicholas, Robertson, Bracken, Mason, Fleming, Bath, Rowan, Morgan, Jonnson, Pike, Martin, Lawrence, Elliott, Carter, Boyd, Greenup, and Lewis Counties, Ky., on the one hand, and, on the other, points in Delaware, District of Columbia, Maryland, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, points in Massachusetts

within 35 miles of Boston, and points in Virginia east of a line beginning at the West Virginia-Virginia State line extending along Virginia Highway 16 to the Virginia-Tennessee State line. The purpose of this filing is to eliminate the gateways of (1) West Virginia; (2) Pennsylvania; (3) New York; and (4) points in Massachusetts within 35 miles of Boston; (5) points in Massachusetts east of U.S. Highway 5.

NOTE.—The purpose of this correction is to state the correct gateway.

No. MC 60014 (Sub-No. E125) (Correction), filed June 4, 1974, published in the FEDERAL REGISTER issues of October 1, 1975, October 3, 1977, and republished, as corrected, this issue. Applicant: AERO TRUCKING, INC., P.O. Box 308, Monroeville, Pa. 15146. Applicant's representative: William R. Rorison (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building, roofing and insulating material*, requiring special equipment, restricted so that, or provided that, the loading or unloading which necessitate the special equipment, is performed by the consignor or consignee, or both (except in bulk), from the plantsite of Johns Manville Perlite Corporation, Rockdale, Ill., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont, Virginia, and the District of Columbia (Pennsylvania); points in New York within 10 miles of Greenwich, Conn.; Greenwich, Conn., and points in Massachusetts within 35 miles of Boston and points in Massachusetts east of U.S. Highway 5*; *Cement pipe* containing asbestos fibre, requiring special equipment, restricted so that, or provided that, the loading or unloading, which necessitates the special equipment, is performed by the consignor or consignee, or both, from Waukegan, Ill., to points in Virginia, Connecticut, Delaware, Maine, Maryland, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, those in Massachusetts on and east of a line beginning at the Vermont-Massachusetts State line and extending along Massachusetts Highway 8 to junction Massachusetts Highway 2, thence along Massachusetts Highway 2 to junction Massachusetts Highway 8A, thence along Massachusetts Highway 8A to junction Massachusetts Highway 116, thence along Massachusetts Highway 116 to junction Massachusetts Highway 8A, thence along Massachusetts Highway 8A to junction Massachusetts Highway 9, thence along Massachusetts Highway 9 to junction Massachusetts Highway 112, thence along Massachusetts Highway 112 to junction U.S. Highway 20, thence along U.S. Highway 20 to junction Massachusetts Highway 8, thence along Massachusetts Highway 8 to the Massachusetts-Connecticut State line; and those in Vermont on and east of a line beginning at the United States-Canada International Boundary line and extending along Vermont Highway 5 to

junction Vermont Highway 14, thence along Vermont Highway 14 to junction Vermont Highway 15, thence along Vermont Highway 15 to junction Vermont Highway 100, thence along Vermont Highway 100 to junction Vermont Highway 12, thence along Vermont Highway 12 to junction Vermont Highway 4, thence along Vermont Highway 4 to junction Vermont Highway 100, thence along Vermont Highway 100 to junction Vermont Highway 8A, thence along Vermont Highway 8A to the Vermont-Massachusetts State line, and the District of Columbia (points in Pennsylvania on and west of U.S. Highway 15; and points in New York within 10 miles of Greenwich, Conn.; Greenwich, Conn.; and points in Massachusetts within 35 miles of Boston, and points in Massachusetts on and east of U.S. Highway 5 and points in West Virginia)*. The purpose of this filing is to eliminate the gateways as indicated by asterisks above.

NOTE.—The purpose of this correction is to state the correct gateway territory.

No. MC 60014 (Sub-No. E136) (Correction), filed June 3, 1974, published in the FEDERAL REGISTER issues of September 19, 1975, October 3, 1977, and republished, as corrected, this issue. Applicant: AERO TRUCKING, INC., P.O. Box 308, Monroeville, Pa. 15146. Applicant's representative: William R. Rorison (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Commodities*, the transportation of which, by reason of size or weight, require the use of special equipment, between those points in Ohio on and west of a line beginning at Lake Erie and extending along Ohio Highway 91 to junction U.S. Highway 422, thence along U.S. Highway 422 to junction Ohio Highway 88, thence along Ohio Highway 88 to the Ohio-Pennsylvania State line, on the one hand, and, on the other, points in Rhode Island, those in Massachusetts within 35 miles of Boston, Mass., those in Connecticut on and east of a line beginning at the Massachusetts-Connecticut State line and extending along U.S. Highway 5 to junction Interstate Highway 91, thence along Interstate Highway 91 to junction Connecticut Highway 2, thence along Connecticut Highway 2 to junction Connecticut Highway 85, thence along Connecticut Highway 85 to the Block Island Sound, those in New Hampshire on and east of a line beginning at the Vermont-New Hampshire State line and extending along U.S. Highway 302 to junction New Hampshire Highway 112, thence along New Hampshire Highway 112 to junction New Hampshire Highway 118, thence along New Hampshire Highway 118 to junction U.S. Highway 3, thence along U.S. Highway 3 to junction New Hampshire Highway 3A/25, thence along New Hampshire Highway 3A/25 to junction New Hampshire Highway 3A, thence along New Hampshire Highway 3A to junction New Hampshire Highway 104, thence along New Hampshire Highway 104 to junction U.S. Highway 4, thence along

U.S. Highway 4 to junction New Hampshire Highway 11, thence along New Hampshire Highway 11 to junction New Hampshire Highway 10, thence along New Hampshire Highway 10 to junction New Hampshire Highway 123A, thence along New Hampshire Highway 123A to junction New Hampshire Highway 123, thence along New Hampshire Highway 123 to the Vermont-New Hampshire State line. The purpose of this filing is to eliminate the gateways of Columbiana, Cuyahoga, Mahoning, Summit, and Trumbull Counties, Ohio, Pennsylvania, New York, and points in Massachusetts within 35 miles of Boston.

NOTE.—The purpose of this correction is to state the correct territorial description.

No. MC 83539 (Sub-No. E54), filed June 4, 1974. Applicant: C & H TRANSPORTATION CO., INC., P.O. Box 5976, Dallas, Tex. 75222. Applicant's representative: H. N. Cunningham, III (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: (1) *Commodities*, the transportation of which because of size or weight, require the use of special equipment and related machinery parts and related contractor's materials and supplies when their transportation is incidental to the transportation by the carrier of commodities which, because of size or weight, require the use of special equipment; (2) *self-propelled articles*, each weighing 15,000 pounds or more, and *related machinery, tools, parts and supplies* moving in connection therewith, restricted in (2) to commodities which are transported on trailers; between points in Illinois (except those located in and west of Jo Daviess, Carroll, Whiteside, Henry, Stark, Peoria, Fulton, Mason, Cass, Morgan, and in and south of Macoupin, Montgomery, Shelby, Cumberland, and Clark Counties), on the one hand, and, on the other, points in Tennessee (except those located in and east of Henry, Carroll, Henderson, Chester, and McNairy Counties). Restriction: The authority granted in (1) is subject to the condition that no service shall be performed in the stringing or picking up of any of those commodities in connection with main or trunk pipelines. The purpose of this filing is to eliminate the gateways of points in Kentucky and points in Tennessee within 50 miles of Nashville, Tenn., and points in Arkansas.

No. MC 106603 (Sub-No. E79), filed May 10, 1974. Applicant: DIRECT TRANSIT LINES, INC., P.O. Box 8099, Grand Rapids, Mich. 49508. Applicant's representative: Martin J. Leavitt, P.O. Box 400, Northville, Mich. 48167. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Such building stone as are building contractor's equipment, materials, and supplies*, from points in Ohio, to points in Iowa on and east of U.S. Highway 63, points in Missouri on and east of U.S. Highway 63, and points in Wisconsin on and south of U.S. High-

way 10. The purpose of this filing is to eliminate the gateway of points in Indiana on and south of U.S. Highway 36 (except Indianapolis, and points in Lawrence and Monroe Counties, Ind.).

No. MC 106603 (Sub-No. E80), filed May 10, 1974. Applicant: DIRECT TRANSIT LINES, INC., P.O. Box 8099, Grand Rapids, Mich. 49508. Applicant's representative: Martin J. Leavitt, P.O. Box 400, Northville, Mich. 48167. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Such building blocks and clay products as are building contractor's equipment, materials, and supplies*, from points in Ohio, to points in Iowa on and east of U.S. Highway 63. The purpose of this filing is to eliminate the gateway of points in Indiana (except the plantsite of the Bethlehem Steel Corporation, located at Burns Harbor, Porter County, Ind.).

No. MC 114284 (Sub-No. E1), filed June 4, 1974. Applicant: FOX-SMYTHE TRANSPORTATION CO., INC., P.O. Box 82307 Stockyard Station, Oklahoma City, Okla. 73108. Applicant's representative: John E. Jandera, 641 Harrison St., Topeka, Kans. 66603. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: (1) *Meats, meat products, and meat by-products and articles distributed by meat packinghouses as described in sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles), from the plant and storage facilities of The Cudahy Co., at Wichita, Kans., to points in that part of Texas within a 25-mile radius of El Paso, and points in Texas within an area bounded by a line beginning at junction U.S. Highway 66 and the Oklahoma-Texas State line, and extending north and west along the Oklahoma-Texas State line to the Texas-New Mexico State line, thence south and west along the Texas-New Mexico State line, to junction U.S. Highway 285, thence southeast along U.S. Highway 285 to Pecos, Tex., thence in a northeast direction along U.S. Highway 80 to Abilene, Tex., thence along Texas Highway 251 via Hamby, Tex., to junction U.S. Highway 180, thence along U.S. Highway 180 to Mineral Wells, Tex., thence along U.S. Highway 281 to Jacksboro, Tex., thence along Texas Highway 24 to Decatur, Tex., thence along U.S. Highway 81 to junction U.S. Highway 82, near Ringgold, Tex., to junction U.S. Highway 77, thence along U.S. Highway 77 to the Texas-Oklahoma State line, except points in Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill and Oldham Counties, Tex. (2) *Meats, meat products and meat by-products and articles distributed by meat packinghouses as described in sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk,

in tank vehicles), from the plant and storage facilities of The Cudahy Co., at Wichita, Kans., to points in New Mexico, except points in Colfax, Harding, Mora, Rio Arriba, San Miguel, San Juan, Taos, Union and Quay Counties, N. Mex. (3) *Meats, meat products, and meat by-products and articles distributed by meat packinghouses* as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles), from the plant site and storage facilities utilized by Wilson & Co., Inc., at or near Cherokee, Iowa, to Las Vegas, Nev.

(4) *Meats, meat products, and meat by-products and articles distributed by meat packinghouses* as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles), from the plant site and storage facilities utilized by Wilson & Co., Inc., at or near Cherokee, Iowa, to points in New Mexico, except points in Colfax, Rio Arriba, San Juan, Taos, and Union Counties, N. Mex. (5) *Meats, meat products, and meat by-products and articles distributed by meat packinghouses* as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles), from the plant site and storage facilities utilized by Wilson & Co., Inc., at or near Cherokee, Iowa, to points in that part of Texas within a 25 mile radius of El Paso, and points in Texas within an area bounded by a line beginning at junction U.S. Highway 66 and the Oklahoma-Texas State line, and extending north and west along the Oklahoma-Texas State line to the Texas-New Mexico State line, thence south and west along the Texas-New Mexico State line to the Texas-New Mexico to junction U.S. Highway 285, thence southeast along U.S. Highway 285 to Pecos, Tex., thence in a northeast direction along U.S. Highway 80 to Abilene, Tex., thence along Texas Highway 351 via Hamby, Tex., to junction U.S. Highway 180 to Mineral Wells, Tex., thence along U.S. Highway 281 to Jacksboro, Tex., thence along Texas Highway 24 to Decatur, Tex., thence along U.S. Highway 81 to junction U.S. Highway 82, to near Ringgold, Tex., thence along U.S. Highway 77 to the Texas-Oklahoma State line, except points in Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill, and Oldham Counties, Tex. (7) *Meats, meat products, and meat by-products and articles distributed by meat*

packinghouses as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles), from the plant site and storage facilities of Missouri Beef Packers, Inc., at or near Phelps City, Mo., to points in New Mexico, except points in Colfax, Rio Arriba, San Juan, Taos, and Union Counties, N. Mex.

(8) *Meats, meat products, and meat by-products and articles distributed by meat packinghouses* as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 206 and 766 (except commodities in bulk, in tank vehicles), from the plant site and storage facilities of Missouri Beef Packers, Inc., at or near Phelps City, Mo., to points in that part of Texas within a 25 mile radius of El Paso, and points in Texas within an area bounded by a line beginning at junction U.S. Highway 66 and the Oklahoma-Texas State line and extending north and west along the Oklahoma-Texas State line to the Texas-New Mexico State line to junction U.S. Highway 285, thence southeast along U.S. Highway 285 to Pecos, Tex., thence in a northeast direction along U.S. Highway 80 to Abilene, Tex., thence along Texas Highway 351 via Hamby, Tex., to junction U.S. Highway 180, thence along U.S. Highway 180 to Mineral Wells, Tex., thence along U.S. Highway 281 to Jacksboro, Tex., thence along Texas Highway 24 to Decatur, Tex., thence along U.S. Highway 81 to junction U.S. Highway 82 near Ringgold, Tex., thence along U.S. Highway 77 to the Texas-Oklahoma State line, except points in Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill, and Oldham Counties, Tex.

The purpose of this filing is to eliminate the gateway of Oklahoma City, Okla.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-33130 Filed 11-15-77; 8:45 am]

[7035-01]

[Revised Service Order No. 1252; I.C.C. Order No. 38]

CHESAPEAKE AND OHIO RAILWAY CO.

Rerouting Traffic

In the opinion of Joel E. Burns, Agent, The Chesapeake and Ohio Railway Co. is unable to transport traffic over its line between Ashland, Ky., and Louisville, Ky., because of a derailment and damage to a tunnel at Princess, Ky.

It is ordered, That:

(a) *Rerouting traffic.* The Chesapeake and Ohio Railway Co., being unable to transport traffic over its line between Ashland, Ky., and Louisville, Ky., because of a derailment and damage to a tunnel

at Princess, Ky., is authorized to divert or reroute such traffic over any available route to expedite the movement.

(b) *Concurrence of receiving road to be obtained.* The Chesapeake and Ohio Railway Co., in rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* The Chesapeake and Ohio Railway Co., when rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic; divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 3:30 p.m., November 4, 1977.

(g) *Expiration date.* This order shall expire at 11:59 p.m., November 25, 1977, unless otherwise modified, changed or suspended.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as Agent of all railroads, subscribing to the car service and car hire agreement under the terms of that agreement; and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 4, 1977.

INTERSTATE COMMERCE
COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.77-33132 Filed 11-15-77; 8:45 am]

[7035-01]

FOURTH SECTION APPLICATION(S) FOR RELIEF

NOVEMBER 11, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of section 4 of the Inter-

state Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed on or before December 1, 1977.

FSA No. 43459—*Hoisting Machinery from Pocatello, Idaho*. Filed by Western Trunk Line Committee, Agent (No. A-2743), for interested rail carriers. Rates on machinery, hoisting, viz.: capstans, iron or steel, and related articles, transported on flat cars, as described in the application, from Pocatello, Idaho, to points in western trunk-line territory.

Grounds for relief—Rate relationship. Tariff—Supplement 2 to Western Trunk Line Committee, Agent, tariff W-200-F, ICC No. A-5065. Rates are published to become effective on December 10, 1977.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-33131 Filed 11-15-77;8:45 am]

[7035-01]

[Notice No. 252]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission on or before December 16, 1977. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopsis form, but are deemed

sufficient to place interested persons on notice of the proposed transfer.

No. MC-FC-77314, filed September 19, 1977. Transferee: Spector Industries, Inc., doing business as Spector Freight System, 1050 Kingery Highway, Bensenville, Ill. 60106. Transferor: Spector Freight System, Inc., 1050 Kingery Highway, Bensenville, Ill. 60106. Applicant's representative: Jack Goodman, 39 South La Salle Street, Chicago, Ill. 60603. Authority sought for the purchase by Transferee of the operating rights of transferor, as set forth in the following: (a) Certificate No. MC 69116 and various Subs thereunder, authorizing general commodities, excepting, among others, Classes A and B explosives, household goods and commodities, in bulk, and certain specified commodities, as a common carrier, over regular and irregular routes, from, to and between specified points in the States of Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Florida, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin and the District of Columbia; (b) Certificate No. MC 64994 and various subs thereunder, acquired pursuant to MC-F-12472, authorizing general commodities, excepting, among others, classes A and B explosives, household goods and commodities, in bulk, and certain specified commodities, as a common carrier, over regular and irregular routes, from, to, and between specified points in the States of Illinois, West Virginia, Ohio, Indiana, South Carolina, North Carolina, Georgia, Virginia, Massachusetts, Maryland, Delaware, Pennsylvania, New York, Connecticut, Rhode Island, Michigan, New Jersey, Florida, Missouri, Wisconsin, Kentucky, Tennessee, and the District of Columbia, with restrictions, serving various intermediate and off-route points, over one alternate route for operating convenience only, as more specifically described in Docket No. MC 64994 and sub numbers thereunder; and (c) Certificate No. MC 105807 and various subs thereunder, acquired pursuant to MC-F-12472, authorizing general commodities, excepting, among others, classes A and B explosives, household goods and commodities, in bulk, and certain specified commodities, as a common carrier, over regular and irregular routes, from, to and between specified points in the States of Illinois, Indiana, Iowa, Nebraska, Missouri and Colorado. Transferor is a subsidiary of Transferee. Transferee presently holds no authority from this Commission. An application has not been filed for temporary authority under section 210a(b) of the Interstate Commerce Act.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-33133 Filed 11-15-77;8:45 am]

[7035-01]

[Notice No. 253]

MOTOR CARRIER TRANSFER PROCEEDINGS

NOVEMBER 16, 1977.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC 77388. By application filed November 4, 1977, BETTER WAY SERVICE CO. OF OHIO, INC., Route 1, Post Office Box 15, Bethesda, OH 43719, seeks temporary authority to transfer the operating rights of CUSTOM MOTOR FREIGHT, INC., 150 East Broad Street, Columbus, Ohio 43215, under section 210a(b). The transfer to BETTER WAY SERVICE CO. OF OHIO, INC., of the operating rights of CUSTOM MOTOR FREIGHT, INC., is presently pending.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-33134 Filed 11-15-77;8:45 am]

[7035-01]

[Notice No. 148TA]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 9, 1977.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 1222 (Sub-No. 44TA) (Partial correction), filed September 27, 1977, published in the FEDERAL REGISTER issue of October 18, 1977, and republished as corrected this issue. Applicant: THE REINHARDT TRANSFER CO., 1410 Tenth Street, Portsmouth, Ohio 45662. Applicant's representative: Robert H. Kinker, 314 W. Main Street, P.O. Box 464, Frankfort, Ky. 40601.

NOTE.—The purpose of this partial correction is to indicate Applicant's representative which was partially published in the FEDERAL REGISTER of October 18, 1977, and corrected this issue. The rest of the publication remains the same.

No. MC 1334 (Sub-No. 19TA), filed October 19, 1977, Applicant: RITEWAY TRANSPORT, INC., 2131 West Roosevelt, Phoenix, Ariz. 85009. Applicant's representative: William H. Shawn, Esquire, 1730 M Street NW., Suite 501, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment). Between Boulder, Colo., and points within 50 miles thereof, on the one hand, and, on the other, Grand Junction, Colo., for 180 days. Applicant intends to tack with Docket No. MC 1334. Applicant intends to interline at Denver, Colo., and its commercial zone. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 29 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 2020 Federal Building, 230 N. First Avenue, Phoenix, Ariz. 85025.

No. MC 10875 (Sub-No. 39TA), filed October 17, 1977, Applicant: BRANCH MOTOR EXPRESS CO., 114 Fifth Avenue, New York, N.Y. 10011. Applicant's representative: G. G. Heller (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except classes A and B explosives, livestock, sand, gravel, household goods, commodities in bulk, and those requiring special equipment), serving the Plant and/or warehouse site of Mead Johnson & Co., at or near Mount Vernon, Ind., as an off-route point in connection with carrier's regular routes presently authorized, for 180 days. Supporting shipper(s): Mead Johnson & Co., 2404 Pennsylvania, Evansville, Ind. 47721. Send protests to: Maria B. Keiss Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 41635 (Sub-No. 50TA), filed October 17, 1977, Applicant: DEALERS

TRANSPORT CO., P.O. Box 2482 DeSoto Station, Memphis, Tenn. 38102. Applicant's representative: Mr. Richard D. Gleaves, Attorney, 631 Stahlman Building, Nashville, Tenn. 37201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Automobiles, new and used, freight or passenger, farm tractors, tractors, buses and chassis*, including parts and equipment thereto when accompanying vehicle, in secondary movements in driveway and truckaway service, from points and places in East Baton Rouge Parish, La., and West Baton Rouge Parish, La., on the one hand, and, on the other, points and places in the following Texas counties: Angeline, Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, Shelby, San Jacinto and Tyler. Restricted to the transportation of shipments manufactured, assembled, imported and distributed by Ford Motor Co., for 180 days. Supporting shippers: Ford Motor Co., Room 324, Ford Division General Office, P.O. Box 1529-B, Dearborn, Mich. 48121. Send protests to: Mr. Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, Tenn. 38103.

No. MC 59856 (Sub-No. 75TA), filed October 19, 1977, Applicant: SALT CREEK FREIGHTWAYS, P.O. Box 39, Casper, Wyo. 82601. Applicant's representative: John R. Davidson, Davidson, Veeder, Baugh & Broeder, P.C., 805 Midland Bank Building, Billings, Mont. 59101. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) between Butte, Mont., and Bozeman, Mont., serving the off-route points of Trident, Amsterdam and Churchill, Mont., as off-route points in connection with carrier's otherwise authorized regular route authority in Docket No. MC 59856 (Sub-No. 60). Applicant requests waiver of restrictions in first ordering paragraph against service to commercial zones and interline and tacking. It intends to perform total service at off-route points and presently authorized points, including tacking with subs. 51 and 60, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Ideal Basic Industries Incorporated, Trident Mont. 59753. Churchill Equipment Co., Inc., Route 1, Box 215 A Churchill Route, Manhattan, Mont. 59741. Amsterdam Lumber Incorporated, Route 1, Box 215 Churchill Route, Manhattan, Mont. 59741. Send protests to: District Supervisor Paul A. Naughton, Interstate Commerce Commission, Room 105 Federal Building & Court House, 111 South Wolcott, Casper, Wyo. 82601.

No. MC 110525 (Sub-No. 1215), filed October 21, 1977, Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 E. Lancaster Avenue, P.O. Box 200, Dowingtown, Pa. 19335. Applicant's representative: Thomas J. O'Brien (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry sugar*, in bulk, in tank vehicles, from Philadelphia, Pa., to Canajoharie, N.Y., for 180 days. Supporting shipper(s): The National Sugar Refining Co., 1037 North Delaware Avenue, Philadelphia, Pa. 19125. Send protests to: Monica A. Blodgett Transportation Assistant, Interstate Commerce Commission, 600 Arch Street, Room 3238, Philadelphia, Pa. 19106.

No. MC 114211 (Sub-No. 322 TA), filed October 19, 1977, Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Daniel Sullivan, 10 South La Salle, Suite 1600, Chicago, Ill. 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the facilities of Nucor Steel Division of Nucor Corp., at or near Norfolk, Nebr., to the ports of entry on the international boundary line located between the United States and Canada located in Michigan, for 90 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Nucor Steel, P.O. Box 309, Norfolk, Nebr. 68701. Send protests to: Herbert W. Allen District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, Iowa. 50309.

No. MC 115496 (Sub-No. 66TA), filed October 17, 1977, Applicant: LUMBER TRANSPORT, INC., P.O. Box 111, Highway 23 South, Cochran, Ga. 31014. Applicant's representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, Ga. 30349. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Board, building wall or insulation faced with vinyl film*, (2) *Moulding, building woodwork, faced with vinyl film*, (3) *Luan plywood faced with vinyl film*, (4) *Board or sheets made from wood shavings, wood sawdust or ground wood, one-half (1/2) inch or more in thickness, faced with vinyl film*, (5) *Plywood*, From the plantsite of Pan American Gyro-Tex Co., at Jacksonville, Fla., to points in Georgia, Illinois, Indiana, Ohio, Oklahoma, Missouri, Maryland, Kansas, Pennsylvania, New York, North Carolina, South Carolina, Virginia, Tennessee, and Texas, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Pan American Gyro-Tex Co., (a division of Sierra Pacific Industries), P.O. Box 26325, Imeson, Airport, Jacksonville, Fla. 32218. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 W. Peachtree St. NW., Room 300, Atlanta, Ga. 30309.

No. MC 113651 (Sub-No. 229TA) (Partial correction), filed September 8, 1977, published in the FEDERAL REGISTER issue of October 13, 1977, and republished as corrected this issue. Applicant: INDIANA REFRIGERATOR LINES, INC., Box 552, Riggins Road, Muncie, Ind. 47305. Applicant's representative: Daniel C. Sullivan, singer & Sullivan, 10 South La Salle Street, Suite 1600, Chicago, Ill. 60603.

NOTE. The purpose of this partial correction is to indicate where to send protests to. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 West Wayne Street, Suite 113, Fort Wayne, Ind. 46802. The rest of the publication remains the same.

No. MC 117815 (Sub-No. 270 TA), filed October 17, 1977. Applicant: PULLEY FREIGHT LINES, INC., 405 Southeast 20th Street, Des Moines, Iowa. 50317. Applicant's representative: Dewey Marselle, 405 Southeast 20th Street, Des Moines, Iowa. 50317. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of or utilized by Oscar Mayer & Company, located at or near Perry and Des Moines, Iowa, to the facilities of or utilized by Oscar Mayer, located at or near Goodlettsville, Tenn., for 90 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Oscar Mayer & Co., P.O. Box 1409, Madison, Wis. 53701. Send protests to: Herbert W. Allen District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, Iowa. 50309.

No. MC 18838 (Sub-No. 16 TA), filed October 20, 1977. Applicant: GABOR TRUCKING, INC., Rural Route 34, Box 124B, Detroit Lakes, Minn. 56501. Applicant's representative: Richard P. Anderson, 502 First National Bank Building, Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steamed bonemeal* (except in bulk, in tank vehicles), from Reading, Pa., to points in Indiana, Minnesota, Iowa, Michigan, and Wisconsin, and to Louisville, Ky.; St. Joseph, Mo.; Harrisburg, Va.; Wooster, Ohio, and Freeport, Ill., restricted to traffic originating at or destined to the above-named locations, for 180 days. Supporting shipper(s): Agri Trading Corp., P.O. Box 457, Hutchinson, Minn. 55350. Send protests to: Ronald R. Mau District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268 Federal Bldg. & U.S. Post Office, 657 2nd Avenue North, Fargo, N. Dak. 58102.

No. MC 119726 (Sub-No. 109 TA), filed October 19, 1977. Applicant: N.A.B. TRUCKING CO., INC., 1644 W. Edge-

wood Avenue, Indianapolis, Ind. 46217. Applicant's representative: James L. Beatty, 130 E. Washington Street, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic containers and closures*, from the warehouse facilities of the Continental Glass Co. at or near Indianapolis, Ind., to Carbondale, Ill., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Continental Glass Co., 3230 Allison Avenue, Indianapolis, Ind. 46268. Send protests to: William S. Ennis District Supervisor, Interstate Commerce Commission, Federal Building & U.S. Courthouse, 46 East Ohio Street, Room 429, Indianapolis, Ind. 46204.

No. MC 119934 (Sub-No. 220TA), filed October 13, 1977. Applicant: ECOFF TRUCKING, INC., 625 East Broadway, Fortville, Ind. 46040. Applicant's representative: Robert W. Loser II, 1009 Chamber of Commerce Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ethyl ether*, in bulk, in tank vehicles, from the plantsite of U.S. Industrial Chemicals Co. located at or near Tuscola, Ill., to Neodesha, Kans., for 180 days. Supporting shipper(s): U.S. Industrial Chemicals Co., P.O. Box 218, Tuscola, Ill. 61953. Send protests to: William S. Ennis, District Supervisor, Interstate Commerce Commission, Federal Building and U.S. Courthouse, 46 East Ohio Street, Room 429, Indianapolis, Ind. 46204.

No. MC 123389 (Sub-No. 39TA), filed October 20, 1977. Applicant: CROUSE CARTAGE CO., P.O. Box 586, Highway 30 West, Carroll, Iowa 51401. Applicant's representative: William S. Rosen, 630 Osborn Building, St. Paul, Minn. 55102. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), between St. Louis, Mo., and all points in its commercial zone and Creston, Iowa, and all points in its commercial zone, (1) from St. Louis over U.S. Highway 61 to its junction with Interstate Highway 70; thence over Interstate Highway 70 to its junction with U.S. Highway 63; thence over U.S. Highway 63 to its junction with U.S. Highway 36; thence over U.S. Highway 36 to its junction with Interstate Highway 35; thence over Interstate Highway 35 to its junction with U.S. Highway 34; thence over U.S. Highway 34 to Creston, Iowa, and return over the same route, serving no intermediate points. (2) From St. Louis over Interstate Highway 70 to its junction with U.S. Highway 63; thence over U.S. Highway 63 to its junction with U.S. Highway 36; thence over U.S. Highway 36 to its junction with Interstate Highway 35; thence over Inter-

state Highway 35 to its junction with U.S. Highway 34; thence over U.S. Highway 34 to Creston, Iowa, and return over the same route, serving no intermediate points. (3) From St. Louis over Interstate Highway 70 to its junction with Interstate Highway 35; thence over Interstate Highway 35 to its junction with U.S. Highway 34, thence over U.S. Highway 34 to Creston, Iowa, and return over the same route, serving no intermediate points. (4) From St. Louis over Interstate Highway 70 to its junction with U.S. Highway 65; thence over U.S. Highway 65 to its junction with U.S. Highway 34; thence over U.S. Highway 34 to Creston, Iowa, and return over the same route, serving no intermediate points, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Bunn-O-Matic Corp., Jacob Bunn, Plant Manager, Creston, Iowa 50801. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, Nebr. 68102.

No. MC 124887 (Sub-No. 39TA), filed October 18, 1977. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, Fla. 32421. Applicant's representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, Fla. 32202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Composition board, plywood and plywood wall paneling*, from the plantsite and storage facilities of Plywood Panels, Inc., at or near Norfolk, Va., to points in Alabama, Georgia, Florida, North Carolina, South Carolina, and Tennessee, for 180 days. Supporting shipper(s): Plywood Panels, Inc., P.O. Box 12678, Norfolk, Va. 23502. Send protests to: G. H. Fauss, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 West Bay Street, Jacksonville, Fla. 32202.

No. MC 124896 (Sub-No. 31TA), filed October 19, 1977. Applicant: WILLIAMSON TRUCK LINES, INC., Thorne and Ralston Streets, P.O. Box 3485, Wilson, N.C. 27893. Applicant's representative: B. H. Williamson, 1107 Brookside Drive, Wilson, N.C. 27893. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products, and articles distributed by meat packinghouses* (except hides and commodities in bulk), for Geo. A. Hormel & Co. from Ottumwa, Iowa, to Ahsokie, N.C., and Victoria, Va., for 180 days. Supporting shipper(s): Geo. A. Hormel & Co., P.O. Box 800, Austin, Minn. 55912. Send protests to: Archie W. Andrews, District Supervisor, Interstate Commerce Commission, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, N.C. 27611.

No. MC 125423 (Sub-No. 3TA), filed October 17, 1977. Applicant: J. FRED SMITH, d.b.a. J. FRED SMITH TRUCKING CO., 112 Nichols Street, Danville,

Ky. 40422. Applicant's representative: Robert H. Kinker, 314 West Main Street, Frankfort, Ky. 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes and AB explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) (1) between railroad facilities in Cincinnati, Ohio, and its commercial zone, on the one hand, and, on the other, points in Adair, Anderson, Bath, Bourbon, Boyle, Casey, Clark, Fayette, Franklin, Garrard, Harrison, Jessamine, Knox, Laurel, Lincoln, Marion, Mercer, McCreary, Montgomery, Nicholas, Pulaski, Rockcastle, Russell, Scott, Shelby, Taylor, Washington, Whitley, and Woodford Counties, Ky. (2) Between railroad facilities in Lexington, Ky., and Danville, Ky., and their commercial zones, on the one hand, and on the other, points in Bath, Harrison, Montgomery, and Nicholas Counties, Ky., for 180 days. Supporting shippers: There are approximately 10 statements of support attached to the application which may be examined at the field office named below. Send protests to: (Mrs.) Linda H. Sypher, District Supervisor, Interstate Commerce Commission, 216 Bakhaus Building, 1500 West Main Street, Lexington, Ky. 40505.

No. MC 125950 (Sub-No. 12TA), filed October 19, 1977. Applicant: C. B. S. TRANSPORTATION, INC., 1207 Columbus Circle, Wilmington, N.C. 28401. Applicant's representative: Francis J. Ortman, 7101 Wisconsin Avenue, Suite 605, Washington, D.C. 20014. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fruit and vegetable containers* (1) from the plantsite of the Talley-Corbett Box Co., located at or near Adel, Ga., to those points in Tennessee on and east of U.S. Highway 231 (except points in Hamilton County, Tenn.), and to points in Florida, South Carolina, North Carolina, Virginia, Maryland, Delaware, Pennsylvania, New Jersey, and New York; and (2) from the plantsite of the Talley-Corbett Box Co., located at or near Springfield, S.C., to those points in Tennessee on and east of U.S. Highway 231 (except points in Hamilton County, Tenn.), and points in Florida, Georgia, North Carolina, Virginia, Maryland, Delaware, Pennsylvania, New Jersey, and New York, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Talley-Corbett Box Co., P.O. Box 210, Wilmington, N.C. 28401. Send protests to: Archie W. Andrews, District Supervisor, Interstate Commerce Commission, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, N.C. 27611.

No. MC 126118 (Sub-No. 56TA), filed October 17, 1977. Applicant: CRETE CARRIER CORP., P.O. Box 81228, Lincoln, Nebr. 68501. Applicant's representative: Duane W. Acklie (same address as applicant). Authority sought to op-

erate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers, from Monroe, Wis., and Chicago, Ill., and their commercial zones, to points in Arkansas, Georgia, Missouri (except Kansas City), North Carolina (except Asheville, Raleigh and Durham), Oklahoma, South Carolina (except Anderson, Columbia, Greenville, and Spartanburg), Tennessee (except Cookeville, Chattanooga, Knoxville, Memphis, Clarksville, Johnson City, Franklin, and Nashville), Texas, (except Austin, Dallas, Fort Worth, and San Antonio), and Virginia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Jos. J. Huber Brewing Co. and Peter Hand Brewing Co., Frederick W. Regnery, 1000 West North Avenue, Chicago, Ill. 60622. Merrill Wholesale Co., Ben Merrill, president, Box 1023, Salisbury, N.C. Send protests to: Max H. Johnston, District Supervisor, Interstate Commerce Commission, 285 Federal Building, 100 Centennial Mall North, Lincoln, Nebr. 68508.

No. MC 126383 (Sub-No. 4TA), filed October 12, 1977. Applicant: G & W TRANSPORT, INC., 465 East Diamond Avenue, Gaithersburg, Md. 20760. Applicant's representative: Gerlad K. Gimmel, Suite 145, 4 Professional Drive, Gaithersburg, Md. 20760. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Animal and poultry feed*, (except in bulk), from Lancaster and Everson, Pa., to Gaithersburg, Md., under a continuing contract, or contracts, with Wayne Feeds, Division of Allied Mills, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Wayne Feeds Division of Allied Mills, Inc., 450 West Wilson Bridge Road, Worthington, Ohio 43085. Send protests to: W. C. Hersman, District Supervisor, Interstate Commerce Commission, 12th and Constitution Avenue NW., Room 1413, Washington, D.C. 20423.

No. MC 129808 (Sub-No. 28TA), filed October 25, 1977. Applicant: GRAND ISLAND CONTRACT CARRIER, INC., P.O. Box 2078, Grand Island, Nebr. 68801. Applicant's representative: Steven K. Kuhlmann, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Battery acids, brake fluids, gasoline anti-freeze, windshield washer solutions and lacquer* (except in bulk), (1) from the facilities of Scholle Corp. located at or near Garland, Tex., to points in New Mexico, Oklahoma, Arkansas, and Louisiana; and (2) from the facilities of Scholle Corp. located at or near Raytown, Mo., to points in Colorado, Kansas, Nebraska, and Iowa, under a continuing contract or contracts, with Scholle Corp., for 180 days. Restriction: Restricted to a transportation service to be performed under a continuing contract or contracts with Scholle. Applicant has also filed an

underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Scholle Corp., Robert J. Mueller, traffic manager, 200 West North Avenue, Northlake, Ill. Send protests to: Max H. Johnston, District Supervisor, Interstate Commerce Commission, 285 Federal Building, 100 Centennial Mall North, Lincoln, Nebr. 68508.

No. MC 133796 (Sub-No. 44TA), filed October 19, 1977. Applicant: GEORGE APPEL, 249 Carverton Road, Trucksville, Pa. 18708. Applicant's representative: Joseph P. Hoary, 121 South Main Street, Taylor, Pa. 18517. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by retail department stores (except commodities in bulk, foodstuffs, and fireworks), between Exeter, Pa., on the one hand, and, on the other, points in the United States (except Arizona, California, Nevada, Oklahoma, Oregon, Texas, Utah, Washington, and Alaska), for 150 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Jewelcor Inc., Erie and Susquehanna Avenue, Exeter, Pa. 18643. Send protests to: Paul J. Kenworthy, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 314 U.S. Post Office Building, Scranton, Pa. 18503.

No. MC 134483 (Sub-No. 5TA), filed October 20, 1977. Applicant: DONALD K. VINES, d.b.a. DON VINES TRUCKING, 1145 East Burnett, Signal Hill, Calif. 90806. Applicant's representative: William J. Monheim, 15942 Whittier Boulevard, Whittier, Calif. 90609. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods and commodities* the transportation of which is exempt from economic regulation under the provisions of section 203(b) of the Interstate Commerce Act when moving in the same vehicle at the same time with frozen foods, from Nogales, Ariz., to points in Calif., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): C. H. Belt & Associates, Inc. Suite 435, 18662 MacArthur Boulevard, Irvine, Calif. 92715. Carl Belt Jr., President. Send protests to: Edward P. Hendy District Supervisor, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, Calif. 90012.

No. MC 134755 (Sub-No. 116TA), filed October 19, 1977. Applicant: CHARTER EXPRESS, INC., P.O. Box 3772, 1959 E. Turner St., Springfield, Mo. 65804. Applicant's representative: Larry D. Knox, 600 Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes transporting: *Canned goods* except frozen and except in bulk (1) From the plantsites of the Joan of Arc Co. at Hoopston and Princeville, Ill., to points in the states of Alabama, Arizona, Colorado, Connecticut, Georgia,

Kansas, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia; (2) From the plantsite of the Joan of Arc Co. at Mayville, Wis., to points in the states of Alabama, Arizona, Georgia, Illinois, Louisiana, Mississippi, Missouri, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas; and (3) From the plantsites of the Joan of Arc Co. at or near St. Francisville, and Belledeau, La., to points in the state of Illinois, for 180 days. Supporting shippers: Joan of Arc Co., Inc. 2231 West Altorfer Drive, Peoria, Ill. 61614. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission-BOP, 600 Federal Building, 911 Walnut Street, Kansas City, Mo. 64106.

No. MC 135082 (Sub-No. 56TA), filed October 19, 1977. Applicant: BURSCH TRUCKING, INC., d.b.a. ROADRUNNER TRUCKING, INC., P.O. Box 26748, 415 Rankin Road, Albuquerque, N. Mex. 87125. Applicant's representative: Pat Jennings (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing paper*, from Hollister, Calif., to Albuquerque, N. Mex., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Nical, Inc., 1621 Williams, SE., Albuquerque, N. Mex. 87102. Mr. Ted Gonzalez Resident Plant Manager. Send protests to: Darrell W. Hammons District Supervisor, Interstate Commerce Commission, 1106 Federal Office Building, 517 Gold Avenue SW., Albuquerque, N. Mex. 87101.

No. MC 135936 (Sub-No. 22TA), filed October 19, 1977. Applicant: C & K TRANSPORT, INC., 503 Des Moines Street, P.O. Box 205, Webster City, Iowa 50595. Applicant's representative: James M. Hodge, 1980 Financial Center, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foodstuffs*, from the facilities of Potato Service, Inc., at or near Presque Isle and Caribou, Maine, to points in Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, West Virginia, and Wisconsin, for 90 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Potato Service, Inc., P.O. Box 809, Presque Isle, Maine 04769. Send protests to: Herbert W. Allen District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, Iowa 50309.

No. MC 135953 (Sub-No. 2TA), filed October 20, 1977. Applicant: CHERO-

KEE LINES, INC., P.O. Box 152, Cuhing, Okla. 74023. Applicant's representative: Donald L. Stern, 7100 West Center Road, Suite 530 Univac Building, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Confectionery* in vehicles equipped with mechanical refrigeration, from the facilities of M & M/Mars division of Mars, Inc., at Chicago, Ill., to points in California, Arizona, New Mexico, Nevada, Utah, Oregon, and Washington, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): M & M/Mars, Inc., High St., Hackettstown, N.J. 07840. Send protests to: Joe Green District Supervisor, room 240, Old Post Office & Court House Bldg., 215 Northwest 3rd, Oklahoma City, Okla. 73102.

No. MC 136605 (Sub-No. 34TA), filed October 17, 1977. Applicant: DAVIS BROS. DIST., INC., 2024 Trade Street, P.O. Box 8058, Missoula, Mont. 59807. Applicant's representative: W. E. Seliski (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fired clay brick and accessories*, from Los Angeles, Calif., to the port of entry on the International Boundary line between the United States and Canada located at or near Sweetgrass, Mont., restricted to traffic destined to the Province of Alberta, Canada, for 180 days. Applicant intends to tack with authority issued to it by the Province of Alberta, Canada. Supporting shipper(s): Sheldon Wayne Gleave Traffic Coordinator, Northwood Building Materials, Division of Northwood Mills, Ltd., P.O. Box 2066, Calgary, Alberta. Send protests to: Paul J. Labane District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, Mont. 59101.

No. MC 136786 (Sub-No. 124TA), filed October 18, 1977. Applicant: ROBCO TRANSPORTATION, INC., 4333 Park Avenue, Des Moines, Iowa 50321. Applicant's representative: Stanley C. Olsen, Jr., 7525 Mitchell Road, Eden Prairie, Minn. 55344. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Merchandise* dealt in by wholesale, retail and chain grocery and food business houses, in vehicles equipped with mechanical refrigeration (except commodities in bulk), from the plant and warehouse facilities of Kraft, Inc., at Springfield, Mo., to points in Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Kansas, Kentucky, Louisiana, Mississippi, New Mexico, Oklahoma, South Carolina, North Carolina, Tennessee, Texas, and Virginia, for 90 days. Supporting shipper(s): Kraft, Inc., 500 Peshtigo Court, Chicago, Ill. 60690. Send protests to: Herbert W. Allen District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, Iowa 50309.

No. MC 138018 (Sub-No. 37TA), filed October 21, 1977. Applicant: REFRIGERATED FOODS, INC., 3200 Blake Street, Denver, Colo. 80205. Applicant's representative: Joseph W. Harvey (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats and packinghouse products*, from Ft. Morgan, Colo., to Butte, Mont., for 90 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Morgan Colorado Beef Co., 1505 E. Burlington, Fort Morgan, Colo. 80701. Send protests to: Roger L. Buchanan District Supervisor, Interstate Commerce Commission, 721 19th St., 492 U.S. Customs House, Denver, Colo. 80202.

No. MC 138328 (Sub-No. 47TA), filed October 13, 1977. Applicant: CLARENCE L. WERNER, d.b.a. WERNER ENTERPRISES, I-80 and Highway 50, P.O. Box 37308, Omaha, Nebr. 68137. Applicant's representative: Donna Ehrlich (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mineral mixtures, tonics, medicines, insecticides, pesticides, feeders, and equipment, advertising matter and premiums related to such commodities* (except commodities in bulk, in tank vehicles), when moving in mixed shipments with feed or feed ingredients, from the plantsite of Moorman Manufacturing Co., located at or near Quincy, Ill., to points in Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Moorman Manufacturing Co., R. G. Hagerbaumer, Manager Traffic Operations, 1000 No. 30th Street, Quincy, Ill. 62301. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, Nebr. 68102.

No. MC 139182 (Sub-No. 5TA), filed: October 11, 1977. Applicant: ATLAS DELIVERY SERVICE, INC., 340 Cole Avenue, Dallas, Tex. 75207. Applicant's representative: E. Larry Wells, Winkle and Wells, Suite 1125, Exchange Park P.O. Box 45538, Dallas, Tex. 75245. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Kitchen Appliances and ventilating hoods*, (1) between Dalton, Ga. on the one hand, and, on the other, Murry, Ky., points in Arkansas, Louisiana, Oklahoma, New Mexico, Mississippi, Arizona, California, Texas, and points in Tennessee on and west of Interstate Highway 65; (2) between Murry, Ky., on the one hand, and, on the other, points in Arkansas, Louisiana, Oklahoma, New Mexico, Mississippi, Arizona, California, Texas, and points in Tennessee on and west of Interstate Highway 65; (3) between points in Tenn. on and west of Interstate Highway 65 on the one hand, and, on the other, points in Arkansas, Louisiana, Oklahoma, New

Mexico, Mississippi, Arizona, California, and Texas; and (4) from Anaheim, Calif. to points in Arkansas, Louisiana, Oklahoma, New Mexico, Mississippi, Arizona, California, Texas, and points in Tenn. on and west of Interstate Highway 65, under a continuing contract or contracts with Tappan Co. for 180 days. Supporting shippers: Tappan Co., P.O. Box 606, Mansfield, Ohio 44901. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce Street, room 13C12, Dallas, Tex. 75242.

No. MC 139482 (Sub-No. 24TA), filed October 20, 1977. Applicant: NEW ULM FREIGHT LINES, INC., County Road 29 West, P.O. Box 347, New Ulm, Minn. 56073. Applicant's representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, Minn. 55403. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses*, as described in sections A and C of Appendix I to the Report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and storage facilities of Hygrade Food Products Corp., located at or near Storm Lake and Cherokee, Iowa, to Montgomery, Ala., restricted to traffic originating at the named origin points and destined to the named destination, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Hygrade Food Products Corp., P.O. Box 4771, Detroit, Mich. 48219. Send protests to: A. N. Spath, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg. & U.S. Court House, 110 South 4th Street, Minneapolis, Minn. 55401.

No. MC 139482 (Sub-No. 25TA), filed October 21, 1977. Applicant: NEW ULM FREIGHT LINES, INC., County Road 29 West, New Ulm, Minn. 56073. Applicant's representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, Minn. 55403. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Composition boards*, from the facilities of the United States Gypsum Co., Greenville, Miss., to Kansas, Oklahoma, and Texas, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s) United States Gypsum Co., 101 South Wacker Drive, Chicago, Ill. 60606. Send protests to: A. N. Spath, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building & U.S. Court House, 100 South 4th Street, Minneapolis, Minn. 55401.

No. MC 139485 (Sub-No. 5TA), filed October 21, 1977. Applicant: TRANS CONTINENTAL CARRIERS, 169 E. Liberty Avenue, Anaheim, Calif. 92803. Applicant's representative: David P.

Christianson, 707 Wilshire Boulevard, Suite 1800, Los Angeles, Calif. 90017. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Bread and materials, supplies and equipment* utilized in the production of bread, from Los Angeles, Calif., to Wisconsin, Illinois, Michigan, Ohio, Pennsylvania, New York, Massachusetts, Indiana, and the United States-Canada border at or near Champlain, N.Y., Niagara Falls, N.Y. and Detroit, Mich., under a continuing contract, or contracts, with U.S. Sugar Co., for 180 days. Applicant has also filed and underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): U.S. Sugar Co., 4411 South Park Avenue, Buffalo, N.Y. Send protests to: Edward Henry, District Supervisor, 300 North Los Angeles Street, room 1321, Los Angeles, Calif. 90012.

No. MC 140024 (Sub-No. 78TA), filed October 18, 1977. Applicant: J. B. MONTGOMERY, INC., 5565 East 52nd Avenue, Commerce City, Colo. 80022. Applicant's representative: John F. DeCock (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the facilities of Nucor Steel Division of Nucor Corp. at or near Norfolk, Nebr., to Memphis, Tenn.; Gadsden, Ala.; Shreveport and Youngsville, La.; Natchez, Mo.; Louisville, Newport, Covington, and Lexington, Ky.; Williamsport, Pittsburgh, New Kensington, and Bethan Park, Pa.; Huntington, Williamson, and Beckley, W. Va.; for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Nucor Steel, Box 309, Norfolk, Nebr. 68701. Frederick Steel Co., 200 W. No. Bend Road, Cincinnati, Ohio 45216. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, 721 19th St., 492 U.S. Customs House, Denver, Colo. 80202.

No. MC 141232 (Sub-No. 3TA), filed October 21, 1977. Applicant: STATE-WIDE TRUCKING CO., 1801 West Oxford, P.O. Box 1116, Englewood, Colo. 80110. Applicant's representative: A. B. Ballah, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Building materials* and (2) *fence materials and supplies*, restricted against transportation of commodities in bulk, in tank vehicles, between Denver, Colo., on the one hand, and, on the other, points in New Mexico north of U.S. Highway 40, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Brooks Scanlon, Inc., Weyerhaeuser Co., 5170 Klamath Street, Denver, Colo. 80221. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, 721 19th Street, 492 U.S. Customs House, Denver, Colo. 80202.

No. MC 141914 (Sub-No. 24TA), filed October 20, 1977. Applicant: FRANKS AND SON, INC., Route 1, Box 108A, Big Cabin, Okla. 74332. Applicant's representative: Kathrena J. Franks, Route 1, Box 108A, Big Cabin, Okla. 74332. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wire, plastic articles and corrugated containers*, from points in the states of New York and Massachusetts, to Wilton, Maine, restricted to delivery at the plantsite of Forster Manufacturing Co., at or near Wilton, Maine, for 180 days. Supporting shipper(s): Forster Manufacturing Co., Wilton, Maine 04294. Send protests to: Joe Green, District Supervisor, room 240, Old Post Office & Court House Building, 215 Northwest 3rd, Oklahoma City, Okla. 73102.

No. MC 142296 (Sub-No. 3TA), filed August 31, 1977. Applicant: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, Tex. 75220. Applicant's representative: Lawrence A. Winkle, Winkle and Wells, P.O. Box 45538, Suite 1125 Exchange Park, Dallas, Tex. 75245. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Clothing and wearing apparel*, from Paris, Tex., and Arkadelphia, Ark., to Memphis, Tenn., and (2) *raw materials* utilized in the manufacture and production of clothing and wearing apparel, from Memphis, Tenn., to Arkadelphia, Ark., and Paris, Tex., under a continuing contract, or contracts, with Munsingwear, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Munsingwear, Inc., 718 Glenwood Avenue, Minneapolis, Minn. 55405. Send protests to: Opal M. Jones Transportation Assistant, Interstate Commerce Commission, 1100 Commerce Street, room 13C12, Dallas, Tex. 75242.

No. MC 143071 (Sub-No. 6TA), filed October 18, 1977. Applicant: UNIVERSAL DEVELOPMENT, INC., Box 568, York, Nebr. 68467. Applicant's representative: William B. Barker, 641 Harrison Street, Topeka, Kans. 66603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Preformed plastic and fiberglass tubs, drums, and tanks*, from the plantsite and facilities of Snyder Industries at Lincoln, Nebr., to points in the United States (except Connecticut, Delaware, and the District of Columbia, Maine, Massachusetts, Nevada, Rhode Island, Utah, and Vermont), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Snyder Industries, Wesley Otto Traffic Manager, 4620 Fremont, P.O. Box 4583, Lincoln, Nebr. 68504. Send protests to: Max Johnston District Supervisor, Interstate Commerce Commission, 285 Federal Building and U.S. Courthouse, 100 Centennial Mall North, Lincoln, Nebr. 68508.

No. MC 143846TA, filed October 14, 1977. Applicant: P. POSA, INC., 315 Feather Lane, Franklin Lakes, N.J. 07417. Applicant's representative: Piken & Piken, Esqs., One Lefrak City Plaza, Flushing, N.Y. 11368. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or used in the operation of retail department stores. Between New York, N.Y. and North Bergen, N.J. on the one hand, and, on the other, Harrisburg, Reading, Levittown, Camphill, Lebanon, Wyomissing, Wilkes-Barre, Pottsville, Wyoming, Bloomsburg, Bath, Dorrance, Philadelphia, and Bethlehem, Pa.; Wilmington, Del.; Trumbull, Bridgeport, Bristol, and Danbury, Conn.; and Boston, North Quincy, Auburndale and Somerville, Mass. Condition: The above-described authority is limited to service to be performed under contract or continuing contracts with Allied Stores Marketing Corp., of New York, N.Y., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Allied Stores Corp., 1114 Avenue of the Americas, New York, N.Y. 10063. Send protests to: District Supervisor Joel Morrows, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Newark, N.J. 07102.

No. MC 143858 (Sub-No. 1TA), filed October 18, 1977. Applicant: GUIGNARD SERVICE CO., P.O. Box 26276, Charlotte, N.C. 28213. Applicant's representative: Edward G. Villalon, 1032 Pennsylvania Bldg., Pennsylvania Ave. & 13th Street NW., Washington, D.C. 20004. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Empty soft drink cans*, from Chattanooga, Tenn., to Charlotte, N.C., under a continuing contract, or contracts, with American Can Co., and Coca Cola Bottling Consolidated Co., for 180 days. Supporting shipper(s): American Can Co., 26 Perimeter Center, East. Northeast Atlanta, Ga. 30346. (2) Coca Cola Bottling Consolidated, 829 S. Summit Avenue, Charlotte, N.C. 26237. Send protests to: Terrell Price, District Supervisor, Interstate Commerce Commission,

800 Briar Creek Road, room CC516, Charlotte, N.C. 28205.

No. MC 143867TA, filed October 19, 1977. Applicant: SINGER CONTRACTING COMPANY, INC., P.O. Box 218, Lumpkin, Ga. 31815. Applicant's representative: Ralph B. Matthews, 1600 First Federal Bldg., Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sawdust, bark, shavings and wood residue*, from Stewart, Randolph and Webster Counties, Ga., to points in Alabama, for 180 days. Supporting shipper(s): (1) American Forest Products Corp., Route 1, Box 167, Lumpkin, Ga. 31815. (2) Burgin Lumber Company, Inc., Drawer 60, Cuthbert, Ga. 31740. (3) Sullivan Lumber Company, Inc., P.O. Box 31, Preston, Ga. 31824. Send protests to: G. H. Fauss, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, Fla. 32202.

No. MC 143873TA, filed October 25, 1977. Applicant: TITAN TRANSFER, INC., 4302 South 30th Street, Omaha, Nebr. 68107. Applicant's representative: Bruce A. Bullock, Suite 530 Univac Bldg., 7100 West Center Rd., Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products, and articles* distributed by meat packing-houses, as described in sections A, B, and C of Appendix I to the Report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), (1) From Omaha, Nebr. to: (a) points in that part of Iowa on and west of a line beginning at the Iowa-Minnesota state line, thence south along U.S. Highway 34 to its junction with U.S. Highway 34, thence east along U.S. Highway 34 to its junction with U.S. Highway 63, thence south along U.S. Highway 63 to the Iowa-Missouri state line; and (b) points in that part of Missouri on and north of a line beginning at the Missouri River, thence east along U.S. Highway 136 to its junction with U.S. Highway 69, thence south along U.S. Highway 69 to its junction with Missouri

Highway 6, thence east along Missouri Highway 6 to its junction with U.S. Highway 63, thence north along U.S. Highway 63 to the Iowa-Missouri state line; and (2) From Omaha and Hastings, Nebr. to points in Nebraska, for 180 days. Supporting shippers: Cudahy Foods Co., Joseph Thompson, Traffic Manager, 5015 South 33rd Street, Omaha, Nebr. 68107. Swift Fresh Meat Company, G. Dwight Weed, Area Traffic Manager, 115 West Jackson, Chicago, Ill. 60604. Wilson Foods Corporation, A. N. Brent, Manager of Transportation, 4545 Lincoln Boulevard, Oklahoma City, Okla. 73105. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, Nebr. 68102.

No. MC 143889TA, filed October 25, 1977. Applicant: Larry M. Murphy, d.b.a. ELLIS MOVING & STORAGE, 1601 Ft. Campbell Blvd., Clarksville, Tenn. 37040. Applicant's representative: Alan Wohlstetter, 1700 K Street, NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods* between points in Stewart, Montgomery, Robertson, Houston, Dickson, Cheatham, Sumner, Macon, Trousdale, Wilson, Davidson, Williamson, Smith, and Dekalb Counties, Tenn., and Trigg, Caldwell, Christian, Todd and Logan Counties, Ky., restricted to the transportation of traffic having a prior or subsequent movement, in containers, and further restricted to the performance of pickup and delivery service in connection with packing, crating and containerization or unpacking, uncrating and decontainerization of such traffic, for 180 days. Supporting shippers: Furniture Forwarding, Inc., P.O. Box 50800, Indianapolis, Ind. 46250. Paramount Forwarders, Inc., 3164 Springfield, Lancaster, Tex. 75146. Send protests to: District Supervisor Joe J. Tate, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Court House, 801 Broadway, Nashville, Tenn. 37203.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-38135 Filed 11-15-77; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6740-02]

1

FEDERAL ENERGY REGULATORY COMMISSION:

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: pub. 11/11/77, 42 F.R. 58830.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., November 16, 1977.

CHANGE IN THE MEETING: The following items have been added:

Item No., Docket No. and Company

G-18.—RP72-133 (PGA77-2), United Gas Pipe Line Company.

G-19.—RP75-35, *Consolidated Edison Company of New York, Inc., Complainant v. Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., Respondent.* RP75-36, *Orange and Rockland Utilities, Inc., Complainant v. Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., Respondent.*

G-20.—RP77-129-2, United Gas Pipe Line Company (Georgia-Pacific Corporation).

G-21.—Northern Michigan Exploration Company, Gas Rate Schedule No. 1.

G-22.—CP77-140, Delhi Gas Pipeline Corporation. CP77-307, Northern Natural Gas Company. CP77-328, Natural Gas Pipeline Company of America.

G-23.—CP77-428, United Gas Pipe Line Company.

G-24.—CP77-495, CP77-596 and CP77-598, Transcontinental Gas Pipeline Corporation.

G-25.—CP77-577, Michigan Wisconsin Pipe Line Company.

P-14.—E-7738 and E-7784, Boston Edison Company.

P-15.—E-9068, E-9118 and E-9497, Ohio Edison Company.

P-16.—ER76-709, Cincinnati Gas and Electric Company.

P-17.—Project No. 2615, Central Maine Power Company, Kennebec River Pulp & Paper Company, Inc., Millstar Manufacturing Corporation and Scott Paper Company.

KENNETH F. PLUMB,
Secretary.

[S-1840-77 Filed 11-14-77; 9:24 am]

[6720-01]

2

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., November 23, 1977.

PLACE: 320 First Street, NW., Room 630, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Michael Scanlon, 202-376-3324.

MATTERS TO BE CONSIDERED:

Bank Membership and Insurance of Accounts Applications—Home State Savings and Loan Association, Ketchum, Blaine County, Idaho.

Branch Office Application—First Federal Savings and Loan Association of Twin Falls, Twin Falls, Idaho.

Delegations of Authority: Conversion Applications and Filings by 1934 Act Registrants.

Applications for Bank Membership and Insurance of Accounts—United Savings and Loan Association, Pendleton, Oregon.

Branch Office Application—First Federal Savings and Loan Association of Vancouver, Vancouver, Washington.

Application for Branch Offices and Increase in Accounts of an Insurable Type—Civic Federal Savings and Loan Association, San Francisco, California and Glendale Federal Savings and Loan Association, Glendale, California.

Satellite Facility Application—Charleston Federal Savings and Loan Association, Charleston, West Virginia.

Branch Office Application—Los Angeles Federal Savings and Loan Association, Los Angeles, California.

EFTS Application—Charleston Federal Savings and Loan Association, Charleston, West Virginia.

Branch Office Application—Clearwater Federal Savings and Loan Association, Clearwater, Florida.

Application for Withdrawal from Bank Membership; Cancellation of Insurance and Transfer of Secondary Reserve—Mutual Savings and Loan Association of Richmond County, Staten Island, New York.

Branch Office Application—Commercial Federal Savings and Loan Association, Omaha, Nebraska.

Report on the Proposal to Extend the Temporary RSU Regulations.

No. 97, November 10, 1977.

Limited Facility Application—State Federal Savings and Loan Association, Beatrice, Nebraska.

Application for Insurance of Accounts—Fayette County Savings and Loan Association, LaGrange, Texas.

Application for Amendment of Charter "S"—County Federal Savings and Loan Association of Westport, Westport, Connecticut.

Branch Office Application—Glendale Federal Savings and Loan Association, Glendale, California.

Branch Office Application—First FS&LA of Salt Lake City, Utah.

Service Corporation Application to Purchase Insurance Agency—Home Federal Savings and Loan Association of Overland, Overland, Missouri.

Satellite Office Application—Peoples Federal Savings and Loan Association, Lake Worth, Florida.

Application for Withdrawal from Bank Membership—Charlestown Savings Bank, Boston, Massachusetts.

Branch Office Application—East Federal Savings and Loan Association of Kinston, Kinston, North Carolina.

Satellite Office Application—First Federal Savings and Loan Association of Lake Worth, Lake Worth, Florida.

Limited Facility Application—First Federal Savings and Loan Association of Live Oak, Live Oak, Florida.

Limited Facility Application—First Federal Savings and Loan Association of Perry, Perry, Florida.

[S-1842-77 Filed 11-14-77; 12:09 pm]

[6720-01]

3

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: November 23, 1977; at the conclusion of the open meeting to be held at 9:30 a.m.

PLACE: 320 First Street, NW., Room 630, Washington, D.C.

STATUS: Closed meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Michael Scanlon, 202-376-3324.

MATTERS TO BE CONSIDERED: Consideration of Authority of Federal Associations to Issue Credit Cards.

No. 98, November 9, 1977.

[S-1843-77 Filed 11-14-77; 12:09 pm]

[6210-01]

4

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS).

TIME AND DATE: 10:00 a.m., Monday, November 21, 1977. The closed portion

of the meeting will commence at the conclusion of the open discussion.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Part of the meeting will be open; part will be closed.

MATTERS TO BE CONSIDERED:

Open portion:

1. Possible amendments to Regulation Q (Interest on Deposits) that would modify the rules concerning early withdrawal of time deposits.

2. Request by a member bank for reconsideration of a Board interpretation (1970 Federal Reserve Bulletin 343) relating to prepayment, in the form of merchandise, of interest on deposits.

3. Report to the Comptroller of the Currency regarding the competitive factors involved in the proposed merger of Zions First National Bank, Salt Lake City, Utah, with Richfield Commercial and Savings Bank, Richfield, Utah, and First State Bank, Salina, Utah.

4. Any agenda items carried forward from a previously announced meeting.

Closed portion:

1. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: November 11, 1977.

[S-1837-77 Filed 11-14-77;9:09 am]

[6750-01]

5

FEDERAL TRADE COMMISSION.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: F.R. 42, November 10, 1977 page No. 58625.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, November 16, 1977.

CHANGES IN THE AGENDA:

The Federal Trade Commission has added the following matters to the

agenda of its November 16, 1977, open meeting to begin at 10:00 a.m.:

(1) Consideration of Presiding Officer's certification to Commission of ruling denying request to compel production of documents and to obtain responses to written questions in proposed Trade Regulation Rules proceeding relating to Mobile Home Sales and Service.

(2) Report from General Counsel on Congressional Matters.

[S-1844-77 Filed 11-14-77;3:54 pm]

[7600-01]

6

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10:00 a.m., November 18, 1977.

PLACE: Room 1101, 1825 K Street, NW., Washington, D.C.

STATUS: This meeting is subject to being closed by a vote of the Commissioners taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED:

Discussion of specific cases in the Commission adjudication process.

CONTACT PERSON FOR MORE INFORMATION:

Ms. Lottie Richardson, 202-634-7970.

Dated: November 10, 1977.

[S-1838-77 Filed 11-14-77;9:09 am]

[8120-01]

7

TENNESSEE VALLEY AUTHORITY.

TIME AND DATE: 2:00 p.m., November 21, 1977.

PLACE: Conference Room B-32, West Tower, 400 Commerce Avenue, Knoxville, Tennessee.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Meeting with senior administrators from the University of Tennessee, Knoxville, Tennessee, to discuss and explore opportunities for further cooperation between TVA and the University of Tennessee on research activities.

CONTACT PERSON FOR MORE INFORMATION:

John Van Mol, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-566-1401.

[S-1841-77 Filed 11-14-77;11:05 am]

[8240-01]

8

UNITED STATES RAILWAY ASSOCIATION.

TIME AND DATE: 9:00 a.m., November 22, 1977.

PLACE: Board Room, Room 2200, Trans Point Building, 2100 Second Street, SW., Washington, D.C.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED BY THE BOARD OF DIRECTORS:

Portions closed to the public (9:00 a.m.):

1. Consideration of internal personnel matters.
2. Review of Delaware and Hudson Railway Company proprietary and financial information for monitoring and investment purposes.
3. Review Conrail proprietary and financial information for monitoring and investment purposes.
4. Litigation Report.

Portions open to the public (1:00 p.m.):

5. Approval of minutes of the October 26, 1977 Board of Directors meeting.
6. Election of Officers.
7. Report on Conrail monitoring.
8. Report by Conrail Monitoring Methodology Task Force.
9. Consideration of Delaware and Hudson Request for Loan Modification.
10. Contract Actions (extensions and approvals).
11. Proposed Modification of Travel and Relocation Order.

CONTACT PERSON FOR MORE INFORMATION:

Alex Bilanow, 202-426-4250.

[S-1839-77 Filed 11-14-77;9:09 am]

**Register
Federal Order**

WEDNESDAY, NOVEMBER 16, 1977

PART II



**DEPARTMENT OF
THE INTERIOR**

Fish and Wildlife Service



MIGRATORY BIRDS

Revised List and Definition

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, SALE, PURCHASE, BARTER, EXPORTATION, AND IMPORTATION OF WILDLIFE

PART 10—GENERAL PROVISIONS

Revised List and Definition of Migratory Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rulemaking.

SUMMARY: This rulemaking revises the list of migratory birds contained in 50 CFR 10.13. As revised, the list contains all species covered by the treaties signed between the United States and Great Britain (on behalf of Canada), the United States and Mexico, and the United States and Japan for the preservation of migratory birds. Consequently, the revised list now includes all species protected by the Migratory Bird Treaty Act and its implementing regulations. The new list also eliminates the unnecessary distinction between game and nongame species.

To complement the revised list, the definition of "migratory bird" in 50 CFR 10.12 is amended so that the term now refers to any bird belonging to a species included in the list. The new definition also makes clear its coverage of mutations and hybrids as well as parts, nests, eggs, and products.

EFFECTIVE DATE: December 16, 1977.

FOR FURTHER INFORMATION CONTACT:

Marshall L. Stinnett, Special Agent in Charge, Regulations and Penalties, Division of Law Enforcement, United States Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-9237.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act (16 U.S.C. 703-711) [hereinafter referred to as "the Act"] expressly protects any migratory bird included in the terms of the Convention for the Protection of Migratory Birds, August 16, 1916, United States—Great Britain (on behalf of Canada), 39 Stat. 1702, T.S. No. 628; the Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States—Mexico, 50 Stat. 1311, T.S. No. 912; or the Convention for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment, March 4, 1972, United States—Japan, 25 U.S.T. 3329, T.I.A.S. No. 7990 (16 U.S.C. 703). Regulations implementing the Act, which are found principally in Title 50, Code of Federal Regulations, Parts 10, 20, and 21, are likewise applicable to any bird covered by one of the three treaties (16 U.S.C. 704). Accordingly, 50 CFR 10.12 currently defines "migratory birds" as " * * * all birds, whether or not raised in captivity, included in the terms of conventions between the United States and any foreign

country for the protection of migratory birds * * *

However, neither the Act nor its implementing regulations presently contain a definitive list of all the species covered by the treaties. The current list in 50 CFR 10.13 is only a reference list and does not include the birds receiving protection under the Japanese treaty. Thus, the public must constantly refer to the treaties in order to determine which species are protected by the Act and its regulations.

To eliminate the need for such cross-referencing, and to clear up other problems with the list as well, the Service proposed in November of 1976 to amend 50 CFR 10.13 so that the list would include all species covered by the treaties and hence protected by the Act and its regulations (41 FR 50010, Nov. 12, 1976). At the same time, the Service proposed a complementary amendment to 50 CFR 10.12 so that the definition of "migratory birds" would refer to the list rather than to the treaties (41 FR 50011). The proposed amendment to section 10.12 was also aimed at clarifying the status of mutations, hybrids and parts. Lastly, the Service proposed a new exception for hybrid "barnyard ducks" (41 FR 50014). Final regulations on that proposal have been reserved for a later time.

Public comments on the November proposal focused exclusively on which birds were intended to be covered by the treaties and therefore should be included in the list. In response to those comments, and in light of other information received by the Service, several changes have been made in the proposed list. The majority of comments concerned typographical errors or inadvertent omissions or deletions from the list. These omissions or deletions, such as the chickadee, catbird, and others, have been restored to the list.

In addition, the introductory paragraph to the list has been modified for greater clarity, and the definition of "migratory bird" has been reworded to make clear its applicability to nests, eggs, and products.

Accordingly, as adopted in this final rulemaking, the list of migratory birds in 50 CFR 10.13 now contains all species covered by the three treaties and consequently all species protected by the Act and its implementing regulations. The species classification was selected because it is the smallest taxon common to all three treaties.

Generally, the species are listed alphabetically by the most widely used common name, followed by the scientific name. However, all species of ducks are listed under the heading "DUCKS" for easier reference. Scientific and English names are based on the "Check-list of North American Birds," fifth edition, published in 1957 by the American Ornithologists' Union, the "Thirty-second Supplement to the American Ornithologists' Union Check-list of North American Birds" (The Auk 90:411-419, 1973, as corrected in the Auk 90:887,

1973), and the "Thirty-third Supplement to the American Ornithologists' Union Check-list of North American Birds" (The Auk 93:875-879, 1976, as corrected). The names of species not included in the "Check-list" or supplements are based on the other current technical literature. As provided in the proposal, the list's current distinction between game and nongame species has been eliminated. Game birds are those for which open seasons are prescribed in 50 CFR Part 20. Since game birds are designated in Part 20, there is no need for a separate listing in Part 10. Also, eliminating the game bird listing in Part 10 will avoid the necessity of dual amendments when changes in game birds are made in Part 20.

Concerning the definition of "migratory bird," this rulemaking amends 50 CFR 10.12 to define that term as any bird, whatever its origin and whether or not raised in captivity, which belongs to a species listed in section 10.13. The definition also provides that "migratory bird" includes mutations or hybrids of listed species, as well as parts, nests, eggs, or products. Because of the great difficulty in distinguishing mutations and hybrids from purebreds, coverage of the former two is essential to adequate enforcement of the Act and treaties. By including parts, nests, eggs, and products, section 10.12 merely restates the coverage of the Act (16 U.S.C. 703).

This rulemaking was prepared by Marshall L. Stinnett, Special Agent in Charge, Regulations and Penalties, Division of Law Enforcement.

NOTE.—Based on the fact that such regulations merely redescribe the birds already protected by the Federal treaties with Great Britain, Mexico, and Japan, the Service has determined that revision of the definition and list of migratory birds in 50 CFR §§ 10.12 and 10.13 is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an environmental impact statement on such regulations is not required.

Accordingly, Part 10 of Title 50, Code of Federal Regulations, is hereby amended as set forth below.

1. § 10.12 is amended by revising the definition of "migratory bird" to read as follows:

§ 10.12 Definitions.

"Migratory bird" means any bird, whatever its origin and whether or not raised in captivity, which belongs to a species listed in § 10.13, or which is a mutation or a hybrid of any such species, including any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists of, or is composed in whole or part, of any such bird or any part, nest, or egg thereof.

2. § 10.13 is revised to read as follows:

§ 10.13 List of Migratory Birds.

The following is a list of all species of migratory birds protected by the Migra-

tory Bird Treaty Act (16 U.S.C. 703-711) and subject to the regulations contained in this subchapter. The species listed are those included in the Convention for the Protection of Migratory Birds, August 16, 1916, United States—Great Britain (on behalf of Canada), 39 Stat. 1702, T. S. No. 628; the Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States—Mexico, 50 Stat. 1311, T.S. No. 912; and the Convention for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment, March 4, 1972, United States—Japan, 25 U.S.T. 3329, T.I.A.S. No. 7990. The species are arranged alphabetically by groups, with the scientific name following the English language common name. All species of ducks are listed together under the heading "DUCKS".

- Accentor, Mountain: *Prunella montanella*.
- Albatross:
 - Black-footed *Diomedea nigripes*.
 - Laysan *Diomedea immutabilis*.
 - Short-tailed *Diomedea albatrus*.
 - White-capped *Diomedea cauta*.
 - Yellow-nosed *Diomedea chlororhynchos*.
- Anhinga, American: *Anhinga anhinga*.
- Ani:
 - Groove-billed *Crotophaga sulcirostris*.
 - Smooth-billed *Crotophaga ani*.
- Auklet:
 - Cassin's *Ptychoramphus aleuticus*.
 - Crested *Aethia cristatella*.
 - Least *Aethia pusilla*.
 - Parakeet *Cyclorhynchus psittacula*.
 - Rhinoceros *Cerorhinca monocerata*.
 - Whiskered *Aethia pygmaea*.
- Avocet, American: *Recurvirostra americana*.
- Bittern:
 - American *Botaurus lentiginosus*.
 - Chinese Little *Izobrychus sinensis*.
 - Least *Izobrychus exilis*.
 - Malay *Gorsachius melanolophus*.
 - Schrenk's Little *Izobrychus eurhythmus*.
- Blackbird:
 - Brewer's *Euphagus cyanocephalus*.
 - Red-winged *Agelaius phoeniceus*.
 - Rusty *Euphagus carolinus*.
 - Tawny-shouldered *Agelaius humeralis*.
 - Tricolored *Agelaius tricolor*.
 - Yellow-headed *Xanthocephalus xanthocephalus*.
 - Yellow-shouldered *Agelaius xanthomus*.
- Bluebird:
 - Eastern *Sialia sialis*.
 - Mountain *Sialia currucoides*.
 - Western *Sialia mexicana*.
- Bluethroat: *Luscinia svecica*.
- Bobolinks *Dolichonyx oryzivorus*.
- Booby:
 - Blue-faced *Sula dactylatra*.
 - Blue-footed *Sula nebouxi*.
 - Brown *Sula leucogaster*.
 - Red-footed *Sula sula*.
- Brambling: *Fringilla montifringilla*.
- Brant (incl. Black Brant): *Branta bernicla*.
- Bufflehead: see DUCKS.
- Bullfinch:
 - Eurasian *Pyrrhula pyrrhula*.
 - Puerto Rican *Loxia portoricensis*.
- Bunting:
 - Indigo *Passerina cyanea*.
 - Lark *Calamospiza melanocorys*.
 - Lazuli *Passerina amoena*.
 - McKay's *Plectrophenax hyperboreus*.
 - Painted *Passerina ciris*.
 - Rustic *Emberiza rustica*.
 - Snow *Plectrophenax nivalis*.
 - Varied *Passerina versicolor*.
- Bushtit: *Psaltriparus minimus*.
- Canvasback: see DUCKS.
- Caracara, Audubon's: *Caracara chertway*.

- Cardinal, American: *Cardinalis cardinalis*.
- Carib, Green-throated: *Sericornis holosericeus*.
- Catbird, Gray: *Dumetella carolinensis*.
- Chat:
 - Ground *Geothlypis poliocephala*.
 - Yellow-breasted *Icteria virens*.
- Chickadee:
 - Black-capped *Parus atricapillus*.
 - Boreal *Parus hudsonicus*.
 - Carolina *Parus carolinensis*.
 - Chestnut-backed *Parus rufescens*.
 - Gray-headed *Parus cinctus*.
 - Mexican *Parus sclateri*.
 - Mountain *Parus gambeli*.
- Chuck-will's-widow: *Caprimulgus carolinensis*.
- Condor, California: *Gymnogyps californianus*.
- Coot:
 - American *Fulica americana*.
 - Caribbean *Fulica caribaea*.
 - European *Fulica atra*.
- Cormorant:
 - Brandt's *Phalacrocorax penicillatus*.
 - Double-crested *Phalacrocorax auritus*.
 - Great *Phalacrocorax carbo*.
 - Olivaceous *Phalacrocorax olivaceus*.
 - Pelagic *Phalacrocorax pelagicus*.
 - Red-faced *Phalacrocorax urile*.
- Cowbird:
 - Bronzed *Molothrus aeneus*.
 - Brown-headed *Molothrus ater*.
 - Glossy *Molothrus bonariensis*.
- Crake, Corn: *Crex crex*.
- Crane:
 - Common *Grus grus*.
 - Sandhill *Grus canadensis*.
 - Whooping *Grus americana*.
- Creeper, Brown: *Certhia familiaris*.
- Crossbill:
 - Red *Loxia curvirostra*.
 - White-winged *Loxia leucoptera*.
- Crow:
 - Common *Corvus brachyrhynchos*.
 - Fish *Corvus ossifragus*.
 - Hawaiian *Corvus tropicalis*.
 - Mexican *Corvus imparatus*.
 - Northwestern *Corvus caurinus*.
 - White-necked *Corvus leucognathus*.
- Cuckoo:
 - Black-billed *Coccyzus erythrophthalmus*.
 - Common *Cuculus canorus*.
 - Hawk *Cuculus fugax*.
 - Lizard *Saurothera vielloti*.
 - Mangrove *Coccyzus minor*.
 - Oriental *Cuculus saturatus*.
 - Yellow-billed *Coccyzus americana*.
- Curlw:
 - Australian *Numenius madagascariensis*.
 - Bristle-thighed *Numenius tahitiensis*.
 - Eskimo *Numenius borealis*.
 - Eurasian *Numenius arquata*.
 - Least *Numenius arquata*.
 - Long-billed *Numenius americanus*.
 - Whimbrel *Numenius phaeopus*.
- Dickcissel: *Spiza americana*.
- Dipper: *Cinclus mexicanus*.
- Dotterel: *Eudromias morinellus*.
- Dove (also see Quail-Dove):
 - Ground *Columbina passerina*.
 - Inca *Scardafella inca*.
 - Mourning *Zenaida macroura*.
 - White-fronted *Leptotila verreauxi*.
 - White-winged *Zenaida asiatica*.
 - Zenaida *Zenaida aurita*.
- Dovekie: *Alle alle*.
- Dowitcher:
 - Long-billed *Limnodromus scolopaceus*.
 - Short-billed *Limnodromus griseus*.
- Ducks:
 - Bufflehead: *Bucephala albeola*.
 - Canvasback: *Aythya valisineria*.
- Duck:
 - Black *Anas rubripes*.
 - Harlequin *Histrionicus histrionicus*.
 - Hawaiian *Anas wyvilliana*.
 - Laysan *Anas laysanensis*.

- Masked *Oxyura dominica*.
- Mexican *Anas diazi*.
- Mottled (incl. Florida) *Anas fulvigula*.
- Ring-necked *Aythya collaris*.
- Ruddy *Oxyura jamaicensis*.
- Tufted *Aythya fulvigula*.
- Whistling (Tree):
 - Black-bellied *Dendrocygna autumnalis*.
 - Fulvous *Dendrocygna bicolor*.
 - West Indian *Dendrocygna arborea*.
 - Wood Aiz sponsa.
- Elder:
 - Common *Somateria mollissima*.
 - King *Somateria spectabilis*.
 - Spectacled *Somateria fischeri*.
 - Steller's *Polysticta stelleri*.
 - Gadwall: *Anas strepera*.
 - Garganey: *Anas querquedula*.
- Goldeneye:
 - Barrow's *Bucephala islandica*.
 - Common *Bucephala clangula*.
- Mallard: *Anas platyrhynchos*.
- Merganser:
 - Common *Mergus merganser*.
 - Hooded *Lophodytes cucullatus*.
 - Red-breasted *Mergus serrator*.
- Oldsquaw: *Clangula hyemalis*.
- Pintail:
 - Bahama *Anas bahamensis*.
 - Northern *Anas acuta*.
- Pochard:
 - Baer's *Aythya baeri*.
 - Common *Aythya ferina*.
- Redhead: *Aythya americana*.
- Scaup:
 - Greater *Aythya marila*.
 - Lesser *Aythya affinis*.
- Scoter:
 - Black *Melanitta nigra*.
 - Surf *Melanitta perspicillata*.
 - White-winged *Melanitta deglandi*.
- Shoveler, Northern: *Anas clypeata*.
- Smew: *Mergellus albellus*.
- Teal:
 - Baikal *Anas formosa*.
 - Blue-winged *Anas discors*.
 - Cinnamon *Anas cyanoptera*.
 - Common (Green-winged) *Anas crecca*.
 - Falcated *Anas falcata*.
- [End of ducks]
- Wigeon:
 - American *Anas americana*.
 - European *Anas penelope*.
- Dunlin: *Calidris alpina*.
- Eagle:
 - Bald *Haliaeetus leucocephalus*.
 - Golden *Aquila chrysaetos*.
 - Gray Sea *Haliaeetus albicilla*.
 - Steller's Sea *Haliaeetus pelagicus*.
- Egret:
 - Cattle *Bubulcus ibis*.
 - Great *Casmerodius albus*.
 - Plumed *Egretta intermedia*.
 - Reddish *Dichromanassa rufescens*.
 - Snowy *Egretta thula*.
- Eider: see DUCKS.
- Elaena: Caribbean *Elaenia martinica*.
- Elepalo *Chasiempis sandwichensis*.
- Emerald: Puerto Rican *Chlorostilbon maugues*.
- Euphonia: Blue-hooded *Tanagra musica*.
- Falcon:
 - Aplomado *Falco femoralis*.
 - Peregrine *Falco peregrinus*.
 - Prairie *Falco mexicanus*.
- Finch:
 - Black Rosy *Leucosticte atrata*.
 - Brown-capped Rosy *Leucosticte australis*.
 - Cassin's *Carpodacus cassinii*.
 - Gray-crowned Rosy *Leucosticte tephrocotis*.
 - House *Carpodacus mexicanus*.
 - Purple *Carpodacus purpureus*.
 - Flamingo: American *Phoenicopterus ruber*.
 - Flicker: Common *Colaptes auratus*.
- Flycatcher:
 - Acadian *Empidonax virescens*.
 - Alder *Empidonax alnorum*.

- Ash-throated *Myiarchus cinerascens*.
 Beardless *Camptostoma imberbe*.
 Chinese Gray-spotted *Muscicapa griseisticta*.
 Coues' *Contopus pertinax*.
 Dusky *Empidonax oberholseri*.
 Fork-tailed *Muscivora tyrannus*.
 Gray *Empidonax wrightii*.
 Great Crested *Myiarchus crinitus*.
 Hammond's *Empidonax hammondi*.
 Kiskadee *Pitangus sulphuratus*.
 Least *Empidonax minimus*.
 Loggerhead *Tyrannus caudifasciatus*.
 Narcissus *Muscicapa narissina*.
 Nutting's *Myiarchus nuttingi*.
 Ollivaceous *Myiarchus tuberculifer*.
 Olive-sided *Nuttallornis borealis*.
 Scissor-tailed *Muscivora forficata*.
 Stolid *Myiarchus stolidus*.
 Sulphur-bellied *Myiodynastes luteiventris*.
 Traill's see Alder and Willow.
 Vermilion *Pyrocephalus rubinus*.
 Western *Empidonax difficilis*.
 Wied's Crested *Myiarchus tyrannulus*.
 Willow *Empidonax traillii*.
 Yellow-bellied *Empidonax flaviventris*
- Frigatebird:**
 Greater *Fregata minor*.
 Lesser *Fregata ariel*.
 Magnificent *Fregata magnificens*.
- Fulmar:** Northern *Fulmarus glacialis*.
Gadwall: see DUCKS.
- Gallinule:**
 Common *Gallinula chloropus*.
 Purple *Porphyrio martinica*.
- Gannet** *Morus bassanus*.
- Gnatcatcher:**
 Black-capped *Poliophtila nigriceps*.
 Black-tailed *Poliophtila melanura*.
 Blue-gray *Poliophtila caerulea*.
- Godwit:**
 Bar-tailed *Limosa lapponica*.
 Hudsonian *Limosa haemastica*.
 Marbled *Limosa fedoa*.
- Goldeneye:** see DUCKS.
- Goldfinch:**
 American *Carduelis tristis*.
 Lawrence's *Carduelis lawrencei*.
 Lesser *Carduelis psaltria*.
- Goose:**
 Barnacle *Branta leucopsis*.
 Bean *Anser fabalis*.
 Blue see SNOW GOOSE.
 Canada *Branta canadensis*.
 Emperor *Phalacrocorax auritus*.
 Hawaiian (Nene) *Branta sandvicensis*.
 Ross' *Chen rossii*.
 Snow *Chen caerulescens*.
 White-fronted *Anser albifrons*.
- Goshawk** *Accipiter gentilis*.
- Grackle:**
 Boat-tailed *Quiscalus major*.
 Common *Quiscalus quiscula*.
 Greater Antillean *Quiscalus niger*.
 Great-tailed *Quiscalus mexicanus*.
- Grassquit:**
 Black-faced *Tiaris bicolor*.
 Melodius *Tiaris canora*.
 Yellow-faced *Tiaris olivacea*.
- Grebe:**
 Eared *Podiceps nigricollis*.
 Horned *Podiceps auritus*.
 Least *Podiceps dominicus*.
 Pied-billed *Podilymbus podiceps*.
 Red-necked *Podiceps grisegena*.
 Western *Aechmophorus occidentalis*.
- Greenshank** *Tringa nebularia*.
- Grosbeak:**
 Black-headed *Pheucticus melanocephalus*.
 Blue *Guiraca caerulea*.
 Evening *Hesperiphona vespertina*.
 Pine *Pinicola enucleator*.
 Rose-breasted *Pheucticus ludovicianus*.
- Ground-Chat** *Geothlypis poliocephala*.
- Guillemot:**
 Black *Cephus grylle*.
 Pigeon *Cephus columba*.
- Gull:**
 Black-headed *Larus ridibundus*.
 Black-tailed *Larus crassirostris*.
 Bonaparte's *Larus philadelphia*.
 California *Larus californicus*.
 Franklin's *Larus pipixcan*.
 Glaucous *Larus hyperboreus*.
 Glaucous-winged *Larus glaucescens*.
 Great Black-backed *Larus marinus*.
 Heermann's *Larus heermanni*.
 Herring *Larus argentatus*.
 Iceland *Larus glaucoideus*.
 Ivory *Pagophila eburnea*.
 Lesser Black-backed *Larus fuscus*.
 Little *Larus minutus*.
 Mew *Larus canus*.
 Ring-billed *Larus delawarensis*.
 Ross' *Rhodostethia rosea*.
 Sabine's *Xema sabini*.
 Slaty-backed *Larus schistisagus*.
 Tayer's *Larus thayeri*.
 Western *Larus occidentalis*.
 Gyrfalcon *Falco rusticolus*.
 Harrier, Northern *Circus cyaneus*.
 Hawfinch *Coccothraustes coccothraustes*.
- Hawk:**
 Black *Buteogallus anthracinus*.
 Broad-winged *Buteo platypterus*.
 Cooper's *Accipiter cooperii*.
 Ferruginous *Buteo regalis*.
 Gray *Buteo nitidus*.
 Harris' *Parabuteo unicinctus*.
 Hawaiian *Buteo solitarius*.
 Japanese Sparrow *Accipiter virgatus*.
 Marsh see HARRIER, NORTHERN.
 Pigeon see MERLIN.
 Red-shouldered *Buteo lineatus*.
 Red-tailed *Buteo jamaicensis*.
 Rough-legged *Buteo lagopus*.
 Sharp-shinned *Accipiter striatus*.
 Short-tailed *Buteo brachyurus*.
 Sparrow see KESTREL, AMERICAN.
 Swainson's *Buteo swainsoni*.
 White-tailed *Buteo albicaudatus*.
 Zone-tailed *Buteo albonotatus*.
- Heron:**
 Black-crowned Night *Nycticorax nycticorax*.
 Great Blue *Ardea herodias*.
 Great White see GREAT BLUE.
 Green *Butorides striatus*.
 Japanese Night *Gorsachius gotsagi*.
 Little Blue *Florida caerulea*.
 Louisiana *Hydranassa tricolor*.
 Reef *Demigretta sacra*.
 Yellow-crowned Night *Nyctanassa violacea*.
- Honeycreeper:** Bahama *Coereba bahamensis*.
- Hummingbird:** (also see Carib, Emerald, Mango, Woodstar):
 Allen's *Selasphorus sasin*.
 Anna's *Calypte anna*.
 Berylline *Amazilia beryllina*.
 Black-chinned *Archilochus alexandri*.
 Blue-throated *Lampornis clemenciae*.
 Broad-billed *Cyananthus latirostris*.
 Broad-tailed *Selasphorus platycercus*.
 Buff-bellied *Amazilia yucatanensis*.
 Calliope *Stellula calliope*.
 Costa's *Calypte costae*.
 Crested *Orthorhynchus cristatus*.
 Heloise's *Atthis heloisa*.
 Lucifer *Calothorax lucifer*.
 Rieffer's *Amazilia tzacatl*.
 Rivoli's *Eugenes fulgens*.
 Ruby-throated *Archilochus colubris*.
 Rufous *Selasphorus rufus*.
 Violet-crowned *Amazilia verticalis*.
 Violet-eared *Colibri thalassinus*.
 White-eared *Hylocharis leucotis*.
- Ibis:**
 Glossy *Plegadis falcinellus*.
 Scarlet *Eudocimus ruber*.
 White *Eudocimus albus*.
 White-faced *Plegadis chitt.*
 Wood *Mycteria americana*.
- Jabiru** *Jabiru mycteria*.
Jacana *Jacana spinosa*.
- Jacksnipe, European** *Lymnocyptes minimus*.
Jaeger:
 Long-tailed *Stercorarius longicaudus*.
 Parasitic *Stercorarius parasiticus*.
 Pomarine *Stercorarius pomarinus*.
- Jay:**
 Blue *Cyanocitta cristata*.
 Gray *Perisoreus canadensis*.
 Green *Cyanocorax yncas*.
 Mexican *Aphelocoma ultramarina*.
 Pinon *Gymnorhinus cyanocephalus*.
 San Blas *Cissilopha sanblasiana*.
 Scrub *Aphelocoma coerulescens*.
 Steller's *Cyanocitta stelleri*.
- Junco:**
 Dark-eyed (Oregon, Slate-colored, White-winged) *Junco hyemalis*.
 Gray-headed *Junco caniceps*.
 Yellow-eyed (Mexican) *Junco phaeonotus*.
- Kestrel:**
 American *Falco sparverius*.
 Eurasian *Falco tinnunculus*.
- Killdeer** *Charadrius vociferans*.
- Kingbird:**
 Cassin's *Tyrannus vociferans*.
 Eastern *Tyrannus tyrannus*.
 Gray *Tyrannus dominicensis*.
 Thick-billed *Tyrannus crassirostris*.
 Tropical *Tyrannus melancholicus*.
 Western *Tyrannus verticalis*.
- Kingfisher:**
 Belted *Megaceryle alcyon*.
 Green *Chloroceryle americana*.
 Ringed *Megaceryle torquata*.
- Kinglet:**
 Golden-crowned *Regulus satrapa*.
 Ruby-crowned *Regulus calendula*.
- Kite:**
 Black *Milvus migrans*.
 Everglade *Rostrhamus sociabilis*.
 Mississippi *Ictinia mississippiensis*.
 Swallow-tailed *Elanoides forficatus*.
 White-tailed *Elanus leucurus*.
- Kittiwake:**
 Black-legged *Rissa tridactyla*.
 Red-legged *Rissa brevirostris*.
- Knot:**
 Great *Calidris tenuirostris*.
 Red *Calidris canutus*.
- Lapwing** *Vanellus vanellus*.
- Lark, Horned** *Eremophila alpestris*.
Limpkin *Aramus guarana*.
- Longspur:**
 Chestnut-collared *Calcarius ornatus*.
 Lapland *Calcarius lapponicus*.
 McCown's *Calcarius mccowni*.
 Smith's *Calcarius pictus*.
- Loon:**
 Arctic *Gavia arctica*.
 Common *Gavia immer*.
 Red-throated *Gavia stellata*.
 Yellow-billed *Gavia adamsii*.
- Magpie:**
 Black-billed *Pica pica*.
 Yellow-billed *Pica nuttalli*.
- Mallard:** see DUCKS.
- Mango:**
 Antillean *Anthracoceros dominicus*.
 Puerto Rican *Anthracoceros viridis*.
- Martin:**
 Caribbean *Progne dominicensis*.
 Cuban *Progne cryptoleuca*.
 Gray-breasted *Progne chalybea*.
 Purple *Progne subis*.
- Meadowlark:**
 Eastern *Sturnella magna*.
 Western *Sturnella neglecta*.
- Merganser:** see DUCKS.
- Merlin** *Falco columbarius*.
Millerbird *Acrocephalus familiaris*.
Mockingbird *Mimus polyglottos*.
- Murre:**
 Common *Uria aalge*.
 Thick-billed *Uria lomvia*.
- Murrelet:**
 Ancient *Synthliboramphus antiquus*.
 Craveri's *Endomychura craveri*

Kittlitz's *Brachyramphus brevirostris*.
 Marbled *Brachyramphus marmoratus*.
 Xantus' *Endomychura hypoleuca*.
 Nighthawk:
 Common *Chordeiles minor*.
 Lesser *Chordeiles acutipennis*.
 Nightjar: Jungle *Caprimulgus indicus*.
 Noddy: see TERN.
 Nutcracker: Clark's *Nucifraga columbiana*.
 Nuthatch:
 Brown-headed *Sitta pusilla*.
 Pigmy *Sitta pygmaea*.
 Red-breasted *Sitta canadensis*.
 White-breasted *Sitta carolinensis*.
 Oldsquaw: see DUCKS.
 Oriole:
 Black-cowled *Icterus dominicensis*.
 Black-headed *Icterus graduacauda*.
 Black-vented *Icterus wagleri*.
 Hooded *Icterus cucullatus*.
 Lichtenstein's *Icterus gularis*.
 Northern (Baltimore, Bullocks') *Icterus galbula*.
 Orchard *Icterus spurius*.
 Scarlet-headed *Icterus pustulatus*.
 Scott's *Icterus parisorum*.
 Osprey *Pandion haliaetus*.
 Ovenbird *Seiurus aurocapillus*.
 Owl:
 Bare-legged *Otus nudipes*.
 Barn *Tyto alba*.
 Barred *Strix varia*.
 Boreal *Aegolius junereus*.
 Burrowing *Athene cucularia*.
 Elf *Micrathene whitneyi*.
 Ferruginous *Geothlypis brasilianum*.
 Flammulated *Otus flammeolus*.
 Great Gray *Strix nebulosa*.
 Great Horned *Bubo virginianus*.
 Hawk *Surnia ulula*.
 Long-eared *Asio otus*.
 Pygmy *Glaucidium gnoma*.
 Saw-whet *Aegolius acadicus*.
 Screech *Otus asio*.
 Short-eared *Asio flammeus*.
 Snowy *Nyctea scandiaca*.
 Spotted *Strix occidentalis*.
 Whiskered *Otus trichopsis*.
 Oystercatcher:
 American *Haematopus palliatus*.
 Black *Haematopus bachmani*.
 Pauraque *Nyctidromus albigollis*.
 Pelican:
 Brown *Pelecanus occidentalis*.
 White *Pelecanus erythrorhynchos*.
 Petrel: (also see Storm-Petrel):
 Black-bellied *Fregata tropica*.
 Black-capped *Pterodroma hastata*.
 Bonin Island *Pterodroma hypoleuca*.
 Bulwer's *Bulweria bulwerii*.
 Cape *Daption capense*.
 Cook's *Pterodroma cookii*.
 Dark-rumped *Pterodroma phaeopygia*.
 Juan Fernandez *Pterodroma externa*.
 Jousanin *Bulweria fallax*.
 Kermadec *Pterodroma neglecta*.
 Murphy's *Pterodroma ultima*.
 Scaled *Pterodroma inexpectata*.
 South Trinidad *Pterodroma arminjoniana*.
 Pewee:
 Eastern Wood *Contopus virens*.
 Lesser Antillean *Contopus latirostris*.
 Western Wood *Contopus sordidulus*.
 Phainopepla *Phainopepla nitens*.
 Phalarope:
 Northern *Lobipes lobatus*.
 Red *Phalaropus fulicarius*.
 Wilson's *Steganopus tricolor*.
 Phoebe:
 Black *Sayornis nigricans*.
 Eastern *Sayornis phoebe*.
 Say's *Sayornis saya*.
 Pigeon:
 Band-tailed *Columba fasciata*.
 Puerto Rican Plain *Columba inornata*.
 Red-billed *Columba flavirostra*.
 Scaly-naped *Columba squamosa*.

White-crowned *Columba leucocephala*.
 Pintall: see DUCKS.
 Pipit:
 Indian Tree *Anthus hodgsoni*.
 Pechora *Anthus gustavi*.
 Red-throated *Anthus cervinus*.
 Sprague's *Anthus spraguei*.
 Water *Anthus spinoletta*.
 Plover:
 American Golden *Pluvialis dominica*.
 Black-bellied *Pluvialis squatarola*.
 Greater Sand *Charadrius leschenaultii*.
 Little Ringed *Charadrius dubius*.
 Mongolian *Charadrius mongolus*.
 Mountain *Charadrius montanus*.
 Piping *Charadrius melodus*.
 Ringed *Charadrius hiaticula*.
 Semipalmated *Charadrius semipalmatus*.
 Snowy *Charadrius alexandrinus*.
 Upland *Bartramia longicauda*.
 Wilson's *Charadrius wilsonia*.
 Pochard: see DUCKS.
 Poor-will *Phalaenoptilus nuttallii*.
 Puffin:
 Common *Fratercula arctica*.
 Horned *Fratercula corniculata*.
 Tufted *Lunda cirrhata*.
 Pyrrhuloxia *Cardinalis sinuatus*.
 Quail-Dove:
 Bridled *Geotrygon mystacea*.
 Key West *Geotrygon chrysis*.
 Ruddy *Geotrygon montana*.
 Rail:
 Black *Laterallus jamaicensis*.
 Clapper *Rallus longirostris*.
 King *Rallus elegans*.
 Virginia *Rallus limicola*.
 Yellow *Coturnicops noveboracensis*.
 Yellow-billed *Porzana flaviventer*.
 Raven:
 Common *Corvus corax*.
 White-necked *Corvus cryptoleucus*.
 Razorbill *Alca torda*.
 Redhead: see DUCKS.
 Redpoll:
 Common *Carduelis flammea*.
 Hoary *Carduelis hornemanni*.
 Redshank: Spotted *Tringa erythropus*.
 Redstart:
 American *Setophaga ruticilla*.
 Painted *Myioborus pictus*.
 Slaty-throated *Myioborus miniatus*.
 Roadrunner *Geococcyx californianus*.
 Robin:
 American *Turdus migratorius*.
 Rufous-backed *Turdus rufopalliatus*.
 Rosy Finch: see FINCH.
 Rubythroat: Siberian *Luscinia calliope*.
 Ruff *Philomachus pugnax*.
 Sanderling *Calidris alba*.
 Sandpiper: (also see Stint):
 Baird's *Calidris bairdi*.
 Broad-billed *Limicola falcinellus*.
 Buff-breasted *Tryngites subruficollis*.
 Common *Actitis hypoleucos*.
 Curlew *Calidris ferruginea*.
 Least *Calidris minutilla*.
 Pectoral *Calidris melanotos*.
 Purple *Calidris maritima*.
 Red-backed *Calidris alpina*.
 Rock *Calidris ptilocnemis*.
 Rufous-necked *Calidris ruficollis*.
 Semipalmated *Calidris pusilla*.
 Sharp-tailed *Calidris acuminata*.
 Solitary *Tringa solitaria*.
 Spoon-billed *Eurynorhynchus pygmeus*.
 Spotted *Actitis macularia*.
 Stilt *Micropalama himantopus*.
 Upland *Bartramia longicauda*.
 Western *Calidris mauri*.
 White-rumped *Calidris fuscicollis*.
 Wood *Tringa glareola*.
 Sapsucker:
 Williamson's *Sphyrapicus thyroideus*.
 Yellow-bellied *Sphyrapicus varius*.
 Scaup: see DUCKS.
 Scoter: see DUCKS.

Seed-eater: White-collared *Sporophila torquata*.
 Shearwater:
 Audubon's *Puffinus therminteri*.
 Christmas Island *Puffinus nativitatus*.
 Cory's *Puffinus diomedea*.
 Flesh-footed *Puffinus carneipes*.
 Greater *Puffinus gravis*.
 Little *Puffinus assimilis*.
 Manx *Puffinus puffinus*.
 New Zealand *Puffinus bulleri*.
 Pink-footed *Puffinus creatopus*.
 Short-tailed *Puffinus tenuirostris*.
 Sooty *Puffinus griseus*.
 Wedge-tailed *Puffinus pacificus*.
 Shoveler: see DUCKS.
 Shrike:
 Loggerhead *Lanius ludovicianus*.
 Northern *Lanius excubitor*.
 Siskin, Pine *Carduelis pinus*.
 Skimmer, Black *Rynchops nigra*.
 Skua:
 Northern *Catharacta skua*.
 Southern *Catharacta maccormicki*.
 Skylark *Alauda arvensis*.
 Smew: see DUCKS.
 Snipe:
 Common *Capella gallinago*.
 Pintail *Capella stenura*.
 Swinhoe's *Capella megala*.
 Solitaire: Townsend's *Myadestes townsendi*.
 Sora *Porzana carolina*.
 Sparrow:
 Bachman's *Aimophila aestivalis*.
 Baird's *Ammodramus bairdii*.
 Black-chinned *Spizella atrogularis*.
 Black-throated *Amphispiza bilineata*.
 Botteri's *Aimophila botterii*.
 Brewer's *Spizella breweri*.
 Cassin's *Aimophila cassini*.
 Chipping *Spizella passerina*.
 Clay-colored *Spizella pallida*.
 Field *Spizella pusilla*.
 Five-striped *Aimophila quinquestriata*.
 Fox *Passerella iliaca*.
 Golden-crowned *Zonotrichia atricapilla*.
 Grasshopper *Ammodramus savannarum*.
 Harris' *Zonotrichia querula*.
 Henslow's *Ammodramus henslowi*.
 Ipswich see SAVANNAH.
 Lark *Chondestes grammacus*.
 LeConte's *Ammodramus lecontei*.
 Lincoln's *Melospiza lincolni*.
 Olive *Arremonops rufivirgata*.
 Rufous-crowned *Aimophila ruficeps*.
 Rufous-winged *Aimophila carpalis*.
 Sage *Amphispiza belli*.
 Savannah *Passerculus sandwichensis*.
 Seaside *Ammodramus maritima*.
 Sharp-tailed *Ammodramus caudacuta*.
 Song *Melospiza melodia*.
 Swamp *Melospiza georgiana*.
 Tree *Spizella arborea*.
 Vesper *Pooecetes gramineus*.
 White-crowned *Zonotrichia leucophrys*.
 White-throated *Zonotrichia albicollis*.
 Worthen's *Spizella wortheni*.
 Spoonbill: Roseate *Ajaia ajaja*.
 Starling:
 Ashy *Sturnus cineraceus*.
 Violet-backed *Sturnus philippensis*.
 Stilt: Black-necked *Himantopus mexicanus*.
 Stint:
 Long-toed *Calidris subminuta*.
 Temminck's *Calidris temminckii*.
 Stork: Wood *Mycteria americana*.
 Storm-Petrel:
 Ashy *Oceanodroma homochroa*.
 Black *Oceanodroma melania*.
 Fork-tailed *Oceanodroma furcata*.
 Harcourt's *Oceanodroma castro*.
 Leach's *Oceanodroma leucorhoa*.
 Least *Halocyptena microsoma*.
 Tristram's *Oceanodroma tristrami*.
 Wilson's *Oceanites oceanicus*.
 Surf-bird *Aphriza virgata*.
 Swallow:

- Palm *Dendroica palmarum*.
 Pine *Dendroica pinus*.
 Prairie *Dendroica discolor*.
 Prothonotary *Protonotaria citrea*.
 Bahama *Callipepla cyanoviridis*.
 Bank *Riparia riparia*.
 Barn *Hirundo rustica*.
 Cave *Petrochelidon fulva*.
 Cliff *Petrochelidon pharos*.
 Rough-winged *Stelgidopteryx ruficollis*.
 Tree *Iridoprocne bicolor*.
 Violet-green *Tachycineta thalassina*.
- Swan:
 Trumpeter *Olor buccinator*.
 Whistling *Olor columbianus*.
 Whooper *Olor cygnus*.
- Swift:
 Black *Cypseloides niger*.
 Chimney *Chaetura pelagica*.
 Common *Apus apus*.
 Needle-tailed *Hirundapus caudacutus*.
 Short-tailed *Chaetura brachyura*.
 Vaux's *Chaetura vauzi*.
 White-rumped *Apus pacificus*.
 White-throated *Aeronautes saxatalis*.
- Tanager:
 Hepatic *Piranga flava*.
 Puerto Rican *Neospingus speculiferus*.
 Scarlet *Piranga olivacea*.
 Stripe-headed *Spindalis zena*.
 Summer *Piranga rubra*.
 Western *Piranga ludoviciana*.
- Tattler:
 Polynesian *Heteroscelus brevipes*.
 Wandering *Heteroscelus incanus*.
- Teal: see DUCKS.
- Tern:
 Aleutian *Sterna aleutica*.
 Arctic *Sterna paradisaea*.
 Black *Chlidonias niger*.
 Black-naped *Sterna sumatrana*.
 Black Noddy *Anous stolidus*.
 Blue-gray Noddy *Procelsterna cerulea*.
 Bridled *Sterna anaethetus*.
 Caspian *Sterna caspia*.
 Cayenne *Sterna eurygnatha*.
 Common *Sterna hirundo*.
 Elegant *Sterna elegans*.
 Forster's *Sterna forsteri*.
 Gray-backed *Sterna lunata*.
 Gull-billed *Gelocheilidon niotica*.
 Least *Sterna albifrons*.
 Noddy *Anous stolidus*.
 Roseate *Sterna dougallii*.
 Royal *Sterna mazima*.
 Sandwich *Sterna sandvicensis*.
 Sooty *Sterna fuscata*.
 Trudeau's *Sterna trudeauti*.
 White (Fairy) *Gygis alba*.
 White-winged Black *Chlidonias leucop-
 terus*.
- Thrasher:
 Bendire's *Toxostoma bendirei*.
 Brown *Toxostoma rufum*.
 California *Toxostoma redivivum*.
 Crissal *Toxostoma dorsale*.
 Curve-billed *Toxostoma curvirostre*.
 LeConte's *Toxostoma lecontei*.
 Long-billed *Toxostoma longirostre*.
 Pearly-eyed *Margarops fuscatus*.
 Sage *Oreoscoptes montanus*.
- Thrush: (see also Waterthrush):
 Eye-browed *Turdus obscurus*.
 Gray-cheeked *Catharus minutus*.
 Hawaiian *Phaeornis obscurus*.
 Hermit *Catharus guttatus*.
 Red-legged *Mimochichla plumbea*.
 Small Kauai *Phaeornis palmeri*.
 Swainson's *Catharus ustulatus*.
 Varied *Icterus naevius*.
- Wood *Hylocichla mustelina*.
 Titmouse:
 Bridled *Parus wollweberi*.
 Plain *Parus inornatus*.
 Tufted (incl. Black-crested) *Parus bicolor*.
- Towhee:
 Abert's *Pipilo aberti*.
 Brown *Pipilo fuscus*.
 Green-tailed *Pipilo chlorurus*.
 Rufous-sided *Pipilo erythrophthalmus*.
- Tree Duck: see DUCKS.
- Tropic-bird:
 Red-billed *Phaethon aethereus*.
 Red-tailed *Phaethon rubricauda*.
 White-tailed *Phaethon lepturus*.
- Turnstone:
 Black *Arenaria melanocephala*.
 Ruddy *Arenaria interpres*.
 Veery *Catharus fuscescens*.
 Verdin *Auriparus flaviceps*.
- Vireo:
 Bell's *Vireo bellii*.
 Black-capped *Vireo atricapilla*.
 Black-whiskered *Vireo altiloquus*.
 Gray *Vireo vicinior*.
 Hutton's *Vireo huttoni*.
 Philadelphia *Vireo philadelphicus*.
 Puerto Rican *Vireo latimeri*.
 Red-eyed *Vireo olivaceus*.
 Solitary *Vireo solitarius*.
 Warbling *Vireo gilvus*.
 White-eyed *Vireo griseus*.
 Yellow-green *Vireo flavoviridis*.
 Yellow-throated *Vireo flavifrons*.
- Vulture:
 Black *Coragyps atratus*.
 King *Sarcorampus papa*.
 Turkey *Cathartes aura*.
- Wagtail:
 Gray *Motacilla cinerea*.
 White (Pied) *Motacilla alba*.
 Yellow *Motacilla flava*.
- Warbler:
 Adelaide's *Dendroica adelaidae*.
 Arctic *Phylloscopus borealis*.
 Audubon's see YELLOW-RUMPED.
 Bachman's *Vermivora bachmanii*.
 Bay-breasted *Dendroica castanea*.
 Black-and-white *Mniotilta varia*.
 Blackburnian *Dendroica fusca*.
 Blackpoll *Dendroica striata*.
 Black-throated Blue *Dendroica caerules-
 cens*.
 Black-throated Gray *Dendroica nigrescens*.
 Black-throated Green *Dendroica virens*.
 Blue-winged *Vermivora pinus*.
 Canada *Wilsonia canadensis*.
 Cape May *Dendroica tigrina*.
 Cerulean *Dendroica caerulea*.
 Chestnut-sided *Dendroica pensylvanica*.
 Collina *Vermivora crissalis*.
 Connecticut *Oporornis agilis*.
 Elfyn Woods *Dendroica angelae*.
 Fan-tailed *Euthlypis lachrymosa*.
 Golden-cheeked *Dendroica chrysoparia*.
 Golden-winged *Vermivora chrysoptera*.
 Grace's *Dendroica graciae*.
 Hermit *Dendroica occidentalis*.
 Hooded *Wilsonia citrina*.
 Kentucky *Oporornis formosus*.
 Kirtland's *Dendroica kirtlandii*.
 Lucy's *Vermivora luciae*.
 MacGillivray's *Oporornis tolmiei*.
 Magnolia *Dendroica magnolia*.
 Middendorff's Grasshopper *Locustella
 ochotensis*.
 Mourning *Oporornis philadelphia*.
 Myrtle see YELLOW-RUMPED.
 Nashville *Vermivora ruficapilla*.
 Northern Parula *Parula americana*.
 Olive *Peucedramus taeniatus*.
- Orange-crowned *Vermivora celata*.
 Red-faced *Cardellina rubrifrons*.
 Swainson's *Limnithlypis swainsonii*.
 Tennessee *Vermivora peregrina*.
 Townsend's *Dendroica townsendi*.
 Tropical Parula *Parula pitiauyumi*.
 Virginia *Vermivora virginiae*.
 Wilson's *Wilsonia pusilla*.
 Worm-eating *Helminthos vermivorus*.
 Yellow *Dendroica petechia*.
 Yellow-rumped *Dendroica coronata*.
 Yellow-throated *Dendroica dominica*.
- Waterthrush:
 Louisiana *Seiurus motacilla*.
 Northern *Seiurus noveboracensis*.
- Waxwing:
 Bohemian *Bombycilla garrulus*.
 Cedar *Bombycilla cedrorum*.
 Wheatear *Oenanthe oenanthe*.
 Whimbrel *Numenius phaeopus*.
- Whip-poor-will:
 Common *Caprimulgus vociferus*.
 Puerto Rican *Caprimulgus noctitherus*.
- Whistling Duck: see DUCKS.
- Wigeon: see DUCKS.
- Willet *Catoptrophorus semipalmatus*.
- Woodcock:
 American *Philohela minor*.
 European *Scolopax rusticola*.
- Woodpecker:
 Acorn *Melanerpes formicivorus*.
 Arizona *Picoides arizonae*.
 Black-backed Three-toed *Picoides arcticus*.
 Downy *Picoides pubescens*.
 Gila *Melanerpes uropygialis*.
 Golden-fronted *Melanerpes aurifrons*.
 Hairy *Picoides villosus*.
 Ivory-billed *Campyphilus principalis*.
 Ladder-backed *Picoides scalaris*.
 Lewis' *Melanerpes lewis*.
 Northern Three-toed *Picoides tridactylus*.
 Nuttall's *Picoides nuttallii*.
 Pileated *Dryocopos pileatus*.
 Puerto Rican *Melanerpes portoricensis*.
 Red-bellied *Melanerpes carolinensis*.
 Red-cockaded *Picoides borealis*.
 Red-headed *Melanerpes erythrocephalus*.
 White-headed *Picoides albolarvatus*.
- Wood Pewee:
 Eastern *Contopus virens*.
 Western *Contopus sordidulus*.
- Woodstar: Bahama *Calliphlox evelynae*.
- Wren:
 Bewick's *Thryomanes bewickii*.
 Brown-throated *Troglodytes brunnicollis*.
 Cactus *Campylorhynchus brunneicapillus*.
 Canon *Catherpes mexicanus*.
 Carolina *Thryothorus ludovicianus*.
 House *Troglodytes aedon*.
 Long-billed Marsh *Cistothorus palustris*.
 Rock *Salpinctes obsoletus*.
 Short-billed Marsh *Cistothorus platensis*.
 Winter *Troglodytes troglodytes*.
- Wryneck *Jynx torquilla*.
- Yellowlegs:
 Greater *Tringa melanoleuca*.
 Lesser *Tringa flavipes*.
 Yellowthroat *Geothlypis trichas*.

NOTE.—The Service has determined that this rulemaking is not a significant Federal action requiring the preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

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LYNN A. GREENWALT,
 Director,
 Fish and Wildlife Service.

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