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federal register

WEDNESDAY, MARCH 15, 1978

highlights

CHICAGO, ILLINOIS WORKSHOPS

HOW TO USE THE FEDERAL REGISTER

FOR: Any person who must use the Federal Register and Code of Federal Regulations.

WHAT: Free public workshop (approximately 3 hours) to present:

1. Brief history of the Federal Register system.
2. Difference between legislation and regulations.
3. Relationship of Federal Register and the Code of Federal Regulations.
4. Important elements of a typical Federal Register document.
5. An introduction to the finding aids of the FR/CFR system.

WHEN: April 12, 13, and 14, 1978 at 9 a.m. (Each session identical)

WHERE: Everett M. Dirksen Federal Building, Conference Room 572, 219 S. Dearborn Street, Chicago, Illinois.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in government actions. There will be no discussion of specific agency regulations.

RESERVATIONS: Call Ardean Merrifield, Area Code 312-353-4242 or 353-0339.

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
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DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
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	HEW/HRA			HEW/HRA
	HEW/HSA			HEW/HSA
	HEW/NIH			HEW/NIH
	HEW/PHS			HEW/PHS

Documents normally scheduled for publication 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.

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

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List of Public Laws

This is a continuing numerical listing of public bills which have become law, the text of which is not published in the FEDERAL REGISTER. Copies of the laws in individual pamphlet form (referred to as "slip laws") may be obtained from the U.S. Government Printing Office.

S. 838 ..... Public Law 95-243
To amend the Indian Claims Commission Act of August 13, 1946, and for other purposes. (Mar. 13, 1978; 92 Stat. 153) Price $.50

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.

[6714-01]

Title 12—Banks and Banking

CHAPTER III—FEDERAL DEPOSIT INSURANCE CORPORATION

SUBCHAPTER B—REGULATIONS AND STATEMENTS OF GENERAL POLICY

PART 330—CLARIFICATION AND DEFINITION OF DEPOSIT INSURANCE COVERAGE

Clarification of Insurance Coverage Afforded to Deposits of Qualified Pension and Other Trusteed Personnel Benefit Plans

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: This amendment specifically provides separate insurance coverage for interests in pension and other trusteed personnel benefit plans, including coverage of nonvested interests with respect to each participant. Formerly, all such interests in any plan in any institution were aggregated and insured for up to a maximum of $40,000. Because of inherent differences between personal trusts and employee benefit trusts, specific regulations applicable to employee benefit trusts are necessary. The effect of this amendment is to recognize, for purposes of deposit insurance, interests of beneficiaries of employee benefit trusts which have not vested pursuant to the terms of the trust at the time of closing of an insured bank.

EFFECTIVE DATE: March 15, 1978.

FOR FURTHER INFORMATION, CONTACT:

Roger A. Hood, Assistant General Counsel, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429, 202-389-4628.

SUPPLEMENTARY INFORMATION: This amendment is adopted pursuant to the authority of Sections 3 and 9 of the Federal Deposit Insurance Act (Sec. 2[3], Pub. L. 797, 64 Stat. 873, as amended (12 U.S.C. 1813); Sec. 2[9], Pub. L. 797, 64 Stat. 881 (12 U.S.C. 1819)). Prior to this amendment, the rules and regulations for Insurance of Deposits contained no specific provisions as to insurance coverage for pension and other trusteed employee benefit funds. Because of this, the rules and regulations governing valuation of trust interests, generally, have been applied to such funds. Pension and other employee benefit funds have thus been treated under § 330.1(c)(1) (12 CFR 330.1(c)(1)) like other irrevocable trusts, with individual trust interests being separately insured only if they are vested or subject to contingencies capable of evaluation by use of the present-worth tables in the Federal Estate Tax Regulations (26 CFR 20.2031-7). At present, all nonvested trust interests in the same trust in any institution are insured up to $40,000, in the aggregate.

The amendment revises subparagraph (c)(1) of § 330.1 (and is contained in the last sentence of the subparagraph) to provide that in connection with deposit accounts containing pension and other trusteed employee benefit plans, including plans qualifying under Sections 401(d) or 408(d) of the Internal Revenue Code of 1954, the trust interest of each participant shall be evaluated for insurance purposes as if the interest of such participant had fully vested as of the date the insured bank was closed on account of inability to meet the demands of its depositors. The proposal will broaden the insurance coverage for participants in such plans so as to separately insure the interest of each of its participants up to $40,000, regardless of whether such interest is vested or nonvested.

The Corporation finds that (1) notice and public procedure are unnecessary under 5 U.S.C. 553(b) and 12 CFR 302.6, because this amendment relieves restriction, and (2) publication of said amendment for the 30-day notice specified in 5 U.S.C. 553(d) and 12 CFR 302.5 prior to effective date is unnecessary for the same reason.

Accordingly, subparagraph (c)(1) of 12 CFR 330.1 is revised to read as follows, effective March 15, 1978.

§ 330.1 General principles applicable in determining insurance of deposit accounts.

* * * * *

(c) *Valuation of trust interests.* (1) Trust interests in the same trust deposited in the same account will be separately insured if the value of the trust interest is capable of determination, without evaluation of contingencies, except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031-7 of the Federal Estate Tax Regulations (26 CFR 20.2031-7). Notwithstanding the foregoing, in connection with pension and other trusteed employee benefit funds (including those qualifing under Section 401(d) or Section 408(d) of the Internal Revenue Code of 1954), the trust interest of each participant shall be evaluated for insurance purposes as if the interest of such participant had fully vested as of the date the insured bank was closed on account of inability to meet the demands of its depositors.

* * * * *

By order of the Board of Directors, February 24, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[FR Doc. 78-6648 Filed 3-14-78; 8:45 am]

[8025-01]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

Statement of General Policy Concerning Discontinuance of Case-by-Case Exemptions To Permit Licensees To Specialize in the Financing of Small Business Homebuilders

AGENCY: Small Business Administration.

ACTION: Statement of general policy.

SUMMARY: Because of a reassessment of its policy, SBA has decided effective immediately to discontinue the granting of exemptions, on a case-by-case basis, from its regulations for small business investment companies (SBIC's) to permit SBIC's to specialize in the financing of operative homebuilders.

EFFECTIVE DATE: March 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Peter F. McNeish, Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416, 202-653-6584.

SUPPLEMENTARY INFORMATION: SBA published a Statement of General Policy on November 28, 1977, setting forth general guidelines under which SBA would consider the granting of exemptions from its Regulations to SBIC applicants specializing in the financing of small operative home builders (42 FR 60560).

A reassessment of this policy, based on applications received since then and related information, has led SBA to conclude: (1) That the unique nature of "Project" related home builder financing is inherently contrary to the intent of the Small Business Investment Act (The Act) and the Regulations promulgated thereunder, (2) that the applicants' proposed methods of operation and forms of financing are inherently incompatible with the intent of SBA's Regulations or any guidelines which might be promulgated thereunder, and (3) that implementation of the policy would result in a material and unwarranted diversion of SBA's funding resources to the detriment of qualified small business concerns which the Act was designed to assist.

For these reasons, SBA has determined that the November 28, 1978, announcement was improvidently made, and accordingly it is revoked, without prejudice to exemptions heretofore granted.

This Notice is published in accordance with section 3 of the Administrative Procedure Act (5 U.S.C. 552(a)(1)(D) requiring Federal agencies to publish in the FEDERAL REGISTER for the guidance of the "* * * statements of general policy * * * formulated and adopted by the agency." As a statement of general policy, it is exempted by 5 U.S.C. 553(b), (A), and 5 U.S.C. 553(d)(2) from public participation-comment procedure and the 30-day postponed effective date requirements of 5 U.S.C. 553 (c) and (d) respectively.

STATEMENT OF GENERAL POLICY

No case-by-case exemptions from § 107.101(c)(2) to permit licensees to invest in small operative homebuilders to extent greater than one-third of its portfolio: On November 28, 1977, SBA approved a general policy of granting exemptions from section 107.101(c)(2), on a case-by-case basis, to permit SBIC's to concentrate their investments in small operative homebuilders to an extent greater than one-third of their respective portfolios (42 FR 60560). SBA has determined that this policy was improvidently adopted. Effective immediately, the statement of General Policy issued on November 28, 1977, is hereby revoked, without prejudice to exemptions heretofore granted.

(Catalog of Federal Domestic Assistance Program No. 59-011, Small Business Investment Companies.)

Dated: March 4, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-6808 Filed 3-14-78; 8:45 am]

[1505-01]

[Rev. 9, Amdt. 12]

PART 123—DISASTER LOANS

Clarification of Eligibility for Economic Injury and Regulatory Compliance Loans, Changes in Interest Rates, and Additional Loans for Insulation Costs

Correction

In FR Doc. 78-4146, appearing at page 6577 in the issue for Wednesday, February 15, 1978, on page 6578 in the middle column, the section heading now reading § 123.11 *General* should be changed to read § 123.1 *General.*

[6750-01]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER A—ORGANIZATION, PROCEDURES, AND RULES OF PRACTICE

PART 2—NONAJUDICATIVE PROCEDURES

Subpart A—Inquiries; Investigations; Compulsory Processes

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: This rule delegates to the Director of Federal-State and Consumer Relations authority to initiate preliminary investigations. This delegation is necessary so that the Director can carry out his responsibilities for the initial processing of consumer and anticompetition complaints from Metropolitan Washington, D.C.

EFFECTIVE DATE: March 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Jack Schwartz, Assistant to the General Counsel, Federal Trade Commission, 6th & Pennsylvania Ave. NW., Washington, D.C. 20580, 202-523-3615.

Accordingly, the Commission hereby amends 16 CFR 2.1 to read as follows:

§ 2.1 How initiated.

Commission investigations and inquiries may be originated upon the request of the President, Congress, governmental agencies, or the Attorney General; upon referrals by the courts; upon complaint by members of the public; or by the Commission upon its own initiative. The Commission has delegated to the Directors, Deputy Directors, and Assistant Directors of the Bureaus of Competition and Consumer Protection, the Regional Directors and Assistant Regional Directors of the Commission's regional offices, and the Director of Federal-State and Consumer Relations, without power of redelegation, limited authority to initiate investigations.

By direction of the Commission dated March 6, 1978.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-6641 Filed 3-14-78; 8:45 am]

[4810-22]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 78-80]

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

Requirements for Establishing Bonded Warehouse

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by eliminating the requirement that an application to establish a Customs bonded warehouse ordinarily must be accompanied by a certificate issued by a board of fire underwriters that the building is acceptable for fire insurance purposes. In place of the certificate, evidence of fire insurance coverage or, if the applicant does not have fire insurance, certificates from an officer or agent of each of two insurance companies stating that the building is acceptable for fire insurance purposes, must be submitted.

EFFECTIVE DATE: March 15, 1978.

FOR FURTHER INFORMATION CONTACT:

John Elkins, Carriers, Drawback and Bonds Division, U.S. Customs Ser-

vice, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5856.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Historically, an application to establish a Customs bonded warehouse must be accompanied by evidence that the building is fireproof or eligible for fire insurance. The purpose of this requirement is to provide Customs with evidence that merchandise to be stored in the warehouse would be safe from destruction by fire, thus protecting the interests of the Government.

Article 424 of the Customs Regulations of 1857 required that an application to establish a private bonded warehouse be accompanied by a certificate signed by the proper officers of two or more insurance companies that the building is "a first class fire-proof store." In 1869, this requirement was replaced by a requirement that the application be accompanied by a certificate from a board of fire underwriters stating the building is eligible for fire insurance. At ports where no board of fire underwriters existed, the certificates from two or more insurance companies continued to be acceptable.

Section 19.2(b) of the present regulations (19 CFR 19.2(b)) provides that the application shall be accompanied by a certificate signed by the president or secretary of a board of fire underwriters, and at ports where no such board exists, by an officer or agent of two or more insurance companies, stating that the building is a suitable warehouse and acceptable for fire insurance purposes.

However, because boards of fire underwriters have for the most part ceased to exist and in light of the modern trend to insure all warehouses, the Customs Service has determined that a more practicable and effective way of obtaining evidence of the safety of a warehouse from fire is to require evidence of fire insurance coverage. In the event the applicant does not have fire insurance coverage, a certificate signed by an officer or agent of each of two insurance companies, stating that the building is acceptable for fire-insurance purposes must accompany the application. Section 19.2(a) of the Customs Regulations is being amended to incorporate the new requirement.

Because this amendment merely updates an existing requirement and imposes no additional duty on the public, notice and public procedure thereon is found to be unnecessary and good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553.

DRAFTING INFORMATION

The principal author of this document was Teresa M. Polino, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, other personnel in the Customs Service participated in its development.

AMENDMENT TO THE REGULATIONS

The first sentence of paragraph (b) of § 19.2 of the Customs Regulations (19 CFR 19.2(b)), is amended to read as follows:

§ 19.2 Application to bond; bond; renewal of.

* * * * *

(b) The applicant shall submit evidence of fire insurance coverage on the proposed warehouse. If the applicant does not have fire insurance for the proposed warehouse, he shall submit a certificate signed by an officer or agent of each of two insurance companies stating that the building is acceptable for fire-insurance purposes. * * *

(R.S. 251, secs. 555, 556, 624, 46 Stat. 742, 759 (19 U.S.C. 66, 1555, 1556, 1624).)

G. R. DICKERSON,
Acting Commissioner of Customs.

Approved: February 22, 1977.

BETTE B. ANDERSON,
Under Secretary of the Treasury.

[FR Doc. 78-6647 Filed 3-14-78; 8:45 am]

[4830-01]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7535]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Distribution in Redemption of Stock Terminating a Shareholder's Interest

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document amends the regulations relating to distributions in redemption of stock terminating a shareholder's interest in the corporation. These regulations provide necessary guidance to the public and affect certain shareholders whose stock is redeemed in complete termination of the shareholder's interest.

DATE: The regulations are effective immediately.

FOR FURTHER INFORMATION CONTACT:

Robert M. Fowler of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, attention: CC:LR:T, 202-566-3464.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 302(c)(2)(A) provides that in determining whether a distribution is in complete redemption of all of the stock of a corporation owned by a shareholder, the family attribution rules of section 318(a)(1) shall not be applicable if certain requirements are met. One of these requirements is the filing "at such time and in such manner as the Secretary by regulations prescribes" of an agreement to notify the Secretary of any acquisition of an interest in the corporation within 10 years from the date of distribution.

Section 1.302-4(a) is amended to conform the present rules governing the time for filing an agreement with certain court decisions which have held that an untimely filing of the agreement does not preclude the distributee from applying section 302(c)(2)(a) to the redemption where reasonable cause for failure to file a timely agreement can be shown.

The amendment as adopted provides that the agreement should be filed with the distributee's first return for the taxable year in which the distribution occurs. If the agreement is not filed with the distributee's first return, the district director shall, upon timely request, grant a reasonable extension of time to file the agreement if the distributee establishes reasonable cause for failing to file the agreement within the prescribed time.

Since this amendment merely reflects judicial interpretation of existing regulations, it is not considered necessary to publish it with notice of proposed rulemaking.

DRAFTING INFORMATION

The principal author of this regulation was Robert M. Fowler of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, 26 CFR Part 1 is amended as follows:

PARAGRAPH 1. Section 1.302-4 is amended by revising paragraph (a) to read as follows:

§ 1.302-4 Termination of shareholder's interest.

. . . . .

(a)(1) The agreement specified in section 302(c)(2)(A)(iii) shall be in the form of a separate statement in duplicate signed by the distributee and attached to the first return filed by the distributee for the taxable year in which the distribution described in section 302(b)(3) occurs. The agreement shall recite that the distributee has not acquired, other than by bequest or inheritance, any interest in the corporation (as described in section 302(c)(2)(A)(i)) since the distribution and that the distributee agrees to notify the district director for the internal revenue district in which the distributee resides of any acquisition, other than by bequest or inheritance, of such an interest in the corporation within 30 days after the acquisition, if the acquisition occurs within 10 years from the date of the distribution.

(2) If the distributee fails to file the agreement specified in section 302(c)(2)(A)(iii) at the time provided in paragraph (a)(1) of this section, then the district director for the internal revenue district in which the distributee resided at the time of filing the first return for the taxable year in which the distribution occurred shall grant a reasonable extension of time for filing such agreement, provided (i) it is established to the satisfaction of the district director that there was reasonable cause for failure to file the agreement within the prescribed time and (ii) a request for such extension is filed within such time as the district director considers reasonable under the circumstances.

. . . . .

The provisions of this Treasury decision merely reflect judicial interpretation of existing regulations. For this reason, it is unnecessary to issue it with notice and public procedure under subsection (b) of section 553, title 5 of the U.S. Code, or subject to the effective date limitation of subsection (d) of that section.

(Sec. 302(c)(2)(A)(iii), 7805, Internal Revenue Code of 1954 (68A Stat. 87, 917; (26 U.S.C. 302(c)(2)(A)(iii), 7805).)

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved: March 8, 1978.

ROBERT H. MUNDHEIM,
General Counsel.

Section 1.302-4 is revised as follows:

§ 1.302-4 Termination of shareholder's interest.

Section 302(b)(3) provides that a distribution in redemption of all of the stock of the corporation owned by a shareholder shall be treated as a distribution in part or full payment in exchange for the stock of such shareholder. In determining whether all of the stock of the shareholder has been redeemed, the general rule of section 302 (c) (1) requires that the rules of constructive ownership provided in section 318(a) shall apply. Section 302(c) (2), however, provides that section 318 (a) (1) (relating to constructive ownership of stock owned by members of a family) shall not apply where the specific requirements of section 302 (c) (2) are met. The following rules shall be applicable in determining whether the specific requirements of section 302 (c) (2) are met:

(a) (1) The agreement specified in section 302 (c) (2) (A) (iii) shall be in the form of a separate statement in duplicate signed by the distributee and attached to the first return filed by the distributee for the taxable year in which the distribution described in section 302 (b) (3) occurs. The agreement shall recite that the distributee has not acquired, other than by bequest or inheritance, any interest in the corporation (as described in section 302 (c) (2) (A) (i)) since the distribution and that the distributee agrees to notify the district director for the internal revenue district in which the distributee resides of any acquisition, other than by bequest or inheritance, of such an interest in the corporation within 30 days after the acquisition, if the acquisition occurs within 10 years from the date of the distribution.

(2) If the distributee fails to file the agreement specified in section 302 (c) (2) (A) (iii) at the time provided in paragraph (a) (1) of this section, then the district director for the internal revenue district in which the distributee resided at the time of filing the first return for the taxable year in which the distribution occurred shall grant a reasonable extension of time for filing such agreement, provided (i) it is established to the satisfaction of the district director that there was reasonable cause for failure to file the agreement within the prescribed time and (ii) a request for such extension is filed within such time as the district director considers reasonable under the circumstances.

(b) The distributee who files an agreement under section 302 (c) (2) (A) (iii) shall retain copies of income tax returns and any other records indicating fully the amount of tax which would have been payable had the redemption been treated as a distribution subject to section 301.

(c) If stock of a parent corporation is redeemed, section 302(c)(2)(A), relating to acquisition of an interest in the corporation within 10 years after termination shall be applied with reference to an interest both in the parent corporation and any subsidiary of such parent corporation. If stock of a parent corporation is sold to a subsidiary in a transaction described in section 304, section 302(c)(2)(A) shall be applicable to the acquisition of an interest in such subsidiary corporation or in the parent corporation. If stock of a subsidiary corportion is redeemed, section 302(c)(2)(A) shall be applied with reference to an interest both in such subsidiary corporation and its parent. Section 302(c)(2)(A) shall also be applied with respect to an interest in a corporation which is a successor corporation to the corporation the interest in which has been terminated.

(d) For the purpose of section 302 (c) (2) (A) (i), a person will be considered to be a creditor only if the rights of such person with respect to the corporation are not greater or broader in scope than necessary for the enforcement of his claim. Such claim must not in any sense be proprietary and must not be subordinate to the claims of general creditors. An obligation in the form of a debt may thus constitute a proprietary interest. For example, if under the terms of the instrument the corporation may discharge the principal amount of its obligation to a person by payments, the amount or certainty of which are dependent upon the earnings of the corporation, such a person is not a creditor of the corporation. Furthermore, if under the terms of the instrument the rate of purported interest is dependent upon earnings, the holder of such instrument may not, in some cases, be a creditor.

(e) In the case of a distributee to whom section 302 (b) (3) is applicable, who is a creditor after such transaction, the acquisition of the assets of the corporation in the enforcement of the rights of such creditor shall not be considered an acquisition of an interest in the corporation for purposes of section 302 (c) (2) unless stock of the corporation, its parent corporation, or, in the case of a redemption of stock of a parent corporation, of a subsidiary of such corporation is acquired.

(f) In determining whether an entire interest in the corporation has been terminated under section 302(b)(3), under all circumstances paragraphs (2), (3), (4), and (5) of section 318(a) (relating to constructive ownership of stock) shall be applicable.

(g) Section 302 (c) (2) (B) provides that section 302 (c) (2) (A) shall not apply—

(1) If any portion of the stock redeemed was acquired directly or indirectly within the 10-year period ending on the date of the distribution by the disbributee from a person, the ownership of whose stock would (at the time of distribution) be attributable to the distributee under section 318 (a), or

(2) If any person owns (at the time of the distribution) stock, the ownership of which is attributable to the distributee under section 318 (a), such person acquired any stock in the corporation directly or indirectly from the distributee within the 10-year period ending on the date of the distribution, and such stock so acquired from the distributee is not redeemed in the same transaction, unless the acquisition (described in subparagraph (1) of this paragraph) or the disposition by the distributee (described in subparagraph (2) of this paragraph) did not have as one of its

principal purposes the avoidance of Federal income tax. A transfer of stock by the transferor, within the 10-year period ending on the date of the distribution, to a person whose stock would be attributable to the transferor shall not be deemed to have as one of its principal purposes the avoidance of Federal income tax merely because the transferee is in a lower income tax bracket than the transferor.

[FR Doc. 78-6740 Filed 3-14-78; 8:45 am]

[4810-31]

Title 27—Alcohol, Tobacco Products and Firearms

CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

SUBCHAPTER F—PROCEDURES AND PRACTICES

[T.D. ATF-47]

PART 71—STATEMENT OF PROCEDURAL RULES

Freedom of Information

AGENCY: Bureau of Alcohol, Tobacco and Firearms.

ACTION: Final rule.

SUMMARY: This document contains amendments to the Statement of Procedural Rules of the Bureau of Alcohol, Tobacco and Firearms, to conform these rules to the Freedom of Information Act Amendments of 1974 (which amended the Freedom of Information Act), and to Department of the Treasury regulations. The specific changes made by this document are discussed below under "Supplementary Information."

EFFECTIVE DATE: March 15, 1978

FOR FURTHER INFORMATION CONTACT:

Steven C. Simon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, 202-566-7626.

SUPPLEMENTARY INFORMATION:

DISCUSSION OF CHANGES

The amendments in this document reflect legislative changes to 5 U.S.C. 552 (Freedom of Information Act) made by Pub. L. 93-502 (Freedom of Information Act Amendments of 1974), as well as regulatory provisions of the Department of the Treasury (31 CFR part 1) implementing these legislative changes.

In general, the amendments describe those matters which the Freedom of Information Act exempts from its disclosure requirements. The amendments provide examples of specific Bureau matters which are protected under these exempt categories. In particular, matters to be kept secret in the interest of national defense or foreign policy pursuant to Executive Order must be, in fact, properly classified under established criteria pursuant to such an Executive Order. Additionally, the amendments set forth the conditions under which investigatory records compiled for law enforcement purposes are exempt. The amendments also provide that disclosure will be made of any portion of a requested record which conveys meaningful information after any exempted portion of such a record has been deleted.

The amendments provide for the public inspection of Bureau records and for the maintenance of current indexes of certain records. The amendments also set forth information regarding the current locations of, and the materials which are available at, Bureau Headquarters and regional office reading rooms, as well as the addresses of officials to whom request for disclosure of records should be addressed. In contrast to current regulations, comments submitted in response to notices of proposed rulemaking will be open in their entirety to public inspection.

The amendments provide the procedure for making a request for records of the Bureau, the procedure for appeal of an initial determination to deny the request, the procedure for judicial review of the Bureau's determination as to the disclosure of records, and the procedure for proceeding against the officer or employee who denied the request for records. The amendments designate the Assistant to the Director (Disclosure) as the official to make the initial determination as to whether to grant requests for records and provide that the Director is to make the appellate administrative determinations. Initial determinations are to be made within 10 working days after the date of receipt by the Assistant to the Director (Disclosure) except where this time limitation is waived or extension is authorized. Appellate determinations are to be made within 20 working days after the date when the Director receives the appeal. Under unusual circumstances, a 10-day extension may be invoked. If such an extension is invoked in connection with an initial determination, the amendments provide that any unused days of the 10-day extension period may be invoked in connection with an administrative appeal from the initial determination.

The amendments set forth the schedule of fees for search and duplication services, the criteria for reduction or waiver of fees, and the procedure for securing payment when the fee is estimated to be $50 or more. The amendments also eliminate the minimum fees previously in effect.

The amendments further conform the procedures of the Bureau in relation to the formulation of rules and regulations to the Freedom of Information Act as amended.

DRAFTING INFORMATION

The drafter of this document was Steven C. Simon of the Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, supervisors and reviewers from both the Bureau and the Department of the Treasury exercised control over the development of the regulations, both as to matters of substance and style.

ISSUANCE

Because the amendments only concern rules of agency organization and procedure, and conform the Bureau's regulations to the requirements of existing statutes and of the Department of the Treasury regulations, and require no public initiative, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

This Treasury decision is issued under the authority contained in 5 U.S.C. 301.

Accordingly, the Statement of Procedural Rules, part 71 of title 27, Code of Federal Regulations, is revised in full text and supersedes the rules issued on July 13, 1972 (37 FR 13091) as amended by 39 FR 2090, effective February 16, 1974. As revised, the Statement of Procedural Rules reads as follows:

Subpart A—Scope

Sec.

71.1 Purpose and scope of regulations.

Subpart B—Definitions

71.11 Meaning of terms.

Subpart C—Records

71.21 Publicity of information.
71.22 Publication in the FEDERAL REGISTER.
71.23 Public inspection and copying.
71.24 Specific requests for other records.
71.25 Fees for services.
71.26 Rules for disclosure of certain specified matters.
71.27 Other disclosure procedures.

APPENDIX A

Subpart D—Rules, Regulations and Forms

71.41 Rules and regulations.
71.42 Forms and instructions.

AUTHORITY: The provisions of this part 71 issued under 5 U.S.C. 301 and 552, unless otherwise noted.

Subpart A—Scope

§ 71.1 Purpose and scope of regulations.

This part sets forth the procedural rules of the Bureau of Alcohol, Tobac-

co and Firearms, the Department of the Treasury, respecting matters of official record in the Bureau, including the procedures for disclosure of information to the public and the formulation and publication of rules, regulations, and forms by the Bureau.

Subpart B—Definitions

§ 71.11 Meaning of terms.

When used in this part and in forms prescribed under this part, the following terms shall have the meanings given in this section, unless the context clearly indicates otherwise. Words in the plural form shall include the singular, and vice versa; and words indicating the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not listed which are in the same general class.

Bureau. Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury.

Delegate. Any officer, employee, or agency of the Department of the Treasury authorized by the Secretary of the Treasury directly, or indirectly by one of more redelegations of authority, to perform the function mentioned or described in the delegation order.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms.

District. A delimited area within a Bureau region.

Regional office. The principal office of each of the seven geographical regions of the Bureau of Alcohol, Tobacco and Firearms.

Regional regulatory administrator. The principal regional official responsible for administering regulations in this part.

Secretary. The Secretary of the Treasury or his delegate.

Special agent in charge. The principal official responsible for the Bureau's criminal enforcement program within the district.

U.S.C. The United States Code.

Subpart C—Records

§ 71.21 Publicity of information.

(a) *General.* Section 552 of title 5 of the United States Code provides for access to information and records developed or maintained by Federal agencies. Generally, this section divides agency information into three major categories and provides methods by which each category is to be made available to the public. The three major categories, for which the disclosure requirements of the Bureau are set forth in this subpart, are as follows:

(1) Information required to be published in the FEDERAL REGISTER.

(2) Information required to be made available for public inspection and copying or, in the alternative, to be published and offered for sale.

(3) Information required to be made available to any member of the public upon specific request. The provisions of section 552 are intended to assure the right of the public to information. Section 552 is not authority to withhold information from Congress. Subject only to the exemptions set forth in paragraph (b) of this section, the public generally or any member thereof shall be afforded access to information or records in the possession of the Bureau. Such access shall be governed by the regulations in this subpart.

(b) *Exemptions.* (1) *In general.* Under 5 U.S.C. 552(b), the disclosure requirements of section 552(a) do not apply to certain matters which are—

(i) (A) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of the National defense or foreign policy, and (B) are in fact properly classified pursuant to that Executive Order;

(ii) Related solely to the internal personnel rules and practices of the Bureau;

(iii) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(iv) Trade secrets and commercial, financial, or other information obtained from a person and privileged or confidential;

(v) Interagency or intraagency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(vi) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(vii) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would: (A) interfere with enforcement proceedings; (B) deprive a person of a right to a fair trial or an impartial adjudication; (C) constitute an unwarranted invasion of personal privacy; (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by a confidential source; (E) disclose investigative techniques and procedures; or (F) endanger the life or physical safety of law enforcement personnel;

(viii) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(ix) Geological and geophysical information and data, including maps, concerning wells.

A reference in this paragraph to a provision of Title 26 of the U.S. Code is considered to be a reference also to any corresponding provisions of prior law and regulations promulgated thereunder. (See § 71.26 for special rules pertaining to the disclosure of information in the case of certain specified matters.)

(2) *Segregable portions of records.* Any reasonably segregable portion of a record shall be provided to any person making a request for the record, after deletion of the portions which are exempt under 5 U.S.C. 552(b) (see paragraph (b)(1) of this section). The term "reasonably segregable portion," as used in this paragraph, means any portion of the requested record which is not exempt from disclosure by 5 U.S.C. 552(b) and which, after deletion of the exempted material, still conveys intelligible information.

(3) *Application of exemptions.* Even though an exemption described in paragraph (b)(1) of this section may be fully applicable to matter in a particular case, the Bureau may, if not precluded by law, elect under the circumstances of that case not to apply the exemption to such matter. The fact that the exemption is not applied by the Bureau in that particular case has no precedential significance.

§ 71.22 Publication in the "Federal Register."

(a) *Requirement.* Subject to the application of the exemptions described in paragraph (b) of § 71.21 and subject to the limitations provided in paragraph (b) of this section, the Bureau is required under 5 U.S.C. 552(a)(1) to separately state, publish, and maintain current in the FEDERAL REGISTER for the guidance of the public the following information:

(1) Descriptions of its central and field organization and the established places at which, the persons from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions, from the Bureau.

(2) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures which are available.

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(4) Substantive rules of general applicability adopted as authorized by

law, and statements of general policy or interpretations of general applicability formulated and adopted by the Bureau.

(5) Each amendment, revision, or repeal of matters referred to in paragraphs (a)(1) through (a)(4) of this section.

Pursuant to the foregoing requirements, the Director publishes in the FEDERAL REGISTER from time to time a statement, which is not codified in this chapter, on the organization and functions of the Bureau, and such amendments as are needed to keep the statement on a current basis. In addition, there are published in the FEDERAL REGISTER the rules set forth in this part or 26 CFR Part 601, as applicable, as well as the regulations issued pursuant to the laws administered by the Bureau, such as the regulations in 27 CFR Part 178 (Commerce In Firearms and Ammunition), 27 CFR Part 181 (Commerce In Explosives), and 27 CFR Part 201 (Distilled Spirits Plants Regulations). Whenever the Director grants relief to any person pursuant to 27 CFR Part 178 (Commerce in Firearms and Ammunition), the notice of such action, including the reasons therefor, is published in the FEDERAL REGISTER.

(b) *Limitation.* (1) *Incorporation by reference in the* FEDERAL REGISTER. Matter which is reasonably available to the class of persons affected thereby, whether in a private or public publication, will be deemed published in the FEDERAL REGISTER for purposes of paragraph (a) of this section when it is incorporated by reference therein with the approval of the Director of the Office of the Federal Register. The matter which is incorporated by reference must be set forth in the private or public publication substantially in its entirety and not merely summarized or printed as a synopsis. Matter having a location and scope which are familiar to only a few persons with a special working knowledge of the activities of the Bureau may not be incorporated in the FEDERAL REGISTER by reference. Matter may be incorporated by reference in the FEDERAL REGISTER only pursuant to the provisions of 5 U.S.C. 552(a)(1) and 1 CFR Part 20.

(2) *Effect of failure to publish.* Unless a person has actual and timely notice of the terms of any matter required by paragraph (a) of this section to be published in the FEDERAL REGISTER, that person is not required in any manner to resort to, or be adversely affected by, the matter if it is neither published in the FEDERAL REGISTER nor incorporated by reference under paragraph (b)(1) of this section. For example, any such matter which imposes an obligation and which is not published or incorporated by reference in the FEDERAL REGISTER will not adversely change or affect a person's rights.

§ 71.23 Public inspection and copying.

(a) *In general.* Subject to the application of the exemptions described in paragraph (b) of § 71.21, the Bureau is required under 5 U.S.C. 552(a)(2) to make available for public inspection and copying or, in the alternative, to promptly publish and offer for sale the following information:

(1) Final opinions, including concurring and dissenting opinions, and orders, if such opinions and orders are made in the adjudication of cases pursuant to 27 CFR 200.116 in administrative procedures on applications for, or to suspend, revoke, or annul, permits under the alcohol and tobacco permit systems, and 27 CFR 178.78 in administrative proceedings relating to firearms licenses, and 27 CFR 181.79 in administrative proceedings relating to explosives licenses and permits.

(2) Those statements of policy and interpretations which have been adopted by the Bureau but are not published in the FEDERAL REGISTER.

(3) Bureau administrative staff manuals and instructions to staff that affect a member of the public.

(b) *Indexes.* The Bureau is also required by 5 U.S.C. 552(a)(2) to maintain and make available for public inspection and copying current indexes identifying any matter, described in paragraphs (a)(1) through (a)(3) of this section which is issued, adopted, or promulgated after July 4, 1967, and which is required to be made available for public inspection or to be published. In addition, the Bureau shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto, unless it determines by order published in the FEDERAL REGISTER that the publication would be unnecessary and impracticable. In the latter case, the Bureau shall nonetheless provide copies of these indexes on request at a cost not to exceed the direct cost of duplication. The Bureau shall publish an annual index which shall be made available for inspection, copying, and sale at cost at any of the addresses shown in appendix A to this subpart.

(c) *Effect of failure to publish or make available.* If any matter is required by paragraph (a) of this section to be made available for public inspection or to be published, the Bureau may not cite as precedent, rely upon, or use that matter against a party (other than an agency) unless the party has actual and timely notice of the terms of the matter, or unless the matter has been indexed and either made available for inspection or published. This paragraph applies only to matters which have precedential significance. It does not apply, for example, to administrative manuals on property or fiscal accounting, vehicle maintenance, personnel administration, and similar proprietary functions of the Bureau. This paragraph does not apply to matters which have been made available pursuant to § 71.22.

(d) *Deletion of identifying details.* To prevent a clearly unwarranted invasion of personal privacy, the Bureau may, in accordance with 5 U.S.C. 552(a)(2), delete identifying details contained in any matter described in paragraphs (a)(1) through (a)(3) of this section before making such matter available for inspection or publishing it. However, in every case where identifying details are deleted, the justification for the deletion must be explained in writing. The written justification for the deletion is placed as a preamble to the document from which the identifying details have been deleted. However, in the case of ATF Rulings published in the Alcohol, Tobacco and Firearms Bulletin, the justification for any deletion is stated in the introductory page of each issue of the Bulletin.

(e) *Public reading rooms.* The Bureau headquarters and each regional office of the Bureau shall make available for inspection and copying, in a reading room or otherwise, the matters described in paragraphs (a) (1) through (a) (3) of this section which are required by paragraph (a) of this section to be made available for public inspection or published, and the current indexes to these matters. Facilities shall be provided whereby a person may inspect the material and obtain copies of that which is shelved. Fees may not be charged for access to materials, but fees are charged in accordance with § 71.25 for copies of material provided to the person. The public is not allowed to remove any records form the place of availability. (See appendix A to this subpart for the location of the public reading rooms of the Bureau.)

(f) *Inability to visit offices.* If a person is unable or uwilling to visit an office where information described in this section is available, in person, but wishes to inspect identifiable material, he may request permission to inspect such material at any office of the Bureau. To the extent that the requested material is available for inspection at the office where the request was made, this material shall promptly be made available for inspection and, where facilities are available, for copying in accordance with the schedule of fees prescribed by § 71.25. Copies of requested material may also be mailed to a person upon request.

§ 71.24 Specific requests for other records.

(a) *In general.* Except with respect to records made available under §§ 71.22 and 71.23, the Bureau shall, in accordance with 5 U.S.C. 552 (a)(3), make reasonable described records promptly available to any person re-

questing them. The request for records must conform in every respect with the rules and procedures of this subpart, and particularly those of this section and appendix A to this subpart. Any request or any appeal from the initial denial of a request which does not comply with the foregoing requirements and those set forth elsewhere in this subpart is not subject to the time constraints of paragraphs (g), (h), and (i) of this section, unless and until amended so as to comply. Nevertheless, the Bureau will make every reasonable effort to comply with such requests within these time constraints or, in the alternative, promptly advise the requester in what respect the request or appeal is deficient so that it may be resubmitted or amended for consideration in accordance with this subpart. This section applies only to records in being which are in the possession or control of the Bureau. There is no requirement that records be created or data processed in a format other than required for governmental purposes in order to comply with a request for records.

(b) *Request for records not in control of the Bureau.* (1) Where the request is for records in the possession or under the control of a constituent unit of the Department of the Treasury other than the Bureau, the request for such records shall immediately be transferred to the appropriate constituent unit and the requester notified to that effect. Such a referral will not be deemed a denial of access within the meaning of these regulations. The constituent unit of the Department of the Treasury to which the referral is made shall treat the request as a new request addressed to it, and the time limits for response set forth by 31 CFR 1.5 (g) and (h) (relating to the disclosure of Department of the Treasury records) shall commence when the referral is received by the designated office or officer of the constituent unit. Where the request is for a record which is determined not to be in the possession or control of any constituent unit of the Department of the Treasury, the requester shall be so advised and the request shall be returned to the requester.

(2) Where the requested record was created by a department or agency other than a constituent unit of the Department of the Treasury or has been classified or otherwise restrictively endorsed by such other department or agency, and a copy thereof is in the possession of the Bureau, the originating or restrictively endorsing department or agency shall be promptly requested to advise the Bureau on the releasability of that record. The request for advice shall also inform the other department or agency that, in the absence of timely guidance from it, the Bureau will proceed to make its own determination in accordance with this subpart and advise the requester accordingly. When it becomes necessary to provide a response to the requester within the time limits set forth in paragraphs (g) and (h) of this section without the advice of the other department or agency, the Bureau shall proceed to make its own determination in accordance with this subpart and advise the requester accordingly. However, where as a result access to the record is denied under one of the exemptions set forth in § 71.21(b), the requester shall be advised of his right to appeal the denial and may also be advised to make a request for the record directly to the originating department or agency. If an appeal to the Bureau results from this procedure, the originating department or agency shall again be promptly requested to provide timely advice on the releasability of the records. Nevertheless, the ultimate decision on the appeal rests with the designated Bureau official.

(c) *Form of request.* In order to be subject to the provisions of this section, the initial request for records shall——

(1) Be made in writing and signed by the person making the request;

(2) State that it is made pursuant to the Freedom of Information Act, 5 U.S.C. 552 or these regulations;

(3) Be addressed to the Assistant to the Director (Disclosure), or, where applicable, to the officials designated in § 71.26, at the locations cited in appendix A (and, if delivered to an office in person, be delivered during the regular office hours of that office);

(4) Reasonably describe the records in accordance with paragraph (d) of this section;

(5) In the case of a request for records the disclosure of which is limited by statute or regulations (as for example, the Privacy Act of 1974 (5 U.S.C. 552a) and 26 U.S.C. 5848, 6103, and 7213, or regulations thereunder), establish the identity and the right of the person making the request to the disclosure of the records in accordance with paragraph (d) (3) of this section;

(6) Set forth the address where the person making the request desires to be notified of the determination as to whether the request will be granted;

(7) State whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them; and

(8) State the firm agreement of the requester to pay the fees for search and duplication ultimately determined in accordance with § 71.25, or request that these fees be reduced or waived and state the justification for this request (see § 71.25(d)).

If the initial request, rather than stating a firm agreement to pay the fees ultimately determined in accordance with § 71.25, places an upper limit on the amount the requester agrees to pay, which upper limit is deemed likely to be lower than the fees estimated ultimately to be due, or where the requester asks for an estimate of the fees to be charged, the requester shall be promply advised of the estimate of fees due and asked to agree to pay this amount. Where the initial request includes a request for reduction or waiver of fees, the responsible official shall determine whether to grant the request for reduction or waiver in accordance with § 71.25(d) and notify the requester of his decision and, if this decision results in the requester being liable for all or part of the fees normally due, ask the requester to agree to pay the amount so determined. The requirements of this paragraph (c) will not be deemed met until the requester has explicitly agreed to pay the fees applicable to his request for records, if any, or has made payment in advance of the fees estimated to be due. In addition, requesters are advised that only requests for records which fully comply with the requirements of this paragraph can be processed in accordance with this section. However, every effort shall be made to comply with the request, including, where appropriate, asking the requester to remedy any defects in his request.

(d) *Reasonable description of records; identity and right of the requester.* (1) The request for records must describe the records in reasonably sufficient detail to enable Bureau employees who are familiar with the subject area of the request to locate the records without placing an unreasonable burden upon the Bureau. While no specific formula for a reasonable description of a record can be established, the requirement will generally be satisfied if the requester gives the name, subject matter, and, if known, the date and location of the requested record. However, it is suggested that the person making the request furnish any additional information which will clearly identify the requested records. Where the request does not reasonably describe the records being sought, the requester shall be afforded an opportunity to refine his request. This opportunity may, where desirable, involve a conference with knowledgeable Bureau personnel. The reasonable description requirement shall not be used by officers or employees of the Bureau as a device for improperly withholding records from the public.

(2) The Bureau shall make every reasonable effort to comply fully with all requests for access to records subject only to any applicable exemption set forth in § 71.21(b). However, in any situation in which it is determined that a request for voluminous records would unduly burden and interfere

with the operations of the Bureau, the person making the request shall be asked to be more specific and to narrow the request, and to agree on an orderly procedure for the production of the requested records, in order to satisfy the request without disproportionate adverse effects on Bureau operations.

(3) In the case of records containing information with respect to a particular person the disclosure of which is limited by statute or regulations, the person making the request must establish his identity and right to access to such records. A person requesting access to records which pertain to himself may establish his identity by—

(i) The presentation of a single document bearing a photograph (such as a passport or identification badge), or the presentation of two items of identification which do not bear a photograph but do bear both a name and signature (such as a driver's license or credit card), in the case of a request made in person; or

(ii) The presentation in person or the submission by mail of a notarized statement swearing to or affirming the person's identity.

Additional proof of a person's identity will be required before the request will be deemed to have met the requirement of paragraph (c)(5) of this section if it is determined that additional proof is necessary to protect against unauthorized disclosure of information in a particular case. A person who has identified himself to the satisfaction of Bureau officials pursuant to this paragraph has established his right to access to records pertaining to himself. A person requesting records on behalf of, or pertaining to, another person must provide adequate proof of the legal relationship under which he asserts the right to access to the requested records before the requirement of paragraph (c)(5) of this section will be deemed met. In the case of an attorney-in-fact the requester shall furnish an original of a properly executed power of attorney together with one other identifier bearing the signature of the person executing such a power of attorney. A person signing a request for disclosure on behalf of a corporation shall furnish a certificate by one of the officers of the corporation (other than the requester) that the person making the request on behalf of the corporation is properly authorized to make such a request. A person requesting access to records of a one-man corporation is properly authorized to make such a request. A person requesting access to records of a one-man corporation or of a partnership shall provide a notarized statement that the requester is in fact an officer or an official of the corporation or a member of the partnership.

(e) *Date of receipt of request.* Any request for records, separate agreement to pay fees, final notification of waiver of fees, or letter transmitting prepayment shall be promptly stamped with the date of receipt or dispatch by the office of the Bureau official responsible for determining disclosure of the records requested as prescribed by this part 71. The latest of these stamped dates is deemed for purposes of this subpart to be the date of receipt of the request, provided that the requirements of paragraph (c) of this section have been satisfied, and, where applicable—

(1) The requester has agreed in writing, by executing a separate contract or otherwise, to pay the fees for search and duplication determined due in accordance with § 71.25; or

(2) The fees have been waived in accordance with § 71.25(d); or

(3) Payment in advance has been received from the requester.

As soon as the date of receipt has been established as provided above, the requester shall be informed when he may expect a response within the time limits specified in paragraphs (g)(1) or (h) of this section, unless extended as provided in paragraph (i)(1) of this section, and shall be given the title of the officer responsible for the response.

(f) *Search for record requested.* Upon the receipt of a request, search services shall be performed by Bureau employees to identify and locate the requested records. With respect to records maintained in computerized form, a search shall include services functionally analogous to searches for records which are maintained in a conventional form. However, the Bureau is not required under 5 U.S.C. 552 to tabulate or compile information for the purpose of creating a record.

(g) *Initial determination.* (1) *In general.* Initial determinations as to whether to grant requests for records are made by the Assistant to the Director (disclosure), or, where applicable, the official authorized to disclose under § 71.26. Determination shall be made and notification thereof mailed within 10 days (excepting Saturdays, Sundays, and legal public holidays) after the date of receipt of the request, as determined in accordance with paragraph (e) of this section, unless an extension is invoked pursuant to paragraph (i)(1) of this section or the requester otherwise agrees to an extension of the 10-day time limitation.

(2) *Granting of request.* If it is determined that the request is to be granted, and if the person making the request desires a copy of the requested records, a copy of these records shall be mailed to him together with a statement of the fees for search and duplication at the time of the determination or promptly thereafter, unless prepayment is required pursuant to paragraph (f)(2) of § 71.25. In the case of a request for inspection, the requester shall be notified in writing of the determination, when and where the requested records may be inspected, and of the fees involved in complying with the request. In such a case, the records shall promptly be made available for inspection at the time and place stated in a manner so as not to interfere with their use by the Bureau or to exclude other persons from making inspections. In addition, reasonable limitations may be placed on the number of records which may be inspected by a person on any given date. The person making the request is not allowed to remove the records from the room where inspection is made. If, after making inspection, the person making the request desires copies of all or a portion of the requested records, copies shall be furnished to him upon payment of the established fees prescribed by § 71.25.

(3) *Denial of request.* If it is determined that the request for records (or any portions thereof) should be denied, the person making the request shall be notified by mail of the reasons for the denial. The letter of notification shall also specify the city or other location where the requested records are situated (if known), and shall state the name and title or position of the official responsible for the denial. The letter shall also advise the person making the request of the right to administrative appeal in accordance with paragraph (h) of this section, and specify the official or office to which the appeal must be submitted.

(4) *Inability to locate records within time limits.* If the requested records cannot be located and evaluated within the initial 10-day period or any extension thereof in accordance with paragraph (i)(1) of this section, the search for the records shall continue, but the requester shall be so notified and advised that he may consider the notification to be a denial of access within the meaning of paragraph (g)(3) of this section, and provided with the address to which an administrative appeal may be addressed. However, the requester may also be invited, in the alternative, to agree to a voluntary extension of time in which to locate the records. Such a voluntary extension of time does not constitute a waiver of the requester's right to appeal any denial of access ultimately made or his right to appeal in the event of failure to comply with the time extension granted.

(h) *Administrative appeal.* At any time within 35 days after the date of the notification described in paragraph (g) of this section or the date of the letter transmitting the last records released, whichever is later, the requester may submit an administrative appeal to the Director. The letter of

appeal should be addressed to the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226. The letter of appeal shall—

(1) Be made in writing and signed by the requester;

(2) Be mailed or hand delivered to the office of the Director;

(3) Reasonably describe, in accordance with paragraph (d) of this section, the requested records which the appeal concerns;

(4) Set forth the address where the requester desires to be notified of the determination on appeal;

(5) Specify the date of the initial request and date of the letter denying the initial request; and

(6) Petition the Director to grant the request for records and cite any arguments in support thereof.

Each appeal shall be promptly stamped with the date of receipt by the office to which addressed; and the later of this stamped date, or the stamped date of a document submitted subsequently which supplements the original appeal so that the appeal satisfies the requirements set forth in paragraphs (h)(1) through (h)(6) of this section, is deemed to be the date of receipt for all purposes of this subpart. The receipt of the appeal shall be acknowledged by the Director or his delegate and the requester advised of the date of receipt established by the foregoing and when a response is due in accordance with this paragraph. If an appeal fails to satisfy any of these requirements the person making the request shall be promptly advised in writing of the additional requirements to be met. The determination to affirm the initial denial (in whole or in part) or to grant the request for records shall be made and notification of the determination mailed within 20 days (exclusive of Saturdays, Sundays, and legal public holidays) after the date of receipt of the appeal, unless extended pursuant to paragraph (i)(1) of this section. If it is determined that the appeal from the initial denial is to be denied (in whole or in part), the requester shall be notified in writing of the denial, the reasons therefor, the name and title or position of the official responsible for the denial on appeal, and of the provisions of 5 U.S.C. 552(a)(4) for judicial review of that determination. If a determination cannot be made within the 20-day period (or any extension thereof pursuant to paragraph (i)(1) of this section), the requester shall be promptly notified in writing that the determination will be made as soon as practicable but that the requester is nonetheless entitled to commence an action in the district court as provided in paragraph (k) of this section. However, the requester may also be invited, in the alternative, to agree to a voluntary extension of time in which to decide the appeal. Such a voluntary extension does not constitute a waiver of the right of the requester ultimately to commence an action in a United States district court.

(i) *Time extension.* (1) *10-day extension.* In unusual circumstances, the time limitations specified in paragraphs (g) and (h) of this section may be extended by written notice from the official charged with the duty of making the determination to the person making the request or appeal setting forth the reasons for the extension and the date on which the determination is expected to be dispatched. Any extension or extensions of time may not cumulatively total more than 10 additional working days. For example, if an extension pursuant to this paragraph is invoked in connection with an initial determination, any unused days of the extension period may be invoked in connection with the determination on administrative appeal by written notice from the official who is to make the appellate determination. If no extension is sought for the initial determination, an extension of 10 days may be added to the ordinary 20-day period for appellate review. As used in this paragraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request, any of the following:

(i) The need to search for and collect the requested records from field facilities or other establishments in buildings other than the building in which the office of the official to whom the request is made is located.

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or with another constituent unit of the Department of the Treasury or among two or more components of the Bureau, other than the office of the Chief Counsel or the office of the Assistant to the Director (Disclosure), having substantial subject-matter interest in the determination of the request. Consultations with personnel of the Department of Justice concerned with requests for records under 5 U.S.C. 552 do not constitute a basis for an extension under this paragraph.

(2) *Extension by judicial review.* If the Bureau fails to comply with the time limitations specified in paragraph (g) or (h) of this section and the person making the request initiates a suit in accordance with paragraph (k) of this section, the court in which the suit was initiated may retain jurisdiction and allow the Bureau additional time to review its records, provided that the Bureau demonstrates the existence of exceptional circumstances and the exercise of due diligence in responding to the request.

(j) *Failure to comply.* If the Bureau fails to comply with the time limitations specified in paragraphs (g), (h), or (i) of this section, any person making a request for records is deemed to have exhausted his administrative remedies with respect to his request. Accordingly, the person making the request may initiate suit as set forth in paragraph (k) of this section.

(k) *Judicial review.* If a request for records is denied upon appeal pursuant to paragraph (h) of this section, or if no determination is made within the 10-day or 20-day periods specified in paragraphs (g) and (h) of this section, respectively, together with any extension pursuant to paragraph (i)(1) of this section or by agreement of the requester, the person making the request may commence an action in a U.S. district court in the district in which he resides, in which his principal place of business is located, in which the records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4). Service of process in such actions shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C., App.) applicable to actions against an agency of the United States. Delivery of process upon the Bureau must be directed to the Director, Bureau of Alcohol, Tobacco and Firearms. For his location and mailing address, see appendix A.

(l) *Proceeding against officer or employee.* In accordance with 5 U.S.C. 552(a)(4)(F), the Civil Service Commission is required, upon the issuance of a specified finding by a court, to initiate a proceeding to determine whether disciplinary action is warranted against an officer or employee of the Bureau who was primarily responsible for a withholding of records. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the Director and Secretary, and shall send copies of the findings and recommendations to the officer or employee or his representative. (See 5 CFR 294.1201 through 294.1207, relating to disciplinary actions by the Civil Service Commission.) For the purposes of this paragraph the officer or employee primarily responsible for withholding records is the officer or employee—

(1) Who, when no response is received within the time limits specified by paragraphs (g), (h), or (i) of this section—

(i) Is identified by title in paragraph (e) of this section as responsible for the initial determination; or

(ii) Acknowledged the receipt of the appeal as provided in paragraph (h) of this section, unless this acknowledgment identifies another officer or employee as being responsible for the decision; or

(2) Who signed the appellate determination, unless another officer or official is named in this determination as being primarily responsible for the decision.

When the designated deciding official is not, in fact, the person making the decision, because of direction from higher authority, the designated deciding official shall state in the response to the requester that his decision is made by direction and identify the officer or employee who is responsible for this direction. When the officer or employee designated in paragraph (e) of this section as responsible for the initial determination has referred the request to another constituent unit of the Department of the Treasury or to another officer or employee, he remains the officer or employee responsible within the meaning of this paragraph until he has notified the requester of this referral and the title of the officer or employee who is to be responsible thereafter for the response.

§ 71.25 Fees for services.

(a) *In general.* (1) The fees indicated in this section are to be charged only for search and duplication and under no circumstances may a fee be charged for determining whether an exemption can or should be asserted, deleting exempt matter being withheld from records to be furnished, or monitoring a requester's inspection of agency records made available in this manner.

(2) While certain relevant publications which are available for sale through the Government Printing Office are placed on the shelves of the reading rooms, these publications are not available for sale there. Persons desiring to purchase such publications should contact the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. However, copies of pages of such publications on the reading room shelves may be obtained at the reading rooms in accordance with the schedule of fees set forth in this section.

(b) *When charged.* Unless performed without charge, waived or reduced in accordance with paragraphs (c) or (d) of this section, fees shall be charged in accordance with the schedule contained in paragraph (g) of this section for services rendered in responding to requests for records.

(c) *Services performed without charge.* Normally, no charge is made for providing records to Federal, State, or foreign governments, international governmental organizations, or local governmental agencies or officers thereof submitting requests in their official capacities.

(d) *Waiver or reduction of fees.* (1) The fees authorized by this section may be waived or reduced by the official who determines the availability of records—

(i) When the record is not located for any reason or when it is determined to be exempt from disclosure;

(ii) When such a waiver or reduction has been requested in writing and the records are being requested by, or on behalf of, an individual who demonstrates in writing under penalty of perjury that he is indigent (for example, by showing that he is eligible for federally-aided public assistance designed to supplement income on the basis of need, such as the food stamp program); and compliance with the request does not constitute an unreasonable burden on the Bureau;

(iii) When waiver or reduction of the fees is in the public interest because furnishing the information primarily benefits the general public; or

(iv) When, in the official's judgment, the costs of collecting and accounting for the fee would be greater than the fee itself.

(2) Appeals from denials of requests for waiver or reduction of fees shall be decided by the Director in accordance with the criteria set forth in paragraph (d)(1) of this section. Appeals shall be addressed in writing to the Director within 35 days of the denial of the initial request for waiver or reduction and shall be decided promptly. (See Appendix A for the appropriate address.)

(e) *Avoidance of unexpected fees.* In order to protect the requester from unexpected fees, all requests for records shall state the agreement of the requester to pay the fees determined in accordance with paragraph (g) of this section or state an amount which the requester has set as an acceptable upper limit to cover the cost of processing the request. When the costs estimated by the Bureau for processing the request exceed that limit, or when the requester has failed to state a limit and the costs are estimated to exceed $50, and the Bureau has not then determined to waive or reduce the fees, a notice shall be sent to the requester. This notice shall—

(1) Inform the requester of the estimated costs;

(2) Extend an offer to the requester to confer with personnel of the Bureau in an attempt to reformulate the request in a manner that will reduce the fees and still meet the needs of the requester; and

(3) Inform the requester that the running of the time period, in which the Bureau is obliged to make a determination on the request has been tolled pending a reformulation of the request or receipt of advance payment or an agreement from the requester to bear the estimated costs.

(f) *Form of payment.* (1) Payment shall be made by check or money order payable to the order of the Bureau of Alcohol, Tobacco and Firearms.

(2) When the estimated costs exceed $50, the Bureau may require the requester to enter into a contract for the payment of actual costs, and this contract may provide for prepayment of the estimated costs.

(g) *Amounts to be charged for specified services.* The fees for services performed by the Bureau shall be imposed and collected as set forth in this paragraph. Should services other than those described be requested and rendered, appropriate fees shall be established by the Director or his delegate, and such fees shall be imposed and collected pursuant to 31 U.S.C. 483a, but subject to the constraints imposed by 5 U.S.C. 552(a)(4)(A).

(1) *Duplication.* (i) Photocopies, per page up to 8½"x14", are provided at $0.10 each, except that no charge is made for 10 pages or less.

(ii) Photographs, films, and other materials are provided at actual cost.

(iii) The Bureau may furnish the records to be released to a private contractor for copying and charge the person requesting the records the actual cost of duplication charged by the private contractor.

(iv) No fee is charged where the requester furnishes the supplies and equipment and makes the copies at the government location.

(2) *Unpriced printed materials.* Otherwise unpriced printed material, which is available at the location where requested and which does not require duplication in order that copies may be furnished, is provided at the rate of $0.25 for each twenty-five pages or fraction thereof.

(3) *Search services.* (i) The fee charged for services of personnel involved in locating records is $5 for each hour or fraction thereof, except that no charge is made for a search consuming 1 hour or less.

(ii) Where, because of the nature of the records sought and the manner in which the records are stored, a computer search is required, the fee is $5 for each hour (or fraction thereof) of personnel time associated with the search plus an amount which reflects the actual costs of extracting the stored information in the format in which it is normally produced, based on computer time and supplies necessary to comply with the request.

(4) *Searches requiring travel or transportation.* Shipping charges to transport records from one location to another, or charges for the transportation of an employee to the site of requested records when it is necessary to

locate rather than examine the records, are at the rate of the actual cost of such shipping or transportation.

§ 71.26 Rules for disclosure of certain specified matters.

(a) *Accepted offers in compromise.* For each offer in compromise submitted and accepted pursuant to 26 U.S.C. 7122 in any case arising under subtitle E of title 26 of the United States Code (relating to alcohol, tobacco, and certain other excise taxes), under section 7 of the Federal Alcohol Administration Act (27 U.S.C. 207) in any case arising under that Act, or in connection with property seized under title I of the Gun Control Act of 1968 (18 U.S.C., chapter 44) or title XI of the Organized Crime Control Act of 1970 (18 U.S.C. chapter 40), a copy of the abstract and statement relating to the offer shall be kept available for public inspection, for a period of 1 year from the date of acceptance, in the office of the regional regulatory administrator who received the offer and in the office of the Assistant to the Director for Public Affairs, Bureau of Alcohol, Tobacco, and Firearms, 1200 Pennsylvania Avenue NW., Washington, D.C. 20226 Information may not be disclosed, however, concerning any trade secrets, processes, operations, style of work, apparatus, confidential data, or any other matter within the prohibition of 18 U.S.C. 1905. "Return information" (defined at 26 U.S.C. 6103 (b)) may not be disclosed except as provided by 26 U.S.C. 6103(k)(1).

(b) *Information regarding liquor permits.* (1) *Applications for permits.* Information with respect to the handling of applications for basic permits under the Federal Alcohol Administration Act (27 U.S.C. 204), operating permits under 26 U.S.C. 5171, and industrial use permits under 26 U.S.C. 5271, is maintained for public inspection in the offices of regional regulatory administrators until the expiration of 1 year following final action on these applications. See § 1.59 of this chapter for more details.

(2) *Card index record of permits.* A current card index for—

(i) All persons to whom industrial use permits have been issued pursuant to 26 U.S.C. 5271;

(ii) All proprietors of distilled spirits plants to whom operating permits have been issued pursuant to 26 U.S.C. 5171, to cover distilling for industrial use, bonded warehousing of spirits for industrial use, or denaturing of spirits; and

(iii) All applicants for such industrial use and operating permits—is available for public inspection in the offices of regional regulatory administrators.

(c) *List of plants and permittees.* Upon request, the regional regulatory administrator shall furnish a list of any type of qualified proprietor or permittee located in his region.

(d) *Information relating to certificates of label approval for distilled spirits, wine, and malt beverages.* Upon written request, the Chief, Trade and Consumer Affairs Division, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, shall furnish information as to the issuance, pursuant to section 5 (e) of the Federal Alcohol Administration Act (27 U.S.C. 205 (e)) and part 4, 5, or 7 of this chapter, of certificates of label approval, or of exemption from label approval, for distilled spirits, wine, or malt beverages. The request must identify the class and type and brand name of the product and the name and address of the bottler or importer thereof or of the person to whom the certificate was issued. The person making the request may obtain reproductions or certified copies of such certificates upon payment of the established fees prescribed by § 71.25 of this part. Information will not be disclosed, however, concerning any trade secrets, processes, operations, style of work, apparatus, confidential data, or any other matter prohibited by statutes such as but not limited to 18 U.S.C 1905 or 26 U.S.C. 6103.

(e) *True identity of companies authorized to use trade names.* Information regarding the true identity (name and address) of companies authorized to use trade names is available in the offices of regional regulatory administrators, for disclosure upon request to any member of the public.

(f) *Information relating to the tax classification of a roll of tobacco wrapped in reconstituted tobacco.* Upon written request, the Assistant Director (Regulatory Enforcement), Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, shall furnish information as to a Bureau determination of the tax classification of a roll of tobacco wrapped in any substance containing tobacco, that is, reconstitued tobacco. The request must identify the brand name of the product and the name and address of the manufacturer or importer. Information may not be disclosed, however, concerning any trade secrets, processes, operations, apparatus, confidential data, or any other matter prohibited by statutes such as but not limited to 26 U.S.C. 6103 or 18 U.S.C. 1905.

(g) *State cases.* Special agents in charge, regional regulatory administrators, regional administrative officers, and chiefs of field laboratories may, in the interest of Federal and State law enforcement, upon receipt of demands or requests of State authorities, and at the expense of the State, authorize special agents and other employees under their supervision to attend trials and administrative hearings in liquor, tobacco, firearms, and explosive cases, or in any criminal case in which the State is a party; to produce records; and to testify as to facts coming to their knowledge in their official capacities. In cases where a defendant in a criminal matter requests or demands testimony, authorization from the Director is required. However, no such testimony or production of records may divulge information contrary to law, such as but not limited to 26 U.S.C. 6103 or 7213 or 18 U.S.C. 1905.

(h) *Comments received in response to a notice of proposed rulemaking.* Written comments received in response to a notice of proposed rulemaking may be inspected by any person upon compliance with the provisions of this paragraph. Comments may be inspected in the Office of the Assistant to the Director for Public Affairs, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, D.C. 20226. The request to inspect comments must be in writing and signed by the person making the request and should be addressed to the Director, Bureau of Alcohol, Tobacco and Firearms, Attention: Assistant to the Director (Disclosure), Washington, D.C. 20226. Upon delivery of such a written request to the place where the comments are located during the regular business hours of that office, the person making the request may inspect those comments. Copies of comments (or portions thereof) may be obtained by a written request addressed to the Assistant to the Director, (Disclosure), Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226. The person making the request for copies should allow a reasonable time for processing the request. The provisions of § 71.25 of this part, relating to fees, apply with respect to requests made in accordance with this paragraph.

§ 71.27 Other disclosure procedures.

For procedures to be followed by officers and employees of the Bureau upon receipt of a request or demand for certain Bureau records or information for which the disclosure procedure is not covered by this section, see 26 CFR 301.9000-1.

APPENDIX A

1. *In general.* This appendix identifies the locations of the public reading rooms at which documents of the Bureau of Alcohol, Tobacco and Firearms are available for public inspection and copying; the titles of officers designated to make the initial and appellate determinations with respect to requests; the officer designated to receive service of process; and the addresses for delivery of requests, appeals and service of process.

2. *Public reading rooms.* Public reading rooms for the Bureau of Alcohol, Tobacco and Firearms are maintained at the following locations:

BUREAU HEADQUARTERS

Location: Freedom of Information Act Reading Room, Room 1315, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, D.C. 20226.
Mailing address: Assistant to the Director (Disclosure), Room 2232, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226.

NORTH ATLANTIC REGION

Location: Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms, 6 World Trade Center, Sixth Floor, New York, N.Y. 10048.
Mailing address: Same as location.

MID-ATLANTIC REGION

Location: Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms, 2 Penn Center Plaza, Philadelphia, Pa. 19102.
Mailing address: Same as location.

SOUTHEAST REGION

Location: Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms, 3835 Northeast Expressway, Atlanta, Ga. 30340.
Mailing address: Same as location.

MIDWEST REGION

Location: Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms, 230 South Dearborn Street, Chicago, Ill. 60604.
Mailing address: Same as location.

CENTRAL REGION

Location: Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms, 550 Main Street, Cincinnati, Ohio 45202.
Mailing address: Same as location.

SOUTHWEST REGION

Location: Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms, Main Tower Building, 1200 Main Street, Dallas, Tex. 75202.
Mailing address: Same as location.

WESTERN REGION

Location: Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms, 525 Market Street, 34th Floor, San Francisco, Calif. 94105.
Mailing address: Same as location.

3. *Requests for records.* Initial determinations under § 71.24(g) as to whether to grant requests for records of the Bureau are made by the Assistant to the Director (Disclosure) or his delegate. Requests made in person should be delivered to:

Assistant to the Director (Disclosure), Bureau of Alcohol, Tobacco and Firearms, Federal Building, 1200 Pennsylvania Avenue NW., Washington, D.C. 20226.

Requests made by mail should be addressed to:

Assistant to the Director (Disclosure), Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under § 71.24(h) with respect to records of the Bureau are made by the Director or his delegate. Appeals must be made by mail and addressed to:

Director, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226.

5. *Delivery of process.* Service of process is received by the Director, and where delivered in person shall be delivered to his office at the following location:

Director, Bureau of Alcohol, Tobacco and Firearms, Federal Building, 1200 Pennsylvania Avenue NW., Washington, D.C. 20226.

Where service of process is made by mail, it shall be addressed to:

Director, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, Attention: Chief Counsel.

Subpart D—Rules, Regulations and Forms

§ 71.41 Rules and regulations.

(a) *Formulation.*—(1) Alcohol, tobacco, firearms and explosives rules take various forms. The most important rules are issued as Treasury decisions, prescribed by the Director, and approved by the Secretary. Other rules may be issued over the signature of the Director or the signature of any other official to whom authority has been delegated. The channeling of rules varies with the circumstances. Treasury decisions are prepared in the office of the Regulations and Procedures Division and reviewed in the Office of Chief Counsel, Bureau of Alcohol, Tobacco and Firearms. After approval by the Director, Treasury decisions are forwarded to the Secretary for further consideration and final approval.

(2) Where required by 5 U.S.C. 553, the Director publishes in the FEDERAL REGISTER general notice of proposed rules unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. Notice may also be published in the FEDERAL REGISTER in such other instances as may be desirable. This notice includes (i) a statement of the time, place, and nature of public rulemaking proceedings; (ii) reference to the authority under which the rule is proposed; and (iii) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Interested persons may participate in the rulemaking by submitting written data, views, or arguments. Persons may also submit requests for a public hearing. However, the Bureau reserves the right to determine, in the light of all the circumstances, whether a public hearing should be held.

(3) If the Bureau determines that the public good will be served thereby, it may hold a public hearing for discussion of the issues raised by the proposed regulations. Such a hearing is announced by a notice in the FEDERAL REGISTER, stating the time and place where the hearing is to be held. The following rules govern the conduct of the public hearing only if incorporated by reference in the notice announcing the hearing:

(i) A person wishing to make oral comments at a public hearing shall submit, within the time prescribed in the notice of hearing, an outline of the topics he wishes to discuss, and the time he wished to devote to each topic. Ordinarily, a period of 10 minutes is the time allotted to each person for making his oral comments.

(ii) A person making oral comments should be prepared to answer questions not only on the topics listed in his outline but also on matters relating to any written comments which he has submitted.

(iii) At the conclusion of the presentation of comments by persons listed in the agenda, to the extent time permits, other comments may be received.

(iv) Written comments submitted prior to the hearing shall be available at the hearing for inspection. Any request for copies of such written comments is treated as a request for records under 27 CFR § 71.26(h).

(v) To the extent resources permit, the public hearings to which this paragraph applies may be transcribed.

(vi) In unusual circumstances or for good cause shown, the application of rules contained in this paragraph may be waived.

(b) *Comments on proposed rules.* Interested persons may submit data, views, or arguments with respect to a notice of proposed rulemaking published pursuant to 5 U.S.C. 553. Procedures are provided in § 71.26(h) for members of the public to inspect and obtain copies of written comments submitted in response to proposed rules. All such comments are open in their entirety to public inspection. Therefore, the Bureau does not recognize any designation of material in comments as confidential or not to be disclosed, and any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in his comments. The name of any person submitting comments or requesting a public hearing, the issues which may be discussed at the hearing, and outlines relating to the hearing are open to public disclosure. (See paragraph (a)(3) of this section for rules relating to hearing outlines.)

(c) *Petition to change rules.* Interested persons may petition for the issuance, amendment, or repeal of a rule. A petition for the issuance of a rule shall identify the section or sections of law involved; and a petition for the amendment or repeal of a rule shall set forth the section or sections of the regulations involved. The petition shall set forth the reasons for the requested action. Such petitions shall be

given careful consideration, and the petitioner shall be advised of the action taken thereon. Petitions shall be addressed to the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, Attention: R:R.

(d) *Publication of rules and regulations.* (1) *General.* All Bureau of Alcohol, Tobacco and Firearms regulations and amendments thereto are published as Treasury decisions which appear in the FEDERAL REGISTER, the Code of Federal Regulations, and the monthly Alcohol, Tobacco and Firearms (ATF) Bulletin. The ATF Bulletin is the authoritative instrument of the Bureau for announcing Treasury decisions, legislation, administrative matters, and other items of general interest. The Bulletin incorporates, into one publication, all matters of the Bureau which are of public record. It is the policy of the Bureau to publish in the Bulletin all substantive rulings necessary to promote a uniform application of all laws administered by the Bureau as well as rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin (including those published prior to July 1, 1972, in the Internal Revenue Bulletin). Procedures relating solely to matters of internal management are not published; however, regulations appearing in internal management documents and statements of internal practices and procedures that affect the rights and duties of the public are published. Rulings and procedures reported in the Bulletin do not have the force and effect of Department of the Treasury Regulations, but they may be used as precedents. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered. Concerned parties are cautioned against reaching the same conclusion in other cases unless the facts and circumstances are substantially the same. The Bulletin is published monthly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated each calendar year into cumulative issues, which are sold on a single-copy basis.

(2) *Objectives and standards for publication of ATF Rulings and ATF Procedures in the Alcohol, Tobacco and Firearms Bulletin.* (i)(A) An "ATF Ruling" is an official interpretation by the Bureau that has been published in the Bulletin for the information and guidance of taxpayers, Bureau officials, and others concerned. ATF Rulings represent the conclusions of the Bureau on the application of the law to the entire state of facts involved. In those that are based on positions taken in rulings to industry members or technical advice to Bureau field offices, identifying details and confidential information are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements concerning disclosure of information obtained from the public.

(B) An "ATF Procedure" is a statement of procedure that affects the rights or duties of taxpayers or other members of the public under law and regulations administered by the Bureau or information that, although not necessarily affecting the rights and duties of the public, should be a matter of public knowledge. ATF Procedures establish methods for performing operations in compliance with the requirements of law and regulations. It is Bureau practice to publish as much of the internal management document or communication as is necessary for an understanding of the procedure. ATF Procedures may also be based on internal management documents which should be a matter of public knowledge even though not necessarily affecting the rights or duties of the public. When publication of the substance of an ATF Procedure in the FEDERAL REGISTER is required pursuant to 5 U.S.C. 552, it will usually be accomplished by an amendment of the Statement of Procedural Rules (27 CFR Part 71).

(ii) It is the policy of the Bureau to publish in the Bulletin all rulings and other communications to members of the public or to Bureau field offices involving substantive law, procedures affecting taxpayer's rights or duties, or industry regulations, except those involving—

(A) Issues specifically and clearly covered by statute or regulations;

(B) Issues specifically covered by rulings, procedures, opinions, or court decisions previously published in the Bulletin;

(C) Issues not likely to arise again because of unique or specific facts;

(D) Determinations of fact rather than interpretations of law;

(E) Acceptability under the law and regulations of containers, labels, and advertising involving alcoholic beverages;

(F) Tobacco operations, such as the disposition of abandoned, seized, or condemned tobacco products;

(G) Informers and informers' rewards; or

(H) Disclosure of secret formulas, processes, business practices, and other similar information.

(iii) (A) It is the practice of the Bureau to publish as much of the ruling or communication as is necessary for an understanding of the position stated. However, in order to prevent unwarranted invasions of personal privacy and to comply with statutory provisions, such as 18 U.S.C. 1905 and 26 U.S.C. 6103 and 7213, dealing with disclosure of information obtained from members of the public, identifying details, including the names and addresses of persons involved, and information of a confidential nature are deleted from the ruling.

(B) ATF Rulings published in the Bulletin do not have the force and effect of Department of the Treasury Regulations (including amendatory Treasury decisions) but are published to provide precedents to be used in the disposition of other cases, and may be cited and relied upon for that purpose. No unpublished ruling or decision may be relied on, used, or cited by any officer or employee of the Bureau as a precedent in the disposition of other cases.

(C) Concerned persons generally may rely upon ATF Rulings published in the Bulletin in determining the Bureau treatment of their own transactions and need not request specific rulings applying the principles of a published ATF Ruling to the facts of their particular cases. However, since each ATF Ruling represents the conclusion of the Bureau as to the application of the law to the entire state of facts involved, taxpayers, Bureau personnel, and others concerned are cautioned against reaching the same conclusion in other cases unless the facts and circumstances are substantially the same. They should consider the effect of subsequent legislation, regulations, court decisions and ATF Rulings.

(D) Comments and suggestions from taxpayers or other concerned persons on ATF Rulings being prepared for publication in the Bulletin may be solicited, if justified by special circumstances. Conferences on ATF Rulings being prepared for publication will not be granted except where the Bureau determines that such action is justified by special circumstances.

(iv)(A) The Assistant Director (Regulatory Enforcement) is responsible for administering the program for the publication of ATF Rulings and ATF Procedures in the Bulletin including the standards for style and format.

(B) In accordance with the standards set forth in paragraph (d)(2)(ii) of this section, each Assistant Director is responsible for the preparation and appropriate referral for publication of ATF Rulings reflecting interpretations of substantive law made by his office and communicated in writing to members of the public or field offices. In this connection, the Chief Counsel is responsible for the referral to the appropriate Assistant Director, for consideration for publication as ATF Rulings, of interpretations of substantive law made by his office.

(C) In accordance with the standards set forth in paragraph (d)(2)(ii) of this section, the Assistant Directors and the Chief Counsel are responsible for determining whether procedures

established by an office under their jurisdiction should be published as ATF Procedures and for the initiation, content, and appropriate referral for publication of such ATF Procedures.

§ 71.42 Forms and instructions.

(a) *Tax return forms and instructions.* Tax forms and instructions are developed by the Bureau to explain the requirements of chapters 51, 52, and 53 of title 26 of the United States Code and of regulations issued thereunder, and are issued for the assistance of taxpayers in exercising their rights and discharging their duties under such laws and regulations. The tax return forms are the instruments through which taxes are collected.

(b) *Other forms and instructions.* The Bureau provides other necessary or appropriate forms for assisting the public in complying with the technical requirements of the laws and regulations administered by the Bureau. The material contained in the forms and instructions, and the arrangement thereof, is carefully considered and is designed to lead the preparer step-by-step through an orderly accumulation of data to an accurate report of the information required.

(c) *Procurement of forms and instructions.* (1) Requests for ATF Forms should be directed to: ATF Distribution Center, 3800 South Four Mile Run Drive, Arlington, Va. 22206

(2) Descriptions of many of the forms and publications of the Bureau for public use are contained in ATF P 1322.1, Alcohol, Tobacco and Firearms Public Use Forms. This publication may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Signed January 20, 1978.

REX D. DAVIS,
Director.

Approved: February 22, 1977.

BETTE B. ANDERSON,
Under Secretary of the Treasury.

[FR Doc. 78-6646 Filed 3-14-78; 8:45 am]

[6712-01]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20509; RM-2704]

PART 89—PUBLIC SAFETY RADIO SERVICES

Providing for Use of Frequencies 530, 1606, and 1612 kHz by Stations in the Local Government Radio Services for the Transmission of Certain Kinds of Information to the Traveling Public; Correction

AGENCY: Federal Communications Commission.

ACTION: Errata.

SUMMARY: At the time the report and orders in Dockets 20149 and 20509 were adopted, a conflict developed so that one deleted a frequency limitation the other added. This Errata corrects that conflict.

EFFECTIVE DATE: August 31, 1977.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION, CONTACT:

Arthur C. King, Safety and Special Radio Services Bureau, 632-6497.

SUPPLEMENTARY INFORMATION:

Released: March 8, 1978.

In the matter of amendment of part 2 and 89 of the rules to provide for the use of frequencies 530, 1606, and 1612 kHz by stations in the Local Government Radio Services for the transmission of certain kinds of information to the traveling public, Docket No. 20509; amendment of parts 2 and 73 of the rules to provide for use of frequencies 530, 1606, 1612 kHz by Community Access Noncommercial Stations for Locally Produced Public Affairs, Musical, Dramatic and Cultural Programing, RM 2704.

When the Report and Order in docket 20509 (42 FR 31594) was adopted, there was a conflict with the Second Report and Order in docket 20149 (42 FR 42200)[1] resulting in the accidental change of certain frequency limitations in § 89.259(f) and (g) and deletion of one limitation in § 89.259(g). To correct the limitations in § 89.259(f), the frequency table should read as follows:

[1]See also 42 FR 35960, July 13, 1977.

(f) * * *

Frequency MHz	Class of station(s)	Limitations
0.530	Base	18
1.610	do	18
*	* * *	* *
154.46375	Fixed and mobile	13, 15, 16, 17, 19
*	* * *	* *
173.2375	Fixed and mobile	15, 16, 17, 20
173.2625	do	15, 16, 17, 20
173.2875	do	15, 16, 17, 20
173.3125	do	15, 16, 17, 20
173.3375	do	15, 16, 17, 20
173.3625	do	15, 16, 17, 20
*	* * *	* *

Limitation, (18), (19), and (20) of paragraph (g) should now read as follows:

(g) * * *

(18) This frequency is available for use only by Travellers Information Stations.

(19) Use of this frequency is limited to stations located at least 120.7 km (75 miles) from the center of any urbanized area of 200,000 or more population (U.S. Census of Population 1970). Operation is on a secondary basis to that in the Power Radio Service.

(20) The maximum effective radiated power (ERP) may not exceed 20 watts for fixed stations and 2 watts for mobile stations. The height of the antenna system may not exceed 15.24 meters (50 feet) above ground. All such operation is on a secondary basis to adjacent channel land mobile operations.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-6736 Filed 3-14-78; 8:45 am]

[7035-01]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Ex Parte No. MC-75 (Sub. No. 1)]

PART 1047—EXEMPTIONS

Agricultural Cooperative Transportation Exemption; Modification of Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Stay of final regulations.

SUMMARY: The effective date of the order in this proceeding and of the final regulations adopted in this proceeding is extended for 60 days, to May 20, 1978, in order to give the Commission an adequate opportunity to give full consideration to the administrative appeals to the order and modifications before the final regulations become effective.

EFFECTIVE DATE: May 20, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael Erenberg, Assistant Deputy Director, Section of Operating Rights, Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423, 202-275-7292.

SUPPLEMENTARY INFORMATION: An order adopting modifications to the regulations governing the agricultural cooperative transportation description was entered in this proceeding on December 22, 1977 (served January 10, 1978), published at 43 FR January 17, 1978, p. 2396. The effective date of the final regulations was set at 60 days from publication in the FEDERAL REGISTER (January 17, 1978), or March 30, 1978. On February 9, 1978, administrative appeals to the order were filed by Agricultural Transportation Alliance and jointly by Heartland Farm Lines, Inc., Market Produce Lines, Inc., Sandmountain Farmers Cooperative, Inc., and Tillamook Growers Cooperative, Inc. In order to give the Commission sufficent time to fully consider the appeals and the replies thereto before the final regulations become effective, the taking effect of the order of December 22, 1977, will be extended 60 days to May 20, 1978.

Decided March 1, 1978.

By the Commission, Chairman O'Neal.

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

[FR Doc. 78-6722 Filed 3-14-78; 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.

COST ACCOUNTING STANDARDS BOARD

[4 CFR Parts 331, 403, 408, and 410]

CONTRACT COVERAGE AND COST ACCONTING STANDARDS

AGENCY: Cost Accounting Standards Board.

ACTION: Proposed rule.

SUMMARY: This proposed rule would exempt most educational institutions which receive negotiated national defense contracts and which are subject to Federal Management Circular 73-8. The exemption would not apply to contracts with Federally Funded Research and Development Centers operated by such educational institutions. This action is in response to request that the Board review and revise the applicability of its Standards, rules and regulations.

DATE: May 12, 1978.

FOR FURTHER INFORMATION CONTACT:

Nelson H. Shapiro, Project Director 202-275-5530.

ADDRESS: Send comments to: Cost Accounting Standards Board, 441 G Street NW., Washington, D.C. 20548.

SUPPLEMENTARY INFORMATION: The Cost Accounting Standards Board has been requested by several Federal agencies and by representatives of educational institutions to consider the extent to which its Standards, rules and regulations should apply to educational institutions that are subject to Federal Management Circular 73-8 or OMB Circular A-21 and to consider whether an exemption for such institution from Board promulgations is appropriate. The Board has provided exemptions for them in certain specific Standards where the application would not be appropriate.

A substantial number of educational institutions receive national defense contracts and the annual dollar value of such awards is approximately $1.5 billion. However, approximately 80 percent of the dollar awards are placed with a few institutions who operate or manage laboratories or similar operations identified by the National Science Foundation as Federally Funded Research and Development Centers (FFRDC's). The remaining 20 percent or approximately $300 million of awards are for contracts performed by the institutions themselves. The $300 million is made up of relatively low value contracts awarded to a number of institutions, with few institutions having a significant amount of CAS covered contract awards. The Board is proposing to modify part 331 of its regulations to exempt contracts to be performed by educational institutions while retaining coverage on contracts which will be performed by the FFRDC's whether such contracts are awarded to the FFRDC or to the FFRDC's parent institution.

The Board is also amending Part .70 of Standard 403, 408, and 410 to delete the specific exemption providing for educational institutions in view of the general exemption now being proposed. This modification of existing Standards, when effective, will result in the prospective application of these Standards to those FFRDC's who were perviously exempt from these Standards.

Interested parties are invited to submit written comments. All written submissions made pursuant to this notice will be made available for public inspection at the Board's office during regular business hours.

The following addition to Section 331.30(b) and amendments to Parts 403, 408 and 410 are proposed to reflect the foregoing views:

PART 331—CONTRACT COVERAGE

1. Section 331.30(b) is modified by inserting the following as paragraph 3:

§ 331.30 Applicability, exemption, and waiver.

* * * * *

(b) * * *

(3) Any contract made with an educational institution whose cost principles are subject to Federal Management Circular 73-8 except contracts that are to be performed by a Federally Funded Research and Development Center (FFRDC) operated by such an institution. A FFRDC is a laboratory or similar operation which is designated as such by the National Science Foundation. If a contract or any part of a contract awarded to an exempt educational institution is to be performed by a FFRDC, the contract shall contain the clause set forth in § 331.50 or § 332.50, as appropriate, and the requirements of that clause shall be applicable to that part of the contract effort, and the costs thereof, which are performed by the FFRDC. Costs incurred by the institution which may be allocated to the FFRDC and the requirement to prepare Part VIII of the Disclosure Statement (CASB-DS-1 or CASB-DS-2) are exempted by this provision.

* * * * *

Part 403—ALLOCATION OF HOME OFFICE EXPENSES TO SEGMENTS

2. Amend § 403.70(b) by changing it to read as follows:

§ 403.70 Exemptions.

* * * * *

(b) This Standard shall not apply to contractors who are subject to the provisions of Federal Management Circular 74-4 (Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments).

PART 408—ACCOUNTING FOR COSTS OF COMPENSATED PERSONAL ABSENCE

3. Revise § 408.70 as follows:

§ 408.70 Exemption.

This Standard shall not apply to contractors who are subject to the provisions of Federal Management Circular 74-4 (Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments).

PART 410—ALLOCATION OF BUSINESS UNIT GENERAL AND ADMINISTRATIVE EXPENSES TO FINAL COST OBJECTIVES

4. Amend § 410.70 by changing it to read as follows:

§ 410.70 Exemption.

This Standard shall not apply to contractors who are subject to the provisions of Federal Management Circular 74-4 (Principles for Determinig Costs Applicable to Grants and Contracts with State and Local Governments).

(84 Stat. 796, Section 103: 50 USC App. 2168)

ARTHUR SCHOENHAUT,
Executive Secretary.

[FR Doc. 78-6696 Filed 3-14-78; 8:45 am]

[6355-01]

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1201]

SAFETY STANDARD FOR ARCHITECTURAL GLAZING MATERIALS

Proposed Amendment to Standard

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed amendment to rule.

SUMMARY: In this document, the Commission proposes to amend the Safety Standard for Architectural Glazing Materials to exempt from its coverage carved glass, faceted glass, and leaded glass, if those materials are incorporated into doors or glazed panels covered by the standard for decorative or artistic purposes.

DATE: Written comments on the proposed amendment must be received by April 14, 1978, to be considered in this proceeding.

EFFECTIVE DATE: The proposed effective date for the amendments is upon publication in the FEDERAL REGISTER of any final amendment.

ADDRESS: Comments on the proposal should be addressed to the Office of the Secretary, Consumer Product Safety Commission, 1111 18th Street NW., Washington, D.C. 20207 and entitled "Decorative Glass."

FOR FURTHER INFORMATION CONTACT:

John F. Liskey, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207. Telephone 301-492-6557.

SUPPLEMENTARY INFORMATION: On January 6, 1977, the Consumer Product Safety Commission issued the Safety Standard for Architectural Glazing Materials to eliminate or reduce unreasonable risks of injury associated with architectural glazing materials and products incorporating those materials (42 FR 1427). The standard prescribes tests to ensure that glazing materials used in certain architectural products either do not break when impacted with a specified energy, or break with such characteristics that they are less likely than other glazing materials to present an unreasonable risk of injury. The standard became effective on July 6, 1977.

On April 20, 1977, the Stained Glass Association of America (SGAA) petitioned the Commission under provisions of section 10 of the Consumer Product Safety Act (15 U.S.C. 2059) to amend the standard to exempt decorative glass. (This petition is designated CP 77-12).

On June 21, 1977, the SGAA filed a motion with the Commission requesting that enforcement of the standard be stayed for products described in the petition. In this motion, SGAA stated that decorative glass of the types described in the petition cannot be manufactured to conform with the standard, are used for decorative and artistic purposes, and are produced in extremely limited quantities. SGAA also argued that the standard effectively eliminates all of its products from use in glazed panels and decorative glass as an art form. On June 30, 1977, the Commission, in view of the arguments raised by SGAA, granted a limited stay of the standard for certain decorative glass, pending action on the petition. This stay of enforcement was published in the FEDERAL REGISTER on August 9, 1977 (42 FR 40188).

To facilitate its evaluation of the merits of SGAA's petition, the Commission published the petition in the FEDERAL REGISTER of July 15, 1977 (42 FR 36543) to invite written comments from all interested parties. One comment was received, and that comment favored an amendment of the type requested by SGAA. The Commission staff also had discussions with SGAA representatives, industry representatives, and met with SGAA representatives in an open meeting to clarify several issues. Records of these discussions and meetings are contained in meeting logs which are part of the briefing package developed to evaluate the petition. The briefing package is available from the Office of the Secretary.

The Commission has considered the SGAA petition, the favorable comment received, the need of the public for the type of decorative glass described in the petition, the available information concerning injuries associated with those materials described in the petition, the injury potential associated with those materials, and the availability of the materials in the absence of an amendment to the standard.

Staff analysis of injury information indicates that all glass, including "decorative" glass, creates a potential risk of injury related to the manner in which architectural products containing the glass are used or misused. However, the quantities of glazing material covered by the requested exemption are estimated to be very small. For example, it is estimated that decorative glass addressed by the petition amounts to perhaps a few hundred thousand square feet annually. Moreover, the risk of injury from decorative glass is mitigated somewhat by its visibility which would reduce the risk of injury from any inability of persons to note the presence of the material though risks of injury from accidential contact would remain.

It appears that substitute materials that comply with the Commission's standard would not be adequate since they cannot, for example, be etched to the depths at which such glazing is typically etched. Glass, according to the petitioner, is typically etched as deep as 60-90 mils on panels that are 7/32 inches or greater in thickness. These depths would apparently shatter tempered glass and at those depths pre-etched glass reportedly could not be reliably tempered. Etching of laminated glass is limited because typicaly laminated glass is only about 100 mils thick.

The primary reasons for the use of "decorative" glass is for aesthetic and artistic purposes. If these products are not excluded from the standard, there would appear to be a reduction in the products' aesthetic qualities with a resulting loss of consumer utility.

The Commission believes, however, that the exemption requested by SGAA in its petition is overly broad since such an exemption could result in the manufacture of glazing materials for which the degree of safety afforded by the standard is considerably reduced.

The Commission is proposing an amendment to the standard to exempt certain decorative glazing materials from the standard's coverage. The materials which would be exempted from the proposed amendment are carved glass, faceted glass, or leaded glass (as those terms are defined in the proposed amendment) used in doors and glazed panels, which meet all of the followng criteria:

1. The coloring, texturing, or other design qualities or components of the glazing material cannot be removed without destroying the material; and

2. The primary purpose of such glazing materials is decorative or artistic; and

3. The glazing materials is conspicuously colored or textured so as to be plainly identifiable as aesthetic or decorative rather than functional (other than for the purpose of admitting or controlling admission of light components or heat and cold); and

4. The glazing material, or assembly into which it is incorporated, is divided into segments by conspicuous and plainly visible lines.

The proposed amendment would not exempt carved, faceted or leaded glass used in storm doors, patio doors, and bathtubs and shower enclosures.

In its present form, the standard contains an exemption for "leaded glass" in § 1201.1(c)(4), and a definition of the term "leaded glass" at

§ 1201.2(a)(14). The existing definition of "leaded glass" is more restrictive than the one contained in the proposed amendment, and would be broadened if the proposed amendment were issued on a final basis.

Until the amendments proposed below are issued on a final basis or are withdrawn by the Commision, the stay of enforcement of the standard issued on June 30, 1977, and published on August 9, 1977, shall remain in force.

Section 9(e) of the consumer Product Safety Act, 15 U.S.C. 2058(e), provides that when an amendment to a consumer product safety rule involves a material change the procedures in section 7 and 9 apply. It is the Commission's view that the amendments proposed below do not involve a material change to the Standard because they do not affect the basic purpose and provisions of the Standard. Therefore, the provisons of section 7 and 9(a)-(d) do not apply. However, the Commission believes the informal rulemaking procedures of the Administrative Procedure Act, 5 U.S.C. 553, do apply.

ENVIRONMENTAL CONSIDERATIONS

The CPSC's interim environmental review procedures, 16 CFR 1021.5 provide that an environmental review is generally not required for amendments to an existing standard that do not alter the principal purpose or effect of the standard. The proposed amendments below would not alter the principal purpose or effect of the standrd for architectural glazing materials. Rather, they allow manufactuers to use additional types of glazing materials in specifed architectural products. The Commission does not foresee any environmental effects from the issuance of the amendments which would necessitate an environmental review. Consequently, preparation of a draft environmental impact statement is unnecessary.

EFFECTIVE DATE

5 U.S.C. 553(d) provides that a rule which relieves a restriction or grants an exemption may take effect immediately. Because the proposed amendments would grant an exemption, the Commission believes the amendment should take effect upon publication of a final amendment in the FEDERAL REGISTER.

Therefore, pursuant to provisions of the Consumer Product Safety Act (section 9(e), Pub. L. 92-573, 86 Stat. 1215; 15 U.S.C. 2058(e)), the Commission proposes to amend the Safety Standard for Architectural Glazing Materials by adding new §§ 1201.2(a)(36), (37), and (38), and by revising §§ 1201.1(c)(4) and 1201.2(a)(14), as follows:

§ 1201.1 Scope, application, and findings.

* * * * *

(c) *Exemptions.* The following products, materials, and uses are exempt from this part 1201:

* * * * *

(4) Carved glass (as defined in § 1201.2(a)(36)), faceted glass (as defined in § 1201.2(a)(37)), or leaded glass (as defined in § 1201.2(a)(14)), which is used in doors and glazed panels (as defined in §§ 1201.2 (a)(7) and (a)(10)) if the glazing material meets all of the following criteria:

(i) The coloring, texturing, or other design qualities or components of the glazing material cannot be removed without destroying the material; and

(ii) The primary purpose of such glazing material is decorative or artistic; and

(iii) The glazing material is conspicuously colored or textured so as to be plainly visible and plainly identifiable as aesthetic or decorative rather than functional (other than for the purpose of admitting or controlling admission of light components or heat and cold); and

(iv) The glazing material, or assembly into which it is incorporated, is divided into segments by conspicuous and plainly visible lines.

* * * * *

§ 1201.2 Definitions.

(a) As used in this part 1201:

* * * * *

(14) "Leaded glass" means a decorative composite glazing material made of individual pieces of glass (whose perimeter is) enclosed by lengths of durable metal such as lead or zinc and the pieces of glass are completely held together and supported by such metal. Such pieces of glass can be clear, colored, beveled, painted, or flashed and etched.

* * * * *

(36) "Carved glass" means decorative glazing material in which a permanent visible design has been produced by polishing, grinding, or otherwise removing portions of the surface.

* * * * *

(37) "Faceted glass" means a decorative composite glazing material made of individual pieces of glass which are imbedded in a cast matrix of concrete or epoxy.

* * * * *

Interested persons are invited to submit on or before April 14, 1978, written comments regarding the proposed amendment to the Standard for Architectural Glazing Materials.

Written submissions and any accompanying data or material should be submitted, preferably in five copies, addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207 and entitled "Decorative Glass". Comments may be accompanied by a supporting memorandum or brief. Any comments that are received and all other material which the Commission has that is relevant to this proceeding may be seen in, or copies obtained from, the Office of the Secretary, 3d floor, 1111 18th Street NW., Washington, D.C. 20207.

Dated: March 10, 1978.

SADYE E. DUNN,
Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 78-6723 Filed 3-14-78; 8:45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 230]

[Release No. 33-5913]

PRIVATE PLACEMENT EXEMPTIVE RULE

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposal rulemaking.

SUMMARY: The Commission reasserts the "non-exclusive" nature of its private placement exemptive rule and proposes to amend it to prohibit persons who receive compensation from the issuer in connection with the offering from also serving as an offeree representative and to revise the disclosure requirements when an offering is for less than $500,000. This action is being taken because of the response to the Commission's invitation to comment about the operation of the rule.

DATES: Comments must be received on or before April 7, 1978.

ADDRESS: Comments should refer to File No. S7-730 and should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT:

Richard K. Wulff, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, 202-755-1240.

SUPPLEMENTARY INFORMATION: Section 4(2) of the Securities Act of 1933 (15 U.S.C. 77a et seq.) provides that offers and sales of securities by an issuer not involving any public offering are exempt from the registration provisions of the Act. Rule 146 (17

CFR 230.146) provides objective standards for determining when the exemption is available. The main conditions of the rule require that (1) there be no general advertising or soliciting in connection with the offering; (2) offers be made only to persons the issuer reasonably believes have the requisite knowledge and experinece in financial and business matters or who can bear the economic risk; (3) sales be made only to persons as described above except that persons meeting the economic risk test must also have an offeree representative capable of providing the requisite knowledge and experience; (4) offerees have access to or be provided information comparable to that elicited through registration; (5) there be no more than 35 purchasers in the offering; and (6) reasonable care be taken to ensure that the securities are not resold in violation of the Act's registration provisions.

BACKGROUND

On December 6, 1976, the Commission published Securities Act Release No. 5779 (41 FR 53808) to request public comment about the operation of Rule 146 and whether it should be retained, revised or rescinded. Moreover, specific recommendations for amendments to the rule were sought. The request was prompted by criticism that the Rule has hindered the investment of venture capital and has facilitated the fraudulent offering of certain types of securities. In response to the Commission's invitation, approximately 50 letters were received. On the basis of this information and its own review of the rule, the Commission believes that the existing rule should be retained essentially as structured, although two modifications should be proposed. In addition, the Commission is using this opportunity to emphasize the "non-exclusive" nature of Rule 146 and that issuers may rely on the exemption provided by Section 4(2) of the Act by complying with relevant administrative and judicial criteria. In related action announced today, the Commission has adopted an amendment to Rule 146 requiring a notification when issuers rely upon the rule, and has issued a release announcing the conduct of public hearings regarding the effects of Commission rules and regulations on the ability of small businesses to raise capital and the impact on small businesses of disclosure requirements under the securities acts. See Rules and Regulations in the issue of March 14, 1978, at page 10548, Securities Act Release No. 33-5912 (March 3, 1978), and Proposed Rules in this issue at page 10876, Securities Act Release No. 33-5914 (March 6, 1978).

The majority of the comments received favored retention of Rule 146 and, contrary to the criticism noted in the invitation to comment, did not indicate that the rule impedes the flow of venture capital or facilitates the fraudulent offering of securities. Very little information was received concerning the volume of transactions effected under the rule, although the comments do indicate that the rule is used or at least followed as a guideline. Many recommendations for amendments to the rule were made, but most were repetitive of comments received prior to the rule's adoption,[1] or are of such a nature that in the Commission's view revision is not warranted at this time.

NON-EXCLUSIVE NATURE OF RULE 146

The development of Rule 146 was prompted by a need to create greater certainty in the application of the Section 4(2) exemption. When the rule was adopted, the Commission indicated its belief that it should deter reliance on the private offering exemption for securities offerings to persons unable to fend for themselves in terms of obtaining and evaluating information about an issuer and, in certain situations, of assuming the risk of the investment. In drafting the rule, the Commission carefully considered the legislative history, statutory language, judicial decisions and its own interpretations of Section 4(2). The rule incorporates the basic criteria enunciated by the United States Supreme Court in *S.E.C.* v. *Ralston Purina Co.*[2] as necessary to establish the availability of the private offering exemption. These criteria are whether the offerees need the protection afforded by the Act as evidenced by their access to the same kind of information as registration would elicit as well as whether they are able to fend for themselves. In its provisions regarding the manner of offering, the nature of the offerees, access to or furnishing of information about the issuer, limitations on the number of purchasers and limitations on the subsequent disposition of securities acquired in the offering, the rule reflects the major areas deemed important to the private offering exemption by the Commission and the Courts. But the rule is not a restatement of the case law under Section 4(2). In some ways it is more restrictive, in others less restrictive than the cases. For example, in its consideration of access to information under Rule 146, the Commission clearly stated its view that an offeree would not have to be an insider such as an officer or director of the issuer in order to have access to information, which under the rule can exist only by virtue of an offeree's position with the issuer, i.e., an employment or family relationship or economic bargaining power enabling him to obtain information from the issuer in order to evaluate the merits and risks of the investment. At least in part, this provision of the rule was in response to the holding in *S.E.C.* v. *Continental Tobacco Co.*[3] that offerees must have a relationship with the issuer giving access to the kind of information that registration would disclose.[4]

When Rule 146 was adopted, commentators voiced concern that the rule would become the only method of establishing the private placement exemption. For this reason, the Commission included Preliminary Note 1 to the rule which clearly asserts the "non-exclusive" nature of the rule, thus preserving the broader statutory exemption of Section 4(2). Nonetheless, commentators have resurrected this criticism of the rule and point to two recent judicial decisions of the Fifth Circuit Court of Appeals which they believe demonstrate a penchant to supplant the broad statutory exemption with the narrower criteria of Rule 146.

Woolf v. *S. D. Cohn & Co.*[5] involved a suit to recover amounts paid for convertible debentures unregistered under the Act in reliance upon the Section 4(2) exemption. The Court was unable on the basis of the record to determine if the exemption was available and remanded the case for further proceedings. Nonetheless, the case has received considerable attention because of two points discussed therein. The first point involves a clarification of the Continental Tobacco holding noted above. The Court explained that under that case offerees would not have to have "insider" status in order for the Section 4(2) exemption to be available, but rather stands for the proposition that disclosure is by itself not enought to establish the private offering exemption. The second point in the opinion which has become somewhat controversial is the Court's consideration of Rule 146 as "a useful frame of reference to an appellate court in assessing the validity of Section 4(2) exemptions claimed" and "that practitioners will be unwilling to stray from the safe harbor the rule apparently affords."[6] But the Court does recognize the "non-exclusive" nature of the rule and, in spite of its reference to it, the analysis in the opinion does not superimpose Rule 146 over

[1] Securities Act Release No. 5487 (April 23, 1974) (39 FR 15266); Securities Act Release No. 5430 (October 10, 1973) (38 FR 28951). These releases contain a consideration of many of these comments. There is nothing in the present comments or in the Commission's experience that demonstrates a different result should be reached from that explained in the earlier releases.

[2] 346 U.S. 119 (1953).

[3] 463 F. 2d 137 (5th Cir. 1972).

[4] Id. at 158.

[5] 515 F. 2d 591 (5th Cir. 1975), vacated on other grounds, 426 U.S. 944 (1976).

[6] Id. at 612.

Section 4(2). The Court's analysis begins with *Ralston Purina* and whether the offerees need the Act's protection, their knowledge, whether they are able to fend for themselves and their access to the kind of information which registration would disclose. In considering the law of the circuit, the Court begins with *Hill York Corp.* v. *American International Franchises, Inc.*[7] which finds the important factors to the Section 4(2) exemption to be the number of offerees and their relationship to each other and the issuer, the number of units offered, the size of the offering and the manner of offering.[8] *Hill York* also requires that offerees have information equivalent to that which registration would disclose and that offeree sophistication alone is not enough to establish the exemption. The next case discussed is *Continental Tobacco*, which as previously noted stands for the proposition that disclosure alone is not enough to establish the exemption.[9] In conclusion, the Court indicated doubt that the subject offering qualified under Section 4(2) mainly due to the information provided offerees but remanded the case for further consideration. The Court was also uncertain about the number of offerees involved and the manner of the offering which it characterized as impersonal. All of these elements appear in the case law the Court discussed without consideration of Rule 146.

The second case which has engendered concern among the commentators is *Doran* v. *Petroleum Management Corp.*,[10] a rescission action brought by a purchaser of a limited partnership interest in an oil drilling venture offered in reliance upon Section 4(2) of the Act. Again, the Court remanded the case because of inadequate findings of fact on issues it deems important to a proper claim to the exemption, i.e., furnishing information to offerees comparable to that elicited through registration or that offerees had access to such information. The Court's analysis begins with the four factors deemed important to the exemption, i.e., "the number of offerees and their relationship to each other and the issuer, the number of units offered, the size of the offering, and the manner of the offering."[11] While not exhaustive of any inquiry concerning a claimed exemption under Section 4(2), the Court did believe that three of these guideposts were satisfied under the facts, i.e., all except the number of offerees and their relationship to each other and the issuer. This factor in the Court's view is important in determining the magnitude of the offering as well as the characteristics and knowledge of the offerees. While the Court agreed that the offerees in the instant case were sophisticated, it reasserted the holding in *Hill York* that this alone will not support the exemption, stating "there must be sufficient basis of accurate information upon which the sophisticated investor may exercise his skills;"[12] and indicated that all offerees must have available the information which a registration statement would have afforded. In consideration of the requirement of available information which the Court indicated was a well established sine qua non for the exemption, it directed the lower Court on remand to keep in mind that availabilty means "either disclosure of or effective access to the relevant information."[13] But that when "access" alone is claimed, the relationship between the issuer and the offeree and the latter's sophistication are critical. The Court emphasized that the availability issue is a disjunctive requirement pointing to other Circuit Court decisions[14] and stating that the Fifth Circuit cases are not inconsistent with this position.[15] While reemphasizing that Rule 146 is ot the exclusive manner of establishing the private offering exemption, the Court did find appealing the rule's disjunctive approach to the requirement of available information.

It appears to the Commission that the commentators' concern over Rule 146 becoming the exclusive means of establishing the Section 4(2) exemption is not well founded under the Woolf or Doran holdings. In both instances the Court clearly stated the "non-exclusive" nature of the rule. While Doran does find the rule useful on the access to information issue, this part of the discussion is also heavily based on case law and the Court's analysis of it. The admonition in Woolf to practitioners regarding Rule 146 impresses the Commission as sound and recommends that issuers consider the rule when developing a private offering and to take advantage of the safe harbor it provides. However, the Commission wishes to reassert the "non-exclusive" nature of Rule 146. As stated in Preliminary Note 1 to the rule, the Commission deems the rule to be a method of establishing the exemption in Section 4(2) of the Act. It is not the intention of the Commission that it be the only way to establish the exemption. Issuers may rely on Current administrative and judicial interpretations of the exemption without regard to Rule 146. The Commission is also relocating this portion of Preliminary Note 1 under subdivision (b) of the Rule.

Proposed Amendments

Rule 146(a)(1)—Offeree Representative

Subparagraph (a) of Rule 146 presently provides a definition of an offeree representative who may serve as an advisor to offerees under certain circumstances. The concept of the offeree representative was designed to ensure that offerees have access to the same kind of information as registration elicits as well as understand it and consequently be able to fend for themselves. The definitional provisions exclude certain persons from serving as offeree representatives and prescribe that disclosure be made to the offeree about a representative's material relationships with the issuer. Consequently, and offeree representative could have a material relationship with the issuer and still serve an offeree as long as he discloses the facts and acts in the best interests of the offeree. Such a material relationship does exist when a person agrees to act for the issuer in the placement of the securities being offered. In this situation, there is the possibility of a conflict in interest. Disclosure of the offeree representative's agreement with the issuer may not be enough to eliminate this possibility, since it appears that a person who agrees to place the securities for an issuer owes his main loyalties to the issuer. While not necessarily inconsistent with the interests of an offeree, the Commission believes that such a person should not also represent the offeree. Consequently, Rule 146 is proposed to be amended so that a person receiving compensation directly or indirectly from an issuer in connection with an offering effectuated in reliance upon the rule would not qualify as an offeree representative.

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[7] 448 F. 2d 680 (5th Cir. 1971).

[8] 515 F. 2d at 609, quoting from 448 F. 2d at 688-89.

[9] It is at this point that references to Rule 146 and its differences from the case law in the circuit are noted. For example, the Court states that, while *Hill York* indicated that offeree sophistication is not enough, Rule 146 requires such sophistication even though by itself it will not support a claim to the protection of the rule.

[10] 545 F. 2d 893 (5th Cir. 1977).

[11] 545 F. 2d at 900.

[12] Id. at 903.

[13] Id. at 904. "Access" the Court defined as a relationship based on such factors as employment, family, or economic bargaining power which would enable the offeree to obtain such information. See Rule 146(e).

[14] *Gilligan, Will & Co.* v. *S.E.C.*, 267 F. 2d 461 (2d Cir. 1959), cert. denied. 361 U.S. 896 (1960); *S.E.C.* v. *Tax Service, Inc.*, 357 F. 2d 143 (4th Cir. 1966).

[15] The Court also took the opportunity to explain that in *Continental Tobacco* neither actual disclosure nor access to information was shown and that the holding in the case does not require access and disclosure where sophisticated investors are involved. Similarly, the Court analyzes the *Woolf* decision noting that it does not impose more stringent requirements on this issue than Rule 146.

RULE 146(e)—ACCESS TO OR FURNISHING OF INFORMATION

Subparagraph (e) of Rule 146 requires that an offeree have access to the same kind of information as required under the Securities Act or that the offeree or his representative be furnished such information. The rule specifies the type of information required to be furnished. In the light of its review of the rule and the comments from the public, the Commission believes that the information requirements of the rule may be relaxed in one situation without compromising the protection of investors. Under the proposed amendment, the information required by Schedule I of Regulation A (17 CFR 239.90) could be substituted for that presently required if the offering is for $500,000 or less. This proposal, if adopted, should make it easier for more issuers to take advantage of Rule 146.

The Commission notes that many commentators disapproved of the disclosure requirements under the rule recommending less stringent criteria. When Rule 146 was adopted, the Commission stated its view that the important concepts to a determination of a non-public offering are access to the same kind of information that registration would disclose and the offerees' ability to fend for themselves, thus not needing the protection afforded by registration. While access to information can result only by virtue of the offeree's position with respect to the issuer, an offeree may be able to fend for himself in spite of the fact that he has no position vis-a-vis the issuer. As a practical matter, this possibility can occur only when the offeree is provided with information tantamount to that elicited through the registration process. Consequently, no further revision of this provision is being proposed at this time.

TEXT OF THE PROPOSED AMENDMENTS

(Attention: The text of the following proposed amendments uses ►◄ arrows to indicate additions and [] brackets to indicate deletions.)

It is proposed to amend 17 CFR Chapter II by revising § 230.146 to read as follows:

§ 230.146 Transactions by an issuer deemed not to involve any public offering.

* * * * *

(a) * * *
(1) * * *
(i) * * *

►(ii) Does not receive compensation directly or indirectly from the issuer in connection with the offering being made in reliance upon this rule;◄

[(ii)] ►(iii)◄ * * *
[(iii)] ►(iv)◄ * * *
[(iv)] ►(v)◄ * * *

* * * * *

(b) * * *
(1) * * *

►(2) Transactions by an issuer which do not satisfy all of the conditions of this rule shall not raise any presumption that the exemption provided by Section 4(2) of the Act is not available for such transactions.◄

* * * * *

(e) * * *
(1) * * *
(ii) * * *

(c) Notwithstanding paragraph (e)(1)(ii) (*a*) and (*b*) of this section exhibits required to be filed with the Commission as part of a registration statement or report need not be furnished to each offeree or offeree representative if the contents of the exhibits are identified and such exhibits are available pursuant to paragraph (e)(2) of this section; [and]

►(*d*) If the aggregate sales price of all securities offered in reliance upon this rule does not exceed $500,000, the information requirements of paragraph (e)(1)(ii) may be satisfied by furnishing the disclosure required by Schedule I of Regulation A under Section 3(b) of the Act; and◄

* * * * *

(Secs. 4, 19, 203, 209, 48 Stat. 77, 85, 906, 908; sec. 6, 68 Stat. 684; sec. 12, 78 Stat. 580; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77d(2), 77s(a).)

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

MARCH 6, 1978.

[FR Doc. 78-6649 Filed 3-14-78; 8:45 am]

[4830-01]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[LR-783]

INCOME TAX

Substantially Disproportionate Redemption of Stock, Withdrawal of Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking that appeared in the FEDERAL REGISTER on March 26, 1975, relating to substantially disproportionate redemption of stock.

FOR FURTHER INFORMATION CONTACT:

Robert M. Fowler of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3464. (Not a toll free call.)

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking that appeared in the FEDERAL REGISTER on March 25, 1975 (40 FR 13308) proposed an amendment to the regulations under section 302 of the Internal Revenue Code of 1954. The amendment would have stated that treasury stock or unissued stock subject to an option, if considered as owned under section 318(a)(4) of the Code, would be taken into account under section 302(b)(2).

Those commenting felt the proposal was ambiguous and that it failed to resolve the question of how to treat the presence of options in determining whether a redemption was "substantially disproportionate."

The notice is being withdrawn so that the Service and Treasury may give these matters further study.

DRAFTING INFORMATION: The principal author of this document was Robert M. Fowler of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing this document, both in matters of substance and style.

WITHDRAWAL OF NOTICE OF PROPOSED RULEMAKING

Accordingly, the notice of proposed rulemaking on substantially disproportionate redemptions of stock published in the FEDERAL REGISTER (40 FR 13308) on March 26, 1975, is hereby withdrawn.

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved: February 13, 1978.

ROBERT H. MUNDHEIM,
General Counsel.

[FR Doc. 78-6737 Filed 3-14-78; 8:45 am]

[4830-01]

[26 CFR Part 1]

[LR-133-77]

INCOME TAX

Disposition of Section 306 Stock

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to section 306 stock. The regulations would clarify the definition of the term "section 306 stock" and would eliminate various other ambiguities in the regulations under section 306. Furthermore, the regulations would provide the public with the guidance needed to comply with changes to the applicable tax law made by the Tax Reform Act of 1976.

DATES: The amendments are proposed to be applicable to stock received on or after June 22, 1954, in transactions not subject to the provisions of the Internal Revenue Code of 1939. Written comments and requests for a public hearing must be delivered or mailed by May 1, 1978.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attention: CC:LR:T (LR-133-77), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Jack A. Levine of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention CC:LR:T, 202-566-3474. (Not a toll free call.)

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 306 of the Internal Revenue Code of 1954. These amendments are proposed to clarify the definition of the term "section 306 stock", to eliminate certain other ambiguities in the regulations under section 306 and to conform the regulations to section 1901 of the Tax Reform Act of 1976 (90 Stat. 1764). The amendments are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Explanation of Provisions

Section 306(c)(2) of the Code provides that the term "section 306 stock" does not include any stock no part of the distribution of which would have been a dividend at the time of the distribution if money had been distributed in lieu of the stock. In other words, if a corporation distributes stock and if the distribution of money instead of the stock would not be a dividend, then the stock is not section 306 stock. Paragraph (a) of § 1.306-3 is ambiguous in its explanation of this rule. It is revised to eliminate the ambiguity. Furthermore, several other provisions of the regulations under section 306 are revised to eliminate minor ambiguities.

Several changes of a technical nature have also been made to conform the regulations to section 1901 of the Tax Reform Act of 1976.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations was Mr. Jack A. Levine of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

§ 1.306 [Deleted]

Paragraph 1. Section 1.306 is deleted.

§ 1.306-1 [Amended]

Par. 2. Section 1.306-1 is amended as follows:

1. The Phrase "gain from the sale of property which is not a capital asset," is deleted from the first sentence of paragraph (a) and the phrase "ordinary income" is inserted in lieu thereof.

2. The phrase "gain from the sale of property not a capital asset" is deleted from the first sentence of paragraph (b)(1) and the phrase "ordinary income" is inserted in lieu thereof.

3. The fourth sentence of paragraph (b)(1) is amended by deleting the phrase "While the amount of earnings and profits at the time of the distribution is one of the measures of the amount to be treated as ordinary income," and by capitalizing the first letter of the word "no".

4. The phrase "gain from the sale of property which is not a capital asset" is deleted from each example of paragraph (b)(2) and the phrase "ordinary income" in inserted in lieu thereof.

5. The second sentence of paragraph (c) is deleted.

Par. 3. Section 1.306-3 is amended as follows:

1. Paragraph (a) is revised.

2. Paragraph (b) is revised.

3. The phrase "as of" is deleted from paragraph (g)(2) each time it appears and the phrase "by reference to" is inserted in lieu thereof.

4. The phrase "gain from the sale of property which is not a capital asset" is deleted from the first sentence of paragraph (h) and the phrase "ordinary income" is inserted in lieu thereof.

5. The second sentence of paragraph (i) is deleted.

The added and revised provisions read as follows:

§ 1.306-3 Section 306 stock defined.

(a) For the purpose of subchapter C, chapter 1 of the Code, the term "section 306 stock" means stock which meets the requirements of section 306(c)(1). Any class of stock distributed to a shareholder in a transaction in which no amount is includible in the income of the shareholder or not gain or loss is recognized may be section 306 stock, if a distribution of money by the distributing corporation in lieu of such stock would have been a dividend in whole or in part. However, except as provided in section 306(g), if no part of a distribution of money by the distributing corporation in lieu of such stock would have been a dividend, the stock distributed will not constitute section 306 stock.

(b) For the purpose of section 306, rights to acquire stock shall be treated as stock. Such rights shall not be section 306 stock if no part of the distribution would have been a dividend if money had been distributed in lieu of the rights. When stock is acquired by the exercise of rights when are treated as section 306 stock, the stock acquired is section 306 stock. Upon the disposition of such stock (other than by redemption or within the exceptions listed in section 306 (b)), the proceeds received from the disposition shall be treated as ordinary income to the extent that the fair market value of the stock rights, on the date distributed to the shareholder, would have been a dividend to the shareholder had the distributing corporation distributed cash in lieu of stock rights. Any excess of the amount realized over the sum of the amount treated as ordinary income plus the adjusted basis of the stock, shall be treated as gain from the sale of the stock.

* * * * *

§§ 1.391 and 1.391-1 [Deleted]

Par. 4. Sections 1.391 and 1.391-1 are deleted.

§§ 1.392 and 1.392-1 [Deleted]

PAR. 5. Sections 1.392 and 1.392-1 are deleted.

§§ 1.393 and 1.393-3 [Deleted]

PAR. 6. Sections 1.393 through 1.393-3 are deleted.

§§ 1.394 and 1.394-1 [Deleted]

PAR. 7. Sections 1.394 and 1.394-1 are deleted.

§§ 1.395 and 1.395-1 [Deleted]

PAR. 8. Sections 1.395 and 1.395-1 are deleted.

JEROME KURTZ,
Commissioner of Internal Revenue.

[FR Doc. 78-6739 Filed 3-14-78; 8:45 am]

[8320-01]

VETERANS ADMINISTRATION

[38 CFR Part 21]

VETERANS EDUCATION

Unsatisfactory Progress

AGENCY: Veterans Administration.

ACTION: Request for public comment.

SUMMARY: The Veterans Administration is publishing for public comment revised statements of policy and procedures which have been adopted by the Agency to implement the Veterans' Education and Employment Assistance Act of 1976. These policy and procedural statements will better acquaint veterans, eligible persons, educational institutions, and the public at large with the way in which this Act will be administered.

DATES: Comments must be received on or before April 14, 1978.

ADDRESS: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420.

Comments will be available at the address shown above during normal business hours until April 24, 1978.

FOR FURTHER INFORMATION CONTACT:

June C. Schaeffer, Assistant Director for Policy and Program Administration, Education and Rehabilitation Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420, 202-389-2092.

SUPPLEMENTAL INFORMATION: This publication contains DVB Circular 20-76-84, Appendix O, Revised. The first version of this appendix was published for comment on page 8261 of the FEDERAL REGISTER of February 9, 1977. It deals with the policy and procedures necessary to implement provisions of the Veterans' Education and Employment Assistance Act of 1976 as to determining unsatisfactory progress. This appendix has been implemented and has or will be distributed through normal channels to interested persons.

ADDITIONAL COMMENT INFORMATION

Interested persons are invited to submit written comments, suggestions, or objections regarding this document to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays), until April 24, 1978.

Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to a VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

Approved: March 8, 1978.

By direction of the Administrator.

RUFUS H. WILSON,
Deputy Administrator.

DVB Circular 20-76-84, Appendix O, Revised
February 3, 1978

DEPARTMENT OF VETERANS BENEFITS,
VETERANS ADMINISTRATION,
Washington, D.C.

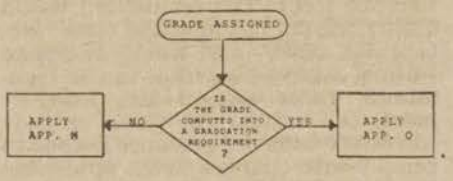
UNSATISFACTORY PROGRESS

(Public Law 94-502)

1. *Purpose.* This appendix provides instructions for implementing the Public Law 94-502 provision pertaining to unsatisfactory progress under chapters 32, 34 and 35.

2. *General.* A student must maintain satisfactory progress to continue to be eligible to receive educational benefits under chapters 32, 34 and 35. If progress is unsatisfactory according to the established policy of the school, the law requires the institution to report this to the Veterans Administration. Pub. L. 94-502 amended 38 U.S.C. 1674 and 1724 effective December 1, 1976, to expand the concept of unsatisfactory progress to include those students not progressing at a rate that will permit graduation within the approved length of the course, based upon the training time paid by the VA. This provision may be waived for individual students if there is a VA finding of mitigating or extenuating circumstances. School must determine progress under the standards of Pub. L. 94-502, in addition to their own standards, unless exempt under paragraph 4.

3. *Distinction between appendixes M and O.* The provisions of this appendix are not to be confused with the provisions of DVB Circular 20-76-84, appendix M. Although each appendix requires a review of grades assigned, only one appendix can be applied to any one grade as shown below:



4. *Exemptions.*—a. *Adequate standards of progress.* If a particular school's standards of progress are considered by the VA to be adequate to meet this provision of law, and if the SAA (State approving agency) recommends it, that school may be exempted from the specific procedures outlined in this appendix (pars. 6 through 11). The VA regional office Director may grant this exemption if the school, under its established monitoring and reporting procedures, would notify the VA of unsatisfactory progress by the time the student accumulates unsatisfactory punitive grades in more hours than the school's minimum full-time requirement (normally 12 or 14 hours for VA purposes). See paragraphs 6 and 7.

NOTE.—Approval of a school's standards of progress under VAR 14253 and/or VAR 14254 does not automatically guarantee that this is the case.

b. *Nonpunitive grading system.* If a school has approved standards of progress and uses a nonpunitive grading system (i.e., never assigns an unsatisfactory punitive grade), the regional office Director may grant an exemption.

(1) Unit subjects for which a nonpunitive grade is assigned are equivalent to audited courses (see DVB Circular 20-76-84, app. M). For such unit subjects, either:

(a) Benefits are not payable, or

(b) Mitigating circumstances are found to exist.

(2) Since such unit subjects are not relevant to a consideration of unsatisfactory progress under the standards of Pub. L. 94-502, schools with a nonpunitive grading system may be exempted from the specific procedures in this appendix (i.e., counting unsatisfactory punitive grades).

5. *Implementation of exemptions.*-a. To receive an exemption from the procedures in this appendix, the school must apply to the SAA for an exmption. The SAA will forward the school's application to the VA with a recommendation for approval or denial.

b. The regional office Director will advise both the school and the SAA whether the school is exempt or not exempt from the monitoring requirements under Pub. L. 94-502. In the case of an adverse decision, the school will be notified of the right to an administrative review by Central Office (225B).

c. The liaison representative will maintain a log for purposes of a later report to Central Office and will file the appropriate documentation in the approval folder. The following information will be recorded in the log:

(1) Name of school;

(2) Approximate VA enrollment;

(3) Application approved or denied; and

(4) Reason for approval or denial.

6. *Monitoring unsatisfactory progress under Pub. L. 94-502.* Unless exempted

under paragraph 4, the school will monitor each student's progress under this provision.

a. *School organized on a term basis with credit-hour measurement.* The school will report unsatisfactory progress when the student accumulates unsatisfactory punitive grades (see par. 7) in the equivalent of more credit hours than the minimum full-time load for VA purposes (normally 12 or 14 hours).

b. *School organized on a term basis without credit-hour measurement.* The school will report unsatisfactory progress when it is first determined that the student will be required to extend the equivalent of more than one term based on the minimum full-time requirement.

c. *School not organized on a term basis.* The school will report unsatisfactory progress when it is first determined that the student will require an extension beyond 10 percent of the approved length of the course to complete the program.

NOTE.—The 10 percent guideline is used for monitoring progress; payment beyond the approved length is not allowed for flight, apprenticeship/OJT or correspondence courses.

7. *Unsatisfactory punitive grades.* An "unsatisfactory grade" is defined as a punitive grade that is unacceptable for graduation based on the policies of the school.

a. The following grades are considered as unsatisfactory grades:

(1) Punitive failing grades (i.e., an "F" or the equivalent); and

(2) Punitive grade below that required by the school (e.g., a "D" when the school requires a "C").

b. An incomplete grade (usually designated an "I") is disregarded when monitoring progress under Pub. L. 94-502 because it reflects neither satisfactory nor unsatisfactory work. (See chg. 5 to DVB Cir. 20-76-84. The procedure in par. 4f, app. M, remain in effect.)

c. A nonpunitive grade is also disregarded when monitoring progress under Pub. L. 94-502 because either benefits are not payable or mitigating circumstances are found. (See DVB Circular 20-76-84, app. M, for procedures regarding nonpunitive grades.)

8. *School reporting.* a. When the school determines that a student's progress is unsatisfactory under this provision of Pub. L. 94-502, the report to the VA should indicate that unsatisfactory progress is due to an extension of training beyond the approved length of the course.

b. When reporting unsatisfactory progress under this provision, the school should also show any circumstances which they feel the VA may consider as possible mitigating circumstances.

c. Schools that are exempt under paragraph 4 are not affected by this provision. Such schools will report unsatisfactory progress based on their own standards and without showing mitigating circumstances.

9. *VA Determination of mitigating circumstances.* a. A student is considered to be making satisfactory progress if, after progress is reported as unsatisfactory under paragraph 6 of this appendix, there is an Adjudication determination of mitigating or extenuating circumstances.

b. Mitigating circumstances are not for consideration if progress is unsatisfactory under school standards (e.g., GPA (grade point average)). Nor are mitigating circumstances for consideration if the school is exempt from the unsatisfactory progress procedures of this appendix (see par. 4).

c. Mitigating circumstances include the following:

(1) Personal illness.

(2) Illness or death in the immediate family.

(3) Geographical transfer or a change in hours or conditions of employment.

(4) Financial emergency.

(5) Failure to satisfactorily complete a deficiency or remedial course without fault.

(6) Active duty military service, including active duty for training.

(7) Any other circumstances beyond the student's control which hampers pursuit of a course.

d. Mitigating circumstances under this provision should not be confused with mitigating circumstances under 38 U.S.C. 1780(a) which prohibits payment for courses not counted to satisfy graduation requirements (see DVB Circular 20-76-84, app. M). Mitigating circumstances may apply under one provision or the other, but not both since they are mutually exclusive.

(1) Mitigating circumstances under this provision deal with unsatisfactory progress and only affect courses for which punitive grades are assigned.

(2) Mitigating circumstances under 38 U.S.C. 1780(a) deal with prohibition of payment and only affect courses for which nonpunitive grades are assigned.

10. *Unsatisfactory progress reported with mitigating circumstances.* If a claim of mitigating circumstances is received from a student or if the school notice indicates possible mitigating circumstances, the Adjudication activity will follow the procedures outlined below:

a. When the information concerning mitigating circumstances is not sufficient to make a determination, development will be required and, if there is a running award, benefits will be suspended.

(1) The circumstances which are claimed to have caused the unsatisfactory progress will be developed by means of a dictated letter to the student requesting a written statement explaining the extenuating circumstances including the unit subjects involved.

(2) The student will also be advised of the reason for the suspension of benefits, if benefits were suspended, and advised that if the requested statement is not received in 30 days, it will be necessary to terminate the award on the basis of unsatisfactory progress.

b. If it is determined that mitigating circumstances exist, benefits will be resumed, if previously suspended. The school will be notifed of the unit subject(s) which will be disregarded, because of the mitigating circumstances, if any future determination of unsatisfactory progress.

c. If it is determined that no mitigating circumstances exist, benefits will be terminated, if not already in a terminated status. The student will be notified by FL 22-337, unless an application (VA Form 22-1995, 22-5495, or 22-5495W) has already been submitted. In that instance, the case will be referred to the Counseling activity and the student will be notified by dictated letter of the termination and will be advised that a counseling appointment will be scheduled.

11. *Unsatisfactory progress reported without mitigating circumstances.* When unsatisfactory progress is reported without any indication of mitigating circumstances, the Adjudication activity will terminate benefits if there is a running award. The student will be advised by dictated letter (or FL 22-337) in which the following sentences (or the equivalent) will be included: "If you feel that there are extenuating circumstances surrounding your unsatisfactory progress, you should submit a written statement explaining those circumstances. Identify each unit subject affected by title and number (e.g., Math 101)."

12. *Counseling.* If educational benefits are terminated due to a determination of unsatisfactory progress, VA counseling is required before benefits may be reinstated even if the student continues in the same course at the same school (see VAR 14278). If the VA counseling psychologist determines that the cause of the unsatisfactory progress has been removed and that the program that the beneficiary proposes is suitable to his or her aptitudes, interests and abilities, benefits may be reinstated effective the date such conditions were met as determined by the counseling psychologist, or the date of reentrance, whichever is later. The effective date may be a future date, date of the counseling session or a retroactive date, depending on the circumstances in the individual case.

13. *Effective date.* This change affects all enrollment periods beginning on or after December 1, 1976. Enrollment periods prior to that are not for consideration under this change.

DOROTHY L. STARBUCK,
Chief Benefits Director.

[FR Doc. 78-6720 Filed 3-14-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 866-8]

STATE IMPLEMENTATION PLAN FOR THE COMMONWEALTH OF PENNSYLVANIA

Withdrawal of Proposed Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed State Implementation Plan.

SUMMARY: This notice announces that the Commonwealth of Pennsylvania has formally requested the Regional Administrator, EPA Region III, to take no further action on a proposed revision of its State Implementation Plan. The proposed revision, if approved by EPA, would have resulted in a requirement that combustion or flaring of any coke oven gas containing sulfur compounds, expressed as equivalent hydrogen sulfide, in concentrations greater than 50 grains per 100 dry standard cubic feet be prohibited. As proposed, emissions may also have included sulfuric compounds, from any tail gas sulfur recovery equipment utilized in a coke oven gas desulfurization system in the determination of that concentration limit.

EFFECTIVE DATE: This Notice of Withdrawal is effective March 15, 1978.

FOR FURTHER INFORMATION:

Mr. Thomas Maslany, Air Programs Branch, Air and Hazardous Materials Division, U.S. Environmental Protection Agency, Curtis Building, 6th and Walnut Streets, Philadelphia, Pa. 19106 215-597-2745.

SUPPLEMENTARY INFORMATION: On November 8, 1974 the Commonwealth of Pennsylvania submitted to the Regional Administrator an amendment to its State Implementation Plan (SIP). The Commonwealth requested that the amendments be reviewed and processed as a revision of its SIP. This proposal was to be strictly clarifying in nature and was to reflect a modification to § 123.23 of the Department of Environmental Resource's Rules and Regulations dealing with by-product coke oven gas. Specifically the proposal was to make clear the Department of Environmental Resources' intention that the emission standard of 50 grains of hydrogen sulfide per 100 dry standard cubic feet is to be applied jointly to the cleaned fuel gas stream from desulfurization units and the exhaust gas stream from sulfur recovery equipment. This would afford operators of facilities a greater flexibility in choosing the control method to reduce the overall sulfur oxide emission.

The Commonwealth of Pennsylvania provided adequate proof that public hearings were held in the Commonwealth on August 5-7, 1974.

On January 10, 1975 (40 CFR 2212) the Regional Administrator proposed the amendments as a revision of the Pennsylvania SIP and provided for a 30-day public comment period ending February 10, 1975. During this public comment period, comments were received from the Alan Wood Steel Company and the United States Steel Corporation. Neither company was in favor of the proposed revision. In a number of discussions, EPA and the Commonwealth reviewed the language of the amendment and modifications that might be made that would better express the Commonwealth's intent to provide the indudtry with greater flexibility in reducing the overall sulfur oxide emission.

In September 1977 the Commonwealth advised EPA that in light of the fact that language modifications of this regulation and revisions of other sulfur oxide related regulations would be advertised for public comment in early 1978, the Commonwealth no longer wanted EPA to act on this proposed State Implementation Plan revision. This was confirmed in a letter dated October 26, 1977 from the Commonwealth to the Regional Administrator, EPA Region III.

In response to this request, the Administrator hereby formally withdraws his proposal of this amendment from any further consideration as a revision of the Pennsylvania Implementation Plan.

(42 U.S.C. 7401.)

Dated: February 9, 1978.

JACK J. SCHRAMM,
Regional Administrator.

[FR Doc. 78-6635 Filed 3-14-78; 8:45 am]

[6560-01]

[40 CFR Part 52]

(FRL 867-1)

CONNECTICUT

Approval of Implementation Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice puts forth for public comment a proposed approval under the authority of the Clean Air Act, of a modification to the Indirect Source Regulation for Connecticut. The modification eliminates the requirement for review of all off-street facilities, such as shopping centers, parking lots, and sports complexes, and maintains review and permit requirements for highways and airports only. The applicable state regulation, § 19-508-100 of the Regulations of Connecticut State Agencies, was modified on June 30, 1977.

DATE: Comments must be received on or before April 14, 1978.

ADDRESSES: Copies of the Connecticut 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; and the Connecticut Department of Environmental Protection, Air Compliance Unit, State Office Building, Hartford, Conn. 06115.

Comments should be submitted to the Regional Administrator, Region I, Environmental Protection Agency, Room 2203A, JFK Federal Building, Boston, Mass. 02203.

FOR FURTHER INFORMATION CONTACT:

Donald White, Air Branch, EPA Region I, Room 2113, JFK Federal Building, Boston, Mass. 02203, 617-223-5609.

SUPPLEMENTARY INFORMATION: Following a July 1974 notice that EPA would require Indirect Source regulations in all non-attainment areas, the Connecticut Department of Environmental Protection (the Connecticut Department) prepared and submitted regulations requiring the air quality review of facilities such as shopping centers, sports complexes, highways, and airports to ensure that traffic attracted to those areas would not create a violation of a health related ambient air quality standard. These regulations were made part of the Connecticut State Implementation Plan in February 1976 (FEDERAL REGISTER, February 13, 1976, p. 6765). In July 1975, EPA announced an indefinite suspension of the federal indirect source regulations (FEDERAL REGISTER, July 3, 1975, p. 28064). Connecticut, however, continued to enforce the indirect source regulation, Section 19-508-100 of the Regulations of Connecitcut State Agencies, until June 30, 1977, when the regulation was modified to require review of highways and airports only.

It is the position of the Connecticut Department that the resources necessary to conduct an adequate review of the off-street facilities to which the regulation was applicable could not be justified in light of the estimated reductions of ambient air pollutants attributed to the regulation. The Department also believes that the State's current monitoring capabilities are not sufficient to ensure that the regulation is followed through to implementation. Further, it was determined that the economic burdens placed on the private facility operators was not commensurate with the nature of the carbon monoxide problem in Connecticut.

The subject of new source review provisions in state implementation plans was addressed by the 1977 Clean Air Act Amendments, Pub. L. 95-95. The amendments added section 110(a)(5) to the Act, the purpose of which, as explained by the Conference Report, was to prohibit the Administrator "outright from requiring indirect source review programs as part of state implementation plans, either directly or indirectly, except with respect to federally funded projects." H.R. Rep. 95-564, 95th Cong. 1st Sess., 126 (1977). The report further says: "Any program which has already been approved by the Administrator may remain part of the applicable implementation plan. However any State at any time may suspend or revoke such a program."

EPA's October 1977 appropriation bill included a prohibition against EPA's enforcement of parking regulations that are not specifically authorized by subsequent legislation. Pub. L. 95-119 § 406. Taken together, these laws restrict EPA's authority to: (1) require state plans to include indirect source review programs, (2) disapprove plan revisions for eliminating such programs, (3) promulgate federal indirect source review regulations, except with respect to federally owned, oper-

ated or assisted projects, or (4) enforce any such programs.

In light of this clear congressional intent, it is difficult to reconcile one phrase in section 110(a)(5)(A)(iii) of the Clean Air Act, which says that a State may suspend or revoke its indirect source review program: *Provided,* that its implementation plan "meets the requirements" of section 110 of the Act. One could argue that this language prohibits a state from suspending or revoking an indirect source review program unless its implementation plan is now fully adequate to assure attainment and maintenance of the ambient air quality standards.

In EPA's view this proviso should be given a meaning that more nearly fits the legislative history and the structure of the 1977 amendments. EPA therefore interprets the phrase as meaning that the plan must in all respects except attainment and maintenance of the standards meet the requirements of § 110, and that with respect to attainment and maintenance, the state must be proceeding in good faith to revise its plan by the January 1979 deadline for all non-attainment areas.

Such an interpretation is consistent with the approach of the 1977 amendments as to non-attainment areas. Under Part D of the Act, the states are required to revise their SIPs for all areas where any ambient air quality standard has not been attained. An extension until 1982 will be allowed for attainment, with a further extension to 1987 in the case of carbon monoxide and photochemical oxidants if, despite the application of all reasonably available control measures as expeditiously as practicable, the 1982 date cannot be met.

EPA emphasizes that indirect source review is a means of assuring attainment and maintenance of the carbon monoxide standard. In Connecticut, as in many areas of the country, the SIP does not now provide for attainment or maintenance of this standard. Therefore, by January 1, 1979, the plan must be revised and must show that this defect has been cured. If the state continues to disfavor a complete indirect source review program, some other measures must be adopted in its place.

The Regional Administrator therefore proposes to approve the Connecticut revision on the grounds that it is authorized by § 110(a)(5) of the Clean Air Act; that Connecticut is proceeding to revise its SIP to provide for attainment and maintenance of the standards as required by Part D of the Act; and that in all other respects the plan meets the requirements of section 110(a) of the Act. This revision being proposed pursuant to Sections 110(a) and 301 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601).

Dated: March 3, 1978.

WILLIAM R. ADAMS, Jr.,
Regional Administrator, Region I.

[FR Doc. 78-6642 Filed 3-14-78; 8:45 am]

[6560-01]

[40 CFR Part 52]

[FRL 866-6]

DISTRICT OF COLUMBIA

Proposed Revision of the District of Columbia Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The District of Columbia has submitted a plan for the improvement of bus travel in the District and has requested that it be reviewed and processed as a revision of the District of Columbia Implementation Plan. This "bus priority plan" is designed to improve the efficiency of bus service (i.e. increasing both headway and average speeds) while at the same time reducing operating costs. This bus improvement plan may also result in improved traffic flow and consequent reduction in mobile source-related air pollutants such as carbon monoxide (CO), photochemical oxidants (O_x) and oxides of nitrogen (NO_x). The District is currently not attaining the National Ambient Air Quality Standards for CO and O_x. At the same time, the District has requested that the express bus lane measures promulgated by EPA as part of the transportation control plan for the District's portion of the National Capital Interstate AQCR be revoked.

DATE: Comments must be submitted on or before April 14, 1978.

ADDRESSES: Copies of the proposed revision and acccompanying support documentation are available for public inspection during normal business hours at the following offices: U.S. Environmental Protection Agency, Air Programs Branch, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pa. 19106, Attention: Mr. Harold Frankford (3AH11); Department of Environmental Services, Bureau of Air and Water Quality Control, 5010 Overlook Avenue SW., Washington, D.C. 20032, Attention: Mr. John Brink; Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mr. Harold A. Frankford, Air Programs Branch, U.S. Environmental Protection Agency, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pa. 19106, telephone 215-597-8392.

SUPPLEMENTARY INFORMATION: On September 30, 1977, the District of Columbia submitted to the Regional Administrator, EPA Region III, a plan for the improvement of bus travel in the District and requested that it be reviewed and processed as a revision of the District of Columbia's Implementation Plan for the attainment and maintenance of National Ambient Air Quality Standards.

The plan would establish approximately 50 miles of "bus priority" lanes along major radial corridors leading to and from Washington's central business district (CBD). All of these corridors presently carry more than 21 buses per hour in the peak flow direction during the morning and afternoon peak periods and consist of the following:

1. Key Bridge-M Street NW.
2. Wisconsin Avenue-Massachusetts Avenue-Connecticut Avenue NW.
3. 16th Street NW-Seventh Street-Georgia Avenue NW.
4. Michigan Avenue NE-New York Avenue-Rhode Island Avenue NE.
5. Benning Road-H Street NE.
6. Pennsylvania Avenue SE.
7. South Capital Street-Martin Luther King, Jr. Avenue SE.

(Although New York Avenue NE carries less than 21 buses per hour during the peak periods, this corridor is considered by the District of Columbia to be a traffic corridor worthy of special examination.)

The 21 bus-per-hour figure represents the minimum number of buses to justify a bus priority lane on an arterial roadway, as the number of people being transported by 21 buses per hour equals the number of people transported per hour by automobile, assuming 750 automobiles per hour, 1.4 occupants per vehicle, and two available traffic lanes in addition to the bus priority lane.

In conjunction with establishment and implementation of the bus priority lanes, various traffic engineering measures are being recommended for implementation, including 11 additional miles of curb bus lanes, traffic signal timing changes, turn movement alterations, bus stop relocations, unbalanced traffic lanes, sign and marking work, and channelization. By implementing this entire transportation improvement program, bus speeds are expected to improve from levels of 11.7 miles per hour (mph) for local buses and 17.1 mph for express buses to 13.3 mph and 21.1 mph respectively. Because of the increased speed efficiency as well as the additional incentives provided to encourage increased usage of bus service, reductions of motor vehicle-related pollutants (carbon monoxide, non-methane hydrocarbons) can be expected. Current-

ly, the District of Columbia is not attaining the National Ambient Air Quality Standards for carbon monoxide and for photochemical oxidants (resulting from chemical reactions between non-methane hydrocarbons and nitrogen oxides in the presence of sunlight).

The District of Columbia also requests that this bus priority plan replace the express lane measure (40 CFR Section 52.476(h)) promulgated by EPA on December 6, 1973 (38 FR 33702) as part of the transportation control plan for the District's portion of the National Capital Interstate AQCR.

The District of Columbia submitted proof that a public hearing with respect to this amendment was held on September 8, 1976 in accordance with the requirements of 40 CFR Section 51.4.

The public is invited to submit comments on whether the District of Columbia's bus priority plan should be approved as a revision of the District of Columbia's Implementation Plan. All comments submitted on or before April 14, 1978.

The Administrator's decision to approve or disapprove this proposed revision will be further based on whether the District's bus priority plan meets the requirements of Section 110(a)(2) of the Clean Air Act, and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of Implementation Plans.

(42 U.S.C. 7401 et seq.)

Dated: March 3, 1978.

JACK J. SCHRAMM,
Regional Administrator.

[FR Doc. 78-6694 Filed 3-14-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 21502; RM-2727]

SUBSCRIPTION TELEVISION SERVICE

Order Extending Time For Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for filing comments and reply comments in a proceeding concerning aspects of the subscription television service. Petitioners, Wometco Blonder-Tonge Broadcasting Corp. and Wometco Home Theatre, state that the additional time is necessary so that it may respond to the complex problems presented for comment.

DATES: Comments must be received on or before April 28, 1978, and reply comments on or before May 26, 1978.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: March 7, 1978.

Released: March 10, 1978.

In the matter of Amendment of Part 73 of the Commission's rules and regulations in regard to § 73.642(a)(3) and other aspects of the Subscription Television Service, Docket No. 21502; RM-2727.

1. On December 15, 1977, the Commission adopted a Memorandum Opinion and Order and Notice of Inquiry and Notice of Proposed Rule Making, 43 FR 1516, in the above-entitled proceeding. The dates for filing comments and reply comments are presently March 13, and April 12, 1978, respectively.[1]

2. On March 1, 1978, Wometco Blonder-Tongue Broadcasting Corp. and Wometco Home Theatre, Inc. ("Wometcos"), filed a request seeking an extension of time to and including April 28, 1978.

3. Wometcos states that because of the complexity of the problems presented for comment and the inability to secure precise information from manufacturers as to the availability and cost of decoders, additional time is needed in order to prepare meaningful comments.

4. We are of the view that the additonal time is warranted in order to assure development of a sound and comprehensive record on which to base a decision in this proceeding. *Accordingly, it is ordered,* That the dates for filing comments and reply comments in Docket 21502 are extended to and including April 28, and May 26, 1978, respectively.

5. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-6718 Filed 3-14-78; 8:45 am]

[1] See 42 FR 2413, January 17, 1978.

[6712-01]

[47 CFR PART 73]

[BC Docket No. 78-87; RM-3014]

FM BROADCAST STATION IN ST. MARY'S, GA.

Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: Action taken herein proposes the assignment of a Class A FM channel to St. Marys, Ga. The proposal for that community's first FM assignment was made in a petition filed by Camden County Broadcasters.

DATES: Comments must be received on or before May 2, 1978, and reply comments on or before May 22, 1978.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: March 3, 1978.

Released: March 9, 1978.

In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations. (St. Marys, Ga.), BC Docket No. 78-87, RM-3014.

1. The Commission has under consideration a petition for rule making[1] seeking asmendment of § 73.202(b) of the Commission's rules, the Table of FM Assignments. The petition was filed on behalf of Camden County Broadcasters ("petitioner"), proposing the assignment of FM Channel 228A on a hyphenated basis to the communities of St. Marys and Kingsland, Ga. The channel could be so assigned in conformity with the minimum distance separation requirement without affecting the present assignment in the FM Table. The petitioner's preclusion study shows that the proposed assignment would only affect Channel 228A in the St. Marys-Kingsland area. Petitioner states that it will immediately file an application for the proposed channel, if assigned. No responses to the proposal have been received.

2. St Marys (pop. 3,408),[2] in Camden County (pop. 11,334), is located in the southeastern part of Georgia, approximately 45 kilometers (28 Miles) north of Jacksonville, Fla. Kingsland, locat-

[1] Public Notice of the petition was given on December 14, 1977, Report No. 1093.

[2] Population figures are taken from the 1970 U.S. Census.

ed approximately 14 kilometers (9 miles) northwest of St. Marys, has a population of 1,831. There is no local aural broadcast service in either St. Marys or Kingsland.

3. In support of its proposal, petitioner claims that a recent U.S. Census projection indicates the population of Camden County, as of July 1, 1975, has increased nearly 6 percent in five years. It states that the largest employers in Camden County are two divisions of the Gilman Paper Co. It asserts that economic growth in the area has been impressive with retail sales in Camden County increasing over 57 percent between 1973-1974. Petitioner states the proposed channel would principally serve the needs of these two communities and would provide a first full time aural broadcast service to Camden County.

4. Although petitioner requests assignment of the channel on a hypenated basis, no basis has been shown for doing so. Therefore, the assignment will be proposed for St. Marys, the larger community. Nonetheless, since the two communities are located within 14 kilometers (9 miles) of each other, if the channel is assigned to St. Marys, it would be available for use at Kingsland under the provisions of § 73.203(b) of the rules.

5. In view of the foregoing information, and the fact that the proposed FM channel could bring a first local aural broadcast service to St. Marys, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the rules, with regard to St. Marys, Georgia, as follows:

City and Channel No.	
St. Marys, Ga.;	Present: —; Proposed: 228A.

6. Authority to institute rule making proceedings; showings required; cut-off procedures; and filing requirements are contained in the attached Appendix below and are incorporated herein.

NOTE.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before May 2, 1978, and reply comments on or before May 22, 1978.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in rely comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 78-6716 Filed 3-14-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[49 CFR Parts 1201 and 1206]

[Docket No. 36367]

ACCOUNTING FOR CERTAIN GOVERNMENT TRANSFERS BY RAILROADS AND MOTOR CARRIERS OF PASSENGERS

Extension of Public Comment Period

AGENCY: Interstate Commerce Commission.

ACTION: Extension of Public Comment Period.

SUMMARY: Upon consideration of the record in the above-entitled proceeding, including the request of the Association of American Railroads for an extension of time for filing public comment, the comment period has been extended until February 28, 1978.

DATE: Written comments must be received by February 28, 1978.

ADDRESS: Send comments (with 15 copies, if possible) to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Brown, Jr., Chief, Section of Accounting, Bureau of Accounts, Interstate Commerce Commission, Washington, D.C. 20423, phone number 202-275-7448.

SUPPLEMENTARY INFORMATION: The proposed rule would provide accounting and reporting regulations for certain transfers of cash and other assets to railroads and bus companies from Federal, State or local governments. The Notice of Proposed Rulemaking was published in Volume No. 43, page 1371 of the FEDERAL REGISTER on January 9, 1978.

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

[FR Doc. 78-6721 Filed 3-14-78; 8:45 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.

[3410-02]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

PUBLICATION OF LIST OF WAREHOUSES LICENSED UNDER THE U.S. WAREHOUSE ACT

Notice is hereby given that the Agricultural Marketing Service has published a list of warehouses licensed under the U.S. Warehouse Act (7 U.S.C. 241 et seq.) as of December 31, 1977, as required by section 26 of that Act. Copies of the list will be distributed to all licensed warehousemen. Other interested persons may obtain a copy of the list from:

Mrs. Judy Fry, Warehouse Service Branch, Transportation and Warehouse Division, U.S. Department of Agriculture—AMS, Room 1777—South Agriculture Building, Washington, D.C. 20250. Phone: 202-447-3616.

Done at Washington, D.C., on March 9, 1978.

WILLIAM T. MANLEY,
Deputy Administrator, Marketing Program Operations.

[FR Doc. 78-6657 Filed 3-14-78; 8:45 am]

[3410-16]

Soil Conservation Service

GEODE WONDERLAND RC&D AREA CRITICAL AREA TREATMENT MEASURES, IOWA

Intent Not To Prepare Environmental Impact Statements

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that environmental impact statements are not being prepared for the Geode Wonderland RC&D Area Critical Area Treatment Measures in Des Monies, Henry, Lee, and Louisa Counties, Iowa.

The environmental assessment of these Federally assisted actions indicates that the projects will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. William J. Brune, State Conservationist, has determined that the preparation and review of environmental impact statements are not needed for this project.

These measures concern plans for critical area treatment. The planned works of improvement include small grade stabilization strutures, tile outlet terraces, sediment and water control basins, diversions, critical area planting, debris basins, and fencing.

The notice of intent not to prepare environmental impact statements has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental asessment are on file and may be reviewed by contacting Mr. William J. Brune, State Conservationist, Soil Conservation Seryice, 693 Federal Building, 210 Walnut Street, Des Moines, Iowa 50309, 515-284-4260. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

Dated: March 2, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program, Pub. L. 87-703, 16 U.S.C. 590 a-f, q.)

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc. 78-6652 Filed 3-14-78; 8:45 am]

[3410-16]

GILMER COUNTY FISHERMAN ACCESS PUBLIC WATER-BASED FISH AND WILDLIFE AND RECREATION RC&D MEASURE, W. VA.

Intent Not To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statment is not being prepared for the Gilmer County Fisherman Access Public Water-Based Fish and Wildlife and Recreation RC&D Measure, Gilmer County, W. Va.

The environmental assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Craig M. Right, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for construction of facilities to provide public water-based fish and wildlife and recreational opportunities. The planned works of improvement include establishment of six fisherman access areas which include parking areas, boat launching ramps, sanitary facilities, water management structures, and road improvement.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Craig M. Right, State Conservationist, Soil Conservation Service, 75 High Street, P.O. Box 865, Morgantown, W. Va. 26505, 304-599-7151. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

Dated: March 2, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590 a-f, q.)

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc. 78-6651 Filed 3-14-78; 8:45 am]

[3410-16]

SALMON CREEK CRITICAL AREA TREATMENT RC&D MEASURE, N.Y.

Intent Not To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of

1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Salmon Creek Critical Area Treatment RC&D Measure, Tompkins County, N.Y.

The environmental assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Robert L. Hilliard, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for critical area treatment. The planned works of improvement include installing approximately 700 linear feet of rock riprap on two streambank areas, shaping of streambanks, and seeding of disturbed areas.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Robert L. Hilliard, State Conservationist, Soil Conservation Service, U.S. Courthouse and Federal Building, 100 South Clinton Street, Room 771, Syracuse, N.Y. 13260, 315-423-5493. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

Dated: March 2, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590 a-f, q.)

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc. 78-6653 Filed 3-14-78; 8:45 am]

[3410-16]

SOUTHERN IOWA RC&D AREA, CRITICAL AREA TREATMENT MEASURES, IOWA

Intent Not to Prepare Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that environmental impact statements are not being prepared for the Southern Iowa RC&D Area, Critical Area Treatment Measures in Adair, Adams, Clarke, Decatur, Ringgold, Taylor, and Union Counties, Iowa.

The environmental assessment of these Federally assisted actions indicates that the projects will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. William J. Brune, State Conservationist, has determined that the preparation and review of environmental impact statements are not needed for these projects.

These measures concern plans for critical area treatment. The planned works of improvement include small grade stabilization structures, tile outlet terraces, sediment and water control basins, critical area planting, debris basins, and fencing.

The notice of intent not to prepare environmental impact statements has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. William J. Brune, State Conservationist, Soil Conservation Service, 693 Federal Building, 210 Walnut Street, Des Moines, Iowa 50309, 515-284-4260. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

Dated: March 2, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program— Pub. L. 87-703, 16 U.S.C. 590 a-f, q.)

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc. 78-6654 Filed 3-14-78; 8:45 am]

[3410-16]

WIREGRASS RC&D AREA CRITICAL AREA TREATMENT RC&D MEASURES, ALA.

Intent Not To Prepare Environmental Impact Statements

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conervation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that environmental impact statements are not being prepared for the Wiregrass RC&D Area Critical Area Treatment RC&D Measures in Crenshaw, Barbour, Covington, Coffee, Dale, Henry, Geneva, and Houston Counties, Ala.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. W. B. Lingle, State Conservationist, has determined that the preparation and review of environmental impact statements are not needed for these projects.

These measures concern plans for critical area treatment. The planned works of improvement include small grade stabilization structgures, diversions, critical area plantings, concrete and grass flumes, and grassed waterways.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developd during the environmental assessment are on file and may be reviewed by contacting Mr. W. B. Lingle, State Conservationist, Soil Conservation Service, 138 South Gay Street, Auburn, Ala. 36830, 205-821-8070. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested perties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

Dated: March 2, 1978.

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conervation Service.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590a-f, q.)

[FR Doc. 78-6655 Filed 3-14-78; 8:45 am]

[3410-16]

WIRT COUNTY HIGH SCHOOL RECREATION AREA LAND DRAINAGE RC&D MEASURE, W. VA.

Intent Not To Preserve an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental

Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Wirt County High School Recreation Area Land Drainage RC&D Measure, Wirt County, W. Va.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Craig M. Right, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for drainage of 3 acres of school grounds. The planned works of improvement include land smoothing and shaping and surface and subsurface water management structures.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Craig M. Right, State Conservationist, Soil Conservation Service, 75 High Street, P.O. Box 865, Morgantown, W. Va. 26505, 304-599-7151. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(Catalog of Federal Domectic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590a-f, q.)

Dated: March 2, 1981.

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conservation Service.

[FR Doc. 78-6656 Filed 3-14-78; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[Docket No. 31071; Order 78-3-48]

DELTA AIR LINES, INC.

Order to Show Cause for Los Angeles-San Francisco Fill-up Authority

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 9th day of March 1978.

Delta Air Lines has authority on its route 114 between San Francisco and Los Angeles, on the one hand, and points in Cuba, Jamaica, Puerto Rico and Venezuela, on the other, but condition (4) restricts it from carrying local traffic between Los Angeles and San Francisco. By application and petition for show cause order, dated June 30, 1977, Delta seeks removal of this restriction, stating that such action would be consistent with our proposed grant of Los Angeles-San Francisco fill-up authority to Braniff Airways, Northwest Airlines, and Pan American World Airways in Order 77-4-153.[1] Delta now operates nine round trips per week over a San Francisco-Los Angeles-New Orleans-San Juan routing,[2] and has operated at least six such round trips per week for the past four years. There are a number of unused seats on the San Francisco-Los Angeles portion of these flights, particularly in the eastbound direction.[3]

For reasons similar to those in Orders 77-4-153, 77-11-10, and 77-12-164, we tentatively find that the public convenience and necessity require fill-up authority for Delta in this market. This authority will benefit Delta by filling some of its empty seats, at little expense to the carrier, the San Francisco-San Juan traveling public by helping to insure the continued operation of the San Juan service, and travelers in the local market by providing a greater choice of frequencies. Moreover, we do not believe that nine weekly round trips by Delta between Los Angeles and San Francisco will seriously harm incumbent carriers, or that Delta will increase its local service to any great extent as a result of this fill-up authority since the distance between Los Angeles and San Juan over New Orleans is 3390 miles, while the Los Angeles-San Francisco distance is only 337 miles.[4]

American Airlines and United Air Lines oppose Delta's application. In Order 77-11-10, however, we rejected American's argument that the Board cannot properly award Los Angeles-San Francisco fill-up authority without first granting American's application in Docket 28874 to serve both points on the same flights. Similarly, we have previously rejected the general arguments against award of fill-up authority which United and American repeat in opposition to Delta's application.

We will give persons 30 days following adoption of this order to show cause why the tentative findings and conclusions set forth here should not be made final. We expect such persons to direct their objections, if any, to specific markets, and to support them with detailed economic analysis. If anyone requests an oral evidentiary hearing, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a hearing that he cannot establish in written pleadings. We will not entertain general, vague, or unsupported objections. In this connection, we note that it is not enough merely to state that one objects to the grant of a certain type of authority by show-cause procedures. Objections must demonstrate the necessity of an evidentiary hearing.[5]

Accordingly, it is ordered, That: 1. All interested persons be directed to show cause why the Board should not issue an order making final the tentative findings and conclusions we have made above and authorizing Delta Air Lines Inc. to transport persons, property, and mail in interstate air transportation in the Los Angeles-San Francisco market on flights operated in foreign and/or overseas air transportation pursuant to its certificate for Route 114;

2. Any interested persons having objection to the issuance of an order making final the proposed findings, conclusions, and certificate amendment set forth here shall, within 30 days after the date of adoption of this order, file a statement of objections together with a summary of testimony, statistical data, and such evidence they rely on to support the stated objections; answers may be filed 15 days after that;

3. If timely and properly supported objections are filed, we will accord the matters or issues raised by the objections full consideration before taking further action;[6]

4. In the event no one files objections, we will consider all further pro-

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[1] We made final this proposal in Order 77-11-10 and denied petitions for reconsideration in Order 77-12-164.

[2] Delta already has New Orleans-Los Angeles/San Francisco local traffic rights.

[3] According to Attachment II of Delta's petition for show-cause procedures, the average load factor for 1976 over this segment was 16.5% eastbound and 63.9% westbound.

[4] Delta operates one weekly Houston-New Orleans-Maracaibo-Caracas round trip which it could extend the 1379 miles beyond Houston to Los Angeles.

[5] We have considered Delta's representations as to the environmental effect and gross transport revenue increase resulting from an award of Los Angeles-San Francisco fill-up rights. On the basis of these representations, we find that such an award will not be a major Federal action significantly affecting the quality of the environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, and that, for purposes of a license fee, the resulting increase in gross transport revenues will be $454,113.

[6] All motions and/or petitions for reconsideration shall be filed within the period allowed for filing objections and we will entertain no further motions, requests, or petitions for reconsideration of this order.

cedural steps waived, and we will take final action on the case; and

5. Delta Air Lines' petition for show-cause order be granted.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-6742 Filed 3-14-78; 8:45 am]

[6320-01]

[Docket No. 23456; Order 78-3-40]

WTC AIR FREIGHT

Order Terminating Investigation Regarding Rates of Toilet Preparations and Related Articles From New York/Newark to Los Angeles

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 9th day of March 1978.

By Order 71-6-4, June 1, 1971 the Board instituted an investigation, without suspension, of tariff changes proposed by WTC Air Freight (WTC), an air freight forwarder, establishing reduced airport-to-airport specific commodity rates on various toilet preparations and related articles moving from New York/Newark to Los Angeles.

The investigation was prompted by a complaint by United Air Lines, Inc., filed after WTC's rates had become effective, alleging that they were uneconomic.

Pub. L. 95-163, November 9, 1977, has removed Board jurisdiction over the reasonableness of domestic cargo rates. Therefore, this proceeding should be terminated.

Accordingly, it is ordered: 1. That the investigation instituted by Order 71-6-4, June 1, 1971, in Docket 23456 be terminated; and

2. That copies of this order shall be served upon WTC Air Freight and United Air Lines, Inc.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[1]
Secretary.

[FR Doc. 78-6741 Filed 3-14-78; 8:45 am]

DEPARTMENT OF COMMERCE

Bureau of the Census

ESTIMATES OF THE VOTING AGE POPULATION FOR 1977

In accordance with the requirements of the Federal Election Campaign Act Amendments of 1976, title 2, U.S.C. 441a(e), notice is hereby given that the estimates of the voting age population (18 years of age and over) for July 1, 1977, for each State, congressional district, the District of Columbia, the Commonwealth of Puerto Rico, and the territories of Guam and the Virgin Islands are as shown in the following table. These estimates have been certified to the Federal Election Commission.

JUANITA M. KREPS,
Secretary of Commerce.

Estimates of the population of voting age for States, congressional districts, and selected outlying areas: July 1, 1977

[In thousands]

State and Congressional District	Population 18 and over
UNITED STATES	152,089
Alabama	2,543
1	357
2	360
3	372
4	395
5	347
6	359
7	353
Alaska	258
Arizona	1,562
1	361
2	394
3	414
4	394
Arkansas	1,494
1	348
2	379
3	428
4	339
California	15,627
1	406
2	406
3	375
4	358
5	371
6	342
7	344
8	355
9	362
10	347
11	367
12	350
13	364
14	384
15	367
16	419
17	371
18	352
19	369
20	385
21	318
22	344
23	391
24	402
25	304
26	339
27	366
28	339
29	293
30	307
31	289
32	342
33	339
34	331
35	349
36	333
37	387
38	327
39	377
40	515
41	380
42	352
43	510
Colorado	1,828
1	315
2	389
3	345
4	392
5	387
Connecticut	2,238
1	365
2	389
3	373
4	350
5	381
6	380
Delaware	407
District of Columbia	505
Florida	6,219
1	357
2	379
3	323
4	437
5	503
6	447
7	382
8	421
9	345
10	508
11	520
12	408
13	390
14	407
15	395
Georgia	3,450
1	322
2	327
3	322
4	351
5	295
6	390
7	374
8	328
9	398
10	343
Hawaii	615
1	291
2	322
Idaho	574
1	297
2	277
Illinois	7,873
1	265
2	298
3	336
4	355
5	290
6	330
7	255
8	274
9	383
10	327
11	312
12	370
13	340
14	351
15	333

Estimates of the population of voting age for States, congressional districts, and selected outlying areas: July 1, 1977— Continued

[In thousands]

[1] All Members concurred.

Estimates of the population of voting age for States, congressional districts, and selected outlying areas: July 1, 1977— Continued

[In thousands]

State and Congressional District	Population 18 and over
16	315
17	352
18	339
19	332
20	341
21	351
22	351
23	311
24	363
Indiana	3,690
1	302
2	365
3	327
4	334
5	342
6	335
7	354
8	337
9	347
10	334
11	312
Iowa	2,025
1	344
2	329
3	334
4	347
5	345
6	325
Kansas	1,664
1	332
2	343
3	331
4	319
5	340
Kentucky	2,402
1	364
2	343
3	302
4	322
5	361
6	360
7	352
Louisiana	2,609
1	328
2	329
3	331
4	323
5	324
5	344
7	325
8	305
Maine	756
1	384
2	372
Maryland	2,921
1	393
2	368
3	339
4	388
5	332
6	421
7	298
8	383
Massachusetts	4,166
1	356
2	338
3	338
4	335
5	339
6	325
7	327
8	371
9	330
10	356
11	350
12	401
Michigan	6,284
1	284
2	351
3	338
4	346
5	333
6	356
7	310
8	330
9	340
10	375
11	370
12	343
13	243
14	322
15	330
16	310
17	323
18	330
19	352
Minnesota	2,765
1	358
2	364
3	320
4	319
5	324
6	362
7	358
8	361
Mississippi	1,575
1	311
2	291
3	317
4	314
5	341
Missouri	3,417
1	259
2	335
3	312
4	367
5	293
6	358
7	393
8	377
9	364
10	360
Montana	523
1	268
2	255
Nebraska	1,095
1	371
2	368
3	357
Nevada	439
New Hampshire	594
1	300
2	294
New Jersey	5,224
1	358
2	421
3	363
4	340
5	334
6	390
7	327
8	335
9	344
10	287
11	357
12	326
13	373
14	331
15	338
New Mexico	783
1	397
2	386
New York	12,879
1	389
2	314
3	306
4	302
5	327
6	339
7	342
8	372
9	355
10	349
11	335
12	239
13	359
14	280
15	328
16	330
17	360
18	394
19	292
20	361
21	188
22	382
23	332
24	323
25	354
26	354
27	352
28	331
29	350
30	337
31	325
32	341
33	318
34	317
35	325
36	321
37	283
38	345
39	328
North Carolina	3,864
1	341
2	334
3	340
4	382
5	353
6	341

Estimates of the population of voting age for States, congressional districts, and selected outlying areas: July 1, 1977— Continued

[In thousands]

State and Congressional District	Population 18 and over
7	358
8	343
9	343
10	358
11	371
North Dakota	450
Ohio	7,484
1	305
2	310
3	306
4	327
5	335
6	346
7	325
8	345
9	321
10	354
11	343
12	342
13	331
14	313
15	345
16	335
17	332
18	341
19	321
20	298
21	251
22	323
23	335
Oklahoma	1,994
1	317
2	338
3	346
4	345
5	301
6	347
Oregon	1,695
1	445
2	430
3	386
4	434
Pennsylvania	8,508
1	328
2	323
3	309
4	318
5	363
6	359
7	318
8	355
9	346
10	371
11	361
12	348
13	326
14	304
15	362
16	347
17	366
18	321
19	358
20	309
21	337
22	348
23	349
24	342
25	338
Rhode Island	673
1	325
2	349
South Carolina	1,953
1	332
2	358
3	329
4	327
5	315
6	292
South Dakota	475
1	240
2	235
Tennessee	3,028
1	388
2	398
3	369
4	405
5	363
6	413
7	381
8	310
Texas	8,773
1	368
2	403
3	404
4	379
5	337
6	400
7	491
8	343
9	347
10	428
11	415
12	311
13	343
14	323
15	359
16	354
17	349
18	316
19	337
20	303
21	411
22	378
23	346
24	328
Utah	797
1	400
2	397
Vermont	336
Virginia	3,631
1	357
2	347
3	356
4	341
5	358
6	356
7	406
8	362
9	380
10	368
Washington	2,589
1	358
2	362
3	406
4	383
5	385
6	365
7	329
West Virginia	1,313
1	321
2	348
3	319
4	325
Wisconsin	3,244
1	351
2	372
3	383
4	342
5	326
6	359
7	372
8	364
9	375
Wyoming	278
OUTLYING AREAS	
Puerto Rico	2,010
Guam	49
Virgin Islands	59

[FR Doc. 78-6692 Filed 3-14-78; 8:45 am]

[3510-25]

Foreign-Trade Zones Board

[Docket No. 1-78]

FOREIGN-TRADE ZONE—DALLAS/FORT WORTH AIRPORT, TEX.

Application and Public Hearing

Notice is hereby given that an application has been submitted to the Foreign-Trade Zone Board (the Board) by the Dallas/Fort Worth Regional Airport Board, a public agency of the Cities of Dallas and Fort Worth, Tex., requesting authority to establish a general-purpose foreign-trade zone within the Dallas/Fort Worth Customs port of entry. The proposed zone would be located in Dallas County on the grounds of the Dallas/Fort Worth Airport which is jointly owned by the cities. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. Section 81a-81u), and the Regulations of the Board (15 CFR Part 400). It was formally filed on March 8, 1978. The applicant is authorized to make this proposal as a joint airport board under Texas Senate Bill No. 362, effective on August 29, 1977.

The proposal calls for the establishment of a 250 acre general-purpose foreign-trade zone within the northeastern portion of the Dallas/Fort Worth Airport on the north and south

sides of State Highway 114, in Dallas County, Tex. Initial zone facilities will be located at the Radio Road and Highway 114 interchange. They will include a warehouse/manufacturing building, a materials handling and terminal building, and an administration building.

The application contains economic data and information concerning the need for providing zone services to various firms in the Dallas/Fort Worth area. Several firms have indicated their intention to use the zone for warehousing, assembly, distribution, and light manufacturing activities. Among the initial zone users are firms involved with leather goods, electronic components, machine tools, watch components, toys, and television equipment.

In accordance with the Board's regulations, an Examiners Committee has been appointed to investigate the application and report thereon to the Board. The Committee consists of: Hugh J. Dolan (Chairman), Office of the Secretary, U.S. Department of Commerce, 14th and E Streets NW., Washington, D.C. 20230; Ernest J. Gonsoulin, Director (Inspection and Control), Region VI, U.S. Customs Service, 500 Dallas Street (Allen Center), Room 1255, Houston, Tex. 77002; and Colonel John F. Wall, Jr., District Engineer, U.S. Army Engineer District Forth Worth, P.O. Box 17300, Fort Worth, Tex. 76102.

In connection with its investigation of the proposal, the Examiners Committee will hold a public hearing on April 12, 1978, beginning at 9 a.m., in the 2nd floor Board Room of the Administration Building, Dallas/Fort Worth Airport, East Airfield Drive, Dallas/Fort Worth, Airport, Tex. The purpose of the hearing is to help inform interested persons about the proposal, to provide an opportunity for their expression of views, and to obtain information useful to the examiners.

Interested persons or their representatives are invited to present their views at the hearing. Such persons should, by April 5, notify the Board's Executive Secretary, in writing at the address below, of their desire to be heard. In lieu of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the Examiners Committee, care of the Executive Secretary, at any time from the date of this notice through May 12, 1978. Evidence submitted during the post-hearing period is not desired unless it is clearly shown that the matter is new and material and that there are good reasons why it could not be presented at the hearing. A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Office of the Director, U.S. Department of Commerce District Office, Room 7A5, 1100 Commerce Street, Dallas, Tex. 75242.
Office of the Executive, Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 6886-B, Washington, D.C. 20230.

Dated: March 8, 1978.

JOHN J. DA PONTE, Jr.,
Executive Secretary,
Foreign-Trade Zones Board.

[FR Doc. 78-6695 Filed 3-14-78; 8:45 am]

[3510-25]
[4310-10]

DEPARTMENT OF COMMERCE

Industry and Trade Administration

DEPARTMENT OF THE INTERIOR

Office of the Secretary

WATCHES AND WATCH MOVEMENTS

Final Watch Quota Allocation Rules for 1978

AGENCY: Industry and Trade Administration, Bureau of Trade Regulation.

ACTION: Amendment to Final Watch Quota Allocation Rules for 1978.

SUMMARY: Final rules for the allocation of calendar year 1978 watch quotas under Pub. L. 89-805 were published in the FEDERAL REGISTER dated February 1, 1978 (43 F.R. 4274). Among other things, the rules invited applications by March 1, 1978 from new firms for the calendar year 1978, American Samoa quota and for 150,000 units of the calendar year 1978 Guam quota.

No applications were received by the March 1, 1978 deadline and the annual rules are amended to provide for an additional period in which to submit applications.

FOR ADDITIONAL INFORMATION CONTACT:

Mr. Richard M. Seppa, who can be reached by telephone on 202-377-2925.

SUPPLEMENTARY INFORMATION: Section 5 of the Final Rules for the allocation of calendar year 1978 watch quotas provides in pertinent part that if the Secretaries of Commerce and the Interior determine with respect to the new entrant provisions for quotas in Guam or American Samoa that no application has been received by March 1, 1978 * * *, "the Secretaries may issue a new invitation or extend the date for * * * applications from other new firms." Because no application was received pursuant to the new-entrant provision prior to the March 1, 1978 deadline, the Secretaries have determined to amend the Final Rules for the allocation of watch quotas for calendar year 1978 in order to provide additional time for the submissions of applications.

Accordingly, section 5 of the Final Rules for the allocation of watch quotas (43 F.R. 4275) is amended as follows: a. In section 5, line 5, in lieu of "March 1, 1978," substitute "such later date as the Secretaries may establish (by publication of notice in the FEDERAL REGISTER),".

b. At the end of the first sentence in section 5, insert the following sentence: "Any date which might be established, after which applications will no longer be accepted, will be within calendar year 1978 and will not be less than 15 days following the date of the publication of such notice."

Applicants for new-entrant quotas in Guam or American Samoa should comply with the procedures set forth in section 4 and the balance of section 5 of the Final Rules which remain in effect.

Dated: March 10, 1978.

STANLEY J. MARCUSS.
Deputy Assistant Secretary for Trade Regulation, Department of Commerce.

RUTH G. VAN CLEVE,
Director, Office of Territorial Affairs, Department of the Interior.

[FR Doc. 78-6747 Filed 3-14-78; 8:45 am]

[6330-01]

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts will meet in open session on Tuesday, April 4, 1978, at 10 a.m. in the Commission offices at 708 Jackson Place NW., Washington, D.C. 20006, to discuss various projects affecting the appearance of Washington, D.C. This meeting is a rescheduling of a meeting previously announced for March 28, 1978.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, at the above address.

This notice amends notice published December 27, 1977, 42 FR 64651.

Signed in Washington, D.C., March 8, 1978.

CHARLES H. ATHERTON,
Secretary.

[FR Doc. 78-6643 Filed 3-14-78; 8:45 am]

[3910-01]

DEPARTMENT OF DEFENSE

Department of the Air Force

SCIENTIFIC ADVISORY BOARD

Meeting

MARCH 9, 1978.

The USAF Scientific Advisory Board Advisory Group, Armament Development and Test Center, will hold joint

meetings with the National Academy of Sciences Air Force Studies Board on March 30, 1978 from 8:00 a.m. to 5:00 p.m. and on March 31, 1978 from 8:00 a.m. to 2:00 p.m. at Eglin Air Force Base, Florida, in Building 1, room 204.

The Group and the Board will receive classified briefings and hold classified discussions on Air-to-Air Technology.

The meetings concern matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and that accordingly the meetings will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at 202-697-8404.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison Officer, Directorate of Administration.

[FR Doc. 78-6715 Filed 3-14-78; 8:45 am]

[6740-02]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. AR61-2 and AR69-1, et al.

MICHIGAN WISCONSIN PIPE LINE CO.

Proposed Plan of Refund

MARCH 8, 1978.

Take notice that on November 25, 1977, Michigan Wisconsin Pipe Line Co. (Mich-Wis) tendered for filing its proposed refund plan required of the Federal Power Commission in its order issued September 23, 1977, in this docket. Mich-Wis proposes to credit some $1,011,607.95 to its unrecovered Purchased Gas Cost account to comply with the FPC's Opinion No. 598 as amended by the above referenced order. This, according to the company is in accordance with section 15.3 of the General Terms and Conditions of its gas tariff.

The Company states that copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

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 sections 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 March 31, 1978. 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. 78-6675 Filed 3-14-78; 8:45 am]

[6740-02]

[Docket Nos. AR61-2, AR69-1, et al.; Docket Nos. G-1964, G12706, G-18841, RP65-69, RP69-13, and RP70-29]

TEXAS EASTERN TRANSMISSION CORP.

Proposed Plan of Refund

MARCH 8, 1978.

Take notice that Texas Eastern Transmission Corp. (Texas Eastern), on July 28, 1977, tendered for filing, in accordance with the Commission's order directing disbursement and flow through of refunds issued on August 19, 1975, its proposed supplemental plan of refund to flow through additional monies received from United Gas Pipe Line Co. pursuant to Opinion No. 598.

Texas Eastern proposes to flow-through to its jurisdictional customers $432,148.79 of the $433,603.00 received from United Gas Pipe Line Co. by crediting the balance of its Gas Cost Adjustment Account by such amount, as provided for in section 23.8 of the General Terms and Conditions of its FPC Gas Tariff, Fourth Revised Volume No. 1.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

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 sections 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 March 31, 1978. 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. 78-6674 Filed 3-14-78; 8:45 am]

[6740-02]

[Docket Nos. AR61-2 and AR69-1, et al.]

SOUTHERN NATURAL GAS CO.

Proposed Supplemental Refund Plan

MARCH 8, 1978.

Take notice that on February 7, 1978, Southern Natural Gas Co. (Southern) tendered for filing its proposed supplemental refund plan required by the Federal Power Commission in its order issued September 23, 1977, in this docket. Southern states that this filing also comports with the terms of settlement agreements in FPC Docket Nos. G-13258, G-18512, G-20509 and RP60-15, RP70-5 and RP70-16, and RP70-38, et al.

Southern proposes to retain some $203,152.21 as an offset to the reserve deficiencies in Docket No. G-18517.

The Company states that copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

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 sections 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 March 31, 1978. 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. 78-6673 Filed 3-14-78; 8:45 am]

[6740-02]

[Docket No. RI78-21]

BRADEN-DEEM, INC.

Petition for Special Relief

MARCH 7, 1978.

Take notice that Braden-Deem, Inc. (BD), Suite 520, 200 East First Street, Wichita, Kans. 67202, filed, on December 7, 1977, a petition for special relief pursuant to 18 CFR § 2.76.

BD requests a rate of 83 cents/Mcf plus annual escalation of 14 cents/Mcf for all sales of its remaining 269,209 Mcf of reserves to Panhandle Eastern Pipe Line Co. (Panhandle). BD is presently selling gas to Panhandle for 35 cents/Mcf. BD estimates that production will decline 10 percent/year and operating costs will increase 10 percent/year until the reserves are depleted in 7 years, thus it says it needs an annual increase of 14 cents/Mcf to profitably continue the production from these wells. BD estimates it will need to invest $34,500 to continue the operations as proposed.

Any person desiring to be heard or to make any protest with reference to said petition should on or before

March 29, 1978, 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 or Practice and Procedure (18 CFR 1.8 or 1.10). 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 party 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. 78-6663 Filed 3-14-78; 8:45 am]

[6740-02]

[Docket No. RI78-29]

BRIGHT & SCHIFF

Petition for Special Relief

MARCH 7, 1978.

Take notice that on February 13, 1978, Bright & Schiff (B&S), 2355 Stemmons Building, Dallas, Tex. 75207, filed a petition for special relief pursuant to 18 CFR § 2.76 requesting a rate of $1/Mcf for the sale of its gas from the Hamman No. 1 gas well, Monte Christo Field, Hidalgo County, Tex. to South Texas Natural Gas Gathering Co. (South Texas), for resale to Transcontinental Gas Pipe Line Corp. (Transco).

B&S estimates the remaining 50,000 Mcf of reserves will be depleted in 2 years. In order to produce these reserves B&S avers it needs to add compression facilities, necessitating the requested rate of $1/Mcf. It is presently collecting a rate of 33.32 cents/Mcf from South Texas.

Any person desiring to be heard or to make any protest with reference to said petition should on or before March 29, 1978, 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). 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 party 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. 78-6664 Filed 3-14-78; 8:45 am]

[6740-02]

[Docket No. ER76-533]

CENTRAL VERMONT PUBLIC SERVICE CORP.

Notice of Compliance Filing

MARCH 8, 1978.

Take notice that on March 1, 1978, Central Vermont Public Service Corp. (Central Vermont) filed a compliance report in accordance with Paragraph (D) of the Order of the Federal Power Commission issued September 30, 1977 which required a showing of monthly billing determinants and revenues under prior, present, and adjudicated rates, monthly adjudicated rate increase, monthly rate refund, and the monthly interest computation, together with a summary of such information for the total refund period.

Central Vermont states that a copy of the compliance report has been furnished to the Vermont Public Service Board and the New Hampshire Public Utilities Commission.

Any person desiring to be heard or to protest this compliance filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure. All comments should be filed on or before March 29, 1978. Copies of this compliance filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-6676 Filed 3-14-78; 8:45 am]

[6740-02]

[Docket No. RP72-134]

EASTERN SHORE NATURAL GAS CO.

Purchased Gas Cost Adjustments to Rates and Charges

MARCH 7, 1978.

Take notice that on February 17, 1978, Eastern Shore Natural Gas Co. (Eastern Shore) tendered for filing revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective January 1, 1978. Eastern Shore states that these revised tariff sheets are intended to track increases in rates filed on January 27, 1978, Docket No. RP77-108 by Transcontinental Gas Pipe Line Corp.

Copies of this filing have been mailed to each of Eastern Shore's jurisdictional customers and to interested State Commissions.

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 Sections 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 March 14, 1978. 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. 78-6665 Filed 3-14-78; 8:45 am]

[6740-02]

[Docket No. CP76-526]

EL PASO NATURAL GAS CO.

Notice of Petition To Amend

MARCH 7, 1978.

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 March 1, 1976, El Paso Natural Gas Co. (Petitioner), P.O. Box 1492, El Paso, Tex. 79978, filed in Docket No. CP76-526 a petition to amend the order of December 15, 1976 (56 FPC ——) issued by the

Federal Power Commission (FPC) in the instant docket pursuant to Section 7(c) of the Natural Gas Act and section 157.7(b) of the regulations thereunder (18 CFR 157.7(b)) so as to provide for waiver of the $1,250,000 single project cost limitation contained in its budget-type authorization, 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 December 15, 1976, et al., Petitioner was granted a certificate authorizing, inter alia, the budget-type construction, during the calendar year 1977, and operation of gas-purchase facilities in connection with the operation of its interstate pipeline system. It is stated that the aggregate cost of all facilities installed by Petitioner during the authorized construction period is limited to $5,000,000 with a single project cost limitation of $1,250,000.

Petitioner indicated that among those facilities it installed during the calendar year 1977 under the budget-type authorization issued it in the instant docket were two 1,068 horsepower Saturn T-1000 gas turbine-driven centrifugal compressor units with appurtenances at the Getty-Schafer compressor station located in Carson County, Texas. Petitioner further indicates that said facilities were installed so as to enable it to receive and transport additional supplemental supplies of natural gas produced and acquired in the Panoma, South Zyback, and Hobard Ranch Field areas to Petitioner's Dumas compressor station for use in augmenting existing natural gas supplies utilized in rendering service to Petitioner's interstate pipeline system customers. Petitioner originally estimated the installation of said compressor units at approximately $1,107,000; however, due to unexpected cost overruns associated primarily with materials and installation, Petitioner's actual total installation cost, as of December 31, 1977, was $1,326,572 or some 6 percent above the single project cost limitation prescribed by the Commission, it is stated. Petitioner indicates that the unexpected cost overruns experienced by it were attributable in large part to its need for expedited installation of the additional compressor units and appurtenances to provide sufficient supply lateral capacity to receive the additional supplies available in the area for use in serving Petitioner's interstate system customer requirements during the 1977-78 heating season. As a consequence of such expedition, the installation of said compressor units resulted in field costs which exceeded the original estimate since Applicant utilized more field personnel and related supervision than originally anticipated and required station piping to be fabricated at a remote location and hauled to the job site, it is said. It is stated that these increased costs, coupled with increased material expenses, resulted in the unexpected cost overrun and, hence, the excess of some $77,000 above the single project cost limitation.

Consequently, Petitioner requests waiver of the $1,250,000 single project cost limitation with respect to the installation of said compressor units. Petitioner states that the actual total cost for installation of the subject compressor units, when taken together with the costs for other budget-type construction undertaken during the calendar year 1977 under the authorization issued in the instant docket, totaled only $1,962,292 and thus does not exceed the total authorized dollar limitation of $5,000,000.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before March 29, 1978, 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. 78-6667 Filed 3-14-78; 8:45 am]

[6740-02]

[Docket No. CP74-98]

EL PASO NATURAL GAS CO.

Motion for Approval of Stipulation and Agreement

MARCH 7, 1978.

Take notice that on March 2, 1978, El Paso Natural Gas Co. (El Paso) filed a "Motion for Approval of Stipulation and Agreement" pursuant to Section 1.12 of the Commission's Rules of Practice and Procedure.

The agreement sponsored by El Paso would dispose of all issues in this proceeding and resolve the dispute as to allocation of the cost of looping a segment of El Paso's Alamogordo, N. Mex. lateral as more fully described in the record on file with the Commission and available for public inspection.

Any person desiring to be heard or to make any protest with reference to said Motion and Stipulation and Agreement should, on or before April 17, 1978, 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. Copies of the Motion and Stipulation and Agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-6666 Filed 3-14-78; 8:45 am]

[6740-02]

[Docket No. ES78-23]

IDAHO POWER CO.

Notice of Filing

MARCH 8, 1978.

Take notice that on February 28, 1978 Idaho Power Co. (Idaho) filed a request for authorization to engage in negotiations for the underwriting and sale of up to 1,200,000 shares of Common Stock pursuant to Sections 34.1(a)(4) and 34.2(f)(2) of the Commission's Regulations Under the Federal Power Act. Applicant states that its financing program for 1978 calls for the sale in the second half of the year of the Common Stock, $5 par value, to raise up to $30 million of equity capital and $60 million of 30-year First Mortgage Bonds. The proceeds of these security issues would be used to repay short-term indebtedness in the form of promissory notes to banks and commercial paper obligations which will be outstanding at the time of these financings. The Company plans to offer the issue of first mortgage bonds by competitive bidding. The Company believes that the best interests of its customers and its stockholders would be served if the sale of the new shares of Common Stock is handled on a negotiated basis for a period of 90 days prior to the offering.

The Company states that it is seeking permission at this time to inquire and negotiate with respect to the underwriting terms which can be obtained on its forthcoming Common Stock issue only in order to determine whether application for exemption from competitive bidding should be made, and that it has not engaged in

any of the negotiations for the underwriting or sale of the stock and agrees not to do so except in accordance with the Commission's authorization.

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 Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protest should be filed on or before March 20, 1978. 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. 78-6677 Filed 3-14-78; 8:45 am]

[6740-02]

[Docket No. ER78-233]

ILLINOIS POWER CO.

Filing of Transformer Sharing Agreement

MARCH 7, 1978.

Take notice that on March 2, 1978, Illinois Power Co. tendered for filing a Baldwin Spare Transformer Sharing Agreement dated November 1, 1977 between Union Electric Co. and Illinois Power Co. Illinois Power indicates that it has entered into an agreement with Union Electric whereby a spare generator step-up transformer located at Illinois Power's Baldwin Power Plant is available for use by Union Electric in the event of a failure of one of its Labadie or Rush Island generator step-up transformers. Illinois Power states that in consideration for making the transformer available to Union Electric, they will compensate Illinois Power with a use charge equal to 15 percent of one-half of Illinois Power's original cost for the spare transformer. Illinois states that in the event the spare transformer is placed in operation by either party, the compensation paid to Illinois Power will vary as more fully explained in the filing.

Illinois Power states that a copy of the filing was served upon Union Electric Co. and the Illinois Commerce Commission and that a copy of the Agreement has been mailed to the Missouri Public Service Commission.

Any person desiring to be heard or to protest said filing should file comments or protests with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such comments or protests should be filed on or before March 20, 1978. 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. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-6668 Filed 3-14-78; 8:45 am]

[6740-02]

Docket No. ER78-232]

INDIANAPOLIS POWER & LIGHT CO.

Tariff Change

MARCH 8, 1978.

Take notice that on March 1, 1978, Indianapolis Power & Light Co. (IP&L) tendered for filing a change in the demand charge for Unit Power included in Service Schedule B of the Kentucky-Indiana Pool Planning and Operating Agreement, designated as IP&L's Rate Schedule FPC No. 8. The Agreement is between IP&L, East Kentucky Power Cooperative, Inc., Kentucky Utilities Co. and the Public Service Co. of Indiana, Inc.

IP&L represents that the Unit Power Demand Charges are determined by using plant cost per kilowatt, fixed charge rate and annual plant O&M expense, and that the change in the demand charge results from recalculations of these three figures.

IP&L requests waiver of compliance with any filing requirements of Section 35.13 of the Commission's Regulations not met by this filing and also asks waiver of the notice requirements under Section 35.11 of said Regulations, in order that such demand charge may become effective April 1, 1978.

IP&L states that a copy of the filing was sent to each to the parties to the Agreement, to the Public Service Commission of Indiana and to the Public Utilities Commission of Kentucky.

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 Sections 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 March 27, 1978. 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. 78-6678 Filed 3-14-78; 8:45 am]

[6740-02]

[Docket No. RI77-70]

INTERSTATE DRILLING, INC.

Amended Petition for Special Relief

MARCH 8, 1978.

Take notice that Interstate Drilling, Inc. (Interstate), 500 Commerce Square, Charleston, W. Va. 25301, filed an amended petition for special relief on September 30, 1977 requesting a rate of $1.32/Mcf for sales of its gas to Columbia Gas Transmission Corp. (Columbia), pursuant to 18 CFR § 2.76.

Interstate originally filed on May 5, 1977 for a rate of $1.70/Mcf for the sale of gas from 8 wells located in the Troy District, Gilmer County, W. Va. Interstate states it will spend an additional $12,000 to rework the wells to produce the remaining 100,000 Mcf of remaining recoverable reserves.

Any person desiring to be heard or to make any protest with reference to said petition should on or before March 30, 1978, 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). 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 party 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. 78-6679 Filed 3-14-78; 8:45 am]

[6740-02]

[Docket No. RI77-26]

J & J ENTERPRISES, INC., ET AL.

Settlement Agreement and Motion To Waive Hearing

MARCH 7, 1978.

Take notice that on February 13, 1978, J & J Enterprises, Inc., et al. (Petitioners), thirty-three independent small producers [1] in Pennsylvania who

[1] J & J Enterprises, Inc.; Fairman Drilling Co.; Castle Gas Co., Inc.; Boyd & Shriver; Mid-East Oil Co.; Armclar Gas Co.; Arthur

are selling gas in jurisdictional transactions to three interstate pipelines[2] filed a settlement agreement and a motion to waive hearing with the Commission[3] in the above-captioned docket.

On January 14, 1977, J & J Enterprises, Inc., Fairman Drilling Co., Castle Gas Co., Inc. (Original Producers) filed a petition seeking special relief pursuant to § 2.56a(g) and § 2.76 of the General Policy and Interpretations and § 154.107(e) of the Regulations from the area rates for the Appalachian Basin Area prescribed in Order No. 411, as amended, to collect a rate of 55.02 cents per Mcf at 14.73 psia. Also the original producers sought relief from the national rates prescribed by Opinion No. 699-H, as amended, and Opinion Nos. 770 and 770-A to collect the rate of 177.99 cents per Mcf at 14.73 psia for post-January 1, 1973 sales. The special relief petition was noticed by the Commission on January 31, 1977.

Columbia Gas Transmission Corp. and Consolidated Gas Supply Corp. filed timely interventions. National Fuel Gas Supply Corp. filed for leave to intervene out of time.

On February 18, 1977, the Original Producers filed to amend their petition by the inclusion of Additional Parties,[4] (Additional Producers). The petition for inclusion of Additional Parties was noticed by the Commission on March 14, 1977.

Several conferences have been held which have led to a settlement agreement. Specifically, the Petitioners have agreed to request a rate of 61 cents per Mcf for all gas sold from Eligible Stripper Gas Wells[5] (Old Gas Stripper Wells) and to the applicable area or national rates per Mcf for all gas from all other wells from which gas is sold pursuant to the contracts[6] subject to adjustments for production or severance taxes, Btu content, gathering allowances, escalation and other similar matters sanctioned by the Commission. In addition, the Petitioners request an annual escalation of 1 cent per Mcf commencing as of January 1, 1978, for gas purchased from Old Gas Stripper Wells. The settlement agreement, inter alia, also sets forth provisions for Petitioners to file for an increase in rates should the Old Gas Stripper Well rate prove to be uneconomical; however, should the Commission approve this settlement agreement the Petitioners have agreed not to seek increased rates for gas sold pursuant to the contracts earlier than January 1, 1979 (unless eligible for special pricing arrangements under future Federal legislation or regulation applicable to such gas).

Any person desiring to be heard or to protest said settlement proposal should file comments with the Federal Energy Regulatory Commission, Washington, D.C. 20426, on or before March 20, 1978. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this proposal are on file with the Commission and are available for public inspection.

Any person who is not a party to this proceeding, or who has not yet filed a protest or petition for leave to intervene, may file such pleading on or before March 20, 1978. Any person desiring to comment upon the settlement proposal, or any person desiring to be heard with reference to the settlement proposal filed herein, shall file a protest or petition for leave to intervene on or before March 20, 1978. Such filings shall be made with the Federal Energy Regulatory Commission at the above-noted address. 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 party 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. 78-6669 Filed 3-14-78; 8:45 am]

Continued
H. Denton; B. J. Oil Co.; Butcher & Singer; D. A. Dorward, et al.; Fox Oil & Gas, Inc.; Harry Brunt; J. Gerald Ackley; Joseph L. and Betty Dunn; Kaib & Kaib; Lawrence Faes; Lee E. Minter; Mays Gas & Coal Co.; Natural Resources Development Division, U.G.I. Development Co.; I.P.S.C.O.; R. Nelson & A. Johnson; N. Y. Petro-Min Corp.; Orville Eberly, William E. Snee, Robert E. Eberly; Reeves Lewenthal; Union Drilling, Inc.; W. F. Glover; W. C. Hurtt Drilling Co.; W. R. Maxson; Zenith Exploration Co.; A. F. Carino Oil & Gas Interests; A. A. Lollar; R. Taylor Mosier; Weir Walker.

[2]Columbia Gas Transmission Corp., Consolidated Gas Supply Corp., National Fuel Gas Supply Corp.

[3]Prior to October 1, 1977, "The Commission" refers to the Federal Power Commission; subsequent to that date, it refers to the Federal Energy Regulatory Commission.

[4]Boyd & Shriver, Mid-East Oil Co., Harry Brunt, Lee E. Minter, Ohio Lease Operating Co., Zenith Exploration Co., A. A. Lollar, I. L. Greer & Sons, Union Drilling Co., Joseph L. Dunn, Reeves Lewenthal, D. A. Dorwood, Dorvo Corp. and Pennsylvania Oil & Gas Association who seeks to be made a party on behalf of all its members who are small producers of natural gas having jurisdictional sales in Pennsylvania. Ohio Lease Operating Co. and I. L. Greer & Sons are not included as Petitioners in the final settlement agreement.

[5]Eligible Stripper Gas Wells (Old Gas Stripper Wells) shall mean those wells first commencing production prior to January 1, 1973, from which gas is sold to the Buyers under the Contracts and which produced or shall have produced an average of 60 Mcf per day or less per well during any continuous 12-month period commencing with the 12-month period ended December 31, 1975, or any continuous 12-month period thereafter; provided, however, that the average production volume for each well whose production is measured by a single multiwell meter shall be determined for any such 12-month period by dividing the aggregate production of all wells measured by such meter by the number of wells whose production is so measured. If a well shall once have qualified for purposes hereof as an Eligible Stripper Gas Well, subsequent changes in its production or metering shall not thereafter disqualify it as an Eligible Stripper Gas Well.

[6]Contracts shall mean those contracts, whether or not now in existence, by and between the Petitioners and each of the Buyers for the sale of gas by the Petitioners to the Buyers in jurisdictional transactions from wells in Pennsylvania.

[6740-02]

[Docket No. EL78-9]

JACKSON PURCHASE ELECTRIC COOPERATIVE CORP. AND BIG RIVERS ELECTRIC CORP. V. KENTUCKY UTILITIES CO.

Notice of Complaint

MARCH 8, 1978.

Take notice that Jackson Purchase Electric Cooperative Corp. and big Rivers Electric Corp. (Complainants) on February 23, 1978, tendered for filing a Complaint against Kentucky Utilities Co.

The Complaint states that Jackson Purchase is a distribution cooperative which distributes electric energy to its members in Kentucky. The Complaint further states that under the terms of a membership agreement, dated October 14, 1977, the contract which expired January 15, 1978, between Jackson Purchase and Kentucky Utilities was assigned to Big Rivers by Jackson Purchase. The Complaint also states that Big Rivers is a generation and transmission cooperative which, under the terms of the aforementioned agreement, performs certain services for Jackson Purchase, one of which is to pay for the power and energy supplied to Jackson Purchase for distribution.

The Complaint alleges that Kentucky Utilities stated that it will accept no checks of Big Rivers, or any entity other than Jackson Purchase, in payment of Jackson Purchase's bills for service. The Complaint further alleges that Kentucky Utilities sought to charge interest for payment for service in a form other than checks of Jackson Purchase. The Complaint alleges that these actions on the part of Kentucky Utilities constitute discriminatory actions in violation of the Rules and Regulations of the Commission.

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 sections 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 April 7, 1978. 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. 78-6680 Filed 3-14-78; 8:45 am]

[6740-02]

[Docket No. ER77-522]

KANSAS CITY POWER & LIGHT CO.

Filing of Settlement Agreement

MARCH 8, 1978.

Take notice that the Kansas City Power & Light Co. ("KCPL") on March 2, 1978, tendered for filing a Settlement Agreement between KCPL and twelve of its wholesale for resale customers. KCPL indicates that the proposed Settlement Agreement will increase its annual revenues by approximately $1,377,000 based upon certain Staff assumptions and upon estimated sales for the 12-month test period ending June 30, 1978. In addition, the Settlement Agreement provides that if the commission determines in Docket No. ER76-184 that the "Rolled-in Facilities" should be assigned and allocated as a portion of KCPL's "Local Facilities," then KCPL shall be permitted to put into effect new schedules of rates and charges reflecting such decision. KCPL further indicates that pursuant to the FPC's order dated August 1, 1977, refunds will be made by KCPL to each wholesale customer.

KCPL indicates that the Agreement resolves the parties' differences in the above-captioned docket and urges the Commission to accept this proposed Settlement Agreement.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such protests should be filed on or before March 24, 1978. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-6681 Filed 3-14-78; 8:45 am]

[6740-02]

[Docket No. RP72-149]

MISSISSIPPI RIVER TRANSMISSION CORP.

Proposed Change in Rates

MARCH 8, 1978.

Take notice that Mississippi River Transmission Corp. ("Mississippi") on March 1, 1978 tendered for filing six (6) copies of Sixty-Fourth Revised Sheet No. 3A to its FERC Gas Tariff, First Revised Volume No. 1, to become effective April 1, 1978.

Mississippi states that the instant tariff sheet is being submitted pursuant to the Purchased Gas Cost Adjustment Clause of its tariff and provides for the recovery of amounts accumulated in its recovered purchased gas cost account and an updating of the base average unit cost of gas purchased from producers. Such filing also reflects the pass through of the jurisdictional portion of pipeline supplier rate refunds received from United Gas Pipe Line Co. ("United") at Docket Nos. RP74-20 and RP74-83 and Natural Gas Pipeline Co. of American at Docket Nos. RP75-108 and RP76-106. Also included therein is an adjustment (reduction) in Mississippi's demand rate to reflect the appropriate billing demand of United pursuant to the provisions of United's tariff, Eighteenth Revised Sheet No. 21, which became effective January 1, 1978, subject to refund, at Docket No. RP77-107. Finally, Mississippi states that Sixty-Fourth Revised Sheet No. 3A reflects adjustments to clear the deferred transportation cost account and to update the base average cost of transportation, all as provided for by Article V of Mississippi's Stipulation and Agreement at Docket No. RP76-77.

Mississippi submitted schedules containing computations supporting the rate changes which are proposed to become effective April 1, 1978, and further states that copies of its filing were served on Mississippi's jurisdictional customers and the State Commissions of Arkansas, Illinois, and Missouri.

Any person desiring to be heard or protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission in accordance with sections 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 March 21, 1978. 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 unless such petition has previously been filed. Copies of the filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-6682 Filed 3-14-78; 8:45 am]

[6740-02]

[Docket No. CP78-210]

MONTANA-DAKOTA UTILITIES CO.

Notice of Application

MARCH 7, 1978.

Take notice that one March 1, 1978, Montana-Dakota Utilites Co. (Applicant), 400 North Fourth Street, Bismarck, N. Dak. 58501, filed in Docket No. CP78-210 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and authorizing the purchase, transportation and exchange of natural gas with Colorado Interstate Gas Co. (CIG), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant requests authorization to construct and operate a 4-inch tap connection, including a 4-inch valve, drip and a 2-inch blow-off valve, on its gathering line located in or near Fremont County, Wyo. Applicant states that all other facilities, including facilities for the measurement of gas to be delivered to Applicant by CIG, would be constructed by CIG. It is indicated that redelivery of exchange gas from Applicant to CIG would be effected at one or more of the following mutually agreed upon delivery points:

(a) At a point to be established by the parties in or near the Madden Field in Fremont County, Wyo. where Applicant would deliver or cause to be delivered to CIG all or portions, as the parties agree, of the quantities of gas owing to CIG.

(b) At a point to be established by the parties on Applicant's pipeline within a processing plant site operated by Amoco Production Co. located in Park County, Wyo. where Applicant would deliver or cause to be delivered to CIG all or portions, as the parties agree, of the quantities of gas owing to CIG.

(c) If and when necessary in order for Applicant to return to CIG any remaining volumes due CIG after utilizing to the extent feasible the delivery points set forth in (a) or (b) above, Ap-

plicant and CIG would mutually agree upon and activate one or more additional delivery points.

It is stated that the total estimated cost to construct the proposed facilites is $1,000, which cost would be financed by Applicant through internally generated funds.

Applicant indicates that it has entered into a gas exchange and purchase agreement, dated January 6, 1978, with CIG which provides that Applicant transport, by exchange, gas gathered by CIG from acreage located within the Fuller Reservoir area in Fremont County, Wyo. Applicant states that it presently has gathering and transmission facilities in the area and the most economical way for CIG to produce and market the reserves in this area is by means of sale to and/or exchange with Applicant.

It is indicated that pursuant to the subject gas exchange and purchase agreement Applicant has the option to purchase from CIG up to 100 percent of the volumes of gas delivered by CIG to Applicant for the period from initial delivery hereunder through September 30, 1979; and thereafter, Applicant would have a continuing option to purchase from CIG up to 25 percent of such volumes delivered by CIG to Applicant.

It is stated that for gas purchased, Applicant would pay CIG for each Mcf a price equal to the sum of (1) the average price per Mcf that CIG pays for the gas it purchases from wells located in the Fuller Reservoir area covered hereby, not to exceed applicable ceiling prices established by regulatory authority, (2) a charge per Mcf which would reimburse CIG for any gathering, compression, dehydration, and necessary treating occurring upstream from the point of delivery to Applicant which charge the parties have agreed would initially be 10 cents per Mcf, and (3) a charge per Mcf which would reimburse CIG for the cost of service attributable to advance payments in the amount of $2,000,000 made by CIG to the producers of the gas covered hereby, which charge the paties have agreed would initially be 49 cents per Mcf.

It is estimated that initially, an average total of 1,800 Mcf per day would be delivered to CIG to Applicant from the Fuller Reservoir area, it is said. Applicant states that it does not, at this time, expect to exercise its option to purchase any of the gas tendered by CIG. Applicant indicates that it would redeliver to CIG, by exchange, all of the gas delivered to it, at the mutually agreed upon redelivery point or points. It is stated the CIG would pay Applicant a transportation charge equal to 2 cents per Mcf for transporting CIG's gas from the point where Applicant receives such gas to the point of delivery to CIG.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 29, 1978, 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 or 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 the 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. 78-6670 Filed 3-14-78; 8:45 am]

[6740-02]

[Docket No. ER78-170]

SOUTHERN CALIFORNIA EDISON, CO.

Petition for Issuance of Declaratory Order on Interpretation of Contract

MARCH 8, 1978.

Take notice that Southern California Edison Co. (Company) on February 7, 1978, tendered for filing a petition requesting prompt issuance of an order declaring that:

Article 21(b) of the Contract Between State of California and California Companies for the Sale, Interchange and Extra High Voltage Transmission of Electric Capacity and Energy does not require that the review of the killowatt-hour charge set forth in Article 21(a) and agreement as to adjustments to such charge be completed on or before January 1, 1978, in order for such an adjustment to become effective on January 1, 1983, or on or before January 1 each five years thereafter in order for such an adjustment to become effective on January 1 each five years thereafter. If the parties are unable to agree upon a rate adjustment after reviewing the matter in accordance with said Article 21(b), Edison retains the right to submit the matter to the FERC for determination. Such submittal to the FERC for determination need not be made prior to January 1, 1978 or January 1 each five years thereafter in order for any rate determination made by the FERC to become effective, respectively, on January 1, 1983, or January 1 each five years thereafter. Further, nothing in said contract requires that any submittal to the FERC for determination be made earlier than is prescribed in the normal filing requirements set forth in the Federal Power Act and applicable FERC regulations.

In support hereof, Edison respectfully states that:

Edison, Pacific Gas & Electric Co., San Diego Gas & Electric Co. ("Companies"), and the State of California, acting by and through the Department of Water Resources ("State"), are parties to the Contract Between State of California and California Companies for the Sale, Interchange and Extra High Voltage Transmission of Electric Capacity and Energy ("EHV Contract") dated August 1, 1967, which, for Edison's portion of supply under said contract, is (SCE) Rate Schedule FPC No. 38 presently on file with the Commission.

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 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 March 20, 1978. 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. 78-6683 Filed 3-14-78; 8:45 am]

[6740-02]

[Docket No. RP77-31]

Southern Natural Gas Co.

Notice of Petition

MARCH 7, 1978.

Take notice that on February 15, 1978, South Carolina Electric & Gas Co., (SCE&G), P.O. Box 764, Columbia, S.C. 29202, filed in Docket No. RP78-41 a petition requesting that the Commission institute a proceeding to determine whether zone rates should

be eliminated on the system of Southern Natural Gas Co. (Southern).

SCE&G states that Southern has traditionally received all of its natural gas at the Southern end of its system. SCE&G also claims that Southern's rates are now divided into three zones: Zone 1 for sales in Louisiana and Mississippi; Zone 2 for sales in Alabama and a part of Georgia and Zone 3 for sales in the remaining portion of Georgia, Tennessee, and South Carolina. Zone 1 has the lowest rates; Zone 3 the highest. It is stated that Southern's rate zones were approved in Southern Natural Gas Co., 29 FPC 323 (1962).

SCE&G claims that beginning in this year the operating characteristics of Southern's system will be altered by the introduction of liquified natural gas (LNG) at Savannah, Ga., the opposite end of the system from which gas presently enters. Because gas will be entering the system from both ends, it is stated, the basis for zone rates will no longer exist and, furthermore, that maintenance of rate zones may be discriminatory and unlawful.

SCE&G requests that the issues raised by its petition be handled expeditiously. SCE&G recommends that a separate proceeding be instituted to resolve the zoning issue. Alternatively, it is suggested that the proceeding in Southern's current general rated increase application be "phased" so that the zone issue is made the subject of a separate and expedited Phase I of that proceeding.

SCE&G indicates that prepared testimony has already been served in Docket No. RP77-31 which argues for the total elimination of the zone differential on Southern's system.

Any person desiring to be heard or to protest the petition should file comments with the Federal Energy Regulatory Commission, Washington, D.C. 20426, on or before March 17, 1978. All comments filed with the Commission will be considered by it in determining the appropriate action to be taken. Copies of the petition are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-6671 Filed 3-14-78; 8:45 am]

[6740-02]

[Docket No. CP77-617]

TEXAS GAS TRANSMISSION CORP.

Petition To Amend

MARCH 8, 1978.

Take notice that on March 2, 1978, Texas Gas Transmission Corp. (Petitioner), 3800 Frederica Street, Owensboro, Ky. 42301, filed in Docket No. CP77-617 a petition to amend the Commission's order of December 12, 1977, issued in the instant docket pursuant to section 7(c) of the Natural Gas Act and section 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) so as to authorize Petitioner to transport up to 400 Mcf of natural gas per day for Alumax Extrusions, Inc. (Alumax), all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

It is indicated that pursuant to the Commission's order of December 12, 1977 in the subject docket, Petitioner was authorized to transport up to 400 Mcf of natural gas per day for Alumax, which transportation service commenced January 4, 1978. It is stated that the Commission, in its order of December 12, 1977, stated that it was in the process or reviewing the policy established by Order Nos. 533 and 533-A, in Docket No. RM75-25, and that it was committed to concluding such review as quickly as practicable. In the interim, the Commission limited the transportation authorization in the instant docket to a period ending July 31, 1978, it is stated.

It is indicated that pursuant to the Commission's order No. 2 issued February 1, 1978, in Docket No. RM75-25 the Commission decided to continue the 533 policy. Consequently, Petitioner requests that the Commission amend Petitioner's order in the instant docket so as to authorize it to transport up to 400 Mcf of natural gas per day for Alumax for a period of two years from the date of initial delivery (January 4, 1978).

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before March 31, 1978, 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 prostests 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. 78-6684 Filed 3-14-78; 8:45 am]

[6740-02]

[Docket No. RP78-42]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Storage Service Tracking Rate Increase

MARCH 8, 1978.

Take notice that Transcontinental Gas Pipe Line Corp. (Transco) on March 1, 1978 tendered for filing Sixth Revised Sheet No. 12 to its FERC Gas Tariff, Second Revised Volume No. 1 to become effective on or about April 1, 1978.

Transco states that the enclosed tariff sheet reflects an increase in rates for Transco's Rate Schedule GSS (General Storage Service) to track the rate increase to Transco from Consolidated Gas Supply Corp. (Con-Gas) under the latter's GSS rate schedule, which rate increase is to be made effective subject to refund on or about April 1, 1978 in Con-Gas' Docket No. RP77-140. More specifically, by its revised notice of rate changes in Docket No. RP77-140, dated February 22, 1978, Con-Gas has reflected an increase of approximately $866,000 annually in its Rate Schedule GSS charges to Transco which Con-Gas now proposes "to become effective to coincide with the purchase of LNG" which "is expected to occur in late March or early April."

Transco states that its filing increases only the rates under Transco's Rate Schedule GSS to reflect only the aforesaid increase from Con-Gas and is filed to become effective, without suspension on the same date that the aforesaid Con-Gas increase is made effective. Transco agrees and undertakes to refund to its Rate Schedule GSS customers any refunds it may receive from Con-Gas pursuant to final nonappealable order of the Commission in Docket No. RP77-140, and to reduce the GSS rates being filed herein to reflect any final non-appealable order reducing Con-Gas' Rate Schedule.

The Company states that copies of the filing have been mailed to each of its jurisdictional customers and interested State Commissions.

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 NW., Washington, D.C. 20426, in accordance with sections 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 March 22, 1978. 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. 78-6685 Filed 3-14-78; 8:45 am]

[6740-02]

[Docket No. ER78-231]

UNION ELECTRIC CO.

Revised Service Schedules

MARCH 8, 1978.

Take notice that on March 1, 1978, Union Electric Co. (Union) tendered for filing Fourth Revised Service Schedules C, E, and F to the Interconnection Agreement dated February 18, 1972 between Union, Central Illinois Public Service Co. and Illinois Power Co.

Union indicates that said Revised Service Schedules revise the reservation charges for Maintenance, Short-term Non-firm, and Short-term Firm Power transactions.

Union requests an effective date of April 1, 1978 for the Revised Service Schedules.

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 sections 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 March 27, 1978. 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. According to Union, copies of the filing have also been sent to the Illinois Commerce Commission and copies of the Revised Service Schedules have been set to the Missouri Public Service Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-6686 Filed 3-14-78; 8:45 am]

[6740-02]

[Docket No. RP74-85 (PGA78-1)]

WESTERN GAS INTERSTATE CO.

Proposed PGA Rate Adjustment

MARCH 7, 1978.

Take notice that on March 1, 1978, Western Gas Interstate Co. ("Western") filed herein Ninth Revised Sheet No. 3A to its FERC Gas Tariff, Original Volume No. 1. Said tariff sheet is proposed to become effective on April 1, 1978.

Western states the proposed increase in rates is being filed in accordance with its Tariff's PGA clause which permits the recovery of increases in the cost of gas and of unrecovered purchased gas costs. Western further states the proposed Purchase Gas Cost Adjustment for the Northern Division is 16.35 cents per Mcf; for the Southern Division it is 5.34 cents per Mcf. The proposed surcharge adjustment is a decrease of 10.31 cents per Mcf for the Northern Division and an increase of 8.58 cents per Mcf for the Southern Division; these latter adjustments will only be effective over the six-month period April 1, 1978 through September 30, 1978.

The proposed Purchased Gas Cost Adjustment will compensate Western for the increases in the annual cost of gas purchased by Western from producers. The proposed surcharge adjustment will compensate Western for the actual cost of gas purchased during the period July 1, 1977 through December 31, 1977 which was not recovered through Western's then-effective rates.

Any person desiring to be heard and to make any protest with reference to 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 the requirements 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 March 20, 1978. Protests will be considered by the Commission 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 must file a petition to intervene. Western's filing is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-6672 Filed 3-14-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 866-7; OPP-42049A]

STATE OF NEBRASKA

Intent To Implement a Federal Plan for the Certification of Pesticide Applicators

INTRODUCTION

Under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, 7 U.S.C. 136 et seq., the Administrator of the U.S. Environmental Protection Agency (EPA) has the authority to classify all registered pesticide uses as either "restricted use" or "general use." Use of a restricted use pesticide by an individual who is not certified or acting under the direct supervision of a certified applicator, is a violation of the amended FIFRA.

It was the intent of Congress that persons desiring to use restricted use pesticides should be able to obtain certification under state programs approved by EPA. The criteria for such approval are published at 40 CFR Part 171. Each State, however, must accept or decline to accept responsibility for developing and administering an approvable State program. While it is EPA's position that State programs are best suited to the needs of the State and its citizens, EPA has no authority to require States to develop their own programs.

On June 28, 1977, Nebraska Governor J. James Exon, in accordance with Section 4(a)(2) of the amended FIFRA, submitted Nebraska's State Plan for Certification of Pesticide Applicators to EPA. Governor Exon requested full approval of Nebraska's State Plan based upon Section 2-2601 to 2-2619 of the Economic Poisons and Devices Act, R.R.S., Nebraska, 1943, as amended; Department of Agriculture Rule 26; Department of Agriculture Rule 28; and Legislative Resolution 132 (Eighty-Fifth Legislature of Nebraska, First Session, 1977).

On July 29, 1977, Charles V. Wright, then Acting EPA Regional Administrator, informed Governor Exon by letter of his intent to disapprove the Nebraska State Plan on the grounds that the State does not have adequate statutory and regulatory authority as required by Section 4(a) of FIFRA, as amended, and 40 CFR 171.7. The most significant deficiencies in the State's legal authorities were specifically described in the Agency's Notice of Intent to Disapprove the State Plan for Certification of Pesticide Applicators in Nebraska, which was published in the FEDERAL REGISTER on August 22, 1977 (42 FR 42244). A 45-day comment period was provided ending on October 5, 1977. In addition, at the State's request, a comprehensive list of deficiencies in the State Plan was transmitted by letter from the Regional Administrator to Governor Exon on September 16, 1977.

On August 5, 1977, Governor Exon requested a hearing in accordance with Section 4(b) of FIFRA, as amended, to review the reasons for the proposed disapproval. In accordance with the Governor's request, a public hearing was held on September 27, 1977, at 9 a.m. in Lincoln, Nebraska. Comments received at the hearing, and at the EPA Regional Office, generally pertained to the role of the Nebraska State Legislature in enacting, or de-

clining to enact, the legal authorities necessary to carry out an approvable State Certification Plan.

The deficiencies in the Nebraska State Plan,cited in the letters of July 29, 1977, and September 16, 1977, to Governor Exon, were not resolved at the hearing. Accordingly, on November 14, 1977, the Regional Administrator, EPA, Region VII, notified Governor Exon of the disapproval of the State Plan. Notice of Disapproval was published in the FEDERAL REGISTER on November 25, 1977 (42 FR 60223).

In accordance with the provisions of Section 4(a)(1) of the FIFRA, as amended (86 Stat. 973, 7 U.S.C. 136 et seq.) and 40 CFR Part 171, notice is hereby given that the EPA, Region VII, will conduct a program within the State of Nebraska to certify applicators of restricted use pesticides.

The entire EPA Plan, together with all attached appendices, may be examined during normal business hours at the following locations:

1. Room 292, 100 Centennial Mall North, Lincoln, Nebr., 68508, Pesticides Branch/Lincoln Office, Air and Hazardous Materials Division, EPA, Region VII, telephone 402-867-5050.

2.Room 110, 1735 Baltimore Avenue, Kansas City, MO. 64108, Pesticides Branch, Air and Hazardous Materials Division, EPA, Region VII, telephone 816-374-3036.

3. Room 401, East Tower, Waterside Mall, 401 M Street SW., Washington, D.C. 20460, Federal Register Section, Technical Services Division, WH-569, Office of Pesticide Programs, EPA, telephone 202-755-4854.

A summary of EPA, Region VII's certification program for the State of Nebraska follows:

SUMMARY OF CERTIFICATION PLAN

The EPA, Region VII, Kansas City, Mo. (hereafter called "Region VII") will be the lead agency for the administration of the pesticide applicator certification program in the State of Nebraska, with the Air and Hazardous Materials Division, Pesticides Branch, responsible for the program's implementation and coordination. On June 14, 1972, EPA and the U.S. Department of Agriculture—Cooperative Extension Service signed a Supplemental Interagency Agreement outlining each Agency's responsibilities in administering a nationwide certification training program. To further clarify this agreement, the University of Nebraska Cooperative Extension Service (CES) and the EPA, Region VII, have developed a memorandum of understanding which assigns the responsibility for administering the Nebraska pesticide applicator training program to the CES. This includes preparing and conducting training courses for applicators as well as preparing and distributing training materials. The Pesticides Branch will review and approve all training materials and courses to ensure that they meet the requirements of the amended FIFRA and its regulations.

Legal authority for EPA to conduct the applicator certification program is found primarily in Section 4 of the amended FIFRA, regulations at 40 CFR 171.1 through 171.10, and proposed regulations at 40 CFR 171.11. Additional enforcement authorities are found in Sections 8, 9, and 12 of the amended FIFRA and at U.S. Code, Title 18, Section 1001.

Region VII has adequate resources to conduct a certification program in Nebraska which meets the requirements of the amended FIFRA and the regulations in 40 CFR Part 171. These resources include funding from the Office of Pesticide Programs for program development, implementation, administration and enforcement. The EPA also has funding available for applicator training by the university of Nebraska Cooperative Extension Service.

Personnel of the Region VII, Pesticides Branch will be responsible for the maintenance of the Nebraska certification program. Additional personnel may be assigned to EPA, Region VII as needed. An EPA office has been established at 100 Centennial Mall North, Lincoln, Nebr. 68508, for the purpose of certifying pesticide applicators.

The Region VII, Pesticides Branch will prepare an annual report on or before July 1 of each year for the EPA, Region VII Administrator. Copies of this report will be made available to the Governor of Nebraska, the Director of the Nebraska Department of Agriculture, and the Director of the University of Nebraska Cooperative Extension Service. Copies of this report will be available for public inspection at the EPA, Region VII, Pesticides Branch Office, Kansas City, Mo., between 9 a.m. and 3 p.m., Monday through Friday.

Region VII estimates that approximately 7,100 commercial applicators and 70,000 private applicators will need to be certified in Nebraska. Qualified commercial and private applicators will be issued certification credentials.

Region VII will use the same commercial applicator categories in the State of Nebraska as those outlined at 40CFR 171.3(b), "Categorization of Commercial Applicators of Pesticides," except that the Industrial, Institutional, Structural and Health Related Pest Control Category will include a Food Processing and Grain Handling subcategory. No addtional major categories will be used in Nebraska at the present time. The Food Processing and Grain Handling subcategory was established to permit EPA to accept as qualified for certification those individuals who have taken and passed the Nebraska Fumigation—stored grain subcategory examination. The name of the State's subcategory was changed in the Federal Plan to more accurately reflect the training and testing received by the pesticide applicators.

The standards of competency for commercial applicators will be the same as those specified in 40 CFR 171.4(b) and (c) and § 171.6, dated October 9, 1974, except that the standards of competency for the Industrial, Institutional, Structural and Health Related Pest Control do not include standards for the Food Processing and Grain Handling subcategory. Standards of competency for the subcategory have been established.

All individuals seeking certification as commercial applicators will be required to take and pass written exeminations prior to being certified by achieving a score of 70 percent correct or higher on each examination. A general examination will cover the general standards to competency listed at 40 CFR 171.4(b) and § 171.6. A separate category or subcategory examination as specified on 40 CFR 171.4(c) and Part V.A.4. of the Federal Plan must be passed for each commercial applicator category or subcategory in which the applicator wishes to be certified. A commercial applicator wishing to become certified must successfully pass the general examination plus at least one category or subcategory examination. All commercial applicators will be required to be recertified every two years by successfully passing a written examination.

If adequate resources are available, written examinations for commercial applicators will be administered by representatives of Region VII at various locations in Nebraska. Informaion concerning times, dates and locations of examination sessions will be prepared and made public in the future. Examinations may also be taken at the EPA Region VII, Pesticides Branch/Lincoln Office, 100 Centennial Mall North, Room 292, Lincoln, Nebr. 68508, between 9 a.m. and 2:30 p.m., Monday through Friday.

Region VII has determined that the commercial applicator examinations administered by the Nebraska Department of Agriculture during 1977, met the Federal standards of competency described at 40 CFR 171.4 and 171.6. Therefore, Region VII will accept as qualified for certification as commercial applicators and will certify those individuals who, during 1977, passed by scoring 70 percent correct or better on those commercial applicator examinations. The EPA has a list of those individuals who passed State administered examinations during 1977 and are qualified to be certified. Since no formal agreement could be reached

under current State law with the Nebraska Department of Agriculture for that Agency to continue the administration of certification examinations meeting Federal standards under this Federal Plan, on January 1, 1978, EPA began to administer its own certification examinations. Therefore, Region VII will no longer accept as meeting certification requirements any State examinations administered after January 1, 1978.

Under Federal regulations, certification in any category does not include certification under any subcategory. Therefore, Region VII will not accept as qualified in the Food Processing and Grain Handling subcategory any individual who has only passed Nebraska's Industrial, Institutional, Structural and Health Related Pest Control category examination. Region VII has determined that neither the training nor the examination in the State's Industrial, Institutional, Structural and Health Related Pest Control category determines the competency of applicators, in the Food Processing and Grain Handling subcategory. Any individual desiring to be certified in both the category and subcategory must pass appropriate examinations for each. Certification issued in this manner will be valid for two years from the date of issuance of the Federal credential.

Region VII will issue commercial applicator certification credentials in the appropriate category(ies) or subcategory(ies) valid in the State of Nebraska to commercial applicators who have been certified in the same or similar category(ies) or subcategory(ies) as described herein in States or Indian Reservations with EPA approved certification plans or under a Federal Agency Plan approved by EPA. Applicators will be required to present written documentation of certification to the Region VII Pesticides Branch prior to being issued a Federal certification credential for Nebraska. All commercial applicators seeking certification through this means must have met the same requirements as commercial applicators who have obtained initial certification from EPA in accordance with the procedure described in the preceding paragraphs. Certification issued in this manner will be valid for two years from the date of issuance of the credential or upon termination of the original certification, whichever ocurrs first.

The standards of competency for private applicators will be those at 40 CFR 171.5 and 171.6. Certification as a private applicator under this Plan is valid for three years from the date of issuance. Individuals may be certified as private applicators in Nebraska by completing one of the following options:

1. *Successful completion of an approved training course.* Approved training courses may include but are not limited to those sponsored by EPA and the University of Nebraska Cooperative Extension Service. Each training course for certification must be approved by Region VII and include at a minimum: (a) Coverage of the private applicator standards which are listed at 40 CFR 171.5 and 171.6; and, (b) each applicator must participate in the training course by completing the required written worksheets or have received a passing grade for an approved course offered by a recognized educational institution.

The University of Nebraska Cooperative Extension Service will conduct annual training courses for private applicators at various locations throughout Nebraska. Information on times, dates and locations of these training courses will be made available through the local county extension agents.

The EPA has determined that private applicator training courses conducted by the CES between October 1976 and December 1977 met the Federal standards of competency described at 40 CFR 171.5 and 171.6. Individuals who participated in and completed such EPA approved training, filled out and signed a CES Pesticide Certification Request Form, and had this form countersigned by the County Agent will be considered qualified for certification be EPA.

2. *Successful completion of a written examination.* To pass the written examination, a score of 70 percent correct or higher is required. The written examination will cover the standards listed at 40 CFR 171.5 and 171.6.

If adequate resources are available, written examinations for private applicators will be administered by officials or representatives of the Region VII Pesticides Branch, at various locations throughout Nebraska. Information on times, dates and locations of the examination sessions will be prepared and made public. Examinations may also be taken at the EPA, Region VII, Pesticides Branch/Lincoln Office between 9 a.m. and 2:30 p.m., Monday through Friday.

(Although Section 4 of the amended FIFRA prohibits EPA from requiring individuals to be certified as private applicators only by written examination, it is the Agency's view that applicators should be given this option. In many cases individuals seeking certification as private applicators may not have the time or desire to be certified by completion of training. In these cases an applicator should have the opportunity, on a voluntary basis, to be certified by written examination.)

3. *Successful completion of a self-study program.* An individual seeking certification as a private applicator may choose the optional requirement of completing the EPA programmed instruction learning course "Apply Pesticides Correctly," or an equivalent EPA approved self-study program, obtainable in each county from the Cooperative Extension Service County Agent. The applicator may complete the self-study course at home at his or her own convenience. Upon completion of the course manual, the applicant must return it to the County Agent, or an EPA official at the Region VII Pesticides Branch/Lincoln Office, who will review any unresolved questions with the applicant, discuss specific local conditions as they pertain to 40 CFR 171.5 and 171.6, verify that the manual has been completed and determine that the applicator is competent to receive certification. The programmed instruction learning program "Apply Pesticides Correctly" may also be obtained and completed in the Region VII Pesticides Branch/Lincoln Office or completed at home and returned to the Region VII Lincoln Office.

4. *Submitting evidence of certification as a private applicator in any other State having an EPA approved applicator certification program.* A private applicator holding a valid State, Federal, or Tribal certificate and desiring to be certified in Nebraska on that basis will be required to submit written evidence (copy of certification credential, license, or the equivalent) of certification to Region VII before receiving private applicator certification in Nebraska. Private applicators seeking certification through this mechanism must have met requirements equal to those established above. Certification issued in this manner will be valid for three years from the date of issuance, or until the expiration date of the certificate upon which EPA certification is granted, whichever occurs first.

5. *Non-reader certification.* Region VII will certify non-readers for the use of a single product for specific use(s), if the individual seeking certification successfully completes an approved training course or passes an oral examination approved by Region VII. Such training or testing shall incorporate a specific procedure relating to label comprehension, as described at 40 CFR 171.5(b)(1).

All private applicators will be required to be recertified every three years. Private applicators may be recertified by successful completion of one of the options available for original certification.

To ensure that certified applicators comply with standards for the use of restricted-use pesticides and to provide adequate supervision of noncertified applicators, EPA inspectors will investigate incidents, accidents and complaints related to pesticide use. The EPA inspectors will also make routine

inspections of pesticide manufacturers, distributors, dealers and users.

In cases where misuse occurs, EPA may, if appropriate, modify, suspend or revoke a certificate or take action under section 14 of the amended FIFRA. Under section 14, EPA has the authority to assess both civil and criminal penalties. Commercial applicators, wholesalers, dealers, retailers or other distributors can be assessed up to a $5,000 fine for each offense as civil penalties and up to a $25,000 fine or imprisonment, for not more than one year, or both, for each offense as criminal penalties. Private applicators, subsequent to receiving a written warning, can be assessed a civil penalty up to $1,000, or a criminal penalty of not more than a $1,000 fine and/or imprisonment for not more than 30 days, for each offense.

PUBLIC COMMENTS

Interested persons are invited to submit written comments on the proposed Federal certification program for the State of Nebraska to the Chief, Pesticides Branch, Region VII, Environmental Protection Agency, 1735 Baltimore Avenue, Kansas City, Mo. 64108. Comments must be received on or before April, 1978, and should bear the identifying notation (OPP-42049A). All written comments filed pursuant to this notice will be available for public inspection at the above mentioned location from 8:30 a.m. to 3:30 p.m., Monday through Friday.

Dated: March 6, 1978.

KATHLEEN Q. CAMIN,
Regional Administrator, Region VII.

[FR Doc. 78-6632 Filed 3-14-78; 8:45 am]

[6560.01]

[FRL 866-5]

WATER PLANNING AND STANDARDS PROGRAM

Public Meeting

Notice is hereby given that informal discussion sessions have been scheduled for 9 to 3:30 p.m., Friday, March 31, 1978, at Waterside Mall, Room 2117, 401 M Street, SW., Washington, D.C.

The meeting will provide opportunities for public comment concerning implementation of the amended water planning and standards provisions of the 1977 Clean Water Act (Pub. L. 95-217), as well as the 404 Dredge and Fill Program, the Clean Lakes Program and the Vessel Wastes Program.

The meeting schedule and discussion topics are as follows:

9-11:30—208 planning, including funding, regulatory programs and agricultural cost-sharing.

1-3:30—404 Dredge and Fill Program, Clean Lakes and Vessel Wastes.

The meeting will be open to the publlic; however, space is limited and advance reservations are requested. Persons wishing to attend the meeting should contact Mr. Charles Vanderlyn, Water Planning Division (WH-554), 401 M Street, SW., Washington, D.C. 20460. The telephone number is 202-755-9231.

Dated: March 9, 1978.

THOMAS C. JORLING,
Assistant Administrator, Office of Water and Hazardous Materials.

[FR Doc. 78-6631 Filed 3-14-78; 8:45 am]

[6560-01]

[FRL 867-4]

SCIENCE ADVISORY BOARD, ECOLOGY COMMITTEE

Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the Ecology Committee of the Science Advisory Board will be held on April 3 and 4, 1978, beginning at 9 a.m., in the Administrator's Conference Room (Room 1101), Waterside Mall West Tower, 401 M Street SW., Washington, D.C.

This is the sixteenth meeting of the Ecology Committee. The agenda includes a report on Science Advisory Board activities; a briefing on the feasibility study of the possible containment or removal of Kepone contaminants in the James River; updates on the Lakes Eutrophication Survey and the Shagawa Lake projects; discussion on the organization of research in EPA, and the Office of Research and Development 5-Year Research Plan; report on projections of the Nation's water quality given best available control technology (BACT); considerations of Statement on Anticipatory Research; discussion on uniform National regulations versus regional regulations; and member items of interest.

The meeting is open to the public. Any member of the public wishing to attend, participate, or obtain information should contact Dr. J. Frances Allen, Executive Secretary, Ecology Committee, 703-557-7720.

Dated: March 9, 1978.

RICHARD M. DOWD,
Staff Director, Science Advisory Board.

[FR Doc. 78-6744 Filed 3-14-78; 8:45 am]

[6560-01]

[FRL 867-3]

SCIENCE ADVISORY BOARD, ENVIRONMENTAL HEALTH ADVISORY COMMITTEE, STUDY GROUP ON PESTICIDE TOLERANCES

Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the Study Group on Pesticide Tolerances of the Science Advisory Board's Environmental Health Advisory Committee will be held at 9 a.m. on April 5, 1978 in Conference Room A (Room 1112), Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va.

The principal purpose of the meeting will be to brief the Study Group of various aspects of the legislative authority and mandate directly or indirectly relating to the Agency's tolerance setting system.

Pertinent background information is, as follows. In response to an Agency request to the Science Advisory Board, the Board's Environmental Health Advisory Committee established a Study Group on Pesticide Tolerances and charged it with assisting the Committee in an evaluation of the scientific basis of the Agency's system for establishing tolerances for pesticide residues in agricultural crops. The aforementioned briefings are to provide the Study Group with essential background information.

The meeting will be open to the public. Any member of the public wishing to attend or submit a paper should contact the Secretariat, Science Advisory Board (A-101), U.S. Environmental Protection Agency, Washington, D.C. 20460, by c.o.b. March 23, 1978. Please ask for Mrs. Ilene Stein or Ms. Barbara Robinson. The telephone number is 703-557-7720.

RICHARD M. DOWD,
Staff Director, Science Advisory Board.

MARCH 10, 1978

[FR Doc. 78-6745 Filed 3-14-78; 8:45 am]

[6560-01]

[FRL 867-2]

SCIENCE ADVISORY BOARD ENVIRONMENTAL HEALTH ADVISORY COMMITTEE

Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Environmental Health Advisory Committee of the Science Advisory Board will be held on April 3 and 4, 1978 in Conference Room A (Room 1112), Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va. The meeting will start at 9:00 a.m. on April 3, 1978.

The principal purpose of the meeting will be (1) to consider and discuss a

draft report of the Committee's Study Group on Pentachlorophenol Contaminants; (2) to brief the Committee on EPA's current and future health research activities; and (3) to brief the Committee on health risk assessment in EPA. The Agenda will also include brief reports and informational items of current interest to the members.

The draft report of the Committee's Study Group on Pentachlorophenol Contaminants will be the principal Agenda item for April 3, 1978. The other aforementioned Agenda items are planned for April 4, 1978.

Pertinent background information on the draft report of the Committee's Study Group on Pentachlorophenol Contaminants is, as follows. In response to an Agency request to the Science Advisory Board, the Board's Environmental Health Advisory Committee established a Study Group on Pentachlorophenol Contaminants and charged it with reviewing and reporting on available information on the chemistry and toxicology of dibenzodioxin and dibenzofurans; and further, to the extent possible, to comment on the potential hazard to humans which could be attributed to registered uses of PCP and the extent that this hazard might be mitigated by use of a commercial process which results in lower levels of chlorinated dibenzodioxins and related contaminants. At this stage, the Study Group's report is not to be considered as final but subject to further review and revision. A limited number of single copies of the draft report is available on request.

The meeting will be open to the public. Any member of the public wishing to attend or submit a paper should contact the Secretariat, Science Advisory Board (A-101), U.S. Environmental Protection Agency, Washington, D.C. 20460, by c.o.b. March 28, 1978. Please ask for Mrs. Ilene Stein or Ms. Barbara Robinson. The telephone number is 703-557-7720.

RICHARD M. DOWD,
Staff Director,
Science Advisory Board.

MARCH 10, 1978.

[FR Doc. 78-6746 Filed 3-14-78; 8:45 am]

[6560-01]

[FRL 867-5]

SCIENCE ADVISORY BOARD TECHNOLOGY ASSESSMENT AND POLLUTION CONTROL ADVISORY COMMITTEE

Open Meeting

As required by 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 a.m., April 6, 7 and 8, 1978 in Austin, Tex. The meeting is open to the public. Any member of the public wishing to attend should contact Lloyd Taylor or Elaine Hance for the exact address of the meeting on 703-557-7720.

The meeting is to be a working session where the Committee will work on the following objectives: Providing a report to the Agency giving suggestions and comments on the needs for long-term and anticipatory research and development relating to pollution control techniques. Discuss potential committee activities and decide on specific work plans relative to providing advice to EPA on the availability of technology for (a) controlling toxic chemicals, (b) use of land for waste disposal (c) the control of fine particles, the use of the deep oceans for disposal of nonreclaimable wastes, or (d) other similar environmental problems. Consider a report from the study group assigned to study and review the EPA's draft guidelines for identifying novel and innovative technologies for municipal wastewater treatment. Discuss possible plans to review other EPA regulations.

MARCH 9, 1978.

RICHARD M. DOWD,
Staff Director,
Science Advisory Board.

[FR Doc. 78-6743 Filed 3-14-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 21417]

AMERICAN TELEPHONE & TELEGRAPH CO.

Order Extending Reply Comments

Adopted: March 6, 1978.
Released: March 8, 1978.

In the matter of American Telephone & Telegraph Co., Long Lines Department, Revisions of Tariff FCC No. 260: Private Line Services, Series 1000 (telegraph).

1. Comments in this proceeding were to have been filed on or before March 20, 1978, and reply comments on or before April 10, 1978. We have determined that the proceeding would be materially aided by our further extending the due dates by approximately one month. Delegated authority to the Chief, Common Carrier Bureau to so order is contained in § 0.303(c) of the Commission's rules and regulations, 47 CFR § 0.303(c).

2. *Accordingly, it is ordered,* That the due dates for comments and reply comments in this proceeding are hereby extended to April 21, 1978 and May 12, 1978, respectively.

FEDERAL COMMUNICATIONS COMMISSION,
WALTER R. HINCHMAN,
Chief, Common Carrier Bureau.

[FR Doc. 78-6700 Filed 3-14-78; 8:45 am]

[6712-01]

[Docket Nos. 21267; BC Docket No. 78-91; File Nos. BRH-1362; 10244]

LEWEL BROADCASTING, INC., WDRK(FM) AND KORIN BROADCASTING CO., INC.

Memorandum Opinion and Order

Adopted: March 7, 1978.

Released: March 9, 1978.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it for consideration: (i) The above-captioned application of Lewel Broadcasting, Inc. (WDRK) for renewal of license of station WDRK(FM), Greenville, Ohio; (ii) the Commission's Order and Notice of Apparent Liability, FCC 77-372, 42 FR 31182, published June 20, 1977, initiating the renewal proceeding in Docket No. 21267; (iii) the above-captioned mutually exclusive application of Korin Broadcasting Company, Inc. (Korin) for a construction permit for a new FM broadcast station in Greenville, Ohio; (iv) and a petition to dismiss the Korin application, filed by WDRK.

2. WDRK alleges that the Korin application was not substantially complete in the financial and ascertainment areas as originally submitted, and as accepted for filing by the Commission. Moreover, WDRK contends that the Korin application should be dismissed for failure to promptly amend and prosecute in response to a Commission deficiency letter.

3. WDRK's contention that deficiencies in the original Korin application warrant dismissal is without merit.[1] WDRK's petition merely reiterates the financial and ascertainment deficiencies contained in the Commission's July 20, 1977, deficiency letter to Korin. In *KALE Inc.*, 56 FCC 2d 1033, 35 RR 2d 357 (1975), the Commission held that an application may be acceptable for filing and yet not demon-

[1] With regard to the allegations that Korin failed to promptly amend its applicatio to correct the financial and ascertainment deficiencies and failed to prosecute in response to a deficiency letter, the Commission notes that Korin sought and was granted extensions of time within which to amend. Further, the applicant amended its application on several occasions between October 1977 and January 1978. In addition, WDRK alleged that Korin's failure to promptly amend resulted in action on its renewal application being stayed pending completion of the processing of the Korin application. The Commission notes, however, that the Order and Notice of Apparent Liability, supra, directed consolidation of these applications. Such action serves both to expedite a comparative proceeding and the interets of administrative convenience. *Seaboard Broadcasting Corp.*, FCC 70-272, released March 27, 1970, 18 RR 2d 849 (1970).

strate the requisite qualifications to justify a grant. Korin provided data in the original application regarding its proposed costs of construction and first year operation, as well as the sources it proposed to rely upon to meet such costs. Moreover, Korin's original application shows that some effort had been made to ascertain community needs and interests. Under these circumstances, the submission of incomplete financial and ascertainment matter did not render the application so defective that it could not be accepted for filing. See *Communications Gaithersburg, Inc.*, 60 FCC 2d 537, 38 RR 2d 239 (1976); *Trustees of Dartmouth College*, FCC 73-1308, released December 19, 1973, 29 RR 2d 59 (1973). Accordingly, WDRK's petition to dismiss will be denied.

4. Analysis of Korin's application indicates that the applicant will require $82,287 to construct and operate its proposed station for one year, without reliance on revenues, itemized as follows:

Equipment lease	$24,750
Studios and offices (remodel)	1,450
Transmitter building 2,360	
Studio site lease	3,600
Working Capital (first year)	50,127
Total	82,287

To meet this requirement, the applicant relies on existing capital, stock subscriptions, and a bank line of credit totalling $109,382. Korin has established the availability of only $3,241 in existing capital and $15,000 in valid stock subscriptions from three of its four stockholders. Thus, while the applicant's balance sheet reports $19,382.68 in cash and prepaid expenses, it also reflects $16,140.99 in liabilities. Further the balance sheet submitted in support of Mr. Constantine Gianuglou's subscription does not indicate the existence of current assets in excess of current liabilities by an amount sufficient to fulfill his $5,000 commitment. With respect to the $70,000 line of credit Korin has obtained from the Central Trust Company of Montgomery County, N.A., the commitment letter fails to specify terms of repayment as required by Section III, page 3, paragraph 4(e) of the application form. In fact, the letter states that "the notes would be written on a demand basis." Accordingly, we are unable to determine that Korin can rely upon this credit line. Since Korin has, therefore, shown the availability of approximately $18,342 to meet proposed costs of $82,287, a limited financial issue will be specified.

5. Korin has failed to comply with the requirements of the Commission's *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1501 (1971). From the information before us, it appears that Korin has failed to survey leaders of all significant groups set forth in its demographic study, including the following significant groups in Greenville: charities; civic, social and fraternal organizations; cultural services; industrial and manufacturing firms; labor; recreational facilities; migrant farm workers; women; youth; and the elderly. *Voice of Dixie*, 45 FCC 2d 1027, 29 RR 2d 1127 (1974). Additionally, Korin has failed to indicate the dates it conducted its surveys of community leaders and the general public. See Question and Answer 15 of the *Primer*. Accordingly, an ascertainment issue is required.

6. Except as indicated by the issues specified below and in the Order and Notice of Apparent Liability, supra, the applicants are qualified to construct and operate as proposed. However, because the proposals are mutually exclusive, they must be designated for a hearing in a consolidated proceeding on the issues specified below.

7. *Accordingly, it is ordered*, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, and § 1.227 of the commission's rules, the above-captioned renewal and construction permit applications are designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent order, upon the following issues:[2]

(1) To determine, with respect to Korin Broadcasting Company, Inc.:

a. The source and availability of funds in excess of the $18,342 indicated; and

b. Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified to construct and operate as proposed.

(2) To determine the efforts made by Korin Broadcasting Company, Inc. to ascertain the community needs and problems of the area to be served and the means by which the applicant proposes to meet those needs and interests.

(3) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(4) To determine, in light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

8. *It is further ordered*, That the petition to dismiss the application of Korin Broadcasting Company, Inc., filed by Lewel Broadcasting Inc., is denied.

9. *It is further ordered*, That to avail itself of the opportunity to be heard, Korin Broadcasting Company, Inc., pursuant to § 1.221(c) of the Commission's rules, in person, or by attorney, shall, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on a date fixed for the hearing and present evidence on the issues specified in this Order.

10. *It is further ordered*, That Korin Broadcasting Company, Inc. shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-6698 Filed 3-14-78; 8:45 am]

[2]The specification of issues herein in no way supersedes the issues raised in the Order and Notice of Apparent Liability, supra.

[6712-01]

[BC Docket Nos. 78-63, 78-64; File Nos. BRH-855, BPH-9676]

RADIO STATION WABZ, INC. AND VICTOR BROADCASTING, INC.

Designated Applications for Consolidated Hearing on Stated Issues; Memorandum Opinion and Order

Adopted: February 10, 1978.

Released: March 8, 1978.

In re Applications of Radio Station WABZ, Inc. (WABZ-FM), Albemarle, N.C. BC Docket No. 78-63, File No. BRH-855, has: 100.9 mHz, No. 265, 3kW, 200 feet, for Renewal of license. Victor Broadcasting, Inc., Albemarle, North Carolina, BC Docket No. 78-64, File No. BPH-9676, req: 100.9 mHz, No. 265, 3kW (H & V), 300 feet, for construction permit.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned application of radio station WABZ, Inc., licensee of FM broadcast station WABZ, Albemarle, North Carolina, for renewal of license; and the application of Victor Broadcasting, Inc., for a construction permit for a new commercial FM broadcast station at Albemarle, North Carolina, appearing originally in the FEDERAL REGISTER issue of February 28, 1978 at page 8181. Inasmuch as these applications are for the same facilities, they are mutually exclusive with each other.

2. Except as indicated by issues specified below, the applicants are qualified to be FCC licensees. However, because the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

3. *Accordingly, it is ordered*, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications of Radio Station

WABZ, Inc. and Victor Broadcasting, Inc. are designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(2) To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

4. *It is further ordered,* That, to avail themselves of the opportunity to be heard, the applicants herein pursuant to § 1.221(c) of the Commission's rules, in person, or by attorney, shall, within twenty (20) days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

5. *It is further ordered,* That the applicants herein shall pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-6699 Filed 3-4-78; 8:45 am]

[6730-01]

FEDERAL MARITIME COMMISSION

AGREEMENT FILED

The Federal Maritime Commission hereby gives notice that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement and the justification offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street NW, Room 10016; or may inspect the agreement at the Field Offices located at New York, N.Y.; New Orleans, La.; San Francisco, Calif.; and San Juan, P.R. Interested parties may submit comments on the agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington D.C. 20573, on or before March 27, 1978. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity, allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreement and the statement should indicate that this has been done.

AGREEMENT NO.: T-3599.

FILING PARTY:

Thomas W. Gleason, Jr., Esquire, Peter Lambos, Esquire, Co-Counsel, NYSA-ILA Contract Board, 80 Broad Street, New York, N.Y. 10004.

SUMMARY: Agreement No. T-3599 is between the members of the New York Shipping Association, Inc., (NYSA) and the members of the International Longshoremen's Association, AFL-CIO (ILA) and is the parties' tonnage assessment agreement under their collective bargaining agreement for the three-year period commencing October 1, 1977, and ending September 30, 1980. Agreement No. T-3599 is an integral part of the parties' collective bargaining agreement and it is designed to obtain the funds necessary to meet the fringe benefit obligations arising under the collective bargaining agreement. Under Agreement No. T-3599, each vessel carrier calling at the Port of New York will be responsible for an assessment amount per ton on each ton of non-excepted cargo loaded or discharged in the Port during the agreement's term. Excepted cargo (all domestic cargo, all lumber at lumber terminals, bulk cargo, newsprint and passenger vessels) is assessed on a manhour basis. Tons of unboxed automobiles, trucks and buses are to be calculated on a weight basis. Agreement No. T-3599 further provides that any carrier, direct employer, shipper or other interested party has the right to request the NYSA-ILA Contract Board to modify the tonnage definition used under the agreement (i.e., 2,240 lbs. or 40 cubic feet, whichever is greater) with respect to any specific cargo which it is believed to be unduly burdened by such definition.

Dated: March 9, 1978.

By Order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-6640 Filed 3-14-78; 8:45 am]

[6210-01]

FEDERAL RESERVE SYSTEM

MERCANTILE TEXAS CORP.

Acquisition of Bank

Mercantile Texas Corp., Dallas, Tex., 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 100 percent of the voting shares (less directors' qualifying shares) of South Park National Bank, San Antonio, Tex. (a de novo bank). 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)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than March 30, 1978.

Board of Governors of the Federal Reserve System, March 8, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-6658 Filed 3-14-78; 8:45 am]

[6210-01]

PACESETTER FINANCIAL CORP.

Acquisition of Bank

Pacesetter Financial Corp., Grand Rapids, Mich., 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 100 percent of the voting shares of the successor by consolidation to The Brighton State Bank, Brighton, Mich. 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)).

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 March 30, 1978.

Board of Governors of the Federal Reserve System, March 8, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-6659 Filed 3-14-78; 8:45 am]

[6210-01]

TEXAS BANCORP SHARES, INC.

Formation of Bank Holding Company

Texas Bancorp Shares, Inc., San Antonio, Tex., 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 company by acquiring 80 percent or more of the voting shares of Texas State Bank, San Antonio, Tex. 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)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than March 29, 1978.

Board of Governors of the Federal Reserve System, March 8, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-6660 Filed 3-14-78; 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 March 9, 1978. 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 FEC and FTC 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 April 3, 1978, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 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.

FEDERAL ELECTION COMMISSION

The FEC requests clearance of revisions to Form 7, Report of Communications Costs by Corporations and Membership Organizations, and proposes to promulgate this form for use by corporations and membership organizations. The FEC states that the only substantial revision to Form 7 is the requirement for monthly reporting of communication costs during the 1978 primary period once a $2,000 threshold is exceeded and every month thereafter, if additional communication expenditures are made. A separate $2,000 threshold for reporting purposes is applied to the 1978 general election. The revisions to Form 7 include expansion of the instructions to include who must file, what to report and when a report must be filed. The FEC estimates respondents will be approximately 100 corporations and membership organizations and that reporting time will average one hour per response.

FEDERAL TRADE COMMISSION

The FTC requests clearance of a new, single-time, voluntary questionnaire it proposes to send to not more than 600 public accounting firms located in the 50 states, the District of Columbia, Commonwealth of Puerto Rico, Guam and the Virgin Islands. The questionnaire, part of a nonpublic law enforcement investigation, requests information and viewpoints concerning the operation and regulation of accountancy practices. The overall purpose of the FTC's investigation is to determine whether or not providers of accounting services may be engaged in unfair, deceptive, or anticompetitive practices in violation of the Federal Trade Commission Act. The FTC estimates 600 potential respondents out of a universe of 30,000 will be requested to fill out the questionnaire and that reporting time will average two hours per response.

NORMAN F. HEYL,
Regulatory Reports, Review Officer.

[FR Doc. 78-6687 Filed 3-14-78; 8:45 am]

[4110-07]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

REPORT ON TREATMENT OF WOMEN UNDER SOCIAL SECURITY

Request for Comments

AGENCY: Social Security Administration, HEW.

ACTION: This notice sets forth a request for comments on the report of the HEW Task Force on the Treatment of Women Under Social Security.

SUMMARY: An HEW Task Force was appointed by HEW Secretary Califano in November 1977 to consider the treatment of women under social security. The Secretary has released the report of the Task Force which describes issues raised regarding the treatment of women under social security and analyzes various approaches which have been suggested to deal with these issues. A summary of the report is printed below. This report will be used by the Department of Health, Education, and Welfare in its study of proposals to eliminate dependency and sex discrimination from the social security program which is required under the provisions of the Social Security Amendments of 1977 (Pub. L. 95-216). The report of the study is to be submitted to the Congress by June 20, 1978. Comments from members of the public on the HEW Task Force report and any additional views or ideas with regard to women's issues under social security are requested.

DATE: Comments must be received by March 31, 1978.

ADDRESS: All views or comments should be sent to Don I. Wortman, Acting Commissioner of Social Security, Social Security Administration, P.O. Box 17054, Baltimore, Md. 21235. A copy of the complete HEW Task Force report may be obtained by writing to the same address.

FOR FURTHER INFORMATION CONTACT:

Anne Erfle, Office of Program Evaluation and Planning, telephone 301-594-2840.

Dated: March 9, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

REPORT OF THE HEW TASK FORCE ON THE TREATMENT OF WOMEN UNDER SOCIAL SECURITY—FEBRUARY 1978

SUMMARY

In November 1977, Joseph A. Califano, Jr., Secretary of Health, Education, and Welfare, established the HEW Task Force on the Treatment of Women under Social Security to describe issues relating to the treatment of women and to analyze alternative approaches to deal with these issues. A report on the Task Force study was to be submitted by February 1, 1978.

The Task Force report was to be limited to a discussion of issues and approaches that have been put forward by individuals or groups outside the Department; the Task Force was not to develop approaches or make recommendations. The Secretary noted that in light of the changes in women's roles and in society's recognition of those roles, it is important that attention be given to assuring the fair treatment of women under the social security program.

I. Changing Social Trends

CHANGING WORK ROLES OF WOMEN

Far more women, especially married women, are in the labor force today than before World War II—17 percent of married women in 1940 compared to 47 percent in 1977. Over half of married women under age 60 are in the labor force.

The labor-force participation of women is projected to continue to rise—from about 55 percent in 1975 to about 67 percent in 1990 for women age 25 to 54.

The earnings of women remain lower than the earnings of men—median earnings for women working full time have remained close to 60 percent of the median for men for more than two decades.

Three out of four working wives earned less than 40 percent of total family income in 1974. However, because more married women work, more and more families depend on the earnings of both spouses to maintain their standards of living.

Roughly half of married women are full-time homemakers, but perceptions of the homemaker role have been changing. The idea that the homemaker role has an economic value is gaining acceptance. The rising labor-force participation of married women and changing perceptions of the homemaker role tend to lead some toward a view of marriage as an interdependent relationship between spouses.

MARITAL DISSOLUTION

Both the divorce rate and the remarriage rate have been high in the past several years. The ratio of divorces to marriages per year was about 1 to 6 in 1940 and 1 to 2 in 1975.

A high proportion of women are divorced or widowed before retirement age—in 1975, the proportion was 1 in 3 women age 46 to 60 who have ever been married. Less than one-third of divorced women receive support from their ex-husbands. In 1975, only 27 percent of divorced and separated women under age 60 with minor children—and 9 percent without children—received such support.

Women who are divorced, separated, or widowed before retirement age usually seek paid jobs. In 1977, the proportions of such women in the labor force were: 77 percent under age 55 without minor children; 70 percent with school-age children; and 55 percent with pre-school-age children. However, unemployment rates are high for formerly married women; many have low incomes; and many with children rely on public assistance.

II. Major Issues Relating to Family Protection and the Treatment of Women Under Social Security

These issues represent the major ones that have been raised by people outside the Department of Health, Education, and Welfare concerning the treatment of families, women, and single workers under social security. The Task Force recognizes that opinions differ on what the issues are and on the relative importance of each issue.

1. *Low return on contributions of the second working spouse*—Working wives frequently object to paying social security taxes toward retirement protection that, they think, largely duplicates the protection they have as dependents based on their husbands' earnings.

2. *Fairness between one- and two-earner couples*—Many consider it unfair that benefits can be lower for two-earner couples than for one-earner couples with the same average lifetime earnings credits.

3. *Fairness between surviving spouses of one- and two-earner couples*—Many consider it unfair that benefits can be lower for surviving spouses of two-earner couples than for surviving spouses of one-earner couples with the same average lifetime earnings credits.

4. *Fairness to single workers*—Some single workers think that they are treated unfairly as compared with one-earner couples because no additional social security taxes are paid by married workers to provide a 50-percent supplemental benefit for the unpaid spouse.

5. *Lack of coverage of work in the home*—Wives who work in paid employment for part of their lives and who are unpaid homemakers part of their lives have gaps in their social security earnings credits, and lifelong homemakers have no social security protection in their own right.

6. *Lack of protection for disabled homemakers and survivors of deceased homemakers*—Homemakers who become disabled are not entitled to benefits, and if they die their families are not entitled to benefits even though their homemaker services are lost to the family.

7. *Duration-of-marriage requirement for eligibility as a divorced wife and surviving divorced wife*—Women divorced after fewer than 20 years of marriage (10 years effective January 1979) have no social security protection on their former spouses' earnings and must depend on their own earnings. Yet they frequently have gaps in their social security earnings credits or have no credits because of time spent as unpaid homemakers.

8. *Inadequate benefits for divorced wives*—Divorced wives and separated spouses receive a benefit equal to 50 percent of the worker's benefit. This benefit is intended to supplement a worker's benefit rather than to support a person alone.

9. *Dependency status of divorced and separated wives*—Benefits are not payable until the worker retires, becomes disabled, or dies. The benefit amount increases upon the worker's death even though the woman's economic status may not have changed.

10. *Disability protection for widowed or divorced homemakers*—Because of time spent out of the labor force as unpaid homemakers, divorced, separated, or widowed homemakers have little or no protection if their own work efforts are cut short by disability.

III. Approaches Analyzed by the Task Force

The Task Force reviewed eight approaches suggested by people outside the Department of Health, Education, and Welfare which are intended to address some or all of the issues. They represent the major types of approaches that have been suggested.

1. *Working spouse's benefit plan*—Any individual who is eligible for benefits both as a worker and as a spouse (or surviving spouse) of another worker would receive the larger benefit, plus 25 percent of the smaller benefit. This plan narrows the difference in benefit amounts between one- and two-earner couples but increases benefits of couples as compared with single workers.

2. *Combined-earnings plan* (Advisory Council Subcommittee)—Permits married couples at retirement to combine their past earnings and to receive 150 percent of the benefit based on combined earnings. This plan equalizes benefits for one- and two-earner couples and for survivors of these couples but increases benefits of couples as compared with single workers.

3. *Increase worker's benefit by 12.5 percent and decrease spouse's benefit to 33⅓ percent of the worker's benefit* (Robert M. Ball)—Narrows the difference between couple's and single worker's benefits and comes close to equalizing benefits for one- and two-earner couples. Widens the disparity in benefits for surviving spouses of one- and two-earner couples with the same average lifetime earnings credits.

4. *Phase out spouse's and surviving spouse's benefits and provide child-care credits* (Rita Ricardo Campbell)—The phase-out period would be 30 years for spouse's and 50 years for surviving spouse's benefits. Results in the reduction or elimination of benefits for many wives and widows.

5. *Averaged earnings plan* (Consultant Panel)—Permits a married couple to receive benefits based on the sum of the averaged earnings of both spouses, and eliminates spouse's and surviving spouse's benefits. Equalizes benefits for one- and two-earner couples and their survivors, and narrows the difference between couple's and single worker's benefits.

6. *Social security earnings credits for homemaker services* (Representatives Abzug and Jordan)—Provides social security credits for people performing homemaker services who do not hold a full-time job. Abzug approach would finance credits through general revenues and Jordan approach through social security taxes paid at the self-employed rate. Provides social security protection for homemakers in their own right that does not change due to changes in marital status. However, depending on value of homemaker credits, protection could be less than under present law. Also, a number of practical problems remain—who should qualify for the credits, proper reporting of homemaker services, and how the proposal should be financed.

7. *Earnings sharing with 75/75 option* (Representatives Fraser and Keys)—Divides social security earnings credits equally between spouses on a year-by-year basis for the duration of the marriage. Each spouse receives credit for the higher of: 50 percent of the couple's combined earnings or 75 percent of the earnings of the higher-paid worker. The plan treats marriage as an interdependent economic relationship in which the contributions of each spouse have economic value and results in an unpaid homemaker receiving social security protection in her own right. However, the plan raises issues of fairness between one- and two-earner couples. It also raises issues of fairness and adequacy of protection for families when only one spouse is retired, becomes disabled, or dies. The plan also presents administrative problems that need to be explored further.

8. *Earnings sharing plan* (Department of Justice)—Divides social security earnings credits of married couples equally between spouses on a year-by-year basis. The plan addresses all of the issues listed in section II. It treats marriage as an interdependent economic relationship in which the contributions of each spouse have economic value and results in an unpaid homemaker receiving social security protection in her own right. However, the plan raises issues of fairness and adequacy of protection when

only one spouse is retired, becomes disabled, or dies. The plan also raises questions of administrative feasibility that need to be explored further.

IV. CONCLUSIONS

The Task Force believes that the provisions for family protection and the treatment of women under social security require further attention by the Department of Health, Education, and Welfare. A series of workable options, building on the approaches already developed, are needed so that policymakers and the public can have clear choices of alternative forms of individual and family protection under social security.

The Social Security Amendments of 1977 provide for a 6-month study, to be conducted by the Department of Health, Education, and Welfare, of proposals to eliminate dependency and sex discrimination under social security. The Task Force believes that such a study can build on the work of this Task Force to develop the needed options. It is expected that this Task Force report and further development and refinement of options will facilitate consideration of this topic by the Advisory Council on Social Security.

[FR Doc. 78-6697 Filed 3-14-78; 8:45 am]

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM 32907]

NEW MEXICO

Application

MARCH 7, 1978.

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 Co. has applied for one 8⅝-inch natural gas pipeline right-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 21 S., R. 25 E.,
Sec. 1, lots 11, 12, 26, 27, and 28;
Sec. 2, lots 5, 6, 9, 10, and 11; Sec. 3, lots 3, 4, 6, 8, and 17;
Sec. 4, lots 1 and 2.
T. 21 S., R. 26 E.,
Sec. 5, lots 13, 14, and NW¼SW¼;
Sec. 6, lots 13, 15, 16, 17, NE¼SW¼ and N½SE¼.

This pipeline will convey natural gas across 4.957 miles of public lands 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.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-6693 Filed 3-14-78; 8:45 am]

[4410-01]

DEPARTMENT OF JUSTICE

Antitrust Division

UNITED STATES v. SMITH'S BAKERY, INC., SMITH'S BAKERY AND COLONIAL BAKING COMPANY OF GULFPORT

Proposed Consent Judgment and Competitive Impact Statement Thereon

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Sections 16 (b) through (h), that a proposed consent judgment and a competitive impact statement as set out below have been filed with the United States District Court for the Southern District of Mississippi, Biloxi, Miss., in Civil Action No. S77-0107(N), *United States v. Smith's Bakery, Inc., Smith's Bakery, and Colonial Baking Company of Gulfport.*

Count I of the complaint alleged that the defendants conspired to fix prices, rig bids and allocate territories and customers in the wholesale distribution of bakery products in the Gulf Coast area of Mississippi. Counts II and III of the complaint alleged that the defendants rigged bids to federal institutions, and that the federal government, as a purchaser of bakery products, was financially damaged. The proposed judgment permanently enjoins the defendants from entering into any agreements to fix prices, rig bids, allocate territories or allocate customers in connection with the sale and distribution of bakery products. The proposed judgment also provides that Smith's Bakery and Colonial Baking Company of Gulfport will each pay $300,000 to the federal government. The CIS sets forth the particular nature of the violation and the industry involved. It also discusses the specific relief set forth in the proposed consent judgment.

Public comment is invited within the 60 day statutory comment period. Such comments and responses thereto will be published in the FEDERAL REGISTER and filed with the Court. Comments should be directed to Donald A. Kinkaid, Chief, Atlanta Field Office, Antitrust Division, United States Department of Justice, Suite 420, 1776 Peachtree Road NW., Atlanta, Ga. 30309.

Dated: February 27, 1978.

CHARLES F. B. MCALEER,
Special Assistant for Judgment Negotiations, Office of Operations.

U.S. DISTRICT COURT, SOUTHERN DISTRICT OF MISSISSIPPI, SOUTHERN DIVISION

United States of America, Plaintiff, v. *Smith's Bakery, Inc.*, a Florida corporation, *Smith's Bakery*, a Mississippi corporation, and *Colonial Baking Company of Gulfport*, a Delaware corporation, Defendants.

Civil No. S77-0107.

Filed: February 27, 1978.

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to plaintiff or defendants in this or any other proceeding.

Dated: February 27, 1978.

For the Plaintiff: John H. Shenefield, *Assistant Attorney General;* William E. Swope, Charles F. B. McAleer, Donald A. Kinkaid, Gary Flack, Justin M. Nicholson, Nicholas A. Lotito, *Attorneys, Department of Justice.* Robert E. Hauberg, *U.S. Attorney.*

For the Defendants: Vickers, Riis, Murray & Curran, Mobile, Ala., by Edwin J. Curran, Jr., *Attorney for Smith's Bakery, Inc., and Smith's Bakery;* Levin, Warfield, Middlebrook, Mabie, Rosenbloum & Magie, P.A. Pensacola, Fla., by D. L. Middlebrook, *Attorney for Smith's Bakery, Inc., and Smith's Bakery;* Butler, Snow, O'Mara, Stevens & Cannada, Jackson, Miss., by Lawrence J. Franck, *Attorney for Smith's Bakery, Inc., and Smith's Bakery;* Taylor, Porter, Brooks & Phillips, Baton Rouge, La., by Fredrick R. Tulley, *Attorney for Colonial Baking Company of Gulfport;* Cox & Dunn, Ltd., Jackson, Miss., by Vardaman S. Dunn, *Attorney for Colonial Baking Company of Gulfport.*

U.S. DISTRICT COURT, SOUTHERN DISTRICT OF MISSISSIPPI, SOUTHERN DIVISION

United States of America, Plaintiff v. *Smith's Bakery, Inc.*, a Florida corporation, *Smith's Bakery*, a Mississippi corporation, and *Colonial Baking Company of Gulfport*, a Delaware corporation, Defendants.

Civil No. S77-0107.

Filed: February 27, 1978.

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on March 21, 1977, and the plaintiff and the defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without ad-

mission by any party with respect to any such issue and without this Final Judgment constituting any evidence or admission by any party with respect to any such issue;

Now, therefore, without adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby,

Ordered, adjudged and decreed, as follows:

AS TO COUNT ONE

I

This court has jurisdiction over the subject matter herein and the parties hereto. Count One of the complaint states a claim against the defendants upon which relief may be granted under Section I of the Sherman Act, 15 U.S.C. § 1.

II

As used in this Final Judgment;

(A) "Bakery products" shall include, but not be limited to, items such as white sliced bread, whole wheat and other varieties of bread, rolls, buns, specialty items, cake, sweet rolls and other confectionaries;

(B) "Discount" means any percentage or other reduction from the regular or list prices charged by any of the defendants;

(C) "Person" means any individual, partnership, firm, association, corporation or other business or legal entity; and

(D) "Control" means at least a 50 percent direct or indirect ownership interest in the controlled person by the controlling person.

III

The provisions of this Final Judgment are applicable to each defendant herein and to each of such defendant's officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Each defendant is enjoined and restrained from directly or indirectly entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan, program, combination or conspiracy with any other person engaged in the production and sale of bakery products to:

(1) Fix, determine, maintain or stabilize prices for the sale of bakery products;

(2) Fix, determine, maintain, stabilize or adhere to specific or uniform discounts for the sale of bakery products or to limit, reduce, remove or eliminate such discounts;

(3) Submit noncompetitive, collusive or rigged bids or quotations or not to submit any bid or quotation for the sale of bakery products;

(4) Fix, determine, maintain, stabilize, limit or reduce the production or sale of bakery products;

(5) Allocate geographical territories or customers or both.

V

Each defendant is enjoined and restrained from directly or indirectly soliciting, inducing or coercing any other person engaged in the production and sale of bakery products to:

(1) Adopt or adhere to uniform or specific prices for the sale of bakery products;

(2) Adopt or adhere to uniform or specific discounts for the sale of bakery products or to limit, reduce, remove or eliminate such discounts;

(3) Refrain from bidding or submitting any price quotation for the sale of bakery products, or to submit a bid or price quotation at a uniform or specific price;

(4) Limit or reduce the production or sale of bakery products;

(5) Allocate geographical territories, or customers or both.

VI

For a period of ten (10) years from the date of entry of this Final Judgment, each defendant is enjoined and restrained from directly communicating to any other person engaged in the production and sale of bakery products information concerning:

(1) Future prices at which, or terms or conditions upon which, bakery products will be sold or offered for sale by said defendant;

(2) Consideration by said defendant of charges or revisions in the prices at which, or the terms or conditions upon which, said defendant sells or offers to sell bakery products;

(3) Whether any bid or price quotation will be submitted by said defendant to any person.

VII

(A) Nothing in this Final Judgment shall prohibit any defendant from:

(1) Entering into or carrying out a bona fide purchase or sale transaction involving such defendant and any other person engaged in the production and sale of bakery products, when such person is either purchasing bakery products on his own behalf or acting as a purchasing agent or group buying representative on behalf of any third person; or

(2) Communicating information to another person engaged in the production and sale of bakery products in the course of, and related to, negotiating for, entering into, or carrying out a transaction as described in Section VII(A)(1).

(B) Nothing in Section V or VI hereof shall prohibit the transmission, without additional comment or explanation, to another person engaged in the production and sale of bakery products, upon the request of said person, of such defendant's bakery products price list, or any change therein, regularly issued in the course of business, which price list, or said change, had been previously released and circulated to the trade generally.

VIII

The injunctions contained in this Final Judgment shall not apply to relations solely between a defendant and a parent or subsidiary of, or corporation under common control with, such defendant or between the officers, directors, agents and employees thereof.

IX

Each defendant is ordered and directed to:

(A) Furnish within ninety (90) days after the date of entry of this Final Judgment a copy thereof to each of its officers and directors, and to each of its agents and employees having sales, supervisory and/or pricing responsibility for bakery products;

(B) Furnish a copy of this Final Judgment to each successor to those officers, directors, agents and employees described in subsection (A) of this Section IX, within thirty (30) days after each such successor is employed by or becomes affiliated with the defendant.

(C) File with this Court and serve upon the plaintiff within one hundred twenty (120) days from the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with subsection (A) of this Section IX.

X

(A) For the purpose of determining or securing compliance with this Final Judgment, any duly authorized representative of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any Defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matter contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, directors, agents, partners or employees of such defendant, who may have counsel present, regarding any such matter.

(B) A defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing, under oath if requested, with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information or documents obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents which is of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under the Federal Rules of Civil Procedure", then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

AS TO COUNT TWO

By agreement of all parties, IT IS ORDERED that Count II be, and hereby is dismissed.

AS TO COUNT THREE

I

This Court has jurisdiction over the subject matter herein and the parties hereto. Count Three of the complaint states a claim against the defendants, Smith's Bakery, a Mississippi corporation, and Colonial Baking Co. of Gulfport, a Delaware corporation, upon which relief may be granted under the False Claims Act, 31 U.S.C. Sections 231-233. The case against Smith's Bakery, Inc., a Florida corporation, under said False Claims Act is hereby DISMISSED.

II

By agreement of Plaintiff, Defendant Smith's Bakery, a Mississippi corporation, and Defendant Colonial Baking Co. of Gulfport, a Delaware corporation, judgment shall be and hereby is entered against defendants, Smith's Bakery, a Mississippi corporation, and Colonial Baking Co. of Gulfport, a Delaware corporation, in the amount of $300.000 each in full settlement of all alleged monetary claims in Plaintiff's complaint. Of this amount, $170,000.00 shall be deemed damages with respect to alleged overcharges on sales by said Defendants to United States Governmental Installations, and $130,000.00 shall be deemed forfeitures and penalties. For the recovery of these amounts let execution issue: *Provided, however,* That Smith's Bakery, a Mississippi corporation, is to be accorded the privilege of paying said judgment against it as hereinafter set forth.

III

Defendant, Smith's Bakery, a Mississippi corporation, has the option of paying the judgment rendered against it under Count Three of the Compaint in five equal installments, provided, however, as follows:

(a) At least 20 percent of the judgment under Count Three must be paid within thirty (30) days of the entry of this Final Judgment. The remaining principal balance of the judgment shall be payable in four equal annual installments, the first of which shall be payable one year from the date of this judgment and one on the same day of each succeeding year thereafter for the next three years.

(b) The unpaid balance of said judgment against Smith's Bakery, a Mississippi corporation, under Count Three after thirty (30) days from the date of entry hereof shall bear interest at the rate of 7 percent per annum.

(c) Smith's Bakery, Inc., a Florida corporation, by separate instrument will guarantee the balance of said judgment due by Smith's Bakery, a Mississippi corporation, to plaintiff.

(d) Smith's Bakery may at any time prepay without penalty.

(e) Should Smith's Bakery default on the payment of any installment of principal or interest as agreed, then the entire remaining balance of the judgment against it, together with accrued interest thereon, shall immediately become due and payable, for the recovery of which let execution issue.

AS TO ALL COUNTS

I

Jurisdiction is retained for the purpose of enabling any of the parties to this final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment or for the modification of any of the provisions herein and for the enforcement of compliance herewith and the punishment of the violation of any of the provisions contained herein.

II

The cost of this proceeding shall be taxed against the defendants.

III

The entry of this Final Judgment is in the public interest.

Dated this the — day of ——, 1978.

United States District Judge.

U.S. DISTRICT COURT, SOUTHERN DISTRICT OF MISSISSIPPI, SOUTHERN DIVISION

United States of America, Plaintiff, v. *Smith's Bakery; Smith's Bakery, Inc;* and *Colonial Baking Company of Gulfport,* Defendants.

Civil No. S77-0107(N).

Filed: February 27, 1978.

PROPOSED CONSENT DECREE COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)), the United States of America hereby files this Competitive Impact Statement relating to the proposed consent judgment submitted for entry in this civil antitrust proceeding.

I

NATURE AND PURPOSE OF THE PROCEEDING

On March 21, 1977, the Government filed a three count complaint against the above captioned corporate defendants. Count I of the complaint alleges that the defendants combined and conspired in restraint of trade in violation of Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1) and seeks injunctive relief pursuant to Section 4 of that Act (15 U.S.C. § 4). Counts II and III are alternative claims for monetary damages suffered by the federal government as a consequence of rigged bids submitted by the defendants to federal installations. Count II seeks recovery of damages under Section 4(a) of the Clayton Antitrust Act (15 U.S.C. § 15(a)), and Count III, in the alternative, seeks recovery of damages, forfeitures and penalties pursuant to the False Claims Act (31 U.S.C. § 231).

Entry by the Court of the proposed consent judgment will terminate the action, except that the Court will retain jurisdiction over the matter for possible further proceedings which may be required to interpret, modify or enforce the judgment, or to punish alleged violations of any of the provisions of the judgment.

II

DESCRIPTION OF THE DEFENDANTS AND THE PRACTICES INVOLVED IN THE ALLEGED VIOLATIONS

The defendants are engaged in the manufacture and wholesale distribution and sale of bakery products. The bakery products involved in the alleged conspiracy include standard white sliced and variety types of bread, rolls, buns, and specialty items, including cake, sweet rolls, and other confectionaries. Typical customers of the defendants include restaurants, grocery stores, and institutional buyers such as schools, hospitals, and government agencies and installations. The geographic area affected by the conspiracy alleged in the complaint encompasses all of southeastern Mississippi, within the counties of Harrison, Jackson, George, Stone, Greene, Perry, Forrest, and Lamar, and is described in the complaint as the Gulf Coast Market.

The defendant, Smith's Bakery, Inc., a Florida corporation, is a family controlled corporation. Its principal office is in Mobile, Ala., and it has plants in Mobile and in Pensacola, Fla. Of these two plants, products of only the Mobile plant are sold in the Gulf Coast Market. The defendant Smith's Bakery, a Mississippi corporation, is a wholly-owned subsidiary of Smith's Bakery, Inc. Smith's Bakery has plants in Hattiesburg and Meridian, Miss. Its principal place of business is in Meridian.

Both Smith's Bakery, Inc. and Smith's Bakery are licensees and members of the Quality Bakers of America Cooperative, and market products under the name "Sunbeam." During the conspiracy period, the Mobile, Hattiesburg, and Meridian plants each specialized in the production of different types of bakery products. These products were distributed to customers in the Gulf Coast Market principally by the Hattiesburg plant, but also by the Mobile plant. The officers of Smith's Bakery generally also have been officers of Smith's Bakery, Inc., and the annual financial statements combine the reports of the parent and subsidiary in a consolidated statement which shows Smith's Bakery as the Mississippi Division of Smith's Bakery, Inc.

The defendant, Colonial Baking Co. of Gulfport, a Mississippi corporation, is a subsidiary of Campbell-Taggart, Inc., a large food processing company based in Dallas, Tex. Campbell-Taggart operates bakery facilities throughout the United States. Colonial sells bakery products from its single bakery in Gulfport, Miss., under the brand name "Colonial." It operates throughout the Gulf Coast Market.

The case against the defendants developed and resulted from information discovered in the course of investigations conducted by two federal grand juries, one sitting in Baton Rouge, La., and one sitting in Jackson, Miss. Both grand juries were investigating the commercial bakery industry for possible criminal violation of federal anti-trust statutes.

The complaint alleges that beginning as early as the late 1960's, and continuing until sometime in 1975, the defendants and certain co-conspirators combined and conspired in unreasonable restraint of trade. The substantial terms of the conspiracy were to fix, raise and maintain the prices of bakery products sold by the defendants in the Gulf Coast market; to reduce or eliminate discounts and other inducements to purchasers of bakery products from the defendants in the Gulf Coast Market; to submit collusive and rigged bids for the sale of bakery products to government installations, school districts, institutions, and others requesting competitive bids in the Gulf Coast Market; and to allocate territories and customers in the Gulf Coast Market among the defendants. The complaint alleges further that the defendants and co-conspirators did those things which they combined and conspired to do.

Had this case gone to trial, the Government would have adduced evidence to show that beginning in the mid-1960's and continuing until sometime in 1974, certain officers and managerial employees of the defendant corporations had a series of meetings which resulted in understandings in restraint of trade. From time to time, and in conjunction with each other, these men agreed to and did increase, by a pre-determined amount, the wholesale prices of bakery products to retail grocers and other customers. The evidence would have shown that meetings were held for the purpose of reducing, and which resulted in the reduction of, the frequency and amounts of discounts being given by these commercial

bakers to their customers; in some cases, the understandings resulted in the elimination of such discounts. The evidence also would have shown an agreement to exchange and allocate customers along specific roads in Jackson, and George Counties and the implementation of that agreement. Finally, the evidence would have shown that the three defendants submitted rigged and collusive bids to public and private institutions.

With respect to Counts II and III of the complaint, the evidence at trial would have shown that the defendants had meetings, and telephone conversations in which they reached understandings to submit collusive bids to various federal installations. The evidence would have shown collusive bids were submitted to Keesler Air Force Base (including Camp Shelby), the Naval Construction Battalion Center, the Veterans' Administration Centers in Biloxi and Gulfport and to Ingall's Shipyard in Pascagoula (for visiting vessels) from sometime in the mid-1960's until sometime in mid-1974. The Government would have contended at trial that the effects of the conspiracy continued to at least May 1975. The evidence would also have shown that between March 1971 and May 1975, the period within the appropriate statute of limitations, the federal government purchased about $2.8 million worth of bakery products from the defendants, and sustained overcharges estimated at $340,000.

III

EXPLANATION OF THE PROPOSED CONSENT JUDGMENT

The United States and the defendants have stipulated that the proposed consent judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The consent judgment provides that there has been no admission by either party with respect to any issue of fact or law. Under provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of this judgment is conditioned upon a determination by the Court that the proposed judgment is in the public interest.

Count one

Each defendant is enjoined from entering into any form of agreement with anyone engaged in the production and sale of bakery products to fix prices; to fix, reduce or eliminate discounts on such products; to submit collusive, non-competitive or rigged bids to anyone seeking such bids; to limit the production of any bakery products; or to allocate customers or territories among themselves. Each defendant is also enjoined from attempting to have anyone else engaged in the production and sale of bakery products (1) adopt or adhere to specific prices on bakery products; (2) adopt or adhere to specific discounts or reduce or eliminate such discounts on the sale of bakery products; (3) refuse to bid or bid any particular amount to anyone seeking a competitive bid for the purchase of bakery products; (4) limit the production of any bakery products, or (5) allocate customers or territories. Furthermore, each defendant is, for a period of 10 years, enjoined from communicating to any other person engaged in the production and sale of bakery products (1) future prices at which a defendant intends to sell bakery products; (2) any consideration or intention by the defendant to change the price at which it will sell bakery products; or (3) its intention to bid or the amount which it intends to bid to any person seeking to buy bakery products on a competitive bid basis.

The defendants must provide each of their employees, who has any sales supervisory or pricing responsibility, with a copy of the decree entered in this case, and must furnish each successor to any such employee with a copy of the decree within 30 days of the time that employee is vested with sales supervisory or pricing responsibility. Each defendant must also file an affidavit of compliance with the decree within 120 days of its entry.

The defendants are not enjoined under the decree from negotiating or entering into a bona fide sale or purchase transaction with a competitor or from sending a competitor a copy of the defendant's price list which has already been released to the trade generally, if such a price list is requested by the competitor. Nor do the provisions of the judgment apply to any transactions or relationships between a defendant and a parent or subsidiary of the defendant, or a corporation which is under common control with the defendant. Thus, intracorporate transactions are exempt from coverage of the decree.

The proposed consent judgment provides the maximum coverage permitted by law. By its terms, the judgment applies to each defendant and to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons who act in concert with any of the defendants, provided that such persons have actual notice of the judgment, by personal service or otherwise. Unless the Court either modifies or vacates all or a part of the proposed judgment, the defendants are forever bound by its prohibitions. The judgment would apply to the defendant's activities wherever they may occur.

Count two

As stated above, Counts Two and Three were pleaded in the alternative; therefore, the Government could recover damages under one count or the other, but not both. For reasons described in Section IV, below, the Government chose to proceed only under Count III. Count II is dismissed in the consent judgment.

Count three

The consent judgment provides that the defendants, Smith's Bakery and Colonial Baking Co. of Gulfport, will each pay to the Government the sum of $300,000. Thus, the Government will collect in total, $600,000, plus interest at 7 percent on the amount unpaid after 30 days from the date the judgment is entered by the Court. The $600,000 figure represents $340,000 in overcharges, $120,000 in forfeitures, and $140,000 in additional penalties, all as provided for in the Falso Claims Act (31 U.S.C. § 231).

The defendant, Smith's Bakery, has the option to pay its half of the judgment in five annual payments of $60,000, plus accrued interest. In the event Smith's Bakery fails to make any of these payments, Smith's Bakery, Inc. is liable for them as surety, pursuant to the terms of a separate bilateral agreement between the Govenment and Smith's Bakery, Inc. Smith's Bakery, Inc. is dismissed from Count III because it is immaterial to the Government whether the judgment is paid by the subsidiary or the parent, and the Smith's defendants preferred the payments to be made by Smith's Bakery.

IV

ALTERNATIVES TO THE PROPOSED CONSENT DECREE

As to Count I, no alternatives substantially different from the relief obtained were considered by the Government. The injunctive relief described herein is substantially identical to the relief the Government obtained from the defendants (including Colonial Baking Co. of Gulfport) in *United States* v. *Cotton's Inc.*, (Civil No. 75-76, M.D. La. filed Feb. 28, 1975). The only difference between the relief obtained by the Government in *Cotton's and in this case relates to the additional relief herein obtained by the Government to generally enjoin territorial or customer allocation agreements.*

Morever, Count I of this case does not involve any unsual or novel issues of fact or law which might make litigation a more desirable alternative than entry of this consent decree. The Department considers the substantive language of the judgment to be of sufficient scope and effectiveness to make litigation on relief unnecessary, as the judgment provides all relief which was requested in the complaint.

Counts II and III were pleaded in the alternative, as previously noted. Had this case been tried, the Government would have had to elect between the Counts in submitting its theory of the case to the Court and jury. Count II seeks recovery of damages under the Clayton Antitrust Act, which provides that the defendants must reimburse the Government for overcharges. Count III is pleaded under the False Claims Act, by the terms of which the defendants may be liable to pay double the amount of overcharges plus $2,000 in forfeitures for each false claim submitted for payment. The statute of limitations for the Clayton Act is four years, for the False Claims Act, six years.

Based upon the facts available to the Government in support of its claim for damages, recovery under the False Claims Act is clearly more advantageous than recovery under the Clayton Act because of the doubling and forfeiture provisions. The evidence would have shown that sixty contracts were awarded pursuant to rigged bids, and thus the total of forfeitures would have been $120,000. Damages under the Clayton Act are limited to the sum of the overcharges. Simple arithmetic demonstrates the superiority of the False Claims Act over the Clayton Act in this case.

If this case had been tried and submitted to a jury under the False Claims Act, the Government might have recovered more than $600,000, but, might also have recovered substantially less, or even nothing at all. The settlement figure of $600,000 is considered to be a reasonable basis upon which to conclude the litigation and avoid the costs and uncertainities inherent in a trial. Moreover, the settlement figure does not reflect a reduction in the damages due to the Government, but only a compromise in the amount of penalties. In effect, the Government will have recovered its losses of $340,000 and an additional $260,000.

Finally, the Government considered seeking compensation for damage sustained by local school districts in connection with their purchases of bakery products, because of the federally supported school lunch program. The Government has abandoned this possibility because of the cost and difficulty in measuring the Government's share of the resulting damages. Also, after *Illinois Brick Co.* v. *State of Illinois*, 97 S. Ct. 2061 1977),

the State of Mississippi, the direct purchaser, may be better suited to recover these damages.

V

SCOPE AND TIME PROVISIONS OF THE PROPOSED JUDGMENT

By its terms, the judgment applies to each defendant and to each of the defendant's officers, directors, agents, employees, subsidiaries, successors, and assigns, and to all other persons who act in concert with any such defendant, provided that such persons have actual notice of the judgment, by personal service or otherwise. The judgment would apply to any defendant's activities wherever they might occur. Thus, it is not limited to the geographic area described within the complaint. The decree is perpetual in duration, with the limited exception of Paragraph VI which, for 10 years, enjoins communications concerning the future pricing of bakery products or the intention of bidding or the amount to be bid to someone seeking to purchase bakery products on a competitive bid basis.

VI

EFFECT OF THE PROPOSED JUDGMENT ON COMPETITION

The relief emcompassed in the proposed consent judgment is designed to prevent any continuance or reoccurrence of the activities alleged in the complaint. The prohibitive language of the judgment should insure that prices charged for bakery products, discounts given to purchasers of bakery products, bids submitted to agencies seeking competitive bids, and the customers, territories and products to be marketed or served by each defendant will be determined independently, without the restraining and artificial influence which resulted from the meetings and agreements in which the defendants engaged. The monetary damages to be paid by Smith's Bakery and Colonial can be expected to have a salutary effect on competition between the two firms. Henceforth, they should recognize that they have little to gain by collusion.

The judgment provides two methods for determining the defendants' compliance with the judgment. First, the Government is given access, upon reasonable notice, to the records of the defendants, to examine these records for possible violations of the judgment, and to interview officers, directors, agents, partners, or employees of the defendants. Second, the defendants may be required to submit written reports with respect to any matter contained in the proposed judgment.

It is the opinion of the Department of Justice that the proposed consent judgment contains fully adequate provisions to prevent continuance or reoccurrence of the violations of the antitrust laws charged in the complaint. In the Department's view, disposition of the lawsuit without further litigation is appropriate in that the proposed judgment provides all the relief which the Government sought in its complaint; the additional expense of litigation would therefore not result in additional public benefit.

VII

REMEDIES AVAILABLE TO PRIVATE LITIGANTS

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed consent judgment in this proceeding will neither impair nor assist the bringing of any such private antitrust actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), this consent judgment has no prima facie effect in any lawsuits which might be brought against these defendants.

VIII

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed judgment should be modified may submit written comments to Donald A. Kinkaid, Antitrust Division, U.S. Department of Justice, 1776 Peachtree Street NW., Suite 420, Atlanta, Ga. 30309, within the 60-day period provided by the Act. These comments, and the Department's responses to them, will be filed with the Court and published in the FEDERAL REGISTER. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed judgment at any fime prior to its entry if it should determine that some modification of it is necessary. The proposed judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for such Orders as may be necessary or appropriate for its modification, interpretation or enforcement.

IX

OTHER MATERIALS

All materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. Section 16(b)) which were considered in formulating this proposed judgment are filed herewith.

There are only two documents. The first is a proposal prepared by defendant Colonial Baking Co. of Gulfport in support of a lower settlement figure. The second is a copy of the Guaranty executed by Smith's Bakery, Inc. in accordance with Paragraph III(c) page 9 of the Final Order.

GARY FLACK,
JUSTIN M. NICHOLSON,
NICHOLAS A. LOTIO,
Attorneys, Antitrust Division,
U.S. Department of Justice.

RECAPITULATION

Theory	Percent overcharge
1. Myslinsk: Contemporaneous contract standard	3.80
2. Myslinsk—June 3, 1977—base-pre and post conspiracy:	
(a) Defendant's time frame:	
Unadjusted	7.70
Adjusted	4.56
(b) Government's time frame:	
Unadjusted	10.33
Adjusted	6.97
3. BLS-base-bread-base (post conspiracy)	6.31
4. BLS-base-bread price index	7.16
5. BLS-base bakery products index	7.26
6. Keesler/Commissary-base-ABA bread prices	7.29
7. BLS-base-bakery products index (post conspiracy)	8.68

MYSLINSKI'S THEORY OF JUNE 28, 1977

While we do not accept the accuracy of Dr. Myslinski's figures for all purposes, we do note that they can be instructive.

If we assume, as Dr. Myslinski seems to assume:

1. that there is validity to an analysis founded upon "wholesale" price;

2. that the comparison of the "wholesale" price in one area of the country, or even one city to the "wholesale" price in another city is at all meaningful;

3. that Smith—Hattiesbury and Smith—Meridian are linked by some Siamese connection so that by looking at one we are instructed about the other; and

4. that the variation in the discounts from wholesale between these two plants in the conspiracy period might throw some light upon the extent of the conspiracy; then it becomes necessary to see what the correlation is in a non-conspiracy period:

We have added certain average discount figures to the tables I and II which were delivered in Atlanta on June 28, 1977.

If we will look at the period of time that is, according to the government, clearly post-conspiracy (F on the tables) you will see that the Meridian discount off wholesale in this post-conspiracy period was 35.78 percent.

The Gulfport discount off wholesale in the same post-conspiracy period was 14.67 percent, leaving a free-market difference in discount between Meridian and Gulfport of 21.11 percent.

In the conspiracy period (D), the Meridian discount was 28.71 percent, deducting the free-market difference in discount between Gulfport and Meridian of 21.11 percent, you would expect the discount in Gulfport of 7.60 percent.

In fact, the Myslinski table II shows that during this period (D) the actual Gulfport discount was 3.80 percent, so that using the Myslinski figures, the Gulfport overcharge was 3.80 percent.

PRE- AND POST-CONSPIRACY BASE—MYSLINSKI JUNE 3, 1977

Using your time frame, the average pre- and post-conspiracy discount (A & F) was 14.13 percent, and the conspiracy discount (D) was 3.80 percent, leaving an overcharge of 10.33 percent. Using our time frame (B & E) the base is 10.51 percent, the conspiracy discount (C) was 2.81 percent, leaving an overcharge of 7.70 percent.

But the post-conspiracy wholesale price distorts the actual price received for bakery products because most of Colonial's customers in the post-conspiracy period have been receiving "discounts" or "cents off" wholesale at a level greatly in excess of the level received during the conspiracy period.

In other words the list wholesale price during the conspiracy period is a much more accurate guide to the net or "getting" price than is the wholesale price for the non-conspiracy periods. Therefore, an adjustment must be made to the post- and pre-conspiracy wholesale prices to reflect the actual net or getting price. Table III reflect the level of non-bid discounts given to regular customers for the years 1971-1976.

Assuming that the pre-conspiracy non-bid discount level was equal to the post-conspiracy non-bid discount level, the above figures should be adjusted downward as follows:

Under the government's time frame the base is 14.13 percent less the adjustment of 3.36 or 10.77 percent, the conspiracy discount was 3.80 percent, leaving on overcharge of 6.97 percent. On our time frame the base is 10.51 percent less an adjustment of 3.14 or 7.37 percent, the conspiracy discount was 2.81 percent, and the overcharge 4.56 percent.

TABLE I

Smith-Meridian Discounts to Columbus AFB and Naval Air Station at Meridian

Base	Period Covered by Contract	Date of Bid	Approx. Dollar 1/ Value of Contract or Bid	Weighted Average 2 Discount Percent of Wholesale	
				Weighted	
NAS (Commissary)	12/1/69-8/30/70	11/12/69	26,085.70		15.1
NAS (Troop)	12/1/69-8/30/70	11/12/69	6,785.15	B 13.99 Δ	17.7 A 12.64 US
Columbus 3/	2/1/70-1/31/71	12/17/69	118,623.10		11.2
NAS 3/	7/1/70-11/30/70	5/25/70	25,197.50		15.5
NAS	12/1/70-6/30/71	11/2/70	29,715.90		22.0
NAS	7/1/71-1/31/72	4/22/71	31,742.00		22.5
Columbus	2/1/72-8/31/72	11/30/71	56,192.50		39.6
NAS (Commissary)	2/1/72-8/31/72	12/8/71	29,161.00		41.4
NAS (Troop)	2/1/72-8/31/72	12/8/71		C 29.33	38.7 D
NAS	9/1/72-3/31/73	6/72	31,383.00		26.9 28.9
Columbus	9/1/72-8/31/73	6/9/72	87,470.00		27.3 US
NAS	4/1/73-9/30/73	3/12/73	25,145.00		27.3
Columbus	9/1/73-8/31/74	7/16/73	48,970.00		26.4
NAS	10/1/73-3/31/74	8/30/73	34,873.60		20.5
NAS	4/1/74-6/30/74	3/13/74	19,415.60		30.9
NAS	7/1/74-12/31/74	5/1/74	10,922.60		30.6
Columbus	9/1/74-2/28/75	6/23/74	39,640.00		23.1 4/
NAS	1/1/75-6/30/75	11/1/74	12,683.50		37.5 5/
Columbus	3/1/75-8/31/75	1/27/75	32,410.57	E 30.94 Δ	24.0 6/
NAS	7/1/75-12/31/75	5/26/75	57,099.80		26.3 7/
Columbus	9/1/75-2/29/76	7/31/75	32,101.00		40.2 7/
NAS	1/1/76-6/30/76	11/26/75	44,460.77		40.0 7/ F 35
Columbus	3/1/76-8/31/76	1/13/76	41,966.32		31.3 7/ US 4

Weighted:
A + F = 20.24
B + E = 23.44

TABLE II

Smith-Hattiesburg and Colonial-Gulfport Discounts to Federal Bid Market in Southern Mississippi

Institution	Contract Period	Value of Contract 1/	Weighted Average Discount Percent of Wholesale	
			Weighted	
Keesler Commissary	2/69-9/69	$ 56,000.00°		14.3 2
VA	7/69-6/70	29,000.00°		23.7 A 13.7 US
Keesler Commissary	11/69-5/70	56,000.00°		18.6
Navy CBC	5/1/70-10/31/70	45,800.00°		12.52
Keesler - resale	6/1/70-10/31/70	68,101.00	B 13.44 Δ	14.47
Keesler - troop	6/1/70-10/31/70	204,034.00		11.34
VA	7/1/70-6/30/71	33,587.64°		10.78
Navy CBC	11/1/70-4/30/71	42,323.80°		12.08
Keesler - resale	11/1/70-5/31/71	68,993.00		12.97
Keesler - troop	11/1/70-5/31/71	168,610.60		13.10
Navy CBC	5/1/71-10/31/71	36,503.89*		6.65
Keesler - troop	6/1/71-12/31/71	116,936.12'		7.22
Keesler - resale	6/1/71-12/31/71	161,215.60*		7.71
VA	7/1/71-6/30/72	32,017.25*		3.36
Navy CBC	11/1/71-4/30/72	34,918.47*		6.18
Keesler - troop	1/1/72-7/31/72	124,590.59'		6.34
Keesler - resale	1/1/72-7/31/72	170,567.33*		7.73
Navy CBC	5/1/72-10/31/72	38,951.34*		2.59
VA	7/1/72-6/30/73	36,424.20'		1.81
Keesler - troop	8/1/72-2/28/73	113,092.67'		1.09
Keesler - resale	8/1/72-2/28/73	176,480.00*	C 2.81 Δ	1.79
Navy CBC	11/1/72-4/30/73	43,110.53*		1.51
Keesler - troop	3/1/73-9/30/73	141,096.88'		1.07
Keesler - resale	3/1/73-9/30/73	194,242.62*		0.37
Navy CBC	5/1/73-10/31/73	47,292.21*		1.64
VA	7/1/73-6/30/74	36,495.32*		1.35 D 3.2
Keesler - troop	10/1/73-4/30/74	94,736.74*		0.73
Keesler - resale	10/1/73-4/30/74	215,344.74*		1.11 US
Navy CBC	11/1/73-4/30/74	54,118.04*		0.90
Navy CBC - troop	5/1/74-10/31/74	12,642.68'		NONE
Keesler - troop	5/1/74-10/31/74	92,074.14*		0.22
Keesler (blanket) resale	5/1/74-10/31/74	187,301.55*		0.50
VA	7/1/74-6/30/75	50,748.82'		0.79
Navy CBC (blanket) resale	7/74-6/75	104,267.73*		2.00
Navy CBC (troop)	11/1/74-2/28/75	10,850.69*		4.10
Keesler (blanket) resale	11/1/74-2/28/75	133,198.12*		0.95
Keesler - troop	11/4/74-2/28/75	84,589.97*		4.92
Keesler - resale	3/1/75-8/31/75	200,204.85*		2.07
Navy CBC - (troop)	3/1/75-8/31/75	17,953.56*	E 7.98 Δ	5.81
Keesler - troop	5/1/75-10/31/75	81,923.03*		8.1
VA	7/1/75-6/30/76	59,465.00°		13.5
Navy CBC	9/1/75-2/29/76	51,733.13*		15.0 F
Keesler - troop	11/1/75-4/30/76	83,368.00°		14.9 14.6
CBC	3/1/76-8/31/76	50,227.00°		16.2
Keesler - troop	5/1/76-10/31/76	121,302.00°		14.2 US

Weighted:
A + F = 14.13
B + E = 10.51

1/ ° denotes approximation
* denotes actual documented payments
' denotes defendants' records where they exceed government documented payments

TABLE III

[In percent]

	Discounts	Production adjustments	*Total
1971	3.07	2.33	5.40
1972	4.58	1.74	6.32
1973	5.14	1.84	6.98
1974	5.70	2.41	8.11
1975	7.04	3.79	10.83
1976	8.47	4.23	12.7

*The production adjustments include adjustments for such things as bid-discounts and private label discounts.

Using the government's time frame the average discount was 5.11 percent, the 1976 discount 8.47 percent, and the post-conspiracy increase in the non-bid discount level was 3.36 percent. Using the defendant's time frame, the average conspiracy discount level was 4.62 percent, the average post-conspiracy discount was 7.76 percent, and the post-conspiracy increase was 3.14 percent.

MILITARY BIDS COMPARED TO ABA PRICES

Another possible approach to the analysis of alleged Gulf Coast damages would be to chart the prices of the military bids against some generally recognized overall average of bakery prices. In this study it is assumed that the Kessler commissary contracts of Colonial (which were at substantially the same prices as Kessler troop) were typical of all government sales of Smith & Colonial. The attached table charts these prices against the American Bakers Association Cost Survey.

Based on pre-1971 bids, the Kessler commissary bids could have been expected to be 85.04 percent of the ABA price. In succeeding years when this projected relationship is compared to the actual bid prices, there is an apparent overcharge of 7.29 percent.

In support of this, we also enclose the American Bakers Association Cost Survey 1967-1976 with instructions for the completion of same and a chart in which the relationship between these prices and the Kessler prices is shown in visual form.

The base period (or pre-conspiracy) contracts extended over 19 months from Nov. 1, 1969 to May 31, 1971. A weighted average bid price per pound can be computed:

Dates	Dollars	Pounds of dough
Nov. 1, 1969 to May 31, 1970	81,433.30	532,671.87
June 1, to Oct. 31, 1970	92,463.75	529,109.37
Nov. 1, 1970 to May 31, 1971	96,454.45	543,171.87
Total	270,351.50	1,604,953.11

Weighted average price per pound of dough=$0.1684.
Weighted average price per pound of bread (×1.1719)=.1973.

During the period of 19 months, the ABA published three annual figures. Weight these by time:

1969	0.2205	2 mo.	0.4410
1970	.2308	12 mo.	2.7696
1971	.2394	5 mo.	1.1970
			4.4076 ÷ 19

Average ABA price per pound of bread=$0.2320.

During the period November 1969 through May 1971, the weighted average bid price per pound of bread at the Kessler commissary was $0.1973 which was 85.04 Percent of the weighted ABA price of $0.2320 during the period.

During the period, 1971–74:

(1)	(2) ABA	(3) ABA×85.04 pct	(4) Kessler was	(5) Difference (4)–(3)	(6) Percent of difference (5) of (4)
			2,080 2,190		
1971	0.2394	0.2036	4,270 ÷ 2=0.2135 2,191 2,385	0.0099	4.64
1972	.2473	.2103	4,576 ÷ 2=0.2288 2,373 2,700	.0185	8.09
1973	.2789	.2372	5,079 ÷ 2=0.2539 2,706 3,353	.0167	6.58
1974	.3212	.2731	6,059 ÷ 2=0.3029	.0298	9.84
Average					1.29

Recapitulation of Keesler contracts for commissary sales

Dates	Price per bread pound	Price per dough pound
From May 1, to Oct. 31, 1974	$0.3353	$0.2861
From Oct. 1, 1973 to Apr. 30, 1974	.2706	.2309
From Mar. 1, to Sept. 30, 1973	.2373	.2025
From Aug. 1, 1972 to Feb. 28, 1973	.2385	.2035
From Jan. 1, to July 31, 1972	.2191	.1869
From June 1, to Dec. 31, 1971	.2190	.1869
From Nov. 1, 1970 to May 31, 1971	.2080	.1775
From June 1, to Oct. 31, 1970	.2048	.1748
From Nov. 1, 1969 to May 31, 1970	.1791	.1528

Bulletin

Bulletin No. 1387
May 16, 1977

The American Bakers Association annual cost survey for 1976 is attached for your use. Production, administrative, and sales expenses for a one-pound baked loaf of bread (reflecting all loaf varieties and bread-type rolls) are itemized for the years 1967-76, along with the pre-tax profit for each year. Statistics used in this report were compiled from amounts as reported by the cooperating baking companies to Ernst & Ernst. Source data were not audited, but were reviewed for clerical errors.

Contact: David French
Director of Communications

WHOLESALE BAKING PROFITS

DECLINE 13.2% IN 1976

The American Bakers Association annual cost survey of 337 member bread and roll baking plants shows pre-tax profits off 13.2% in 1976 from the year before. This decline in profitability was accompanied by a 3.3% rise in total expenses.

While the cost of ingredients for a one-pound loaf of bread dropped nearly 10% from 1975 levels, every other cost factor in the manufacture and delivery of bread to the grocery shelf rose in 1976.

Wages for bakery plant workers and route driver-salesmen constituted 35% of the cost of getting a loaf of bread to the store. Overall, their salaries increased 8.5% in 1976, with the largest jump, 11.6%, going to non-supervisory, bakery production workers.

Advertising costs rose more than 13%, and administrative expenses were up 9.7% from what they were in 1975.

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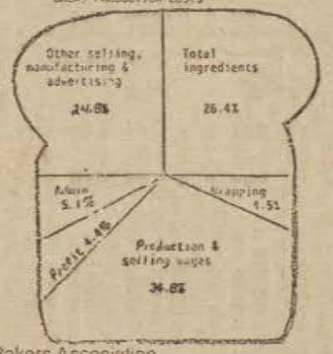
1976
BREAD PRODUCTION COSTS



American Bakers Association

AMERICAN BAKERS ASSOCIATION COST SURVEY, 1967-76.—*Unit value and unit cost per 1 lb baked loaf of bread* *

[18¾ oz of dough at divider]

	1976		1975		1974		1973		1972	
1. Number of plants included in this report	337		330		316		371		380	
	Cents	Percent	Cents	Percent	Cents	Percent	Cents	Percent	Cents	Percent
2. Wholesale production unit value	0.3632	100	0.3537	100	0.3212	100	0.2789	100	0.2473	100
Unit costs—expenses:										
3. Ingredients—total cost	.0958	26.4	.1053	29.3	.1095	34.0	.0833	29.9	.0626	25.4
(a) Flour only	.0630	17.3	.0675	19.1	.0771	23.9	.0590	21.2	.0415	16.8
(b) Sweeteners only	.0088	2.4	.0124	3.5	(1)	(1)	(1)	(1)	(1)	(1)
(c) Shortening only	.0067	1.9	.0092	2.6	(1)	(1)	(1)	(1)	(1)	(1)
(d) Ingredients—all other	.0173	4.8	.0162	4.6	.0324	10.1	.0243	8.7	.0211	8.6
4. Wrapping materials	.0164	4.5	.0162	4.6	.0125	3.9	.0115	4.1	.0115	4.7
5. Manufacturing labor and fringes	.0320	8.8	.0283	8.0	.0271	8.4	.0267	9.6	.0244	9.9
6. Wages—indirect and fringes	.0165	4.5	.0149	4.2	.0121	3.8	.0113	4.0	.0100	4.0
7. Other manufacturing expenses	.0202	5.6	.0201	5.7	.0159	5.0	.0145	5.2	.0145	5.9
8. Selling wages and fringes—total cost	.0781	21.5	.0726	20.5	.0671	20.9	.0641	23.0	.0577	23.3
(a) Driver sales compensation—wages and fringes only	.0493	13.6	.0475	13.4	(1)	(1)	(1)	(1)	(1)	(1)
(b) All other selling wages and fringes	.0288	7.9	.0251	7.1	(1)	(1)	(1)	(1)	(1)	(1)
9. All other selling and advertising expenses—total cost	.0698	19.2	.0616	17.4	.0481	15.0	.0487	17.5	.0477	19.2
(a) Advertising and promotion expenses	.0084	2.3	.0073	2.1	(1)	(1)	(1)	(1)	(1)	(1)
(b) All other selling and advertising expenses except returns	.0319	8.8	.0290	8.2	(1)	(1)	(1)	(1)	(1)	(1)
(c) Returns at full wholesale value	.0295	8.1	.0253	7.2	(1)	(1)	(1)	(1)	(1)	(1)
10. Administrative expenses	.0185	5.1	.0167	4.7	.0138	4.3	.0132	4.7	.0123	5.0
11. Grand total expenses	.3473	95.6	.3357	94.9	.3061	95.3	.2733	98.0	.2408	97.4
12. Pretax profit	.0159	4.4	.0180	5.1	.0151	4.7	.0056	2.0	.0065	2.6

* Includes all loaf varieties, brown and serve, bread-type rolls, etc.
[1] Not a comparable category included in report at that time.

*1967-76 unit value and unit cost per 1 lb baked loaf of bread**

[18¾ oz of dough at divider]

	1971		1970		1969		1968		1967	
1. Number of plants included in this report	404		410		441		460		408	
	Cents	Percent	Cents	Percent	Cents	Percent	Cents	Percent	Cents	Percent
2. Wholesale production unit value	0.2394	100	0.2308	100	0.2205	100	0.2140	100	0.2129	100
Unit costs—expenses:										
3. Ingredients—total cost	.0615	25.7	.0605	26.2	.0589	26.6	.0569	26.6	.0590	27.7
(a) Flour only	.0409	17.1	.0405	17.5	.0398	18.0	.0390	18.2	.0413	19.4
(b) Sweeteners only	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
(c) Shortening only	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
(d) Ingredients—all other	.0206	8.6	.0200	8.7	.0191	8.6	.0179	8.4	.0177	8.3
4. Wrapping materials	.0115	4.8	.0115	5.0	.0116	5.3	.0120	5.6	.0127	6.0
5. Manufacturing labor and fringes	.0227	9.5	.0212	9.2	.0203	9.2	.0194	9.1	.0185	8.7
6. Wages—indirect and fringes	.0093	3.9	.0094	4.1	.0083	3.8	.0080	3.7	.0078	3.7
7. Other manufacturing expenses	.0137	5.7	.0136	5.9	.0134	6.1	.0128	6.0	.0122	5.7
8. Selling wages and fringes—total cost	.0518	21.6	.0493	21.3	.0456	20.7	.0444	20.7	.0433	20.3
(a) Driver sales compensation—wages and fringes only	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
(b) All other selling wages and fringes	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
9. All other selling and advertising expenses—total cost	.0452	18.9	.0410	17.7	.0393	17.8	.0371	17.3	.0376	17.7
(a) Advertising and promotion expenses	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
(b) All other selling and advertising expenses except returns	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
(c) Returns at full wholesale value	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)
10. Administrative expenses	.0124	5.2	.0117	5.1	.0112	5.1	.0106	5.0	.0101	4.7
11. Grand total expenses	.2281	95.3	.2182	94.5	.2086	94.6	.2012	94.0	.2012	94.5
12. Pretax profit	.0113	4.7	.0126	5.5	.0119	5.4	.0128	6.0	.0117	5.5

*Includes all loaf varieties, brown and serve, bread-type rolls, etc.
[1] Not a comparable category included in report at that time.

NOTE.—Report prepared by: American Bakers Association, 2020 K Street NW., Washington, D.C. 20006. Report compiled by Ernest & Ernest, 1225 Connecticut Ave. NW., Washington, D.C. 20036.

AMERICAN BAKERS ASSOCIATION,
Washington, D.C., May 9, 1977.

DEAR MEMBER: It is cost survey time again! As you know, the ABA Statistics Committee decided that our needs would be best served if data were collected quarterly, so that we can have valuable up-to-date information for use in our contacts with the various Federal agencies and Congress.

We are asking for your cooperation in completing the attached questionnaire for the first quarter of 1977 and 1976, 1/1/77 to 5/31/77 and 1/1/76 to 3/31/76. The final report figures for the first quarter of 1976 are provided on the reporting form for your information.

We have used the same format as we have for the last few reports, and obviously we expect to continue this new format in the future to assure comparability. This format merely breaks down the original categories to provide more detail.

There have been some problems when not all companies submitted data and there is concern that such occurrences might distort the results. Therefore, we have added a column to the reporting form asking for data for the comparable period last year, as well as the current period. (The current request is for the first quarter of 1977 and well as the first quarter of 1976.)

The Committee understands that some estimating may be required in calculating the data requested on some of the lines, where individual company accounting procedures do not directly provide the data requested in the instructions. Do not hesitate to use estimates where necessary in computing the data for the reporting form.

All reporting forms will go directly from the reporting company to the accounting firm of Ernst and Ernst where they will be combined with the reports of other companies and tabulated. All data received will be included in one composite report so that the final figures will be representative of all reporting companies. No individual plant or company figures will be divulged to anyone for any reason.

A code number appears on the top of the reporting form. This has been included solely for the use of Ernst and Ernst so that they can identify the form if it is necessary to contact you for clarifying data, and so a second request for data can be made of those few companies from whom reports may be delayed for some reason.

AMERICAN BAKER ASSOCIATION COST SURVEY

Instructions for Completing Questionnaire on Unit Value and Unit Cost per One Pound Baked Loaf of Bread.[1]

For purposes of this report please use the first quarter of 1977 and 1976.

1. *Number of Plants included in this Report.* Report on this line the total number of plants that were included in the development of the reported statistics.

2. *Wholesale Production Unit Value.* Production value is defined as the gross wholesale product value prevailing in a plant's major market area. The wholesale production value can also be described as the total production value obtained by using the wholesale price at which products are recorded in that plant's records.

Unit value will be determined by multiplying the pounds of bread products produced for the subject time by 16; dividing the total ounces of dough resulting by 18¾ ounces; and then dividing the quotient obtained into the total dollars of production value as defined above. For example, total weight of bread dough (including all loaf varieties, brown and serve, bread-type rolls, etc.) 26,000,000 pounds × 16 equals 416,000,000 ounces; divided by 18¾ equals 22,186,666 units; divided into $4,550,000 equals the wholesale production unit value of $0.2051.

3. *Ingredients—Total Cost.* (a) Flour only.—Include in this factor the total cost of all types of flour used in the production of the bread products covered.

(b) Sweeteners only.—Include all sweeteners used in this category.

(c) Shortening only.—Include here all shortening used.

We know all ABA members will want to cooperate in this important project by completing the questionnaire and returning it in the enclosed envelope, directed to Ernst and Ernst. Please complete and return one copy of the reporting form by June 1, 1977. The extra copy is for your records.

Please do not delay in returning the forms, because it is imperative that we have current cost data as soon as possible to back the industry's position in our government contacts.

We look forward to your participation.

Sincerely,

ROBERT MCGRATH,
Chairman, ABA Statistics Committee.

(d) Ingredients—all others.—This item will absorb the cost of all ingredients used in the production of bread type products excluding the cost of flour, shortening and sweetener reported in (a), (b), and (c) above. Be sure to include convenience ingredient items such as pan grease, through grease, divider oil and corn meal.

4. *Wrapping Materials.* This cost factor will include all wrapping materials used on the finished bread product, but excludes such items as pallets, carrier trays, wire baskets and domestic corrugated cartons. The last four items should be included under factor No. 9, "All Other Selling and Advertising Expenses.

5. *Manufacturing Labor and Fringes.* The labor classifications in this factor are described as, and include all, bakeshop labor from mixing room through the wrapping department and including fringe costs. Excluded from this factor, but included in factor No. 6, "Wages Indirect and Fringes," below, is all exempt manufacturing supervisory personnel.

6. *Wages Indirect and Fringes.* Included in this labor item are five preliminary labor and salary classifications along with other corresponding fringe costs; namely manufacturing supervisory personnel, plant equipment maintenance labor, plant general labor such as painters, watchmen and grounds keepers, sanitor labor, and receiving and stock room labor.

7. *Other Manufacturing Expenses.* This cost group will contain a variety of expense items. Included in this group, but not limited to the named items, are the following: sanitor supplies, boiler room supplies, water, manufacturing machinery repairs and depreciation, cartage within the plant's city, demurrage, oven fuel, shop uniforms, pan amortization and repairs, steam fuel, power purchased, insurance and taxes, building repairs and renewal, plant depreciation, plant and manufacturing equipment rentals, storage, and all other manufacturing plant burden cost. Also included in this group are the four items to be expensed at full wholesale value: cripples, production samples, unaccounted for expense and stale on floor. It is anticipated that the latter four items will be included in factor No. 2, "Wholesale Production Unit Value," at full wholesale price as per the definition of that factor; therefore, it will be necessary to expense them out at the wholesale values employed.

8. *Selling Wages and Fringes—Total Cost.* (a) Driver salesmen wages, commissions and fringes—excluding supervisors.

(b) All other selling wages and fringes.—This labor group will obviously contain numerous wage categories that are involved in the merchandising, distribution and selling of bread products. Included, but not limited to the grouping named below, are the following suggested labor classifications to which fringe benefits costs should be added:

Packers and loaders, inter-plant transport drivers' salaries, sales managers' salaries, sales supervisors' salaries, other route labor, garage labor, sales promotion salaries, receiver of returns salaries, branch and depot clerical salaries, branch and depot maintenance labor.

9. *All Other Selling and Advertising Expenses—Total Cost.* (a) Advertising and promotion expenses.—Included in this factor are those expenses incurred for the purpose of persuading either the trade or the consumer to purchase the company's bread products. Such expenses include:

Media broadcast, print, re-print, outdoor. Media production, research, and agency costs. Trade and consumer premiums and related expense. Display material, excluding racks. Product demonstration expense, excluding samples. No wages or fringes paid to the company's employees should be included in this category.

(b) All other selling expenses except returns.—Included in this factor are items of selling costs which are not included in factor No. 8, "Selling Wages and Fringes," above. This factor should include, but is not limited to the following:

Price adjustments, trade samples, transportation of finished bread products, all vehicular expenses, maintenance of branch distribution center, depreciation and rental costs of branch distribution locations, utility costs at branch distribution centers, thrift store expenses excluding labor and fringes. Since thrift store expenses are charged to this group factor, the amount of net proceeds realized from thrift store receipts, likewise, should be credited to this factor.

(c) Returns at full wholesale value.

10. *Administrative Expenses.* This factor specifically includes the cost of operating and maintaining national and regional offices, all plant office expense (excluding branch and depot clerical salaries), and the salaries and labor fringes of plant executives other than the salaries reported under factor No. 6, "Wages Indirect and Fringes."

11. *Grand Total Expenses.* Grand Total Expenses is the sum of all the preceding factors, from No. 3 to No. 10.

12. *Pretax Profit.* Substract factor No. 11, "Grand Total Expenses," from factor No. 2, "Wholesale Production Unit Value."

NOTE.—The expenses listed in the above factors 3 through 10 should exclude non-operating items such as interest income and loss or gain on disposal of capital assets. The credit effect of cash discounts to expenses, however, should be included.

REMINDER.—For plants with mixed types of products, remove any indirect manufacturing, selling and administrative expense applicable to non-bread items.

MILITARY BIDS COMPARED TO BLS FIGURES

This group of materials suggest another approach to damages.

It should be emphasized that these materials relate only to the Keesler commissary

[1] Includes all loaf varieties, brown and serve, bread-type rolls, etc.

for contracts extending from June 1, 1971 to October 31, 1974. It is assumed the figures are typical of all government sales of Smith and Colonial.

Generally, the concept involves a comparison of preconspiracy Keesler prices with conspiracy-Keesler prices against a generally accepted "measuring stick" which presumably reflects a competitive norm. Here we use the Wholesale Price Index prepared by the Bureau of Labor Statistics in part because it permits monthly breakdowns.

The BLS Wholesale Price Index attempts to measure the extent of price change over time against a known base. It does not report prices but changes in prices. For example, if the price of a product in 1967 established a base of 100, the wholesale price index in 1975 would be 200 if prices had doubled. Similarly, if prices in 1980 were four times the level in 1967, the price index would be 400, which would also show that 1980 prices were twice as high as 1975.

The Bureau of Labor Statistics publishes wholesale price indices which are arguably relevant to a damage calculation for Keesler—the national index for bread and the national index for bread and the national index for bakery products.

As a result, we have run calculations based on these two indices. Attached to each set of calculations is a print-out from the Bureau of Labor Statistics showing the monthly level for each index. From this print-out, the arithmetical average wholesale price index for the months covered by each Keesler contract was computed.

From this date, a "competitive price" during the competitive period can be projected from the preconspiracy period, and compared with the actual performance to estimate the magnitude of any overcharge.

Again, we assume that the designated Keesler contracts are representative of all government sales of both companies.

Further, the range in size between contracts of different dates is small enough so as not to introduce a significant error because of using an arithmetical average of "percents."

The wholesale price index on National Index on Bread shows an overcharge of 7.16 percent.

The bakery products index shows an overcharge of 7.26 percent.

If we use a post 1974 base on the bread index, then the overchange is 6.31 percent.

If we use a post 1974 base on the bakery products index, then the overcharge is 8.68 percent

Contract dates	Price per pound of dough for pre-1971 contracts [1]	WPI during period of pre-1971 contracts [2]	WPI during period of contract [3]	Ratio col. 4 divided by col. 3	"Competitive price" col. 5 multiplied by col. 2	Actual bid	Difference col. 7 minus col. 6	Percent of difference col. 7 of col. 6
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
June 1 to Dec. 31, 1971	.1684	109.763	113.671	1.0356039	0.1744	0.1869	0.0125	6.69
Jan. 1 to July 31, 1972	.1684	109.763	115.843	1.055392	.1777	.1869	.0092	4.92
Aug. 1, 1972 to Feb. 28, 1973	.1684	109.763	117.629	1.0716634	.1805	.2035	.0230	11.30
Mar. 1 to Sept. 30, 1973	.1684	109.763	125.443	1.1428532	.1925	.2025	.0100	4.94
Oct. 1, 1973 to Apr. 30, 1974	.1684	109.763	148.929	1.3568233	.2285	.2309	.0024	1.04
May 1 to Oct. 31, 1974	.1684	109.763	160.217	1.459663	.2458	.2861	.0403	14.09
Average								7.16

[1] This is the weighted average for the below listed contracts.

	Dollars	Pounds
Nov. 1, 1969 to May 31, 1970	81,433.30	532,671.87
June 1 to Oct. 31, 1970	92,463.75	529,109.37
Nov. 1, 1970 to May 31, 1971	96,454.45	543,171.87
Total	270,351.50	1,604,953.11

Weighted average price per pound of dough = $0.1684.

[2] This is the average bread WPI for the months Nov. 1, 1969, to May 31, 1971, which corresponds to the contracts identified in footnote 1. Computed from the attached BLS chart.

[3] This is the average bread WPI for the months covered by each of the period contracts.

Contract dates	Price per pound of dough for pre-1974 contracts [1]	WPI during period of pre-1974 contracts [2]	WPI during period of contract [3]	Ratio col. 4 divided by col. 3	"Competitive price" col. 5 multiplied by col. 2	Actual bid	Difference col. 7 minus col. 6	Percent of difference col. 7 of col. 6
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
June 1 to Dec. 31, 1971	0.2694	173.994	113.671	0.6533041	0.1760	0.1869	0.0109	5.83
Jan. 1 to July 31, 1972	.2694	173.994	115.843	.6657873	.1794	.1869	.0075	4.01
Aug. 1, 1972 to Feb. 28, 1973	.2694	173.994	117.629	.676052	.1821	.2035	.0214	10.52
Mar. 1 to Sept. 30, 1973	.2694	173.994	125.443	.7209616	.1942	.2025	.0083	4.10
Oct. 1, 1973 to Apr. 30, 1974	.2694	173.994	148.929	.8559433	.2306	.2309	.0003	.13
May 1 to Oct. 31, 1974	.2694	173.994	160.217	.9208191	.2481	.2861	.0380	13.28
Average								6.31

[1] This is the weighted average for the below listed contracts.

	Dollars	Pounds
May 1 to Oct. 31, 1975	164,699.50	532,394
May 1 to Oct. 31, 1976	120,912.00	468,582
Nov. 1, 1976 to Apr. 30, 1977	72,775.00	329,122
Total	358,386.50	1,330,098

Weighted average price per pound of dough = $0.2694

[2] This is the average bread WPI for the months May 1 to Oct. 31, 1975, and from May 1, 1976, to Apr. 30, 1977, which correspond to the contracts identified in footnote 1. Computed from the attached BLS chart.

[3] This is the average bread WPI for the months covered by each of the period contracts.

Bread

Year	Annual average	January	February	March	April	May	June	July	August	September	October	November	December
1947	54.7	51.8	51.8	51.3	54.5	54.5	54.5	54.2	54.2	54.5	56.1	59.8	59.5
1948	59.3	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.1	58.4
1949	58.0	58.4	58.4	59.4	58.4	58.4	58.4	58.2	57.5	57.5	57.5	57.5	57.5
1950	60.3	57.5	57.5	59.0	58.0	58.0	58.0	61.2	63.0	63.0	63.0	63.0	63.6
1951	67.4	67.1	67.1	67.1	67.2	67.5	67.5	67.5	67.5	67.5	67.5	67.9	67.5
1952	67.3	67.5	67.5	67.5	67.5	67.2	67.2	67.8	67.8	67.8	66.7	66.7	66.7
1953	69.6	66.7	67.8	67.9	68.3	68.3	68.8	69.1	69.1	71.4	72.7	72.7	72.7
1954	74.4	72.7	72.7	72.7	74.1	74.1	74.1	74.6	74.6	74.6	74.6	76.8	76.8
1955	77.5	77.4	77.4	77.4	77.4	77.4	77.4	77.4	77.4	77.4	77.4	78.2	78.2
1956	79.5	78.2	79.1	79.1	79.5	79.1	79.1	79.1	80.1	80.1	80.1	80.1	80.1
1957	81.1	80.1	80.1	81.2	81.2	81.2	81.2	81.2	81.2	81.2	81.2	81.2	81.1
1958	93.0	82.1	82.1	82.1	82.1	82.1	83.1	83.1	83.1	84.2	84.2	84.2	84.2
1959	86.2	84.2	84.2	86.4	86.4	86.4	86.4	86.4	86.4	86.4	86.9	86.9	86.9
1960	88.1	86.9	86.7	86.7	86.7	86.7	86.7	89.2	89.2	89.6	89.6	89.6	89.7
1961	89.7	89.7	89.7	89.7	89.7	89.7	89.7	89.7	89.7	89.7	89.7	89.7	89.7
1962	90.0	90.2	90.6	90.6	91.1	89.5	89.5	89.5	89.5	89.5	89.8	90.2	90.2
1963	90.7	90.2	92.2	91.2	90.7	90.7	90.7	90.7	90.7	90.7	90.7	89.7	89.8
1964	90.0	90.0	90.0	90.0	90.0	90.0	90.0	90.0	90.0	90.0	90.0	90.0	90.0
1965	90.4	90.0	90.0	90.0	90.0	90.0	90.0	90.0	89.5	90.0	90.2	92.3	93.2
1966	97.2	93.9	94.2	94.2	94.6	94.6	94.5	94.5	100.9	100.9	101.2	101.2	101.2
1967	100.0	100.9	100.9	99.8	99.8	99.8	99.8	99.8	99.8	99.8	99.8	99.8	99.8
1968	101.5	99.8	99.8	99.8	99.8	99.8	99.8	102.0	104.3	103.3	103.3	103.0	103.0
1969	103.8	103.3	103.3	103.3	103.3	103.3	103.4	103.3	103.9	103.8	104.8	104.9	104.9
1970	109.2	105.6	106.5	106.8	107.1	107.2	107.8	109.7	110.1	111.4	111.8	113.1	113.1
1971	113.4	113.1	113.1	113.1	113.1	113.1	113.3	113.8	113.8	113.7	113.7	113.7	113.7
1972	116.5	115.0	115.1	115.1	115.4	116.1	117.0	117.2	117.2	117.2	117.3	117.5	117.5
1973	129.0	117.9	118.8	119.3	121.1	121.8	122.0	122.4	128.6	142.9	143.4	144.6	145.7
1974	158.7	146.8	150.1	155.1	156.8	157.7	158.7	159.0	159.6	161.0	164.5	165.0	168.7
1975	172.3	173.3	174.2	174.1	173.6	172.7	172.3	172.6	169.4	169.9	171.7	172.8	171.4
1976	174.3	174.6	174.3	173.8	173.6	173.1	173.8	173.8	173.7	174.7	176.0	176.3	176.2
1977	NA	176.2	176.1	176.6	176.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

NA—Not available.

Contract dates	Price per pound of dough for pre-1971 contracts[1]	WPI during Period of pre-1971 contracts[2]	WPI during period of contract[3]	Ratio col. 4 divided by col. 3	"Competitive price" col. 5 multiplied by col. 2	Actual bid	Difference col. 7 minus col. 6	Percent of difference col.7 of col. 6
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
June 1 to Dec. 31, 1971	0.1684	110.768	115.1	1.0391087	0.1750	0.1869	0.0119	6.37
Jan. 1 to July 31, 1972	.1684	110.768	117.243	1.0584555	.1782	.1869	.0087	4.65
Aug. 1, 1972 to Feb. 28, 1973	.1684	110.768	118.829	1.0727737	.1807	.2035	.0228	11.20
Mar. 1 to Sept. 30, 1973	.1684	110.768	125.914	1.1367362	.1914	.2025	.0111	5.48
Oct. 1, 1973 to Apr. 30, 1974	.1684	110.768	148.1	1.3370287	.2252	.2309	.0057	2.47
May 1 to Oct. 31, 1974	.1684	110.768	163.	1.4715441	.2478	.2861	.0383	13.39
Average								7.26

[1]This is the weighted average for the below listed contracts.

	Dollars	Pounds
Nov. 1, 1969 to May 31, 1970	81,433.30	532,671.87
June 1 to Oct. 31, 1970	92,463.75	529,109.37
Nov. 1, 1970 to May 31, 1971	96,454.45	543,171.87
Total	270,351.50	1,604,953.11

Weighted average price per pound of dough = $0.1684

[2]This is the average bakery products WPI for the months Nov. 1, 1969, to May 31, 1971, which corresponds to the contracts identified in footnote 1. Computed from the attached BLS chart.

[3]This is the average bakery products WPI for the months covered by each of the period contracts.

Contract dates	Price per pound of dough for pre-1974 contracts [1]	WPI during period of pre-1974 contracts [2]	WPI during period of contract [3]	Ratio col. 4 divided by col. 3	"Competitive price" col. 5 multiplied by col. 2	Actual bid	Difference col. 7 minus col. 6	Percent of difference col. 7 of col. 6
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
June 1 to Dec. 31, 1971	0.2694	179.978	115.1	0.6395226	0.1723	0.1869	0.0146	7.81
Jan. 1 to July 31, 1972	.2694	179.978	117.243	.6514296	.1755	.1869	.0114	6.10
Aug. 1, 1972 to Feb. 28, 1973	.2694	179.978	118.829	.6602418	.1779	.2035	.0256	12.58
Mar. 1 to Sept. 30, 1973	.2694	179.978	125.914	.6996077	.1885	.2025	.0140	6.91
Oct. 1, 1973 to Apr. 30, 1974	.2694	179.978	148.1	.8228783	.2217	.2309	.0092	3.98
May 1 to Oct. 31, 1974	.2694	179.978	163.	.9056662	.2440	.2861	.0421	14.72
Average								8.68

[1] This is the weighted average for the below listed contracts.

	Dollars	Pounds
May 1 to Oct. 31, 1975	164,699.50	532,394
May 1 to Oct. 31, 1976	120,912.00	468,582
Nov. 1, 1976 to Apr. 30, 1977	72,755.00	329,122
Total	358,386.50	1,330,098

Weighted average price per pound of dough = $0.2694

[2] This is the average bakery products WPI for the months May 1 to Oct. 31, 1975, and from May 1, 1976, to Apr. 30, 1977, which correspond to the contracts identified in footnote 1. Computed from the attached BLS chart.

[3] This is the average bakery products WPI for the months covered by each of the period contracts.

Bakery products

Year	Annual average	January	February	March	April	May	June	July	August	September	October	November	December
1947	64.9	63.0	62.9	62.6	64.8	64.8	64.8	64.6	64.6	64.8	65.9	68.4	68.4
1948	68.6	68.7	68.7	68.7	68.7	68.7	68.7	68.7	68.7	68.7	68.7	68.4	68.0
1949	67.0	68.0	68.0	68.0	68.0	68.0	68.0	67.8	66.9	65.4	65.4	65.4	65.4
1950	67.5	65.4	65.4	65.7	65.7	65.7	65.7	67.9	69.4	69.4	69.4	69.8	70.5
1951	74.2	73.6	73.6	73.6	73.6	73.7	73.7	73.7	74.6	74.8	74.9	74.9	74.9
1952	74.9	74.9	74.9	74.9	74.9	74.9	74.9	75.1	75.1	75.1	74.5	74.5	74.5
1953	76.5	74.5	75.1	75.3	75.5	75.5	75.9	76.1	76.1	77.7	78.5	78.5	78.5
1954	79.6	78.6	78.5	78.5	79.5	79.5	79.5	79.8	79.8	79.8	79.8	81.3	81.3
1955	81.7	81.5	81.6	81.6	81.6	81.6	81.6	81.6	81.6	81.6	81.6	82.1	82.1
1956	82.8	82.1	82.6	82.6	82.8	82.6	82.6	82.6	83.1	83.1	83.1	83.1	83.1
1957	83.9	83.4	83.4	84.0	84.0	84.0	84.0	84.0	84.0	84.0	84.0	84.0	84.5
1958	85.2	84.5	84.5	84.4	84.4	84.4	85.2	85.2	85.2	86.1	86.1	86.1	86.1
1959	87.5	86.1	86.1	87.7	87.7	87.7	87.7	87.7	87.6	87.6	88.0	88.0	88.0
1960	88.9	88.0	87.9	87.9	87.9	87.9	87.9	89.6	89.6	90.0	90.0	90.0	90.1
1961	90.2	90.1	90.1	90.1	90.1	90.1	90.1	90.1	90.1	90.1	90.7	90.7	90.7
1962	90.8	91.0	91.4	91.4	91.6	90.5	90.5	90.5	90.5	90.5	90.7	90.8	90.9
1963	91.3	90.9	92.4	91.7	91.4	91.4	91.4	91.4	91.4	91.4	91.4	90.7	90.7
1964	90.8	90.8	90.8	90.8	90.8	90.8	90.8	90.8	90.8	90.8	90.8	90.8	90.8
1965	91.7	90.8	90.6	91.2	91.4	91.4	91.4	91.4	91.1	91.4	91.7	93.2	93.8
1966	97.3	94.3	94.8	95.0	95.4	95.4	95.3	95.3	100.4	100.4	100.6	100.6	100.6
1967	100.0	100.4	100.4	99.6	99.6	99.6	99.6	99.6	100.0	100.0	100.0	100.5	100.5
1968	101.8	100.5	100.5	100.5	100.5	100.5	100.5	102.2	103.9	103.2	103.2	103.0	103.0
1969	103.9	103.2	103.2	103.2	103.2	103.2	103.3	103.5	103.9	104.2	105.1	105.7	105.7
1970	110.1	106.2	107.1	107.7	108.7	108.6	109.2	110.7	111.0	112.2	112.5	113.4	113.7
1971	114.8	113.7	113.9	114.8	114.8	114.8	115.0	115.2	115.1	115.1	115.1	115.1	115.1
1972	117.8	116.1	116.4	116.8	117.2	117.8	118.0	118.4	119.2	118.2	118.4	118.6	118.1
1973	129.2	119.0	120.3	120.7	122.1	122.8	123.0	123.3	128.5	141.0	142.1	143.1	144.7
1974	161.0	146.4	149.5	154.6	156.3	159.3	160.0	160.2	162.4	166.2	169.9	171.9	175.8
1975	179.6	179.1	182.7	183.0	179.4	178.7	177.7	177.9	175.5	175.9	177.2	178.1	177.4
1976	179.9	179.9	179.8	179.5	178.9	179.0	179.5	179.5	179.5	180.2	181.2	181.5	181.4
1977	NA	181.3	183.3	185.1	185.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

NA: Not available.

U.S. DISTRICT COURT, SOUTHERN DISTRICT OF MISSISSIPPI, SOUTHERN DIVISION

United States of America, Plaintiff v. *Smith's Bakery, Inc.*, a Florida corporation, *Smith's Bakery*, a Mississippi corporation, and *Colonial Baking Company of Gulfport*, a Delaware corporation, Defendants.

Civil No. S77-0107.

GUARANTY

This Guaranty executed by Smith's Bakery, Inc., a Florida corporation (herein called Smith's of Florida), this the — day of ————, 197-;

WITNESSETH

Whereas, the United States of America (U.S.A.) obtained a money judgment against Smith's Bakery, a Mississippi corporation (herein called Smith's of Mississippi), in the amount of three hundred thousand ($300,000) dollars as evidenced by Consent Final Judgment entered in the captioned case; and

Whereas, U.S.A. is willing to permit Smith's of Mississippi to pay the judgment against it in installments as more fully set forth in said Consent Final Judgment, *Provided, however*, That Smith's of Florida, which owns all of the issued and outstanding capital stock of Smith's of Mississippi, guarantee the payment as and when the same becomes due of any portion of the judgment to be paid in installments; and

Whereas, Smith's of Mississippi has elected to pay said judgment in installments and Smith's of Florida is willing to execute this Guaranty as an inducement to U.S.A. to permit such installment payments;

Now, therefore, in consideration of the premises, the undersigned, Smith's of Florida, does hereby guarantee the payment when and as the same becomes due and payable of any and all indebtedness, principal and interest, which Smith's of Mississippi now owes or will owe to U.S.A. under and by virtue of that certain Consent Final Judgement in the captioned case, and Smith's of Florida does also hereby agree to pay reasonable attorneys fees and all other costs and expenses which may be incurred by U.S.A. in the enforcement of this Guaranty.

Smith's of Florida hereby expressly waives notice of each and every one of the following:

1. Acceptance of this Guaranty by U.S.A.;

2. Default by Smith's of Mississippi with respect to any debt or obligation owing to U.S.A. by virtue of said Consent Final Judgment; and

3. Presentment, protest and demand, or any of them, with respect to the indebtedness of Smith's of Mississippi to U.S.A.

Smith's of Florida expressly agrees to remain bound under this Guaranty notwithstanding any extension of time for performance or the granting of any other indulgence to, or any other modification of said obligation of, Smith's of Mississippi to U.S.A. This Guaranty shall continue in full force and effect until the indebtedness of Smith's of Mississippi to U.S.A., as evidenced in said Consent Final Judgment, has been paid in full.

The failure of U.S.A. to enforce any provisions of this Guaranty at any time or for any period of time shall not be construed to be a waiver of any such provision or of the right thereafter to enforce the same.

In witness whereof, the said Smith's Bakery, Inc., a Florida corporation, has caused this instrument to be executed by ————, its ————, as of the date first above written.

SMITH'S BAKERY, INC.,
A Florida Corporation.

By: (As Its President) ————

[FR Doc. 78-6537 Filed 3-14-78; 8:45 am]

[6820-35]

LEGAL SERVICES CORPORATION

Grants and Contracts

MARCH 9, 1978.

The Legal Services Corp. was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract or project."

The Legal Services Corp. hereby announces publicly that it is considering the grant applications submitted by:

Western Arkansas Legal Services in Fort Smith, Ark. to serve Crawford, Franklin, Logan, and Sebastian Counties.

East Arkansas Legal Services in West Memphis, Ark. to serve Crittendon, Cross, and St. Francis Counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above applications to the Regional Office of the Legal Services Corporation at:

Legal Services Corp., Atlanta Regional Office, 615 Peachtree St. NE., 9th Floor, Atlanta, Ga. 30308.

THOMAS EHRLICH.

[FR Doc. 78-6689 Filed 3-14-78; 8:45 am]

[7537-01]

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Arts

SPECIAL PROJECTS ADVISORY COMMITTEE

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 Committee to the National Council on the Arts will take place March 31, 1978, from 9 a.m.-5:30 p.m.; April 1, 1978, from 9 a.m.-5:30 p.m.; and April 2, 1978, from 9 a.m.-12:30 p.m. in Room 1422 of the Columbia Plaza Office 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 (42 FR 14936), 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. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

Dated: March 9, 1978.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 78-6636 Filed 3-14-78; 8:45 am]

[7555-01]

NATIONAL SCIENCE FOUNDATION

NATIONAL SCIENCE BOARD REGIONAL FORUM, NORTHEASTERN UNITED STATES

Statements Sought for Planning Phase

BACKGROUND AND OBJECTIVE

The National Science Board is holding a series of regional forums and pre-forum planning meetings in response to language in the NSF Authorization Act for Fiscal Year 1976 which directed the Foundation: "* * * to facilitate the participation of members of the public in the formulation, development, and conduct of the National Science Foundation's programs, policies, and priorities."

The objectives of both the forums and pre-forum planning meetings are to encourage the expression of views by the general public on scientific and science education issues. Several Members of the National Science Board participate in each forum; participation for the entire activity is invited from business, industry, State and local government, educational institutions, public interest and citizen groups, and the community at large. Ideas exchanged at the forum and the pre-forum planning meeting will help the Board expand its information base and assist in its policy-making role for the National Science Foundation.

PLANNING PHASE

At the pre-forum planning meeting, a Regional Planning Group is asked to hear and consider statements from various groups, individuals, and organizations on various issue areas. It is this group that then identifies and selects several of the topics which become the agenda for the Board's larger forum meeting.

This notice is designed to solicit statements to be presented at or provided in writing for this upcoming planning meeting. Our hope is that statements from various representatives and citizens will be made on several of the important topics that are listed below. It is from this list that the Regional Planning Group will designate several as the topics for the National Science Board's Regional Forum.

In order to provide an opportunity for views to be expressed at the planning stage of this forum activity, this pre-forum planning meeting will be held in Boston, Mass. on March 29, 1978. Oral testimony and/or written statements are requested on any of the topics listed below or others you deem as broad research areas in which NSF should increase the research support.

For this particular meeting, oral testimony is being solicited only from individuals and groups that are located or reside in the following states: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

HOW TO GET ON THE PROGRAM IN BOSTON

Those wishing to make written statements or to provide oral testimony on any of these topics should contact Dr. Raymond Bye at the National Science Foundation for additional details. Presentations should relate to those areas described or to those other areas that might constitute important broad research thrusts. As the oral statements will be made in one day, those selected to give oral presentations will represent diverse interests and presentations will be scheduled upon as many of the issues as is possible within time constraints. Oral presentations will be

limited to ten minutes, but written statements containing greater detail would be useful and are encouraged. Both oral statements and written papers should include why the issue area is important to the region and the Nation, both now and in the longer-term. A portion of the presentation could suggest broad research directions for NSF to consider relative to the particular area of concern. If you are selected to present a statement in Boston to the Regional Planning Group, you may also apply in advance of the meeting if you wish to be considered for partial reimbursement of your expenses; the amount of the stipend will be a flat amount dependent upon the travel distance required to reach the Boston meeting. Under no circumstances will the amount exceed the actual expenses incurred. The total amount of money available for this purpose is limited to $1,000 maximum for all participants of this meeting. As these statements or presentations are made to the Regional Planning Group, it is this Group that will narrow the list down to the most important issued to be usd as the discussion topics for the National Science Board's Regional Forum. That forum will be held in Philadelphia, Pennsylvania in mid-May of 1978. Representatives from the National Science Board will be present at both meetings to hear your presentations and the discussions.

Areas for Presentations

Presentations are sought in the following areas and sub-areas:

FOOD-RELATED CONCERNS

Plant productivity. Consideration could include effects of water supply on plants, strain developments, genetic research, and another "green revolution."

Salt-tolerant plants and microorganisms. Developments in these areas could have substantial effects upon the supply of food, fiber, chemicals, and waste treatment.

Nutritional aspects of food. Nutritional requirements of various trace elements, as well as their effect on humans, is of growing interest to scientists, the public, and public policymakers. Minute concentrations of elements have been found to have dramatic physiological effects. As nutrition and related aspects of it are of world-wide concern, the area may need further examination and study.

Pest management. This topic should include environmental concerns and economic considerations for farmers, other users, and the public.

Chemical-based fertilizer. The petroleum-based nature and the environmental impacts of fertilizers on man could be considered.

Global carbon cycle. Estimates of the impact of increasing the carbon dioxide in the atmosphere range from possibly acceptable to catastrophic. Clearly it is necessary to foresee more accurately the possibilities, consequences, and possible controls on altering the cycle.

MINERAL- AND MATERIAL-RELATED CONCERNS

Waste resources. Presentations might include emphasis upon waste water, sludge, and solid waste generated by municipalities and industries, and on assessment of alternative approaches to solving the problems.

High technology and substitute materials. This might include some discussion of metallurgical, polymer, and ceramics substitutes. Of particular interest might be non-petroleum based substitutes.

Deep mineral deposits. At depths of a mile or more, new mineral resources may exist. New techiques are required to successfully find and mine these resources.

Marine resources. Possible areas of research interest might be in the vast supply of seabed minerals, of the minerals that exist in seawater, the marine organisms in their ecosystem, and the concept of ocean farming.

ENERGY-RELATED CONCERNS

Tremedous amounts of research into energy-related areas such as chemical and material processes, combustion, heat transfer, catalytic reactions (including biological catalysis) and thermodynamics are needed. Presentations could include these (or other) energy-related concerns that research needs to focus upon.

WATER-RELATED CONCERNS

Aspects of water quality, including study of the various chemicals found in water, as well as industrial and municipal water processing techniques. Also water quantity, which would include sub-surface and surface waters, saline water utilization and desalinization, and the possible economic and legal effects of weather modification would be other areas.

Community water management, which includes the development of water allocation strategies, irrigation approaches, baseline data, and various modeling possibilities could be considered. Data on water requirements for agricultural usage should be considered, particularly as it relates to irrigation and more efficient crop utilization of water resources.

SOCIO-ECONOMIC CONCERNS

Mass media and socialization. One possible aspect would be the effects of television on learning, on child development, and on various human perceptions.

Economic considerations and economic productivity. The diverse aspects might include such things as economic modeling (both domestic and international), including fluctuations in the levels of goods and services, domestic employment levels, and the changes in the inflation rate and its impact. Consideration is needed of data availability and the state of the art in analytical economic tools.

Population redistribution. In addition to regional population shifts and the longer-term impact of the shifts, consideration might be given to concepts of modeling, industrial siting, and the effects upon public services and community resource expenditures and tax bases.

Privacy/computer security. Consideration of various aspects of security, auditing, personal identification, and legal impacts would be useful, as well as examining the next generation of man-machine communication.

Urban planning. Particular consideration might include land use regulations and decisions, taxation policies, and new public service technologies or requirements.

The National Science Board is also seeking your input into these policies and programmatic areas.

ALTERNATIVE PERFORMERS OF BASIC RESEARCH

National Science Foundation's primary mission is the support of basic research in the sciences. The Nation's primary performer of basic research is the academic institution. Almost all of NSF"s funds for basic research go to colleges and universities. The Board wishes to get opinions and ideas upon the most appropriate role of industry or other possible performers in federally-funded basic research.

YOUNGER RESEARCHERS: SUPPLY AND DEMAND

There may be fewer new faculty positions in the sciences in the future. As a result, the supply of young Ph. D.'s is out-stripping the demand for them in academic science. If the supply is curtailed, do we lose a generation of scientific researchers? Are other sources of employment available and appropriate? What new programs might be considered?

CAREER IN SCIENCE FOR WOMEN, MINORITIES AND THE HANDICAPPED

The National Science Board hopes to increase the participation of women, minorities, and the handicapped in careers in science. These groups have been traditionally underrepresented in the sciences and in receipt of doctoral degrees in the sciences. Programs have been initiated in order to improve opportunities for these groups. Your ideas would be appreciated on whether other types or forms of programs are needed.

FOR THOSE INTERESTED

The opportunity for oral presentations in Boston on March 29, 1978, will be limited. If you are interested in making an oral statement to the Regional Planning Group for the National Science Board's Forum, please contact Dr. Raymond Bye of the NSF staff at 202-632-7443 before March 24, 1978, for more information. Further details about the Philadelphia forum can also be provided. Written comments or statements may be sent directly to National Science Board Regional Forums, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

RAYMOND E. BYE, Jr.,
Office of Government and Public Programs.

[FR Doc. 78-6614 Filed 3-14-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

[Project Nos. P-657 and P-657A]

NEW YORK STATE ELECTRIC & GAS CORP. AND LONG ISLAND LIGHTING CO.

Receipt of Partial Application for Construction Permit and Facility License: Time for Submission of Views on Antitrust Matters

New York State Electric & Gas Corp. and the Long Island Lighting Co. (applicants), pursuant to section 103 of the Atomic Energy Act of 1954, as amended, filed one part of an application, date January 10, 1978, in connection with their plans to construct and operate 2 pressurized water reactors at either the "New Haven" site, near Lake Ontario, or the "Stuyvesant" site, near the Hudson River in New York State. The designated site will be identified in the Preliminary Safety Analysis Report and Environmental Report, which are scheduled to be submitted in October and November 1978, respectively. Upon receipt of the remaining portions of the application dealing with radiological health and safety and environmental matters, separate notices of receipt will be published by the Commission including an appropriate notice of hearing.

The portion of the application filed contains the information requested by the Attorney General for the purpose of an antitrust review of the application as set forth in 10 CFR 50, Appendix L.

A copy of the partial application is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555. Project Nos. P-657 and P-657A have been assigned to the application and should be referenced in any correspondence relating to it.

Any person who wishes to have their views on the anititrust matters of the application presented to the Attorney General for consideration or who desires additional information regarding the matter covered by this notice, should submit such views or requests for additional information to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention: Chief, Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation, on or before April 24, 1978.

Dated at Bethesda, Md., this 14th day of February 1978.

For the Nuclear Regulatory Commission.

OLAN D. PARR,
Chief, Light Water Reactors Branch No. 3, Division of Project Management.

[FR Doc.78-4538 Filed, 2-21-78; 8:45 am]

[7590-01]

[Docket No. 50-346]

TOLEDO EDISON CO. AND CLEVELAND ELECTRIC ILLUMINATING CO. (DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1

Consideration of Proposed Modification to Facility Spent Fuel Storage Pool

The Nuclear Regulatory Commission (the Commission) is considering the issuance of a proposed amendment to Facility Operating License No. NPF-3, issued to the Toledo Edison Co. and Cleveland Electric Illuminating Co. (the licensees), for the Davis-Besse Nuclear Power Station, Unit 1 (the facility) which would authorize a modification to the spent fuel storage pool. The facility is a pressurized water reactor located in Ottawa County, Ohio, and is currently authorized for operation at power levels up to 2772 megawatts thermal.

The proposed amendment would authorize replacement of the existing racks in the spent fuel storage pool of the facility with high capacity spent fuel storage racks of a design capable of accommodating up to 735 fuel assemblies in accordance with the licensee's letter dated December 19, 1977. Thereafter, the licensee would be able to operate the facility with this larger spent fuel storage capacity. The existing racks have a capacity for storage of 260 fuel assemblies.

Prior to approval of the proposed modification and license amendment, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

By April 14, 1978, the licensees may file a request for a hearing and any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to the modification to the subject facility spent fuel storage pool. Petitions for leave to intervene must be filed under oath or affirmation in accordance with the provisions of § 2.714 of 10 CFR Part 2 of the Commission's regulations. A petition for leave to intervene must set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and the petitioner's contentions with respect to the proposed action. Such petitions must be filed in accordance with the provisions of this FEDERAL REGISTER notice and § 2.714, and must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, by the above date. A copy of the petition and/or request for a hearing should be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to attorneys for the licensees: Gerald Charnoff, Esquire, of Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, D.C. 20036, and Leslie Henry, Esquire, of Fuller, Seney, Henry and Hodge, 300 Madison Avenue, Toledo, Ohio 43604, attorneys for the licensee.

A petition for leave to intervene must be accompanied by a supporting affidavit which identifies the specific aspect or aspects of the proceeding as to which intervention is desired and specifies with particularity the facts on which the petitioner relies as to both his interest and his contentions with regard to each aspect on which intervention is requested. Contentions shall be limited to the matters within the scope of the amendment under consideration. Petitions stating contentions relating only to matters outside the Commission's jurisdiction will be denied.

All petitions will be acted upon by the Commission or licensing board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel. Timely petitions will be considered to determine whether a hearing should be noticed or another appropriate order issued regarding the disposition of the petitions. A petition for leave to intervene which is not timely will not be entertained absent a determination by the Commission or the licensing board designated to rule on petitions to intervene that the petitioner, in addition to the matters specified in 10 CFR 2.714(d), has made a substantial showing of good cause for failure to file on time. The reasons for the tardiness in filing a petition for leave to intervene, as well as the factors specified in 10 CFR 2.714(a) (1)-(4), shall be considered in making a determination as to whether there has been a substantial

showing of good cause by the petitioner.

In the event that a hearing is held and a person is permitted to intervene, he becomes a party to the proceeding and has the right to participate fully in the conduct of the hearing. For example, he may present evidence and examine and cross-examine witnesses.

For further details with respect to this action, see the licensee's letter dated December 19, 1977, and other related material which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555 and at the Local Public Document Room for the Davis-Besse Nuclear Power Station, Unit 1, located at the Ida Rupp Public Library, 310 Madison Street, Port Clinton, Ohio 43452.

Dated at Bethesda, Maryland, this 8th day of March 1978.

For the Nuclear Regulatory Commission.

JOHN F. STOLZ,
Chief, Light Water Reactor Projects Branch No. 1, Division of Project Management.

[FR Doc. 78-6833 Filed 3-14-78; 8:45 am]

[7715-01]

POSTAL RATE COMMISSION

[Docket No. R77-1]

POSTAL RATE AND FEE INCREASES, 1977

Oral Argument

MARCH 8, 1978.

Notice is hereby given that pursuant to the Presiding Officer's Notice, oral argument in this case is presently scheduled for March 24, 1978. All parties who wish to present oral argument to the Commission shall file a document stating the amount of time desired. In requesting oral argument, parties with substantially like interests are encouraged to group themselves for a single presentation.

The Commission shall allocate time for oral argument and promptly notify the participants of the allocation. For this purpose, the Commission may group parties with substantially like interests so that oral argument will proceed expeditiously. Inasmuch as requests are normally filed concurrently with initial briefs in accordance with established Commission practice (39 CFR 3001.37(b)) the instant notice should be viewed as a reminder for parties of this provision in our rules.

Requests for oral argument should be filed no later than March 15, 1978.

DAVID F. HARRIS,
Secretary.

[FR Doc. 78-6644 Filed 3-14-78; 8:45 am]

[8025-01]

SMALL BUSINESS ADMINISTRATION

[License No. 08/08-0043]

ENERGY INVESTMENTS, INC.

Issuance of a Small Business Investment Company License

On December 16, 1977, a notice was published in the FEDERAL REGISTER (42 FR 63510) stating that an application had been filed by Energy Investments, Inc., 5500 South Syracuse Circle, Suite 269, Englewood, Colo. 80110, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1977)) for a license as a small business investment company.

Interested parties were given until close of business January 3, 1978, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 08/08-0043 on January 11, 1978, to Energy Investments, Inc., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated March 6, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator, for Investment.

[FR Doc. 78-6688 Filed 3-14-78; 8:45 am]

[4910-06]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. RSSI-78-1, Notice No. 1]

HIGH CARBON CAST STEEL WHEELS

Safety Inquiry

Pursuant to § 211.61 of its Rules of Practice (41 FR 54181; 49 CFR 211.61), the Federal Railroad Administration (FRA) is initiating a special safety inquiry concerning the safety performance of certain freight car wheels manufactured between May 1958 and December 1969 by Southern Wheels Co. (ABEX). These wheels have been identified by the National Transportation Safety Board (NTSB) as one-wear, 70-ton cast steels wheels which are marked with "Southern" and "70T" on the back. These wheels are manufactured with a carbon content of 1.0 percent. As many as 20,000 of the 1,700,000 freight cars in the nation may still be equipped with these wheels.

Prior to 1958, some rail wheels were manufactured by ABEX with a carbon content of 1.5 percent. These 1.5 carbon cast steels wheels are prohibited by FRA Freight Car Safety Standards, although there may still be some in service. Since 1970, the carbon content of newly manufactured wheels has not exceeded .75 percent.

On March 9, 1978, the National Transportation Safety Board (NTSB) informed the FRA that "until these wheels are replaced or adequate precautions are instituted for the operation of cars equipped with these wheels, there is an imminent danger of derailment with the possible release of hazardous materials." The NTSB recommended that the FRA: (1) Use emergency powers to prohibit the use of cars equipped with Southern Wheels Co. high carbon wheels from carrying hazardous materials or from being placed in trains moving hazardous materials; (2) Use emergency powers to expedite the replacement of Southern Wheel Co. high carbon wheels 70T and UI; and (3) Promulgate regulations to establish adequate service records so that similar wheel problems will be promptly detected in the future and corrective action taken.

The purpose of this special inquiry is to obtain sufficient information concerning the nature and scope of this safety problem so that an effective solution can be devised and implemented as soon as possible without unduly disrupting essential rail service. The FRA has requested that the NTSB, Association of American Railroads, American Short Line Railraod Association, Louisville and Nashville, and several other railroads and ABEX actively participate in this inquiry by providing knowledgeable witnesses and pertinent manufacturing, service, and accident data.

The public inquiry will begin at 10 a.m. on Friday, March 17, 1978 in Room 3201 of the Trans Point Building, 2100 Second Street SW., Washington, D.C. 20590. Additional information concerning this inquiry may be obtained from Rolf Mowatt-Larssen, 202-426-0924 or Edward F. Conway, Jr., 202-426-8836.

AUTHORITY: Section 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437), § 1.49(n) of the Regulations of the Office of the Secretary, 49 CFR 1.49(n).

Issued in Washington, D.C. on March 14, 1978.

JOHN M. SULLIVAN,
Administrator.

[FR Doc. 78-7116 Filed 3-14-78; 11:29 am]

[4830-01]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

ART ADVISORY PANEL

Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Closed Meeting of Art Advisory Panel.

SUMMARY: A closed meeting of the Art Advisory Panel will be held in Washington, D.C.

DATES: The meeting will be held April 18 and 19, 1978.

FOR FURTHER INFORMATION CONTACT:

Tom Hartnett, T.C.E.A., 1111 Constitution Avenue NW., Room 5240, Washington, D.C., 20224, telephone 202-566-4427 (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V 1975), as amended by Government in the Sunshine Act, Pub. L. No. 94-409, 5(c), 90 Stat. 1247 (1976) that a closed meeting of the Art Advisory Panel will be held on April 18 and 19, 1978, beginning at 9:30 a.m. in Room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. 20224.

The agenda will consist of the review and evaluation of the acceptability of market value appraisals of works of art involved in Federal Income, Estate, or Gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that these meetings are concerned with matters listed in section 552b(c) (3), (4), (6), and (7) of Title 5 of the United States Code, and that the meetings will not be open to the public.

JEROME KURTZ,
Commissioner.

[FR Doc. 78-6738 Filed 3-14-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[Notice No. 611]

ASSIGNMENT OF HEARINGS

MARCH 10, 1978.

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.

CORRECTION [1]

AB 57 (Sub-No. 7), Soo Line Railroad Co. Abandonment in Baraga and Houghton Counties, MI, is assigned for hearing March 20, 1978, at Houghton, MI, at the city of Houghton, City Council Chambers, 100 Portage Street.

[FR Doc. 78-6728 Filed 3-14-78; 8:45 am]

[7035-01]

[Notice No. 610]

ASSIGNMENT OF HEARINGS

MARCH 10, 1978.

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 110393 (Sub-No. 36), Gem Transport, Inc., is now assigned for prehearing conference April 11, 1978, at the offices of the Interstate Commerce Commission, Washington, DC.

No. MC 80289 (Sub-No. 14), Red Line Carriers, Inc., now assigned May 1, 1978, at Philadelphia, PA, is canceled and application dismissed.

MC-FC-77226, Burmen Co., Inc., Pittsburgh, PA, Transferee and Sullivan Lines, Inc. (The Union National Bank of Pittsburgh—Successor in Interest) Pittsburgh, PA, Transferor, is now assigned for hearing April 24, 1978 (1 week), at Pittsburgh, PA, at a hearing room to be later designated.

MC 82492 (Sub-No. 145), Michigan & Nebraska Transit Co., Inc., now assigned May 1, 1978, at Washington, DC, for prehearing conference is postponed to July 1, 1978, for prehearing conference at the Offices of the Interstate Commerce Commission in Washington, DC.

MC-F-13300, Stevens Van Line, Inc.—Control and Merger—Airline Van, Inc., MC 74681 (Sub-Nos. 6 and 7), Stevens Van Lines, Inc., now being assigned May 9, 1978 (9 days), at Detroit, MI, in a hearing room to be later designated.

MC 56679 (Sub-No. 90), Brown Transport Corp., is now assigned for hearing May 2, 1978 (9 days), at Atlanta, GA, and will be held at the Holiday Inn-Downtown, 175 Piedmont Avenue NE., and will be continued June 20, 1978 (9 days), at Chattanooga, TN, and will be held at the Holiday Inn-Downtown, I-24, 401 West (9th Street.

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

[FR Doc. 78-6729 Filed 3-14-78; 8:45 am]

[1] This notice corrects hearing date from March 13, 1978, to March 20, 1978, as published in FEDERAL REGISTER of March 3, 1978 (43 FR 8900).

[7035-01]

[No. MC-C-10003]

ATLANTA, GA-DALLAS, TX

Superhighway Operations

AGENCY: Interstate Commerce Commission.

ACTION: Partial Republication of the Notice of filing of petition for declaratory order, previously published March 2, 1978.

SUMMARY: By petition filed February 9, 1978, petitioner Ryder Truck Lines, Inc., seeks a ruling as to whether its operations between Atlanta, GA, and Dallas, TX, including the transfer of freight from one vehicle to another at intermediate points, are in accordance with the superhighway rules—motor common carriers of property, 49 CFR 1042.3.

DATE: Comments on or before April 14, 1978.

ADDRESSES: Send comments to:

The Secretary, Interstate Commerce Commission, Washington, DC 20423.

Petitioner's representative: John C. Bradley, Suite 1301, 1600 Wilson Boulevard, Arlington, VA 22209.

A copy of each representation must be filed on petitioner's representative.

The purpose of this partial republication is to include the petitioner representative's name and address.

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

[FR Doc. 78-6730 Filed 3-14-78; 8:45 am]

[7035-01]

[Notice No. 12]

SPECIAL PROPERTY BROKERS

MARCH 10, 1978.

The following applicants seek to participate in the property broker special licensing procedure under 49 CFR 1045A authorizing operations as a broker at any location, in arranging for the transportation by motor vehicle, in interstate or foreign commerce, of property (except household goods), between all points in the United

States including AK and HI. Any interested person shall file an original and (1) copy of a verified statement in opposition limited in scope to matters regarding applicant's fitness within 30 days after this notice. Statements must be mailed to:

Broker Entry Staff, Room 2379, Interstate Commerce Commission, Washington, D.C. 20423.

Opposing parties shall serve (1) copy of the statement in opposition concurrently upon applicant's representative, or applicant if no representative is named.

If an applicant is not otherwise informed by the Commission, it may commence operation 45 days after this notice.

B-78-4, file January 9, 1978. Applicant: ALL-AMERICAN FREIGHT SERVICE, INC., 1515 South 350th Street, Federal Way, WA 98003. Applicant's representative: George Fujita (same address as applicant).

B-78-5, filed January 10, 1978. Applicant: INTERSTATE CONSOLIDATION SERVICE, INC., 2437 East 14th Street, Los Angeles, CA 90021. Applicant's representative: Miles L. Kavaller, 315 South Beverly Drive, Suite 315, Beverly Hills, CA 90212.

B-78-17, filed February 21, 1978. Applicant: SOUTHERN BONDED WAREHOUSE, doing business as SOUTHERN BONDED WAREHOUSE, 1491 Mount Zion Road, Morrow, GA 30260. Applicant's representative: Robert L. Graham, P.O. Box 247, Morrow, GA 30260.

By the Commission.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-6731 Filed 3-14-78; 8:45 am]

[7035-01]

[Corrected Service Order No. 1304; Exception No. 1]

SOUTHERN RAILWAY CO.

Exception Under Section (a) Paragraph (6)

The Southern Railway Co., (SOU) does not ordinarily operate unit-grain trains as defined in this order. Soo Line Railroad Co. and Southern Railway Co. are assembling a train for one unit-grain train movement from Duluth, Minn. to Charleston, S.C. Paragraph (a)(5) of this order prohibits any railroad from increasing the proportion of its ownership of covered hopper cars in unit-grain train service above the proportion operated on February 15, 1978. SOU did not operate any covered hopper cars in such service on February 15, 1978. SOU is supplying 50 jumbo covered hoppers for this movement.

It is ordered, That pursuant to the authority vested in the Railroad Service Board by section (a), paragraph (6) of Corrected Service Order No. 1304, the Southern Railway Co. is authorized to use fifty (50) jumbo covered hopper cars for one unit-grain train movement from Duluth, Minn., to Charleston, S.C., regardless of the provisions of section (a) paragraph (5) of the order.

Effective date: March 7, 1978.

Issued at Washington, D.C., March 7, 1978.

Joel E. Burns,
Chairman,
Railroad Service Board.

[FR Doc. 78-6732 Filed 3-14-78; 8:45 am]

[7035-01]

[Notice No. 27TA]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

February 28, 1978.

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 of 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 381 (Sub-No. 12TA), filed February 13, 1978. Applicant: GENOVA EXPRESS LINES, INC., P.O. Box 136, 484 Clayton Road, Williamstown, NJ 08094. Applicant's representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Powdered iron* (except in bulk), from Riverton, NJ, to Coral Springs, FL, for 180 days. Supporting shipper: Hoeganaes Corp., River Road and Taylor Lane, Riverton, NJ 08077. Send protests to: District Supervisor, Interstate Commerce Commission, 428 East State Street, Room 204, Trenton, NJ 08608.

No. MC 96992 (Sub-No. 5TA), filed February 15, 1978. Applicant: HIGHWAY PIPELINE TRUCKING CO., P.O. Box 1517, Edinburg, TX 78539. Applicant's representative: Kenneth R. Hoffman, 1100 Milam Building, Suite 3300, Houston, TX 77002. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Frozen citrus juices and concentrates,* except in bulk, from Hidalgo County, TX, to New Haven, CT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Quality Kitchen Foods, Inc., P.O. Box 766, Danbury, CT 06810. Send protests to: Richard H. Dawkins, District Supervisor, Interstate Commerce Commission, Room B-400 Federal Bldg., 727 E. Durango, San Antonio, TX 78206.

No. MC 102567 (Sub-No. 207TA), filed February 9, 1978. Applicant: McNAIR TRANSPORT, INC., 4295 Meadow Lane, P.O. Drawer 5557, Bossier City, LA 71010. Applicant's representative: Joe C. Day, 2040 Loop West, Suite 208, Houston, TX 77018. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Waste petroleum sulfide,* in bulk, in tank vehicles, from Union County, AR, to all points in MO and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: T & T Chemical, Inc., P.O. Box 782, El Dorado, AZ 71730. Send protests to: Ray C. Armstrong, Jr., District Supervisor, Interstate Commerce Commission, T-9038 U.S. Postal Service Bldg., 701 Loyola Ave., New Orleans, LA 70113.

No. MC 107403 (Sub-No. 1061TA), filed February 15, 1978. Applicant: MATLACK, INC., 10 W. Baltimore Avenue, Lansdowne, PA 19050. Applicant's representative: Martin C. Hynes, Jr. (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Polyester flake, dry,* in bulk, in tank vehicles, from Lewistown, PA, to Front Royal, VA, for 180 days. Supporting shipper: Avtex Fibers Inc., P.O. Box 880, Valley Forge, PA 19482. Send pro-

tests to: T. M. Esposito, Transportation Assistant, 600 Arch St., Room 3238, Philadelphia, PA 19106.

No. MC 107496 (Sub-No. 1121TA), filed February 9, 1978. Applicant: RUAN TRANSPORT CORP., 3200 Ruan Building, 666 Grand Avenue, Des Moines, IA 50309. Applicant's representative: Earl Check (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid feed ingredients*, in bulk, in tank vehicles, from Memphis, TN, to points in AL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Procter & Gamble Co., P.O. Box 599, Cincinnati, OH 45201. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 107496 (Sub-NO. 1124TA), filed February 17, 1978. Applicant: RUAN TRANSPORT CORP., 3200 Ruan Center, 666 Grand Avenue, Des Moines, IA 50309. Applicant's representative: E. Check (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes: transporting: *Coal tar pitch*, in bulk, in tank vehicles, from Granite City, IL, to Woodward, AL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Granite City Steel, 20th and State Street, Granite City, IL 62040. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 107496 (Sub-No. 1125TA), filed February 17, 1978. Applicant: RUAN TRANSPORT CORP., 3200 Ruan Center, 666 Grand Avenue, Des Moines, IA 50309. Applicant's representative: E. Check (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes: transporting: *Weed killing compound, herbicides*, in bulk, in tank vehicles, from El Paso, IL, to CO, GA, FL, IN, IA, KS, KY, MN, MO, NE, NY, NC, OH, PA, TX and WI, for 180 days. Supporting shipper: Shell Chemical Co., 1 Shell Plaza, Houston, TX 77001. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 107496 (Sub-No. 1126TA), filed February 17, 1978. Applicant: RUAN TRANSPORT CORP., 3200 Ruan Center, 666 Grand Avenue, Des Moines, IA 50309. Applicant's representative: E. Check (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foundry compound, premix*, in bulk, in tank vehicles, from Neenah, WI, to Waterloo, IA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: John Deere Tractor Works, P.O. Box 270, Waterloo, IA 50704. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 109584 (Sub-No. 173TA), filed February 3, 1978. Applicant: ARIZONA-PACIFIC TANK LINES, 3980 Quebec Street, P.O. Box 7240, Denver, CO 80207. Applicant's representative: Rick Barker (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cottonseed oil*, in bulk, in tank vehicles, from Casa Grande, AZ, to Houston, TX, for 180 days. Applicant requests no interline or tacking. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Casa Grande Oil Mill—Division of Chickasha, P.O. Box 959, Casa Grande, AZ 85222. Send protests to: Roger L. Buchanan, District Supervisor, 721 19th Street, 492 U.S. Customs House, Denver, CO 80202.

No. MC 110988 (Sub-No. 360TA), filed February 7, 1978. Applicant: SCHNEIDER TANK LINES, INC., 4321 West College Avenue, Appleton, WI 54911. Applicant's representative: Paul Schneider (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cupric chloride in rubber-lined tanks*, from Minneapolis, MN, to Union, IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Bureau of Engraving, Inc., 219 North Second Street, Minneapolis, MN 55401, (Ralph Sucher). Send protests to: Mrs. Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

No. MC 111170 (Sub-No. 246TA), filed February 6, 1978. Applicant: WHEELING PIPE LINE, INC., P.O. Box 1718, 2811 North West Avenue, El Dorado, AR 71730. Applicant's representative: Tom E. Moore (same address as applicant). Authority sought to operate a a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer ingredients*, from North Little Rock, AR, to points in MS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Olin Corp., P.O. Box 991, Little Rock, AR 72203. Send protests to: District Supervisor, William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

No. MC 112223 (Sub-No. 107TA), filed February 7, 1978. Applicant: QUICKIE TRANSPORT CO., 1700 New Brighton Boulevard, North East, Minneapolis, MN 55413. Applicant's representative: Earl Hacking (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid fertilizers*, in bulk, in tank vehicles, from Alexandria, MN, to all points in the states of ND and SD, for 180 days. Supporting shipper: Agrico Chemical Co., P.O. Box 3166, Tulsa, OK 74101. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

No. MC 113678 (Sub-No. 721TA), filed February 15, 1978. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Applicant's representative: Roger M. Shaner (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionery products* (except commodities in bulk, in tank vehicles), in vehicles equiped with mechanical refrigeration, from Salt Lake City, UT to points in the United States (except AK, HI, and UT), for 180 days. Supporting shipper: Mrs J. G. McDonald's Chocolate Co., 2250 South 3rd East, Salt Lake City, UT 84115. Send protests to: H. C. Ruoff, District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

No. MC 114273 (Sub-No. 347TA), filed February 15, 1978. Applicant: CRST, INC., P.O. Box 68, 3930 16th Avenue, Cedar Rapids, IA 52406. Applicant's representative: Kenneth L. Core (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk, in tank vehicles), from Toledo, OH to Galesburg, IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: General Mills, Inc., P.O. Box 1113, 9200 Wayzata Boulevard, Minneapolis, MN 55440. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 116300 (Sub-No. 32TA), filed February 7, 1978. Applicant: NANCE

AND COLLUMS, INC., P.O. Drawer J, Fernwood, MS 39635. Applicant's representative: Harold D. Miller, Jr., P.O. Box 22567, Jacksonville, MS 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sugar*, in sacks and packages, from Mathews, LA, to all points in TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The South Coast Corp., P.O. Box 8036, Houma, LA 70361. Send protests to: District Supervisor Tarrant, Interstate Commerce Commission, Room 212, 145 East Amite Building, Jackson, MS 39201.

No. MC 116300 (Sub-No. 34TA), filed February 15, 1978. Applicant: NANCE AND COLLUMS, INC., P.O. Drawer J, Fernwood, MS 39635. Applicant's representative: Harold D. Miller, Jr., P.O. Box 22567, 1700 Deposit Guaranty Plaza, Jacksonville, MS 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt*, in sacks and packages, from Avery Island, LA, to Louisville, KY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: International Salt Co., 1600 Tully Circle, Suite 133, Atlanta, GA 30329. Send protests to: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission, Room 212, 145 East Amite Building, Jackson, MS 39201.

No. MC 119632 (Sub-No. 73TA), filed February 13, 1978. Applicant: REED LINES, INC., 634 Ralston Avenue, Defiance, OH 43512. Applicant's representative: John P. McMahon, Suite 1800, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, except frozen and in bulk, from Princeville and Hoopeston, IL, to points in OH, PA and WV, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Joan of Arc Co. 2231 West Altorfer Avenue, Peoria, IL 61614. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Building, 234 Summit Street, Toledo, OH 43604.

No. MC 123389 (Sub-No. 42TA), filed February 2, 1978. Applicant: CROUSE CARTAGE CO., P.O. Box 586, Highway 30 West, Carroll, IA 51401. Applicant's representative: James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Insecticides, pesticides, fungicides, and tree and weed killing compounds*, from St. Joseph, MO, to points in the state of CA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Dale Barnhart, Shipping and Receiving Manager, Rhodia Chemicals, Inc., 4900 Packers Avenue, St. Joseph, MO. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

No. MC 134452 (Sub-No. 4TA), filed February 7, 1978. Applicant: EUREKA CARTAGE CO. INC., 5821 West Ogden Avenue, Cicero. IL 60650. Applicant's representative: Paul R. Bergant, 10 South La Salle Street, Suite 1600, Chicago, IL 60603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Mufflers* and (2) *parts and accessories for mufflers*, from Hartford, WI, to Chicago, IL, under a continuing contract or contracts with Midas International Corp. for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Midas International Corp., Gilbert J. Green, Corporate Traffic Manager, 4101 West 42d Place, Chicago, IL 60632, Send protests to: Transportation Assistant, Patricia A. Roscoe, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

No. MC 136155 (Sub-No. 5TA), filed February 16, 1978. Applicant: GAY TRUCKING CO., P.O. Box 7179, Hwy 307, Savannah, GA 31408. Applicant's representative: J. N. Kessler (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electrolytic copper in cathodes*, from Savannah, GA, to Carrollton, GA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Frederick Richards of GA, Inc., P.O. Box 1246, Savannah, GA. Send protests to: District Supervisor, G. H. Fauss, Jr., Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

No. MC 136220 (Sub-No. 50TA), filed February 15, 1978. Applicant: ROY SULLIVAN, d.b.a. SULLIVAN TRUCKING CO., P.O. Box 2164, Ponca City, OK 74601. Applicant's representative: G. Timothy Armstrong, 6161 North May Avenue, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pig-iron* (loose in dump vehicles), from Memphis, TN, to points in AR, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Phillipp Bros., Division of Engelhard, Minerals & Chemical Corp., 1221 Avenue of the Americas, New York, NY 10020. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Courthouse Building, 215 Northwest 3d, Oklahoma City, OK 73102.

No. MC 136343 (Sub-No. 127TA), filed February 15, 1978. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, R.D. No. 1, Milton, PA 17847. Applicant's representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers*, from the facility of Midland Glass Co., at or near Warner Robins, GA, to Williamsburg, VA, for 180 days. Supporting shipper: Midland Glass Co., Inc., P.O. Box 557, Cliffwood, NJ 07721. Send protests to: Mr. Charles F. Myers, District Supervisor, Interstate Commerce Commission, P.O. Box 869, Federal Square Station, 228 Walnut Street, Harrisburg, PA 17108.

No. MC 138875 (Sub-No. 78TA), filed February 15, 1978. Applicant: SHOEMAKER TRUCKING CO., 11900 Franklin Road, Boise, ID 83705. Applicant's representative: F. L. Sigloh (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum extrusions, glass, window and window accessories and sash, and vinyl*, from points in CA south of Hwy 50 to the plantsite of Hehr International Inc., located at or near Nampa, ID, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Hehr International Inc., 1824 Industrial Road, Nampa, ID 83651. Send protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Commission, Suite 110, 1471 Shoreline Drive, Boise, ID 83706.

No. MC 141575 (Sub-No. 8TA), filed February 7, 1978. Applicant: TFS, INC., P.O. Box 126, R.R. 2, Grand Island, NE 68801. Applicant's representative: Gailyn L. Larsen, P.O. Box 81849, Lincoln, NE 68801. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Calcium chloride*, from Ludington and Midland, MI, to points in IA, NE, and CO, under a continuing contract or contracts with Ag Service, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Robert Wenzl, President, Ag Service, Inc., R.R. 2, Box 126, Grand Island, NE 68801. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building and

Courthouse, 100 Centennial Mall North, Lincoln, NE 68508.

No. MC 142327 (Sub-No. 1TA), filed January 16, 1978. Applicant: THE McLARTY COS., INC., 900 Plaza West Building, Little Rock, AR 72205. Applicant's representative: Donald T. Jack and Thomas B. Staley, 1550 Tower Building, Little Rock, AR 72201. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, in bulk, in dump vehicles, from Latimer County, OK, to Little Rock River County, AR, under a continuing contract, or contracts, with Arkansas Cement Corp., for 180 days. Supporting shipper: Arkansas Cement Corp., Box 1734, Shreveport, LA 71151. Send protests to: District Supervisor, William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

No. MC 142649 (Sub-No. 5TA), filed February 7, 1978. Applicant: H. O. SMESTAD CO., P.O. Box 2904, Great Falls, MT 59403. Applicant's representative: G. Robert Crotty, Jr., 400 First National Bank Building, Great Falls, MT 59401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transportating: *Malt and carbonated beverages and related advertising materials, equipment and supplies*, from Cold Spring, MN, to MT and ID, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately (4) statements of support attached to the application which may be examined at the field office named below. Send protests to: District Supervisor, Paul J. Labane, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

No. MC 143328 (Sub-No. 4TA), filed February 9, 1978. Applicant: EUGENE TRIPP TRUCKING, P.O. Box 2730, Missoula, MT 59807. Applicant's representative: David A. Sutherland, 1150 Connecticut Avenue NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages*, from Seattle, WA, to points in OR, and (2) *empty containers*, from points in OR to Seattle, WA, for 180 days. Supporting shipper: Frank W. Shea, Distribution Manager, Rainier Brewing Co., 3100 Airport Way South, Seattle, WA 98134. Send protests to: District Supervisor, Paul J. Labane, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

No. MC 144140 (Sub-No. 3TA), filed February 7, 1978. Applicant: SOUTHERN FREIGHTWAYS, INC., P.O. Box 374, Eustis, FL 32726. Applicant's representative: John L. Dickerson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Citrus products*, between Winter Garden, FL, and Tampa, FL, restricted to shipments having a prior or subsequent movement by water, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Winter Garden Citrus Products Cooperative, P.O. Box 399, Winter Garden, FL 32787. Send protests to: District Supervisor, G. H. Fauss, Jr., Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

No. MC 144201 (Sub-No. 1TA), filed February 17, 1978. Applicant: V. M. P. ENTERPRISES, INC., 3006 South 40th Street, Milwaukee, WI 53215. Applicant's representative: William C. Dineen, 710 North Plankinton Avenue, Milwaukee, WI 53203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Buses*, in initial movements, in driveaway service, from Pembina, ND, to points in the United States, including AK and HI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Motor Coach Industries, Inc., Pembina, ND 58271, (F. M. Martin). Send protests to: Mrs. Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

No. MC 144236 (Sub-No. 1TA), filed January 27, 1978. Applicant: W. R. G., INC., 2161 Industrial Drive, Salem, VA 24153. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1240, Arlington, VA 22210. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (A) *Uncrated stoves and fireplaces and component parts therefor, and such other commodities* as are produced and distributed by manufacturers of stoves and fireplaces: (1) From the plant and warehouse facilities of Dunn Brothers, Inc. at Salem, VA, to points in KY, WV, NY, NJ, DE, MD, VA, and DC; (2) from the plant and warehouse facilities of Dunn Brothers, Inc. in East Syracuse, NY, to points in NJ, NY, and Salem, VA; (3) from the plant and warehouse facilities of Dunn Brothers, Inc. at Shelby County, KY, to points in KY and WV and Salem, VA. (B) *Such materials, equipment and supplies* as are used in the manufacture, assembly or installation of the commodities described in (A) above, from Baltimore, MD, Philadelphia, PA, Grahn, KY, and Youngstown, OH, to the facilities of Dunn Brothers, Inc. at Salem, VA, East Syracuse, NY, and Shelby County, KY. Restriction: The transportation authorized in paragraphs (A) and (B) above is restricted to traffic transported under a continuing contract or contracts with Dunn Brothers, Inc. for 180 days. Supporting shipper: Dunn Brothers, Inc., 2161 Industrial Drive, Salem, VA 24153. Send protests to: Irene W. Yost, Secretary, Bureau of Operations, Interstate Commerce Commission, P.O. Box 210, Roanoke, VA 24011.

No. MC 144309TA, filed February 17, 1978. Applicant: GENE WALTERS AND CLARK WURTELE, doing business as M & M TRUCKING, Buchanan, ND 58420. Applicant's representative: Charles E. Johnson, 418 East Rosser Avenue, P.O. Box 1982, Bismarck, ND 58501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the facilities of Whittaker Metals at or near Minneapolis, MN, to points in ND, SD and MT. Restriction: Restricted to a transportation service to be performed under a continuing contract or contracts with Whittaker Metals, Minneapolis, MN, for 180 days. Supporting shipper: Whittaker Metals, 625 Xenium Lane North, Minneapolis, MN 55441. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268 Federal Building and U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

No. MC 144314TA, filed February 14, 1978. Applicant: FARWEST INDUSTRIES OF LONGVIEW, 225 Industrial Way, Longview, WA 98632. Applicant's representative: Robert Portner (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Treated poles and piling*, from Longview, WA, to points in OR, CA, and NV, under a continuing contract or contract with International Paper Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: International Paper Co., Box 3448, Portland, OR 97208. Send protests to: District Supervisor, R. V. Dubay, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, 555 Southwest Yamhill Street, Portland, OR 97204.

No. MC 144316TA, filed February 16, 1978. Applicant: H. P. HALE, P.O. Box 177, Roswell, NM 88201. Applicant's representative: D. Paul Stafford, Exchange Park, Suite 1125, Box 45538, Dallas, TX 75245. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, plywood, parti-*

cle board, impregnated sheathing, and sheetrock, between points in AZ, AR, NM, LA, OK, and TX, for 180 days. Supporting shipper: Dodson Lumber Co., Inc., Box 1851, Roswell, NM 88201. Send protests to: Darrell W. Hammons, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1106 Federal Office Building, 517 Gold Avenue SW., Albuquerque, NM 87101.

No. MC 144319TA, filed February 15, 1978. Applicant: JOHN BRACY, doing business as NORTHWEST AGRI SUPPLY, 1056 Wiloma Drive, Billings, MT 59101. Applicant's representative: John Bracy (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Pumice,* in bulk, from Malad City, ID to Great Falls, MT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Emery Matsko, Jr., Manager-Owner, Super Lite Products, 1800 Vaughn Road, Great Falls, MT. Send protests to: District Supervisor, Paul J. Labane, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

By the Commission.

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

[FR Doc. 78-6733 Filed 3-14-78; 8:45 am]

[7035-01]

[Notice No. 28TA]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

MARCH 1, 1978.

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 1030 (Sub-No. 4TA), filed January 25, 1978. Applicant: ROBERT BELVILLE, JR., ADMINISTRATOR OF THE ESTATE, OF ROBERT BELVILLE, SR., d.b.a. NEW YORK AND VERMONT MOTOR EXPRESS, Smith Street, Barre, VT 05641. Applicant's representative: John P. Monte, 61 Summer Street, Box 568, Barre, VT 05641. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Motorcycles,* from Edison, Gloucester City and Newark (Port Newark), NJ, to points in VT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: (1) Bevins Speed and Cycle Center, Inc, 407 Barre Street, Montpelier, VT 05602. (2) Land-Air Enterprises, Inc., Kellogg Road, Essex Junction, Vt 05452. (3) Herbert and Harriet Benoit Partnership, 81 Portland Street, St. Johnsbury, VT 05819. (4) Roadside Marine, Inc., Industrial Avenue, Williston, VT 05495. Send protests to: David A. Demers, District Supervisor, Interstate Commerce Commission, P.O. Box 548, 87 State Steet, Montpelier, VT 05602.

No. MC 2095 (Sub-No. 10TA), filed February 3, 1978. Applicant: KEIM TRANSPORTATION, INC., 420 North Sixth, R.F.D. 2, Box 10, Sabetha, KS 66534. Applicant's representative: Clyde N. Christey, 514 Capitol Federal Building, 700 Kansas Avenue, Topeka, KS 66603. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Gypsum and gypsum products and materials and supplies* used in the installation and distribution thereof, from points in Marshall County, KS, to points in TX, OK, MS, LA, AR, and TN, for 180 days. Applicant states it does not intend to tack or interline. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Georgia-Pacific Corp., Gypsum Division, 1062 Lancaster Avenue, Rosemont, PA 19010. Send protests to: Thomas P. O'Hara, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 147 Federal Building and U.S. Courthouse, 444 SE. Quincy, Topeka, KS 66683.

No. MC 27817 (Sub-No. 142TA), filed February 6, 1978. Applicant: H. C. GABLER, INC., R.D. No. 3, P.O. Box 220, Chambersburg, PA 17201. Applicant's representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by retail, wholesale, chain grocery and food business houses, (except commodities in bulk and commodities requiring refrigeration in transit), (1) from the facilities of Dauphin Distribution Services Co., at or near Camp Hill, PA, and Mechanicsburg, PA, to points in OH, and (2) from the facilities of Fostoria Distribution Services Co., at Fostoria, OH, to points in WV, that part of PA on and west of U.S. Hwy 15 and that part of NY on and west of Interstate 81, restricted to traffic originating at the named origins and destined to the named destinations, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): (1) Fostoria Distribution Services Co., P.O. Box D, Fostoria, OH 44830. (2) Dauphin Distribution Services Co., P.O. Box 427, Camp Hill, PA 17011. Send protests to: Charles F. Myers, District Supervisor, Interstate Commerce Commission, P.O. Box 869, Federal Square Station Harrisburg, PA 17108.

No. MC 105636 (Sub-No. 38TA), filed January 24, 1978. Applicant: ARMELLINI EXPRESS LINES, INC., Oak and Brewster Roads, Vineland, NJ 08360. Applicant's representative: Wilmer B. Hill, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Petroleum products,* in containers, from the facilities of Shell Oil Company at or near Sewaren, NJ, and the facilities of Sun Oil Compnay at or near Marcus Hook, PA, to Riviera Beach, FL, and (2) *petroleum refinery materials, supplies and equipment* (except in bulk), from the facilities of Hess Oil V.I. Corp. at or near Woodbridge and Avenel, NJ, to West Palm Beach, FL, restricted in (1) and (2) above to traffic having an immediately subsequent movement by water, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): (1) Asiatic Petroleum Corp., One Rockefeller Plaza, New York, NY 10020. (2) Hess Oil Virgin Islands Corp., 1 Hess Plaza, Woodbridge, NJ 07095. Send protests to: District Su-

pervisor, Interstate Commerce Commission, 428 East State Street, Room 204, Trenton, NJ 08608.

No. MC 107012 (Sub-No. 260TA), filed February 6, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Lincoln Highway, East and Meyer Road, Fort Wayne, IN 46801. Applicant's representative: David D. Bishop, 5001 U.S. Highway 30 West, Fort Wayne, IN 46818. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from the plantsite and storage facilities of the Simmons Co., located at or near Atlanta, GA, to points in KY, LA, MS, NC, SC, TN and VA, for 180 days. Supporting shipper(s): Simmons Co., 6428 Warren Drive, Norcross, GA 30093. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

No. MC 110817 (Sub-No. 24TA), filed January 13, 1978. Applicant: E. L. FARMER & COMPANY, P.O. Box 3512, Odessa, TX 79760. Applicant's representative: J. Michael Alexander, 136 Wynnewood Professional Building, Dallas, TX 75224. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Machinery, equipment, materials, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, and machinery, materials, equipment, and supplies used in, or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof; earth drilling machinery and equipment, and machinery, equipment, materials, supplies and pipe incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites and (d) the injection or removal of commodities into or from holes or wells; between points in CT, DE, FL, GA, ME, MD, MA, NH, NJ, NY, NC, RI, SC, and VA on the one hand, and, on the other, points in the United States, (including AK, but excluding HI), for 180 days. Supporting shipper(s): Shell Oil Co., P.O. Box 2099, Houston, TX 77001. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box H-4395, Herring Plaza, Amarillo, TX 79101.

No. MC 111812 (Sub-No. 556TA), filed February 6, 1978. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57101. Applicant's representative: David Peterson, P.O. Box 1233, Sioux Falls, SD 57101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs and nonedible food products* (except in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of Terminal Ice & Cold Storage Co. at or near Bettendorf, IA, to points in the states of FL, GA, IL, IN, KY, MI, MN, MO, OH, TN, and WI, for 180 days. Supporting shipper(s): (1) Lamb-Weston, Division of Amfac Foods, Inc., 6600 SW. Hampton Street, Portland, OR 97223. (Lawrence L. Shipp, Manager, Distribution Services.) (2) Terminal Ice & Cold Storage, 1618 SW., First Avenue, Portland, OR 97201. (Larry Christensen, Office Manager.) Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 455, Federal Bldg., Pierre, SD 57501.

No. MC 112822 (Sub-No. 441TA), filed December 1, 1977. Applicant: BRAY LINES, INC., 1401 North Little St., P.O. Box 1191, Cushing, OK 74023. Applicant's representative: Charles D. Midkiff (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* (except in bulk), from the plantsite of Stouffer Food Co., loated at or near Solon, OH and the facilities utilized by Stouffer Food Co., at or near Cleveland, OH, to Dallas, Houston, and San Antonio, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Stouffer Food Co., division of the Stouffer Corp., 5750 Harper Rd., Solon, OH 44139. Send protests to: Joe Green, District Supervisor, RM. 240 Old Post Office and Court House Bldg., 215 Northwest 3rd., Oklahoma City, OK 73102.

No. MC 113908 (Sub-No. 427TA), filed January 24, 1978. Applicant: ERICKSON TRANSPORT CORP., 2105 East Dale Street, P.O. Box 3180 G.S.S., Springfield, MO 65804. Applicant's representative: B. B. Whitehead, 2105 East Dale Street, P.O. Box 3180 G.S.S., Springfield, MO 65804. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fruit juice and fruit juice concentrates*, in bulk, (1) Between Lawton, MI; North East, PA, Springdale, AR; Brocton, NY; Westfield, NY; Kennewick, WA, and Grandview, WA, (a) from Lawton, MI, to points in AR, (b) from North East, PA, to points in NY, (c) from Brocton, NY, and Grandview, WA, to points in AR, MI, NY, and PA, (3)(a) from points in CA, to Lawton, MI; North East, PA; Springdale, AR; Kennewick, WA; and Grandview, WA, (b) from points in MI, to Springdale, AR, (c) from points in NY, to Lawton, MI; North East, PA; Springdale, AR; Brocton, NY; Westfield, NY; and Kennewick, WA, (d) from points in PA, to Lawton, MI; Springdale, AR; Brocton, NY; and Westfield, NY; (e) from points in WA, to Lawton, MI; Springdale, AR; Westfield, NY; and Kennewick, WA, for 180 days. Supporting shipper(s): Welch Foods, Inc., Westfield, NY 14787. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 114939 (Sub-No. 48TA), filed December 1, 1977. Applicant: BULK CARRIERS Ltd. 2421 Cawthra Rd., Box 10, Cooksville, ON, Canada. Applicant's representative: John W. Ester, 100 West Long Lake Road, Suite 102 Bloomfield Hills, MI 48013. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Caustic soda solution, in bulk, in tank vehicles* from ports of entry on the International Boundary Line between the United States and Canada located in MN to Silver Bay, MN, for 180 days. Restricted to movements originating at the facilities of Dow Chemical Co. at Thunder Bay, ON. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Dow Chemical U.S.A., 2020 Dow Center, Midland, MI. 48640. Send protests to: Interstate Commerce Commission, Bureau of Operations, 910 Federal Building, 111 West Huron Street, Buffalo, NY 14202.

No. MC 114939 (Sub-No. 49TA), filed February 6, 1978. Applicant: BULK CARRIERS LTD., Box 10, Cooksville Post Office, 2421 Cawthra Road, Mississauga, Ontario, Canada. Applicant's representative: John W. Ester, 100 West Long Lake Road, Bloomfield Hills, MI 48013. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Caustic soda solution*, in bulk, in tank vehicles, from ports of entry on the International Boundary line between the United States and Canada located in MN, to points in MN., restricted to traffic moving in foreign commerce, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Dow Chemical, U.S.A., 2020 Dow Center, Midland, MI 48640. Send protests to: Interstate Commerce Commission, Bureau of Operations, 910 Federal Building, 111 West Huron Street, Buffalo, NY 14202.

No. MC 115311 (Sub-No. 261TA), filed January 12, 1978. Applicant: J&M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Applicant's representative: Kim G. Meyer, 1600 First Federal Building, Atlanta GA 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (A) *Insulation and insulating materials* (except in bulk), from the facilities of Callaway Insulation Co., in Clayton County, GA, to points in AR, AL, FL, LA, SC, NC, VA, KY, TN, and MS, and (B) *materials, supplies, and equipment* used or dealt in by insulation manufacturing plants (except in bulk), from points in AR, AL, FL, LA, SC, NC, VA, KY, TN, and MS, to the facilities of Callaway Insulation Co., in Clayton County, GA, for 180 days. Supporting shipper(s): Callaway Insulation Co., P.O. Box 948, Columbus, GA 31902. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

No. MC 115311 (Sub-No. 263TA), filed February 6, 1978. Applicant: J&M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Applicant's representative: Kim G. Meyer, 1600 First Federal Building, Atlanta, GA 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum and petroleum products, vehicle body sealer and/or sound deadener compound* (except in bulk), *and filters*, from Cango and St. Marys, WV, to points in GA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Quaker State Oil Co., P.O. Box 989, Oil City, PA 16301. Send protests to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

No. MC 115654 (Sub-No. 76TA), filed February 1, 1978. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Applicant's representative: Henry E. Seaton, 915 Pennsylvania Building, 13th and Pennsylvania Avenue NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dairy products, imitation cream and imitation fruit drinks, water ices, ice mixtures, water ice bars, sherbert, frozen desserts, delicatessen products, and fruit juices*, (except commodities in bulk), in vehicles equipped with mechanical refrigeration from the facilities of the Kroger Co. at Hazelwood, MO, to its warehouses and retail outlets at Memphis, TN, Monroe, LA, Little Rock, AR, and points in MS, and (2) *packing and shipping cartons* on return, for 180 days. Supporting shipper(s): The Kroger Co., 1014 Vine Street, Cincinnati, OH 45201. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422 U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

No. MC 119789 (Sub-No. 407TA), filed December 27, 1977. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 6188, Dallas, TX 75222. Applicant's representative: James K. Newbold, Jr., P.O. Box 6188, Dallas, TX 75222. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paint*, in containers, from Ennis, TX, to points in AL, LA, MS, MO, NE, NM, NC, ND, OK, SC, SD, TN, VA, and WY; (2) *materials, equipment, and supplies* used in the manufacture and distribution of paint from points in AL, AR, CO, FL, GA, ID, IA, KS, KY, LA, MS, MO, NE, NM, NC, ND, OK, SC, SD, TN, VA, and WY to Ennis, TX, for 180 days. Supporting shipper: Ennis Paint Manufacturing, Inc., P.O. Box 6, Ennis, TX 75119. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

No. MC 121222 (Sub-No. 4TA), filed February 6, 1978. Applicant: KING MOTOR LINE, INC., P.O. Box 7456, Montgomery, AL 36107. Applicant's representative: Bryant H. Hudson, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, between Montgomery and Mobile, AL, on the one hand, and, on the other, the plantsite of Alabama River Pulp Co., Monroe County, AL, for 180 days. Applicant intends to tack the authority here applied for to authority held by it in its Sub-Nos. 1, 2, and 3, and to interline with other carriers at Montgomery and Mobile, AL. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Alabama River Pulp Co., P.O. Box 906, Monroeville, Al 36460. Send protests to: Mabel E. Johnston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

No. MC 123310 (Sub-No. 13TA), filed February 6, 1978. Applicant: DOUG ANDRUS & SONS, INC., 1820 Broadway, Idaho Falls, ID 83401. Applicant's representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transportating: *Feed, feed ingredients, mineral mixtures, whey and/or powdered dry milk solids* (with not to exceed 35 percent other ingredients) and *animal health aid products, viz.: condition powders, disinfectants, insecticides, drugs or medicines, chemicals, shampoo, feed supplements, and cleaning compounds*, from Ralston Purina Co. Plant at Henderson, CO, to points in UT, for 180 days. Applicant does not intend to tack or interline authority. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Ralston Purina Co., Checkerboard Square, St. Louis, MO 63188. Send protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Commission, Suite 110, 1471 Shoreline Drive, Boise, ID 83706.

No. MC 126881 (Sub-No. 14TA), filed February 1, 1978. Applicant: RICHARD B. RUDY, INC., 203 Linden Avenue, Frederick, MD 21701. Applicant's representative: Charles E. Creager, P.O. Box 1417, 1329 Pennsylvania Avenue, Hagerstown, MD 21740. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transportating: (1) *Bakery products*, from Frederick, MD, and its commercial zone, to points in NY, NJ, PA, DE, OH, and VA, and (2) *pan grease*, from Carnegie, PA, and its commercial zone, to Frederick, MD, and its commercial zone, and (3) *packing materials* used in the manufacture, sale, and distribution of bakery products, from Oaks, PA, and its commercial zone, to Frederick, MD, and its commercial zone, under a continuing contract, or contracts, with S. B. Thomas, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): S. B. Thomas, Inc., 919 North Riverview Drive, Totowa, NJ 07512. Send protests to: W. C. Hersman, District Supervisor, Interstate Commerce Commission, 12th and Constitution Avenue NW., Room 1414, Washington, DC 20423.

No. MC 128246 (Sub-No. 23TA), filed February 6, 1978. Applicant: SOUTHWEST TRUCK SERVICE, P.O. Box A.D., Watsonville, CA 95076. Applicant's representative: William F. King, 6121 Lincolnia Road, Suite 400, Overlook Building, Alexandria, VA 22312. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (A) *Meat, meat products and meat by-products*, as described in section A of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except commodities in bulk), (b) from the plantsites and warehouse facilities of Missouri Beef Packers, Inc., at or near Friona and Plainview, TX, to the plantsite and warehouse facilities of the Safeway Stores, Inc., Meat

Processing Plant at or near Wichita, KS. Restriction: The operations described above are limited to a transportation service to be performed, under a continuing contract, or contracts, with Safeway Stores, Inc., of Oakland, CA, for 180 days.

NOTE.—The authority sought involves only the territorial expansion of the present contract carrier service being provided by applicant, under a continuing contract, with Safeway Stores, Inc., of Oakland, CA.

Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Safeway Stores, Inc., 5725 East 14th Street, Oakland, CA 94660. Send protests to: Michael M. Butler, District Supervisor, 211 Main Street, Suite 500, San Francisco, CA 94105.

No. MC 133703 (Sub-No. 10TA), filed February 6, 1978. Applicant: WISCONSIN CHEESE SERVICE, INC., 770 North Springdale Road, P.O. Box 337, Waukesha, WI 53186. Applicant's representative: David V. Purcell, 111 East Wisconsin Avenue, Milwaukee, WI 53202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Canned fruits and vegetables*, from Green Bay, Brillion, Cambria, Cedar Grove, Fond du Lac, Fort Atkinson, Hortonville, and Waldo, WI, to points in the United States in and east of ND, SD, NE, KS, OK, and TX (except AK and HI), under a continuing contract, or contracts, with The Larsen Co. of Green Bay, WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): The Larsen Co., 520 North Broadway, Green Bay, WI 54305 (Robert L. O'Donnell). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

No. MC 134105 (Sub-No. 25TA), filed February 6, 1978. Applicant: CALERY-VALE TRANSPORT, INC., 1318 East 23d Street, Chattanooga, TN 37402. Applicant's representative: Daniel O. Hands, 205 West Touhy Avenue, Suite 200, Park Ridge, IL 60068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, dairy 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 MCC 209 and 766, (except hides and commodities in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of John Morrell & Company, located at or near Esterville, IA and Sioux Falls, SD, to points in AL, AR, FL, GA, LA, MS, NC, SC, and TN, restricted to traffic originating at the named origins and destined to the named destination States, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): John Morrell & Company, 208 South LaSalle Street, Chicago, IL 60604. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

No. MC 136258 (Sub-No. 3TA), filed February 3, 1978. Applicant: HARDING TRUCKING, INC., P.O. Box 65, Whiting, IA 41063. Applicant's representative: D. Douglas Titus, Titus, Holman & Myers, Suite 510, Benson Building, Sioux City, IA 51101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Hides, green*, in dump trucks, (a) from Omaha, NE, to Denison, IA; Sergeant Bluff, IA; and Dakota City, NE, and (b) from Sioux City, IA to West Point, NE, under a continuing contract, or contracts, with Iowa Beef Processors, Inc., for 180 days. Two ETAs were filed, one corresponds to part (a) and the other corresponds to part (b). As of this date both are pending. Supporting shipper(s): Robert E. Gillespie Manager Rates & Regulatory Affairs, Iowa Beef Processors, Inc., Dakota City, NE 68731. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

No. MC 136275 (Sub-No. 25TA), filed February 6, 1978. Applicant: WHITFIELD ASSOCIATED TRANSPORT, INC., 28 San Marcos Drive, El Paso, TX 79922. Applicant's representative: H. B. Dudley, 28 San Marcos, El Paso, TX 79922. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Beams, girders, joists, piling, slabs or panels, concrete, precast, prestressed, or reinforced*, and which by reason of length or other physical characteristics require the use of special devices, facilities, and equipment for their loading, unloading and transportation, from Featherlite plantsite at El Paso, TX, El Paso County to Tucson, Az, for 180 days. Supporting shipper(s): Featherlite Corporation, P.O. Box 9977, El Paso, TX 79990. Send protests to: Haskell E. Ballard District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box H-4395 Herring Plaza, Amarillo, TX 79101.

No. MC 136784 (Sub-No. 1TA), filed February 6, 1978. Applicant: BRADY'S TRANSPORT LIMITED, P.O. Box 940, Hull, PQ, Canada. Applicant's representative: Herbert M. Canter & Benjamin D. Levine, 305 Montgomery Street, Syracuse, NY 13202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Rough and dressed lumber*, from ports of entry on the United States-Canada boundary line located in NY, to points in NJ, OH, PA and VT, restricted to the transportation of traffic originating at or near Davidson, PQ, Canada, for 180 days. Supporting shipper(s): E. B. Eddy Forest Products Ltd., P.O. Box 3521, Station C, Ottawa, ON, Canada. Send protests to: Interstate Commerce Commission, U.S. Courthouse & Federal Building, 100 South Clinton Street, Room 1259, Syracuse, NY 13260.

No. MC 138882 (Sub-No. 41TA), filed February 6, 1978. Applicant: WILEY SANDERS, INC., P.O. Box 707, Troy, AL 36081. Applicant's representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Mayonnaise, salad dressing, and salad dressing products, mustard, catsup, jelly, tartar, sauce, gelatin and gelatin products*, from the facilities of Brundidge Foods, Inc., at or near Troy, AL, to points in the United States, (except AK and HI), and (2) *materials, equipment and supplies* used in the manufacturing and distribution of commodities named in (1) above, from points in the United States, (except AK and HI), to the facilities of Brundidge Foods, Inc., at or near Troy, AL, for 180 days. Supporting shipper(s): Brundidge Foods, Inc., P.O. Box 187, Brundidge, AL 36010. Send protests to: Mabel E. Holston Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

No. MC 140665 (Sub-No. 21TA), filed January 3, 1978. Applicant: PRIME, INC., Route 1, Box 115-B, Urbana, MO 65767. Applicant's representative: Clayton Geer, P.O. Box 786, Ravenna, OH 44266. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (a) *Chemicals; plastic products; fiberglass cloth; coatings; adhesives; paint and materials and supplies* used in the marketing or production of the above commodities, (except commodities in bulk), from Culver City, CA, and (b) *thermoplastic colors and compounds; chemicals or chemical additives; paint; plastic materials; coatings and materials* used in the marketing or distribution of the above materials, (except commodities in bulk), from Vernon, CA; and (c) *chemical or chemical compounds, and materials and supplies* used in the marketing or distribution of the above commodities (except commodities in bulk), from Whittier, CA; and (d) *clay or clay products, borax, derivatives of clay or*

borax, chemicals or chemical compounds; and materials and supplies used in the marketing or distribution of the above commodities, (except commodities in bulk), from points in CA, to points in the United States in and east of MN, IA, MO, AR and TX, for 180 days. Supporting shipper(s): Ferro Corp., One Erieview Plaza, Cleveland, OH 44114. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 141010 (Sub-No. 3TA), filed February 6, 1978. Applicant: CONTRACT TRANSPORT, INC., Rural Route No. 3, Norwalk, IA 50211. Applicant's representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, (1) between the facilities of Distinctive Packaging at West Des Moines, IA on the one hand and, on the other, St. Louis and St. Joseph, MO, and Moline and Morrison, IL; and (2) from St. Louis and St. Joseph, MO, and Moline, IL, to Marshalltown, Newton, Grinnell, Ottumwa, Knoxville, Iowa City, Cedar Rapids, Madrid, and Spirit Lake, IA, under a continuing contract, or contracts, with or in Parts (1) and (2) above with Distinctive Packaging of West Des Moines, IA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Distinctive Packaging, 520 South 18th Street West, West Des Moines, IA 50265. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 141747 (Sub-No. 4TA), filed January 25, 1978. Applicant: DONALD ENGLE and JAMES ENGLE, d.b.a. ENGLE BROS. FARMS, Rural Route 1, Rector, AR 72461. Applicant's representative: Don Garrison, 324 North Second Street, Rogers, AR 72756. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Limestone*, from Butler, Scott and Wayne Counties, MO, to Clay, Craighead, Crittenden, Cross, Green, Independence, Jackson, Lawrence, Mississippi, Poinsett, Randolph, Sharp and White Counties, AR, and (2) *urea, ammonium nitrate, nitrogen solutions and NKP in mixed grades*, from Hayti and Sikeston, MO, to points in Clay, Craighead, Crittenden, Cross, Green, Independence, Jackson, Lawrence, Mississippi, Poinsett, Randolph, Sharp and White Counties, AR; Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Marshall, and McCracken Counties, KY, Alexander, Johnson, Massac, Pope, Pulaski, Saline, Union and Williamson Counties, IL; Carroll, Crockett, Dyer, Fayette, Gibson, Haywood, Henderson, Henry, Lake, Lauderdale, Madison, Obion, Shelby, Tipton and Weakley Counties, TN, for 180 days. Supporting shipper(s): MFA Delta Division, Missouri Farmers Association, Inc., P.O. Box 409, Portageville, MO 63873. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

No. MC 142271 (Sub-No. 2TA), filed January 18, 1978. Applicant: WAYNE E. WATKINS, d.b.a. WATKINS REFRIGERATED DISTRIBUTING SERVICE, 20436 Schoolcraft Street, Winnetka, CA 91306. Applicant's representative: Milton W. Flack, 4311 Wilshire Boulevard, Los Angeles, CA 90010. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Liquid plastic*, in vehicles equipped with mechanical refrigeration, from the plantsite of Furane Plastics, Inc., located at Los Angeles, CA, to Coquille, Sutherlin and Portland, OR; Corrigan, TX; and Aberdeen, WA, (2) *liquid plastic or chemicals*, (except in bulk), used in the manufacture or processing of liquid plastic, in vehicles equipped with mechanical refrigeration, (a) from the plantsite and facilities of Delta Petroleum Co., located at New Orleans, LA, to the plantsite of Furane Plastics, Inc., located at Los Angeles, CA; (b) from the plantsite and facilities of Dow Chemical Corp., located at Freeport, TX, to the plantsite of Furane Plastics, Inc., located at Los Angeles, CA; (3) *molding compound* used in the manufacture of plastic resistors, in vehicles equipped with mechanical refrigeration, from the plantsite and facilities of Furane Plastics, Inc., located at Los Angeles, CA, to the cold storage facilities of Union Ice & Cold Storage located at Shreveport, LA, or the plantsite and facilities of General Electric located at Shreveport, LA. Restriction: Said operations are limited to a transportation service to be performed, under a continuing contract, or contracts, with Furane Plastics, Inc., for 180 days. Supporting shipper(s): Furane Plastics, Inc., 5121 San Fernando Road West, Los Angeles, CA. Send protests to: Edward P. Henry, District Supervisor, Interstate Commerce Commission, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 144173 (Sub-No. 1TA), filed January 20, 1978. Applicant: PETERSEN TRANSPORTATION, INC., P.O. Box 96, Ruskin, NE 68974. Applicant's representative: Gailyn L. Larsen, P.O. Box 81849, Lincoln, NE 68601. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Anhydrous ammonia*, (a) from the facilities of Farmland Industries, Inc., at or near Dodge City, KS, and the Mapco, Inc., pipeline terminal, at or near Clay Center, KS, to points in NE; and (b) from the facilities of Wy-Con Chemical Co., at or near Cheyenne, WY, the facilities of Farmland Industries, Inc., at or near Dodge City, KS, and Hastings, NE, and the facilities of Cominco American, Inc., and Phillips Petroleum Co., at or near Hoag, NE, to Yuma County, CO; (2) *anhydrous ammonia and liquid fertilizer*, from the facilities of Cominco American, Inc., and Phillips Petroleum Company, at or near Hoag, NE, and the facilities of Farmland Industries, Inc., at or near Hastings, NE, to points in KS, and (3) *liquid fertilizer*, (a) from the facilities of Boettcher Enterprises, Inc., at or near Republic and Courtland, KS, to points in NE, and (b) from the facilities of Kugler Oil Company, at or near Culbertson, NE, to points in KS, under a continuing contract, or contracts, with W. W. Agri Sales, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Arlan D. Woltemath President, W. W. Agri Sales, Inc., 4800 Main Street, Kansas City, MO 64112. Send protests to: Max H. Johnson, District Supervisor, 285 Federal Building and Court House, 100 Centennial Mall North, Lincoln, NE 68505.

No. MC 144177TA filed January 9, 1978. Applicant: BILL'S MOBIL HOME TRANSPORT, INC., 4900 Laurel Road, Billings, MT 59101. Applicant's representative: Jerry J. Jones, President (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New and used trailers* designed to be drawn by passenger and other similar automobiles with and without accessories and contents (owners' furniture, fixtures and personal property); sections of buildings (designed to be transported in tow-away service) to be jointed with same or similar buildings and sections of buildings, between all points and places in and between the following States: MT, WY, ND, and SD, for 180 days. Supporting shipper(s): William J. Novak, President, Char El Homes Corp., 4750 Underpass Ave., Billings, MT 59101, George Popiel, Convoy Manager, Gallatin Homes Corp., Route 1, Belgrade, MT 59714, Paul A. Wells, President, Imperial Mobile Homes of Billings, Inc., 809 Main, Billings, MT 59101, Michael E. Hopkins, Shipping Agent, Schult Homes Corp., 201 Industrial Drive, Redwood Falls, MN 56283. Send protests to: District Supervisor Paul J. Labane, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

No. MC 144180 (Sub-No. 1TA), filed February 3, 1978. Applicant: LOUIS

HOFFMAN, d.b.a. LOUIS HOFFMAN TRUCKING, P.O. Box 86, Westfield, IA 51062. Applicant's representative: D. Douglas Titus, Titus, Holman & Myers, Suite 510 Benson Building, Sioux City, IA 51101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Hides, green*, in dump trucks, from LeMars, IA, to Dakota City and West Point, NE., under a continuing contract, or contracts, with Iowa Beef Processors, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Robert E. Gillespie, Manager, Rates and Regulatory Affairs, Iowa Beef Processors, Inc., Dakota City, NE 68731. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

No. MC 144186TA, filed January 12, 1978. Applicant: A-W TRANSPORTATION CO., Armstrong, IA 50514. Applicant's representative: Thomas E. Leahy, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Agricultural machinery, implements, accessories and parts*, from Armstrong, IA, to points in the United States and equipment, materials and supplies used or useful in the manufacture and distribution of agricultural machinery, implements, accessories, and parts, from points in the United States to Armstrong, IA, under a continuing contract with Arts-Way Manufacturing Co., Inc.; and (2) *electrical scales, equipment, accessories, and parts*, from Fairmont, MN, to points in the United States and equipment, materials, and supplies used or useful in the manufacture and distribution of electrical scales, equipment, accessories, and parts from points in the United States to Fairmont, MN, under a continuing contract, or contracts, with Weigh-Tronix, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Arts Way Manufacturing Co., Inc., Armstrong, IA 50514. (2) Weigh-Tronix, Inc., Fairmont, MN. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 144244 (Sub-No. 1TA), filed February 3, 1978. Applicant: CRESTON TRANSPORTATION, INC., East Highway 34, Creston, IA 50801. Applicant's representative: Frank W. Davis, Jr., 2600 Ruan Center, Des Moines, IA 50309. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Omaha, NE, Milwaukee, WI; and Peoria, IL, to Creston, IA, under a continuing contract, or contracts, with Southwest Distributing Co., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Southwest Distributing Co., Inc., Industrial Road Parkway, Creston, Iowa 50801. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 144248 (Sub.-No. 1TA), filed February 6, 1978. Applicant: WAYNE ALBERTS, d.b.a., ALBERTS LEASING, 11030 South Nagle, Worth, IL 60482. Applicant's representative: Patric H. Smyth, 19 South LaSalle Street, Suite 521, Chicago, IL 60603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, (1) between Berwe Warehouse, Inc., Chicago, IL, on the one hand, and, on the other, Cedar Rapids, IA, Cleveland, OH; Detroit, MI; Fort Recovery, OH; Kansas City, MO; Milwaukee, WI; Omaha, NE; St. Louis, MO, and Valley, NE, and (2) from Cleveland, OH and Omaha, NE, to Streater Dependable Co., at or near Streator, IL. Restriction: The transportation services authorized above are restricted against the transportation of commodities of bulk and under a continuing contract, or contracts, with D-L Steel Co., Chicago, IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): D-L Steel Co., Penelope M. Piech, Traffic Manager, 4433 West Touhy, Chicago, IL. 60646. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

By the Commission.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-6734 Filed 3-14-78; 8:45 am]

[7035-01]

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY ELIMINATION OF GATEWAY APPLICATIONS

March 10, 1978.

The following applications to eliminate gateways for the purpose of reducing highway congestion, alleviating 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 1065(a)(2)), and notice thereof to all interested persons is hereby given as provided in such rules.

Carriers having a genuine interest in an application may file an original and three copies of verified statements in opposition with the Interstate Commerce Commission on or before April 14, 1978. (This procedure is outlined in the Commission's report and order in Gateway Elimination, 119 MCC 530.) A copy of the verified statement in opposition must also be served upon applicant or its named representative. The verified statement should contain all the evidence upon which protestant relies in the application proceeding including a detailed statement of protestant's interest in the proposal. No rebuttal statements will be accepted.

No. MC 119777 (Sub-No. 340G), filed December 27, 1977. Applicant: LIGON SPECIALIZED HAULER, INC., P.O. Drawer L, Madisonville, KY 42431. Applicant's representative: Carl U. Hurst (same address as applicant). Authority sought to operate an a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Treated poles, treated cross-arms, treated cross-ties, and wood flooring*, from points in AL, AZ, CA, CT, DE, DC, FL, GA, ID, IL (except Chicago, IL), IN, IA, ME, MD, MA, MI, MN, MT, NE, NV, NH, NJ, NY (except Jamaica, Long Island, NY), NC (except Moncure, NC), ND, OH, OR, PA, RI, SC, SD, TN (except Memphis, TN, and points in TN on and west of U.S. Hwy 31), UT, VT, VA (except Norfolk and Chesapeake, VA), WA, WV, WI (except Oshkosh, WI), and WY, to points in IN, the lower Peninsula, of MI, OH, WV, PA, NY, NJ, IL, WI, CT, RI, MA, NH, VT, ME, VA, MD, DE, and DC, restricted against the transportation of treated poles, treated cross-arms and treated cross-ties from points in AL to points in IL, IN, MI, OH, PA, and WI. Gateway: Mitchell, TN, (2) *Knocked down pallets, knocked down wire boxes, baskets, lumber, and oak molding*, from points in AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, LA, ME, MD, MA MI, MN, MO, MS, MT, NE, NV, NH, NJ, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TX, TN, UT, VT, VA, WA, WV, WI, KY, and Louisville, KY, to points in KY, IN, MI, OH, WV, PA, NY, NJ, IL, WI, CT, RI, MA, NH, VT, ME, VA, MD, DE, DC, AL, AR, CO, FL, GA, IA, KS, LA, MN, MS, MO, NE, NC, ND, OK, SC, SD, TN, and TX. Restriction: Restricted against the transportation of traffic from points in AL to points in IL, IN, KY, MI, OH, PA, AND WI, from Louisville, KY, to points in KY, and from points in that part of TN on and west of U.S. Hwy 31 to points in KY, IN, the Lower Peninsula of MI, OH, WV, PA, NY, NJ, IL, WI, CT, RI, MA, NH, VT, ME, VA, MD, DE, and DC, and further restricted against the trans-

portation of baskets from points in AZ, CA, ID, ME, MT, NV, NH, OR, UT, VT, WA, and WY, and further restricted against the transportation of lumber from points in AR, LA, that part of TX east of U.S. Hwy 77, GA, NC, SC, and AL, to points in Logan County, KY and the plantsites of Kentucky Mills Lumber & Manufacturing Co., at or near Williamsburg, KY, and James Jones Lumber Co., at or near Adams, TN. Gateways: Adams, TN, Mitchell, TN, and Muhlenberg County, KY, and (3) *lumber*, (a) from points in NM, to points in KY, IN, IL, WI, TN, SC, GA, FL, AL, and MS, and (b) from points in AL, CT, DE, FL, GA, IL, IN, MD, MA, MI, MS, NJ, NY, NC, OH, PA, RI, SC, TN, VA, WV, and WI, to points in AZ, CA, ID, MT, NV, NM, OR, UT, WA, and WY. Gateways: Paris, IL and Adams, TN.

NOTE.—Common control may be involved. Applicant has contract carrier authority in No. MC 126970 (Sub-No. 1) and other subs, therefore, dual operations may be involved. If a hearing is deemed necessary, applicant does not specify a location. The purpose of this application is to eliminate the gateways as indicated above.

[7035-01]

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY-ELIMINATION OF GATEWAY LETTER NOTICES

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviation 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 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protects against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission on or before March 27, 1978. 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.

The following applicants seek to operate as a *common carrier*, by motor vehicles, over irregular routes.

No. MC 40215 (Sub-No. E4) (Correction), filed May 17, 1974, published in the FEDERAL REGISTER issue of September 1, 1976, partially republished, November 3, 1976, and partially republished, as corrected, this issue. Applicant: RICHARDSON TRANSFER & STORAGE CO., INC., 246 North Fifth Street, Salina, KS 67401. Applicant's representative: James Flint, Suite 600, 1250 Connecticut Avenue NW., Washington, DC 20036. *Household goods*, as defined by the Commission: (1) From points in CA to points in AR (Garden City, KS*). (2) From points in CA on and south of a line beginning at the CA-AZ State line, and extending along Interstate Hwy 10 to the Pacific Ocean, to points in SD (Coolidge, KS*). (3) From points in CA to those points in TX on and east of a line beginning at the TX-OK State line, and extending along Interstate Hwy 35 to junction U.S. Hwy 287, then along U.S. Hwy 287 to junction Interstate Hwy 45, then along Interstate Hwy 45 to junction U.S. Hwy 290, then east along U.S. Hwy 290 to the TX-LA State line (Liberal, KS*). (4) From points in CA to points in NE on and east of a line beginning at the SD-NE State line, and extending along U.S. Hwy 83, then along U.S. Hwy 83 to the NE-KA State line (Garden City, KS, or Pratt, KS, or Salina, KS*). (5) From points in CA on and south and west of a line beginning at the OR-CA State line and extending along Interstate Hwy 5, to junction CA Hwy 36, then along CA Hwy 36 to the CA-NV State line, to points in NE on and east and south of a line beginning at the NE-KS State line, and extending along U.S. Hwy 83, to junction NE Hwy 70, then to junction NE Hwy 22, to junction U.S. Hwy 30, then along U.S. Hwy 30 to the NE-IA State line (Garden City, KS, Pratt, or Salina, KS*). (6) From points in CA on and south of a line beginning at the Pacific Ocean, and extending along U.S. Hwy 101, to junction Interstate Hwy 210, then along Interstate Hwy 210 to junction U.S. Hwy 66, then south along U.S. Hwy 66 to the CA-AZ State line, to points in Nebraska (Garden City, Pratt, or Salina, KS*). (7) (a) (Clarification) from points in CA to those points in MN, on and south of a line beginning at the MN-SD State line, and extending along MN Hwy 23 to junction U.S. Hwy 12, then east along U.S. Hwy 12 to the MN-WI State line (Garden City, KS*). (b) From points in CA on and south of a line beginning at the Pacific Ocean, and extending east along U.S. Hwy 66 to the CA-NV State line, to points in MN (Garden City, Pratt, or Junction City, KS*). The purpose of this filing is to eliminate the gateways designated above by asterisks.

NOTE.—The purpose of this partial republication is to clarify the territorial descriptions. The remainder of this letter-notice remains as previously published.

No. MC 40215 (Sub-No. E15) (correction), filed May 17, 1974, published in the FEDERAL REGISTER issue of October 6, 1976, and partially republished, as corrected, this issue. Applicant: RICHARDSON TRANSFER & STORAGE CO., INC., 246 North Fifth Street, Salina, KS 67401. Applicant's representative: James Flint, Suite 600, 1250 Connecticut Avenue NW., Washington, DC 20036. *Household goods*, as defined by the Commission, (1) from points in MD to points in NE (Ravenna, OH and Kansas City, KS*). (2) From points in MD to points in NV (Ravenna, OH and Garden City KS*). (3) From points in MD to points in NM (Ravenna, OH, Manhattan and Pratt, KS*). (4) (A) From points in MD to points in OK on and north and west of a line beginning at the OK-AR State line, and extending along OK Hwy 83, then along OK Hwy 83 to junction U.S. Hwy 271, then southwest along U.S. Hwy 271 to the TX-OK State line. (B) From points in MD on and west of a line beginning at the PA-MD State line, and extending along Interstate Hwy 83, then south along Interstate Hwy 83 to junction MD Hwys 32 and 3 to U.S. Hwy 301, then south along U.S. Hwy 301 to the VA-MD State line (Ravenna, OH, Fort Scott and Galena, OH*). (5) From points in MD to those points in TX on and west of a line beginning at the OK-TX State line, and extending south along U.S. Hwy 259, then to junction U.S. Hwy 69, then south along U.S. Hwy 69 to the Gulf of Mexico (Ravenna, OH, Fort Scott and Arkansas City, KS*). (6) From points in MD to points in UT (Ravenna, OH and Garden City, KS*). (7) From points in MD to those points in WY on and west and south of a line beginning at the WY-MT State line, and extending south along WY Hwy 59, to junction WY Hwy 20, then east along WY Hwy 20 to the WY-NE State line (Ravenna, OH and Garden City, KS*). The purpose of this filing is to eliminate the gateways indicated by asterisks above.

NOTE.—The purpose of this partial republication is to correct the territorial descriptions. The remainder of this letter-notice remains as previously published.

No. MC 60014 (Sub-No. E270), filed August 28, 1976. Applicant: AERO TRUCKING, INC., P.O. Box 308, Monroeville, PA 15146. Applicant's representative: William J. Rorison (same as above). *Iron and steel angles, bars, channels, conduit, fencing, flooring, joists, lath, mesh, piling, pipe, posts, rails, rods, roof bolt mats, roofing, strip, structurals, tank parts, tubing and wire* in coils, except commodities in bulk, between points in PA on and south of a line beginning at the OH-PA State line, and extending along Interstate Hwy 80 to the PA-NJ State line, on the one hand, and, on the other, points in VT on and east of a line beginning at the Canada-United States boundary line, and extending along U.S. Hwy 5 to the VT-NH State line. The purpose of this filing is to eliminate the gateways of points in

NY, Greenwich, CT., points in MA on and east of U.S. Hwy 5, and between points in that part of MA, on and east of a line beginning at the MA-NH State line and extending southwardly along U.S. Hwy 202 to junction MA Hwy 68 (at or near Baldwinville, MA), then along MA Hwy 68 to junction MA Hwy 56 (at or near Hubbardston, MA), then over MA Hwy 56 to junction MA Hwy 12 (near Rochdale, MA), then along MA Hwy 12 to the MA-CT State line (except points in Barnstable, Dukes, and Nantucket Counties, MA).

No. MC 60014 (Sub-No. E271), filed August 28, 1976. Applicant: AERO TRUCKING, INC., P.O. Box 308, Monroeville, PA 15146. Applicant's representative: William J. Rorison (same as above). *Iron and steel angles, bars, channels, conduit, fencing, flooring, joists, lath, mesh, piling, pipe, posts, rails, rods, roof bolt mats, roofing, strip, structurals, tank parts, tubing and wire* in coils, between points in PA, on the one hand, and, on the other, points in NH on and north and east of a line beginning at the VT-NH State line and extending along NH Hwy 25A, then along NH Hwy 25A to junction NH Hwy 118, then along NH Hwy 118 to junction U.S. Hwy 4, then along U.S. Hwy 4 to junction NH Hwy 11, then along NH Hwy 11 to junction Interstate Hwy 89, then along Interstate Hwy 89 to junction NH Hwy 103, then along NH Hwy 103 to junction NH Hwy 114, then along NH Hwy 114 to junction U.S. Hwy 202, then along U.S. Hwy 202 to junction NH Hwy 9, then along NH Hwy 9 to junction NH Hwy 123, then along NH Hwy 123 to the NH-VT State line. The purpose of this filing is to eliminate the gateways of: Between points in that part of MA, on and east of a line beginning at the MA-NH State line and extending southwardly along U.S. Hwy 202 to junction MA Hwy 68 (at or near Baldwinville, MA), then along MA Hwy 68 to junction MA Hwy 56 (at or near Hubbardston, MA), then along MA Hwy 56 to junction MA Hwy 12 (near Rochdale, MA), then along MA Hwy 12 to the MA-CT State line (except points in Barnstable, Dukes, and Nantucket Counties, MA) and points in NY.

No. MC 60014 (Sub-No. E272), filed August 28, 1976. Applicant: AERO TRUCKING, INC., P.O. Box 308, Monroeville, PA 15146. Applicant's representative: William J. Rorison (same as above). *Iron and steel angles, bars, channels, conduit, fencing, flooring, joists, lath, mesh, piling, pipe, posts, rails, rods, roof bolt mats, roofing, strip, structurals, tank parts, tubing and wire* in coils, except commodities in bulk, between points in PA on and west of a line beginning at the NY-PA State line, and extending along PA Hwy 171 to junction PA Hwy 247, then along PA Hwy 247 to junction PA Hwy 348, then along PA Hwy 348 to junction PA Hwy 191, then along PA Hwy 191 to the PA-NJ State line, on the one hand, and, on the other, points in RI on and east of a line beginning at the MA-RI State line, and extending along Interstate Hwy 95 to the Atlantic Ocean. The purpose of this filing is to eliminate the gateways of points in NY, Greenwich, CT, points in MA on and east of U.S. Hwy 5, and between points in that part of MA, on and east of a line beginning at the MA-NH State line and extending southwardly along U.S. Hwy 202 to junction MA Hwy 68 (at or near Baldwinville, MA), then along MA Hwy 68 to junction MA Hwy 56 (at or near Hubbardston, MA), then along MA Hwy 56 to junction MA Hwy 12 (near Rochdale, MA), then along MA Hwy 12 to the MA-CT State line (except points in Barnstable, Dukes, and Nantucket Counties, MA).

No. MC 60014 (Sub-No. E275), filed August 28, 1976. Applicant: AERO TRUCKING, INC., P.O. Box 308, Monroeville, PA 15146. Applicant's representative: William J. Rorison (same as above). *Iron and steel angles, bars, channels, conduit, fencing, flooring, joists, lath, mesh, piling, pipe, posts, rails, rods, roof bolt mats, roofing, strip, structurals, tank parts, tubing and wire* in coils, between points in WV, on the one hand, and, on the other, points in OH on and east of a line beginning at the IN-OH State line and extending along OH Hwy 122, then along OH Hwy 122 to junction U.S. Hwy 35, then along U.S. Hwy 35 to junction Interstate Hwy 71, then along Interstate Hwy 71 to junction OH Hwy 56, then along OH Hwy 56 to junction of OH Hwy 316, then along OH Hwy 316 to junction OH Hwy 752, then along OH Hwy 752 to junction OH Hwy 674, then along OH Hwy 674 to junction OH Hwy 188, then along OH Hwy 188 to junction U.S. Hwy 33, then along U.S. Hwy 33 to the OH-WV State line. The purpose of this filing is to eliminate the gateway between points in that part of OH on and south of U.S. Hwy 30 on and east of a line beginning at the junction U.S. Hwy 30 and OH Hwy 13 (near Mansfield, OH), and extending in a southward direction along OH Hwy 13 to junction U.S. Hwy 33 (near Athens, OH), then southwardly along U.S. Hwy 33 to junction OH Hwy 33 to junction OH Hwy 7 (near the Ohio River), then westerly along OH Hwy 7 and U.S. Hwy 33 to Pomeroy, OH (except points in Licking County, OH), on the one hand, and, on the other, points in PA, NY, WV, IN, IL, MI, and WI.

No. MC 60014 (Sub-No. E276), filed August 28, 1976. Applicant: AERO TRUCKING, INC., P.O. Box 308, Monroeville, PA 15146. Applicant's representative: William J. Rorison (same as above). *Iron and steel angles, bars, channels, conduit, fencing, flooring, joists, lath, mesh, piling, pipe, posts, rails, rods, roof bolt mats, roofing, strip, structurals, tank parts, tubing and wire* in coils, between points in WV on and south and west of a line beginning at the PA-WV State line and extending along WV Hwy 69, then along WV Hwy 69 to junction U.S. Hwy 250, then along U.S. Hwy 250 to junction U.S. Hwy 33, then along U.S. Hwy 33 to the WV-VA State line, on the one hand, and, on the other, points in CT on and east of a line beginning at the MA-CT State line and extending along Interstate Hwy 91, then along Interstate Hwy 91 to junction CT Hwy 2, then along CT Hwy 2 to junction CT Hwy 85, then along CT Hwy 85 to the CT-RI State line. The purpose of this filing is to eliminate the gateways of points in NY, and between points in that part of MA, on and east of a line beginning at the MA-NH State line and extending southwardly along U.S. Hwy 202 to junction MA Hwy 68 (at or near Baldwinville, MA), then along MA Hwy 68 to junction MA Hwy 56 (at or near Hubbardston, MA), then over MA Hwy 56 to junction MA Hwy 12 (near Rochdale, MA), then along MA Hwy 12 to the MA-CT State line (except points in Barnstable, Dukes, and Nantucket Counties, MA).

No. MC 60014 (Sub-No. E278), filed August 28, 1976. Applicant: AERO TRUCKING, INC., P.O. Box 308, Monroeville, PA 15146. Applicant's representative: William J. Rorison (same as above). *Iron and steel angles, bars, channels, conduit, fencing, flooring, joists, lath, mesh, piling, pipe, posts, rails, rods, roof bolt mats, roofing, strip, structurals, tank parts, tubing and wire* in coils, between points in VA, on the one hand, and, on the other, points in NH and RI. The purpose of this filing is to eliminate the gateway of points in NY, and between points in that part of MA, on and east of a line beginning at the MA-NH State line and extending southwardly along U.S. Hwy 202 to junction MA Hwy 68 (at or near Baldwinville, MA), then along MA Hwy 68 to junction MA Hwy 56 (at or near Hubbardston, MA), then over MA Hwy 56 to junction MA Hwy 12 (near Rochdale, MA), then along MA Hwy 12 to the MA-CT State line (except points in Barnstable, Dukes, and Nantucket Counties, MA).

No. MC 60014 (Sub-No. E279), filed August 28, 1976. Applicant: AERO TRUCKING, INC., P.O. Box 308, Monroeville, PA 15146. Applicant's representative: William J. Rorison (same as above). *Iron and steel angles, bars, channels, conduit, fencing, floor-*

ing, joists, lath, mesh, piling, pipe, posts, rails, rods, roof bolt mats, roofing, strip, structurals, tank parts, tubing and wire in coils, between points in VA, on the one hand, and, on the other, points in CT on and east of a line beginning at the MA-CT State line, and extending along CT Hwy 32, then along CT Hwy 32 to junction of CT Hwy 2, then along CT Hwy 2 to the CT-RI State line. The purpose of this filing is to eliminate the gateways of points in NY, and between points in that part of MA, on and east of a line beginning at the MA-NH State line and extending southwardly along U.S. Hwy 202 to junction MA Hwy 68 (at or near Baldwinville, MA), then along MA Hwy 68 to junction MA Hwy 56 (at or near Hubbardston, MA), then over MA Hwy 56 to junction MA Hwy 12 (near Rochdale, MA), then along MA Hwy 12 to the MA-CT State line (except points in Barnstable, Dukes, and Nantucket Counties, MA).

No. MC 60014 (Sub-No. E303), filed August 28, 1976. Applicant: AERO TRUCKING, INC., P.O. Box 308, Monroeville, PA 15146. Applicant's representative: William J. Rorison (same as above). *Iron and steel angles, bars, channels, conduit, fencing, flooring, joists, lath, mesh, piling, pipe, posts, rails, rods, roof bolt mats, roofing, strip, structurals, tank parts, tubing and wire* in coils, except commodities in bulk, between points in OH on and west of a line beginning at Lake Erie and extending along OH Hwy 91 to junction of U.S. Hwy 422, then along U.S. Hwy 422 to junction OH Hwy 88, then along OH Hwy 88 to the OH-PA State line, on the one hand, and, on the other, points in CT, RI, ME, and those points in MA on and east of a line beginning at the VT-MA State line and extending along U.S. Hwy 5 to the MA-CT State line, those points in NH on and east of a line beginning at the VT-NH State line extending along U.S. Hwy 302 to junction NH Hwy 112, then along NH Hwy 112 to junction NH Hwy 118, then along NH Hwy 118 to junction U.S. Hwy 3, then along U.S. Hwy 3 to junction NH Hwy 3A/25, then along NH Hwy 3A/25 to junction NH Hwy 3A, then along NH Hwy 3A to junction NH Hwy 104, then along NH Hwy 104 to the junction U.S. Hwy 4, then along U.S. Hwy 4 to junction NH Hwy 11, then along NH Hwy 11 to junction NH Hwy 10, then along NH Hwy 10 to junction NH Hwy 123A, then along NH Hwy 123A to junction NH Hwy 123, then along NH Hwy 123 to the VT-NH State line. The purpose of this filing is to eliminate the gateway: (1) Between points in that part of OH on and south of U.S. Hwy 30 on and east of a line beginning at junction U.S. Hwy 30 and OH Hwy 13 (near Mansfield, OH), and extending in a southward direction along OH Hwy 13 to junction U.S. Hwy 33 (near Athens, OH), then southwardly along U.S. Hwy 33 to junction OH Hwy 33 to junction OH Hwy 7 (near the Ohio River), then westerly along OH Hwy 7 and U.S. Hwy 33 to Pomeroy, OH (except points in Licking County, OH); (2) points in NY; (3) points within 10 miles of Greenwich, CT; (4) between points in that part of MA, on and east of a line beginning at the MA-NH State line and extending southwardly along U.S. Hwy 202 to junction MA Hwy 68 (at or near Baldwinville, MA), then along MA Hwy 68 to junction MA Hwy 56 (at or near Hubbardston, MA), then over MA Hwy 56 to junction MA Hwy 12 (near Rochdale MA), then along MA Hwy 12 to the MA-CT State line (except points in Barnstable, Dukes, and Nantucket Counties, MA).

No. MC 60014 (Sub-No. 304), filed August 28, 1976. Applicant: AERO TRUCKING, INC., P.O. Box 308, Monroeville, PA 15146. Applicant's representative: William J. Rorison (same as above). *Iron and steel angles, bars, channels, conduit, fencing, flooring, joists, lath, mesh, piling, pipe, posts, rails, rods, roof bolt mats, roofing, strip, structurals, tank parts, tubing and wire* in coils, except commodities in bulk, between points in OH on and west of a line beginning at Lake Erie and extending along OH Hwy 19 to junction OH Hwy 53, thence along OH Hwy 53 to junction U.S. Hwy 224, thence along U.S. Hwy 224 to junction OH Hwy 162, thence along OH Hwy 162 to junction OH Hwy 18, thence along OH Hwy 18 to junction Interstate Hwy 271, thence along Interstate Hwy 271 to junction OH Hwy 82, then along OH Hwy 82 to OH Hwy 305, then along OH Hwy 305 to the OH-PA State line, on the one hand, and, on the other, points in VT on and east of a line beginning at the International boundary line between United States and Canada, and extending along U.S. Hwy 5 to the junction of U.S. Hwy 302, then along U.S. Hwy 302 to the VT-NH State line. The purpose of this filing is to eliminate the gateways of: (1) points in Columbiana, Cuyahoga, Mahoning, Summit, and Trumbull Counties, OH. (2) points in NY. (3) Greenwich, CT, and points within 10 miles thereof. (4) Between points in that part of MA, on and east of a line beginning at the MA-NH State line and extending southwardly along U.S. Hwy 202 to junction MA Hwy 68 (at or near Baldwinville, MA), then along MA Hwy 68 to junction MA Hwy 56 (at or near Hubbardston, MA), then over MA Hwy 56 to junction MA Hwy 12 (near Rochdale, MA), then along MA Hwy 12 to the MA-CT State line (except points in Barnstable, Dukes, and Nantucket Counties, MA).

No. MC 60014 (Sub-No. 305), filed August 28, 1976. Applicant: AERO TRUCKING, INC., P.O. Box 308, Monroeville, PA 15146. Applicant's representative: William J. Rorison (same as above). *Iron and steel angles, bars, channels, conduit, fencing, flooring, joists, lath, mesh, piling, pipe, posts, rails, rods, roof bolt mats, roofing, strip, structurals, tank parts, tubing and wire* in coils, from those points in OH on and east of a line beginning at Lake Erie and extending along OH Hwy 58 to junction OH Hwy 89 then along OH Hwy 89 to junction OH Hwy 95, then along OH Hwy 95 to junction OH Hwy 179, then along OH Hwy 179 to junction OH Hwy 39/60, then along OH Hwy 39/60 to junction OH Hwy 60, then along OH Hwy 60 to junction U.S. Hwy 62, then along U.S. Hwy 62 to junction OH Hwy 60, then along OH Hwy 60 to the WV-OH State line, to points in MS and AL. The purpose of this filing is to eliminate the gateways of: (1) Between points in that part of OH on and south of U.S. Hwy 30 on and east of a line beginning at junction U.S. Hwy 30 and OH Hwy 13 (near Mansfield, OH), and extending in a southward direction along OH Hwy 13 to junction U.S. Hwy 33 (near Athens, OH), then southwardly along U.S. Hwy 33 to junction OH Hwy 33 to junction OH Hwy 7 (near the Ohio River), then westerly along OH Hwy 7 and U.S. Hwy 33 to Pomeroy, OH (except points in Licking County, OH). (2) Wheeling, WV.

No. MC 60014 (Sub-No. E306), filed August 28, 1976. Applicant: AERO TRUCKING, INC., P.O. Box 308, Monroeville, PA 15146. Applicant's representative: William J. Rorison (same as above). *Iron and steel angles, bars, channels, conduit, fencing, flooring, joists, lath, mesh, piling, pipe, posts, rails, rods, roof bolt mats, roofing, strip, structurals, tank parts, tubing and wire* in coils, from those points in OH on and east of a line beginning at Lake Erie and extending along OH Hwy 237 to junction OH Hwy 82, then along OH Hwy 82 to junction U.S. Hwy 42, then along U.S. Hwy 42 to junction OH Hwy 57, then along OH Hwy 57 to junction U.S. Hwy 30, then along U.S. Hwy 30 to junction OH Hwy 94, then along OH Hwy 94 to junction U.S. Hwy 250, then along U.S. Hwy 250 to junction Interstate Hwy 77, then along Interstate Hwy 77 to junction OH Hwy 78, thence along OH Hwy 78 to junction OH Hwy 800, then along OH Hwy 800 to the OH-WV State line, to points in TN. The purpose of this filing is to eliminate the gateways of (1) points in that part of OH on and east of a line extending from Mansfield, to Pomeroy, OH, along OH Hwy 13 to junction thereof U.S. Hwy 33, then along U.S. Hwy 33 to Pomeroy, and on and south of U.S. Hwy 30 extending from Mansfield to the OH-WV State line. (2) Wheeling, WV.

No. MC 107012 (Sub-No. E240) filed July 7, 1977. Applicant: North American Van Lines, Inc., P.O. Box 988, Fort Wayne, IN 46801. Applicant's representative: David D. Bishop and Gary M. Crist, P.O. Box 988, Fort Wayne, IN 46801. *New Household Furnishings, crated* (1) From points in AZ, to points in CT, DE, DC, MD, MA, MI, NJ, NY, OH, PA, RI, and WV. (2) From points in Cochise, Gila, Graham, Greenlee Counties, AZ, to points in Adams, Allen, Blackford, De Kalb, Delaware, Elkhart, Grant, Huntington, Jay, Kosciusko, Lagrange, Noble, Randolph, Steuben, Wabash, Wells, Whitley, Boone, Clinton, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, Shelby, Tipton, Bartholomew, Brown, Clark, Dearborn, Decatur, Fayette, Floyd, Franklin, Harrison, Henry, Jackson, Jefferson, Jennings, Ohio, Ripley, Rush, Scott, Switzerland, Union, Washington, Wayne, Benton, Carroll, Cass, Fountain, Fulton, Howard, Jasper, Lake, La Porte, Marshall, Miami, Montgomery, Newton, Porter, Pulaski, St. Joseph, Starke, Tippecanoe, Warren, and White Counties, IN; Adair, Anderson, Boyle, Casey, Clinton, Cumberland, Fayette, Gerrard, Green, Jessamine, Lincoln, Madison, Marion, Mercer, Metcalfe, Monroe, Pulaski, Rockcastle, Russell, Taylor, Washington, Wayne, Woodford, Allen, Barren, Breckinridge, Bullitt, Butler, Christian, Edmonson, Grayson, Hardin, Hart, Henry, Jefferson, Larue, Logan, Meade, Muhlenberg, Nelson, Ohio, Oldham, Sheleby, Simpson, Spencer, Todd, Trimble, Warren, Bath, Boone, Bourbon, Boyd, Bracken, Campbell, Carroll, Carter, Clark, Elliott, Fleming, Franklin, Gallatin, Grant, Greenup, Harrison, Johnson, Kenton, Lawrence, Lewis, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owen, Pendleton, Powell, Robertson, Rowan, Scott, and Wolfe Counties, KY. (3) From points in Apache, Coconino, Mohave, Navajo, Yavapai, Maricopa, Pima, Pinal, and Santa Cruz Counties, AZ, to points in Adams, Allen, Blackford, De Kalb, Delaware, Elkhart, Grant, Huntington, Jay, Kosciusko, Lagrange, Noble, Randolph, Steuben, Wabash, Wells, Whitley, Boone, Clinton, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, Shelby, Tipton, Bartholomew, Brown, Clark, Dearborn, Decatur, Fayette, Floyd, Franklin, Harrison, Henry, Jackson, Jefferson, Jennings, Ohio, Ripley, Rush, Scott, Switzerland, Union, Washington, Wayne; Benton, Carroll, Cass, Fountain, Fulton, Howard, Jasper, Lake, La Porte, Marshall, Miami, Montgomery, Newton, Porter, Pulaski, St. Joseph, Starke, Tippecanoe, Warren, White Counties, IN; Adair, Anderson, Boyle, Casey, Clinton, Cumberland, Fayette, Gerrard, Green, Jessamine, Lincoln, Madison, Marion, Mercer, Metcalfe, Monroe, Pulaski, Rockcastle, Russell, Taylor, Washington, Wayne, Woodford, Allen, Barren, Breckinridge, Bullitt, Butler, Christian, Edmonson, Grayson, Hardin, Hart, Henry, Jefferson, Larue, Logan, Meade, Muhlenberg, Nelson, Ohio, Oldham, Sheleby, Simpson, Spencer, Todd, Trimble, Warren, Bath, Boone, Bourbon, Boyd, Bracken, Campbell, Carroll, Carter, Clark, Elliott, Fleming, Franklin, Gallatin, Grant, Greenup, Harrison, Johnson, Kenton, Lawrence, Lewis, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owen, Pendleton, Powell, Robertson, Rowan, Scott, Wolfe, Bell, Breathitt, Clay, Estill, Floyd, Harlan, Jackson, Knott, Knox, Laurel, Lee, Leslie, Letcher, McCreary, Owsley, Perry, Pike, and Whitley Counties, KY. (4) From points in Yuma County, AZ, to points in IN; Adair, Anderson, Boyle, Casey, Clinton, Cumberland, Fayette, Gerrard, Green, Jessamine, Lincoln, Madison, Marion, Mercer, Metcalfe, Monroe, Pulaski, Rockcastle, Russell, Taylor, Washington, Wayne, Woodford, Allen, Barren, Breckinridge, Bullitt, Butler, Christian, Edmonson, Grayson, Hardin, Hart, Henry, Jefferson, Larue, Logan, Meade, Muhlenberg, Nelson, Ohio, Oldham, Sheleby, Simpson, Spencer, Todd, Trimble, Warren, Bath, Boone, Burbon, Boyd, Bracken, Campbell, Carroll, Carter, Clark, Elliott, Fleming, Franklin, Gallatin, Grant, Greenup, Harrison, Johnson, Kenton, Lawrence, Lewis, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owen, Pendleton, Powell, Robertson, Rowan, Scott, Wolfe, Bell, Breathitt, Clay, Estill, Floyd, Harlan, Jackson, Knott, Knox, Laurel, Lee, Leslie, Letcher, McCreary, Owsley, Perry, Pike, Whitley Counties, KY. The purpose of this filing is to eliminate the gateway of Chicago, IL.

No. MC 107012 (Sub-No. E243) filed July 7, 1977. Applicant: NORTH AMERICAN VAN LINES, INC, P.O. Box 988, Fort Wayne, IN 46801. Applicant's representative: David D. Bishop and Gary M. Crist, P.O. Box 988, Fort Wayne, IN 46801. *New Household Furnishings, crated* (1) From points in CA, to points in CT, DE, DC, MD, MA, MI, NJ, NY, OH, PA, RI, and WV. (2) From points in Butte, Lassen, Modoc, Nevada, Plumas, Shasta, Sierra, Siskiyou, Yuba, Inyo, Fresno, Kings, Tulare, Glenn, Humboldt, Lake, Mendicino, Tehama, Trinity, Alameda, Alpine, Amador, Calaveras, Colusa, Contra Costa, Eldorado, Madera, Marin, Mariposa, Merced, Mono, Monterey, Napa, Placer, San Benito, Sacramento, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Sutter, Tuolumne, Yolo Counties, CA; to points in IN; KY; Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Iron, Madison, Mississippi, New Madrid, Oregon, Pemiscot, Perry, Reynolds, Ripley, St. Francois, Ste. Genevieve, Scott, Shannon, Stoddard, Wayne Counties, MO. (3) From points in Kern, Los Angeles, Orange, San Luis Obispo, Santa Barbara, Ventura, Imperial, Riverside, San Diego Counties, CA; to points in IN; Adair, Anderson, Boyle, Casey, Clinton, Cumberland, Fayette, Gerrard, Green, Jessamine, Lincoln, Madison, Marion, Mercer, Metcalfe, Monroe, Pulaski, Rockcastle, Russell, Taylor, Washington, Wayne, Woodford, Allen, Barren, Breckinridge, Bullitt, Butler, Christian, Edmonson, Grayson, Hardin, Hart, Henry, Jefferson, Larue, Logan, Meade, Muhlenberg, Nelson, Ohio, Oldham, Sheleby, Simpson, Spencer, Todd, Trimble, Warren, Bath, Boone, Bourbon, Boyd, Bracken, Campbell, Carroll, Carter, Clark, Elliott, Fleming, Franklin, Gallatin, Grant, Greenup, Harrison, Johnson, Kenton, Lawrence, Lewis, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owen, Pendleton, Powell, Robertson, Rowan, Scott, Wolfe, Bell, Breathitt, Clay, Estill, Floyd, Harlan, Jackson, Knott, Knox, Laurel, Lee, Leslie, Letcher, McCreary, Owsley, Perry, Pike, and Whitley Counties, KY. (4) From points in San Bernadino County, CA, to points in Adams, Allen, Blackford, De Kalb, Delaware, Elkhart, Grant, Huntington, Jay, Kosciusko, Lagrange, Noble, Randolph, Steuben, Wabash, Wells, Whitley, Boone, Clinton, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, Shelby, Tipton, Bartholomew, Brown, Clark, Dearborn, Decatur, Fayette, Floyd, Franklin, Harrison, Henry, Jackson, Jefferson, Jennings, Ohio, Ripley, Rush, Scott, Switzerland, Union, Washington, Wayne, Benton, Carroll, Cass, Fountain, Fulton, Howard, Jasper, Lake, La Porte, Marshall, Miami, Montgomery, Newton, Porter, Pulaski, St. Joseph, Starke, Tippecanoe, Warren, White Counties, IN; Allen, Barren, Breckinridge, Bullitt, Butler, Christian, Edmonson, Grayson, Hardin, Hart, Henry, Jefferson, Larue, Logan, Meade, Muhlenberg, Nelson, Ohio, Oldham, Sheleby, Simpson, Spencer, Todd, Trimble, Warren, Adair, Anderson, Boyle, Casey, Clinton, Cumberland, Fayette, Gerrard, Green, Jessamine, Lincoln, Madison, Marion, Mercer, Metcalfe, Monroe, Pulaski, Rockcastle, Russell, Taylor, Washington, Wayne, Woodford, Bath, Boone, Bourbon, Boyd, Bracken, Campbell, Carroll, Carter, Clark, Elliott, Fleming, Franklin, Gallatin, Grant, Greenup, Harrison, Johnson, Kenton, Lawrence, Lewis, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owen, Pendleton, Powell, Robertson, Rowan, Scott,

Wolfe, Bell, Breathitt, Clay, Estill, Floyd, Harlan, Jackson, Knott, Knox, Laurel, Lee, Leslie, Letcher, McCreary, Owsley, Perry, Pike, Whitley Counties, KY. The purpose of this filing is to eliminate the gateway of Chicago, IL.

No. MC 107012 (Sub-No. E245), filed July 7, 1977. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Applicant's representative: David D. Bishop and Gary M. Crist, P.O. Box 988, Fort Wayne, IN 46801. *New household furnishings, crated* (1) from points in CO, to points in CT, DE, DC, MD, MA, NJ, NY, OH, PA, RI, and WV. (2) From points in Garfield, Mesa, Moffat, Rio Blanco, and Routt County, CO, to points in IN; Adair, Anderson, Boyle, Casey, Clinton, Cumberland, Fayette, Gerrard, Green, Jessamine, Lincoln, Madison, Marion, Mercer, Metcalfe, Monroe, Pulaski, Rockcastle, Russell, Taylor, Washington, Wayne, Woodford, Allen, Barren, Breckinridge, Bullitt, Butler, Christian, Edmonson, Grayson, Hardin, Hart, Henry, Jefferson, LaRue, Logan, Meade, Muhlenberg, Nelson, Ohio, Oldham, Shelby, Simpson, Spencer, Todd, Trimble, Warren, Bath, Boone, Bourbon, Boyd, Bracken, Campbell, Carroll, Carter, Clark, Elliott, Fleming, Franklin, Gallatin, Grant, Greenup, Harrison, Johnson, Kenton, Lawrence, Lewis, Magoffin, Martin, Mason, Meniffee, Montgomery, Morgan, Nicholas, Owen, Pendleton, Powell, Robertson, Rowan, Scott, Wolfe, Bell, Breathitt, Clay, Estill, Floyd, Harlan, Jackson, Knott, Knox, Laurel, Lee, Leslie, Letcher, McCreary, Owsley, Perry, Pike, and Whitley Counties, KY; and points in Michigan. (3) From points in Adams, Arapahoe Boulder, Cedar Creek, Chaffee, Denver, Douglas, Eagle, Elbert, El Paso, Fremont, Gilpin, Grand, Jackson, Jefferson, Lake, Larimer, Park, Pitkin, Summit, Teller, Alamosa, Archuleta, Conejos, Delta, Dolores, Gunnison, Hinsdale, La Plata, Mineral, Montezuma, Montrose, Ouray, Rio Grande, Saguache, San Juan, and San Miguel Counties, CO, to points in Adams, Allen, Blackford, De Kalb, Delaware, Elkhart, Grant, Huntington, Jay, Kosciusko, Lagrange, Noble, Randolph, Steuben, Wabash, Wells, Whitley, Boone, Clinton, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, Shelby, Tipton, Bartholomew, Brown, Clark, Dearborn, Decatur, Fayette, Floyd, Franklin, Harrison, Henry, Jackson, Jefferson, Jennings, Ohio, Ripley, Rush, Scott, Switzerland, Union, Washington, Wayne, Benton, Carroll, Cass, Fountain, Fulton, Howard, Jasper, Lake, La Porte, Marshall, Miami, Montgomery, Newton, Porter, Pulaski, St. Joseph, Starke, Tippecanoe, Warren, and White Counties, IN; Adair, Anderson, Boyle, Casey, Clinton, Cumberland, Fayette, Gerrard, Green, Jessamine, Lincoln, Madison, Marion, Mercer, Metcalfe, Monroe, Pulaski, Rockcastle, Russell, Taylor, Washington, Wayne, Woodford, Allen, Barren, Breckinridge, Bullitt, Butler, Christian, Edmonson, Grayson, Hardin, Hart, Henry, Jefferson, LaRue, Logan, Meade, Muhlenberg, Nelson, Ohio, Oldham, Shelby, Simpson, Spencer, Todd, Trimble, Warren, Bath, Boone, Bourbon, Boyd, Bracken, Campbell, Carroll, Carter, Clark, Elliott, Fleming, Franklin, Gallatin, Grant, Greenup, Harrison, Johnson, Kenton, Lawrence, Lewis, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owen, Pendleton, Powell, Robertson, Rowan, Scott, Wolfe, Bell, Breathitt, Clay, Estill, Floyd, Harlan, Jackson, Knott, Knox, Laurel, Lee, Leslie, Letcher, McCreary, Owsley, Perry, Pike, and Whitley Counties, KY; to points in MI. (4) From points in Baca, Bent, Cheyenne, Costilla, Crowley, Custer, Huerfano, Kiowa, Las Ainmas, Lincoln, Otero, Prowers, and Pueblo Counties, CO; to points in Adams, Allen Blackford, De Kalb, Delaware, Elkhart, Grant, Huntington, Jay, Kosciusko, Lagrange, Noble, Randolph, Steuben, Wabash, Wells, Whitley, Boone, Clinton, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, Shelby, Tipton, Benton, Carroll, Cass, Fountain, Fulton, Howard, Jasper, Lake, La Porte, Marshall, Miami, Montgomery, Newton, Porter, Pulaski, St. Joseph, Starke, Tippicanoe, Warren, and White Counties, IN; Bath, Boone, Bourbon, Boyd, Bracken, Campbell, Carroll, Carter, Clark, Elliott, Fleming, Franklin, Gallatin, Grant, Greenup, Harrison, Johnson, Kenton, Lawrence, Lewis, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owen, Pendleton, Powell, Robertson, Rowan, Scott, Wolfe Counties, KY; to points in MI. (5) From points in Kit Carson, Logan, Morgan, Phillips, Sedgwick, Washington, Weld, and Yuma Counties, CO; to points in Adams, Allen, Blackford, De Kalb, Delaware, Elkhart, Grant, Huntington, Jay, Kosciusko, Lagrange, Noble, Randolph, Steuben, Wabash, Wells, Whitley, Boone, Clinton, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, Shelby, Tipton, Bartholomew, Brown, Clark, Dearborn, Decatur, Fayette, Floyd, Franklin, Harrison, Henry, Jackson, Jefferson, Jennings, Ohio, Ripley, Rush, Scott, Switzerland, Union, Washington, Wayne, Benton, Carroll, Cass, Fountain, Fulton, Howard, Jasper, Lake, La Porte, Marshall, Miami, Montgomery, Newton, Porter, Pulaski, St. Joseph, Starke, Tippecanoe, Warren, and White Counties, IN; Adair, Anderson, Boyle, Casey, Clinton, Cumberland, Fayette, Gerrard, Green, Jessamine, Lincoln, Madison, Marion, Mercer, Metcalfe, Monroe, Pulaski, Rockcastle, Russell, Taylor, Washington, Wayne, Woodford, Allen, Barren, Breckinridge, Bullitt, Butler, Christian, Edmonson, Grayson, Hardin, Hart, Henry, Jefferson, LaRue, Logan, Meade, Muhlenberg, Nelson, Ohio, Oldham, Shelby, Simpson, Spencer, Todd, Trimble, Warren, Bath, Boone, Bourbon, Boyd, Bracken, Campbell, Carroll, Carter, Clark, Elliott, Fleming, Franklin, Gallatin, Grant, Greenup, Harrison, Johnson, Kenton, Lawrence, Lewis, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owen, Pendleton, Powell, Robertson, Rowan, Scott, Wolfe, Bell, Breathitt, Clay, Estill, Floyd, Harlan, Jackson, Knott, Knox, Laurel, Lee, Leslie, Letcher, McCreary, Owsley, Perry, Pike, and Whitley Counties, KY; Bay, Clinton, Genesee, Gratiot, Hillsdale, Huron, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Midland, Monroe, Oakland, Saginaw, St. Clair, Sanilac, Shiawassee, Tuscola, Washtenaw, Wayne, Alcona, Alpena, Antrim, Arenac, Benzie, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Gladwin, Grand Travrse, Iosco, Isabella, Kalkaska, Lake, Leelanau, Manistee, Mason, Mecosta, Missaukee, Montmorency, Newaygo, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Wexford, Alger, Delta, Dickinson, Marquette, Menominee, Schoolcraft, Allegan, Barry, Berrien, Branch, Calhoun, Cass, Eaton, Ionia, Kalamazoo, Kent, Montcalm, Muskegon, Ottawa, St. Joseph, Van Buren, Chippewa, Luce, and Mackinac Counties, MI. The purpose of this filing is to eliminate the gateway of Chicago, IL.

No. MC 107012 (Sub-No. E249), filed July 7, 1977. Applicant: NORTH AMERCIAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Applicant's representative: David D. Bishop and Gary M. Crist, P.O. Box 988, Fort Wayne, IN 46801. *New Household Furnishings, crated* (1) From points in ID, to points in CT, DE, DC, IN, KY, MD, MA, NJ, NY, OH, PA, RI, and WV. (2) From points in Ada, Adams, Boise, Camas, Canyon, Custer, Elmore, Gem, Gooding, Lemhi, Owyhee, Payette, Twin Falls, Valley, Washington Counties, ID, to points in Bay, Clinton, Genesee, Gratiot, Hillsdale, Huron, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Midland, Monroe, Oakland, Saginaw, Saint Clair, Sanilac, Shiawassee, Tuscola, Washtenaw, Wayne, Alcona, Alpena, Antrim, Arenac, Benzie, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Gladwin, Grand Travrse, Iosco, Isabella, Kalkaska, Lake, Leelanau, Manistee, Mason, Mecosta, Missaukee, Montmorency, Newaygo, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Wexford, Allegan, Barry, Berrien, Branch, Calhoun, Cass, Eaton, Ionia, Kalamazoo,

Kent, Montcalm, Muskegon, Ottawa, Saint Joseph, Van Buren, Chippewa, Luce, Mackinac Counties, MI; Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Iron, Madison, MS, New Madrid, OR, Pemiscot, Perry, Reynolds, Ripley, St. Francois, Ste. Genevieve, Scott, Shannon, Stoddard, Wayne Counties, MO. (3) From points in Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, Shoshone Counties, ID, to points in Bay, Clinton, Genesee, Gratiot, Hillsdale, Huron, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Midland, Monroe, Oakland, Saginaw, Saint Clair, Sanilac, Shiawassee, Tuscola, Washtenaw, Wayne, Alcona, Alpena, Antrim, Arenac, Benzie, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Gladwin, Grand Travrse, Iosco, Isabella, Kalkaska, Lake, Leelanau, Manistee, Mason, Mecosta, Missaukee, Montmorency, Newaygo, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Wexford, Allegan, Barry, Berrien, Branch, Calhoun, Cass, Eaton, Ionia, Kalamazoo, Kent, Montcalm, Muskegon, Ottawa, Saint Joseph, Van Buren Counties, MI; Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Iron, Madison, MS, New Madrid, OR, Pemiscott, Perry, Reynolds, Ripley, St. Francois, Ste. Genevieve, Scott, Shannon, Stoddard, Wayne Counties, MO. (4) From points in Bannock, Bear Lake, Bingham, Blaine, Bonneville, Butte, Caribou, Cassia, Clark, Franklin, Fremont, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida, Power Counties, ID, to points in Bay, Clinton, Genesee, Gratiot, Hillsdale, Huron, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Midland, Monroe, Oakland, Saginaw, Saint Clair, Sanilac, Shiawassee, Tuscola, Washtenaw, Wayne, Alcona, Alpena, Antrim, Arenac, Benzie, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Gladwin, Grand Travrse, Iosco, Isabella, Kalkaska, Lake, Leelanau, Manistee, Mason, Mecosta, Missaukee, Montmorency, Newaygo, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Wexford, Allegan, Barry, Berrien, Branch, Calhoun, Cass, Eaton, Ionia, Kalamazoo, Kent, Montcalm, Muskegon, Ottawa, Saint Joseph, Van Buren, Chippewa, Luce, Mackinac Counties, MI. The purpose of this filing is to eliminate the gateway of Chicago, IL.

No. MC 107515 (Sub-No. E551), filed January 27, 1975. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Applicant's representative: R. M. Tettlebaum, Suite 375, 3379 Peachtree Rd. NE, Atlanta, GA 30326. (1) *Frozen foods and canned goods* from Mesa, AZ, and *fresh fruits and vegetables*, in vehicles equipped with mechanical refrigeration, when moving in the same vehicle and at the same time as commodities the transportation of which is subject to economic regulation under part II of the Interstate Commerce Act, from Litchfield Park, AZ, to NC, WV, VA, and to points in KY on or east of U.S. Hwy 127. The purpose of this filing is to eliminate the gateway of Atlanta, GA. (2) *Frozen foods and canned goods* from Mesa, AZ, and *fresh fruits and vegetables*, in vehicles equipped with mechanical refrigeration, when moving in the same vehicle and at the same time as commodities the transportation of which is subject to economic regulation under Part II of the Interstate Commerce Act, from Litchfield Park, AZ, to points in PA, NY, CT, RI, MA, NJ, DE, MD, and DC. The purpose of this filing is to eliminate the gateway of Atlanta, GA, and Louisville, KY. (3) *Frozen foods* from Mesa, AZ, to TN, IN, KY, MI, OH, that portion of MS on and north of a line beginning at the AL-MS State line on MS Hwy 19 to junction MS Hwy 35, then along MS Hwy 35 to junction U.S. Hwy 51, then along U.S. Hwy 51 to the MS-TN State line, and that portion of IL on and east of a line beginning at the IL-MO State line on IL Hwy 150 to junction IL Hwy 154, then along IL Hwy 154 to junction IL Hwy 183, then along IL Hwy 183 to junction IL Hwy 14, then along IL Hwy 14 to U.S. Hwy 460, then along U.S. Hwy 460 to junction IL Hwy 1, then along IL Hwy 1 to junction Interstate Hwy 74, then along Interstate Hwy 74 to the IL-IN State line. The purpose of this filing is to eliminate the gateway of Florence, AL.

No. MC 112304 (Sub-No. E2), filed July 18, 1976. Applicant: ACE DORAN HAULING & RIGGING, 1601 Blue Rock Street, Cincinnati, OH 45223. Applicant's representative: Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Refractories*, except commodities in bulk, from points in Audrain, Callaway, and Montgomery Counties, MO, to points in DE, MD, NJ, VA, DC, and those points in TN on and east of a line beginning at the TN-NC State line, and extending along U.S. Hwy 23, then along U.S. Hwy 23 to the TN-VA State line. The purpose of this filing is to eliminate the gateway of Fullerton (Greenup County), KY.

No. MC 114552 (Sub-No. E136), filed August 25, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, VA 22210. *Composition board*, except commodities in bulk, from those points in NC, on and east of a line beginning at the Pamlico River, then extending along U.S. Hwy 264 to junction U.S. Hwy 301, then along U.S. Hwy 301 to junction U.S. Hwy 701, then along U.S. Hwy 701 to junction NC Hwy 55, then along NC Hwy 55 to junction NC Hwy 11, then along NC Hwy 11 to junction U.S. Hwy 70, then along U.S. Hwy 70 to junction U.S. Hwy 17, then along U.S. Hwy 17 to the Neuse River, to points in IA, those points in TX, on and west of U.S. Hwy 75, those points in AR, on and west of a line beginning at the AR-MO State line, then extending along AR Hwy 5 to junction AR Hwy 9, then along AR Hwy 9 to junction AR Hwy 10, then along AR Hwy 10 to junction AR Hwy 28, then along AR Hwy 28 to junction U.S. Hwy 71, then along U.S. Hwy 71 to junction U.S. Hwy 270, then along U.S. Hwy 270 to the AR-OK State line, and those points in MO, on and west of a line beginning at the MO-AR State line, then extending along MO Hwy 5 to junction U.S. Hwy 66, then along U.S. Hwy 66 to junction U.S. Hwy 63, then along U.S. Hwy 63 to the MO-IA State line. The purpose of this filing is to eliminate the gateway of points in Wayne County, NC, Greenwood, SC, and Roaring River, NC.

No. MC 114552 (Sub-No. E137), filed August 25, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, VA 22210. *Composition board*, except commodities in bulk, from those points in VA, on and east of a line beginning at the VA-NC State line, then extending along U.S. Hwy 29 to junction U.S. Hwy 15, then along U.S. Hwy 15 to the MD-VA State line, to those points in OK, on and west of a line beginning at the OK-AR State line, then along Interstate Hwy 40 to junction the Muscogee Turnpike, then along Muscogee Turnpike to junction U.S. Hwy 64, then along U.S. Hwy 64 to junction U.S. Hwy 177, then along U.S. Hwy 177 to the OK-KS State line. The purpose of this filing is to eliminate the gateway of points in Wayne County, NC and Greenwood, SC.

No. MC 114552 (Sub-No. E138), filed August 25, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, VA 22210. *Composition board*, except commodities in bulk, from those points in VA, on and east of a line beginning at the VA-NC State line, then extending along U.S. Hwy 501 to junction U.S. Hwy 15, then along U.S. Hwy 15 to the VA-MD State line, to points in OK. The purpose of this filing is to eliminate the gateway of points in Wayne County, NC and Greenwood, SC.

No. MC 114552 (Sub-No. E139), filed August 25, 1975. Applicant: SENN

TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, VA 22210. *Composition board,* except commodities in bulk, from those points in VA, on and east of a line beginning at the VA-NC State line, then extending along U.S. Hwy 29 to junction U.S. Hwy 33, then along U.S. Hwy 33 to junction Interstate Hwy 81, then along Interstate Hwy 81 to the VA-WV State line, to points in TX. The purpose of this filing is to eliminate the gateway of points in Wayne County, NC to Greenwood, SC.

No. MC 114552 (Sub-No. E 140), filed August 25, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, VA 22210. *Composition board,* except commodities in bulk, from those points in VA, on and east of a line beginning at the VA-NC State line, then extending along U.S. Hwy 29 to junction U.S. Hwy 250, then along U.S. Hwy 250 to the VA-WV State line, to those points in TX, on and west of U.S. Hwy 75. The purpose of this filing is to eliminate the gateway of points in Wayne County, NC, and Greenwood, SC.

No. MC 114552 (Sub-No. E 141), filed August 25, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, VA 22210. *Composition board,* except commodities in bulk, from those points in VA, on and east of a line beginning at the VA-NC State line, then extending along U.S. Hwy 220 to junction U.S. Hwy 60, then along U.S. Hwy 60 to the VA-WV State line, to those points in TX, on and west of a line beginning at the Gulf of Mexico, then extending along U.S. Hwy 181 to junction Interstate Hwy 10, then along Interstate Hwy 10 to junction U.S. Hwy 290, then along U.S. Hwy 290 to junction TX Hwy 349, then along TX Hwy 349 to junction U.S. Hwy 67, then along U.S. Hwy 67 to junction U.S. Hwy 385, then along U.S. Hwy 385 to junction U.S. Hwy 180, then along U.S. Hwy 180 to the TX-NM State line. The purpose of this filing is to eliminate the gateway of points in Wayne County, NC, and Greenwood, SC.

No. MC 114552 (Sub-No. E 144), filed August 25, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, VA 22210. *Composition board,* except commodities in bulk, from those points in VA, on and east of a line beginning at the VA-NC State line, then extending along U.S. Hwy 29 to junction U.S. Hwy 460, then along U.S. Hwy 460 to junction U.S. Hwy 360, then along U.S. Hwy 360 to the Chesapeake Bay, to those points in NE, on and west of a line beginning at the SD-NE State line, then extending along NE Hwy 87 to junction U.S. Hwy 385, then along U.S. Hwy 385 to junction NE Hwy 19, then along NE Hwy 19 to the NE-CO State line. The purpose of this filing is to eliminate the gateway of points in Wayne County, NC, and points in Greenwood, SC.

No. MC 114552 (Sub-No. E 145), filed August 25, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, VA 22210. *Composition board,* except commodities in bulk, from those points in VA, on and east of a line beginning at the VA-NC State line, then extending along U.S. Hwy 501 to junction U.S. Hwy 15, then along U.S. Hwy 15 to junction U.S. Hwy 360, then along U.S. Hwy 360 to junction U.S. Hwy 460, then along U.S. Hwy 460 to junction Interstate Hwy 95, then along Interstate Hwy 95 to junction VA Hwy 5, then along VA Hwy 5 to junction U.S. Hwy 60, then along U.S. Hwy 60 to junction VA Hwy 238, then along VA Hwy 238 to the Chesapeake Bay, to those points in NE, on and west of a line beginning at the NE-KS State line, then extending along U.S. Hwy 77 to junction NE Hwy 41, then along NE Hwy 41 to junction U.S. Hwy 81, then along U.S. Hwy 81 to junction U.S. Hwy 34, then along U.S. Hwy 34 to junction U.S. Hwy 281, then along U.S. Hwy 281 to the NE-SD State line. The purpose of this filing is to eliminate the gateway of points in Wayne County, NC, and Greenwood, SC.

No. MC 114552 (Sub-No. E147), filed August 25, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Blvd., P.O. Box 1267, Arlington, VA 22210. *Composition board,* except commodities in bulk, from those points in VA, on and east of a line beginning at the VA-NC State line, then extending along U.S. Hwy 501, to junction U.S. Hwy 15, then along U.S. Hwy 15 to junction U.S. Hwy 360, then along U.S. Hwy 360 to the Chesapeake Bay, to those points in KS, on and west of U.S. Hwy 77. The purpose of this filing is to eliminate the gateway of points in Wayne County, NC, and Greenwood, SC.

No. MC 114552 (Sub-No. E150), filed August 25, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Blvd., P.O. Box 1267, Arlington, VA 22210. *Composition board,* except commodities in bulk, from points in NC, on and east of a line beginning at the Atlantic Ocean, then extending along U.S. Hwy 64 to junction U.S. Hwy 401, then along U.S. Hwy 401 to junction U.S. Hwy 301, then extending along U.S. Hwy 301 to the NC-SC State line, to those points in WI, to those points in IA, on and west of a line beginning at the IA-MO State line, then extending along U.S. Hwy 63 to junction U.S. Hwy 30, then along U.S. Hwy 30 to junction U.S. Hwy 69, then along U.S. Hwy 69 to the IA-MN State line, those points in MN, on and west of a line beginning at the MN-IA State line, then extending along U.S. Hwy 69 to junction U.S. Hwy 65, then along U.S. Hwy 65 to junction MN Hwy 60, then along MN Hwy 60 to the MN-WS State line, those points in MO, on and west of a line beginning at the MO-AR State line, then extending along MO Hwy 5 to junction U.S. Hwy 54, then along U.S. Hwy 54 to junction U.S. Hwy 63, then along U.S. Hwy 63 to the MO-IA State line. The purpose of this filing is to eliminate the gateway of points in Wayne County, NC, and Greenwood, SC.

No. MC 114552 (Sub-No. E151), filed August 25, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Blvd., P.O. Box 1267, Arlington, VA 22210. *Composition board,* except commodities in bulk, from DC, to points in TX, and those points in OK, on and west of a line beginning at the AR-OK State line, then extending along U.S. Hwy 270 to junction U.S. Hwy 177, then along U.S. Hwy 177 to the KS-OK State line. The purpose of this filing is to eliminate the gateway of points in Wayne County, NC, and Greenwood, SC.

No. MC 114552 (Sub-No. E161), filed September 4, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Blvd., P.O. Box 1267, Arlington, VA 22210. *Particleboard,* except commodities in bulk, from points in NC, on and east of a line beginning at the NC-SC State line, then extending along U.S. Hwy 220 to junction U.S. Hwy 311, then along U.S. Hwy 311 to junction U.S. Hwy 220, then along U.S. Hwy 220 to junction U.S. Hwy 1, then along U.S. Hwy 1 to the NC-SC State line, to points in NM. The purpose of this filing is to eliminate the gateway of points in Wayne County, NC, and Thomson, GA.

No. MC 114552 (Sub-No. E162), filed September 4, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Blvd., P.O. Box 1267, Arlington, VA 22210. *Particleboard*, except commodities in bulk, from points in NC, on and east of U.S. Hwy 21, to points in NM, on and west of a line beginning at the CO-NM State line, then extending along U.S. Hwy 285 to junction U.S. Hwy 85, then extending along U.S. Hwy 85 to junction U.S. Hwy 80, then along U.S. Hwy 80 to the NM-TX State line. The purpose of this filing is to eliminate the gateway of points in Wayne County, NC and Thomson, GA.

No. MC 114552 (Sub-No. E163), filed September 4, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Blvd., P.O. Box 1267, Arlington, VA 22210. *Particleboard*, except commodities in bulk, from points in SC, on and east of U.S. Hwy 52, to points in NM, on and west of a line beginning at the CO-NM State line, then extending along U.S. Hwy 285 to the junction of U.S. Hwy 54, then along U.S. Hwy 54 to the TX-NM State line. The purpose of this filing is to eliminate the gateway of points in Wayne County, NC, and Thomson, GA.

No. MC 114552 (Sub-No. E164), filed September 4, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Blvd., P.O. Box 1267, Arlington, VA 22210. *Particleboard*, except commodities in bulk, from points in VA, on and east of a line beginning at the VA-NC State line, then extending along U.S. Hwy 52 to junction Interstate Hwy 81, then along Interstate Hwy 81 to junction VA Hwy 100, then along VA Hwy 100 to junction U.S. Hwy 460, then along U.S. Hwy 460 to the VA-WV State line, to points in NM, on and west of a line beginning at the TX-NM State line, then extending along U.S. Hwy 54 to junction U.S. Hwy 380, then along U.S. Hwy 380 to junction Interstate Hwy 25, then along Interstate Hwy 25 to junction U.S. Hwy 60, then along U.S. Hwy 60 to junction NM Hwy 32, then along NM Hwy 32 to junction U.S. Hwy 666, then along U.S. Hwy 666 to the CO-NM State line. The purpose of this filing is to eliminate the gateway of points in Wayne County, NC, and Thomson, GA.

No. MC 114552 (Sub-No. E165), filed September 4, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Blvd., P.O. Box 1267, Arlington, VA 22210. *Particleboard*, except commodities in bulk, from points in VA, on and east of a line beginning at the VA-NC State line, then extending along U.S. Hwy 220 to junction VA Hwy 39, then along VA Hwy 39 to the VA-WV State line, to points in NM. The purpose of this filing is to eliminate the gateway of points in Wayne County, NC, and Thomson, GA.

No. MC 114552 (Sub-No. E166), filed September 4, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, VA 22210. *Composition board*, except commodities in bulk, from Camden, NJ, to points in OK, on and south of a line beginning at the OK-AR State line, then extending along OK Hwy 128 to junction U.S. Hwy 270, then along U.S. Hwy 270 to junction OK Hwy 1, then along OK Hwy 1 to junction OK Hwy 19, then along OK Hwy 19 to junction U.S. Hwy 81, then along U.S. Hwy 81 to junction U.S. Hwy 62, then along U.S. Hwy 62 to junction OK Hwy 9, then along OK Hwy 9 to junction U.S. Hwy 183, then along U.S. Hwy 183 to junction U.S. Hwy 66, then along U.S. Hwy 66 to the TX-OK State line. The purpose of this filing is to eliminate the gateway of Franklin, VA, points in Wayne County, NC, and Greenwood, SC.

No. MC 114552 (Sub-No. E168), filed September 4, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, VA 22210. *Such materials and supplies useful in the manufacture and distribution of roofing and roofing materials as are also construction materials, gypsum and gypsum products, composition board, and urethane and urethane products* (except commodities in bulk), from Port Clinton, OH, to points in SC, and on and east of a line beginning at the NC-SC State line, then extending along U.S. Hwy 76 to junction SC Hwy 41, then along SC Hwy 41 to junction U.S. Hwy 378, then along U.S. Hwy 378 to junction U.S. Hwy 52, then along U.S. Hwy 52 to junction SC Hwy 45, then along SC Hwy 45 to junction U.S. Hwy 15, then along U.S. Hwy 15 to junction U.S. Hwy 17, then along U.S. Hwy 17 to the SC-GA State line, and those points in FL, on and south of FL Hwy 50. The purpose of this filing is to eliminate the gateway of Lynchburg, VA, and Wayne County, NC.

No. MC 114552 (Sub-No. E169), filed September 4, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, VA 22210. *Such steel articles as are useful in the manufacture and distribution of roofing and roofing materials which are also roofing and roofing materials* except commodities in bulk), from the sites of the plants, warehouses, and storage facilities of Commercial Shearing & Stamping Co., and of Syro Steel Co. at or near Youngstown, OH, to points in SC, on and east of a line beginning at the NC-SC State line, then extending along U.S. Hwy 601 to junction U.S. Hwy 1, then along U.S. Hwy 1 to the junction U.S. Hwy 21, then along U.S. Hwy 21 to junction U.S. Hwy 301, then along U.S. Hwy 301 to the SC-GA State line, those points in GA, on and south of a line beginning at the SC-GA State line, then extending along U.S. Hwy 301 to junction GA Hwy 24, then along GA Hwy 24 to junction U.S. Hwy 221, then along U.S. Hwy 221 to junction U.S. Hwy 319, then along U.S. Hwy 319 to junction Interstate Hwy 16, then along Interstate Hwy 16 to junction GA Hwy 26, then along GA Hwy 26 to junction U.S. Hwy 19, then along U.S. Hwy 19 to junction U.S. Hwy 280, then along U.S. Hwy 280 to junction GA Hwy 27, then along GA Hwy 27 to the GA-AL State line, and those points in FL, on and east of U.S. Hwy 231. The purpose of this filing is to eliminate the gateway of Staunton, VA, and points in Wayne County, NC.

No. MC 114552 (Sub-No. E233), filed September 22, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, VA 22210. *Such composition boards as are also materials, supplies, and accessories used in the manufacture and installation of composition boards*, except commodities in bulk, from points in ME, VT, those points in MA on and east of a line beginning at the MA-NH State line, then extending along MA Hwy 13 to junction MA Hwy 12, then along MA Hwy 12 to the MA-CT State line; those points in HN, on and north of a line beginning at the MA-NH State line, then extending along NH Hwy 13 to junction NH Hwy 114, then along NH Hwy 114 to junction NH Hwy 103, then along NH Hwy 103 to the NH-VT State line, to those points in FL, on and east of a line beginning at the GA-FA State line, then extending along U.S. Hwy 319 to junction U.S. Hwy 98, then along U.S. Hwy 98 to the Ochlockonee Bay. The purpose of this filing is to eliminate the gateway of Roaring River, NC, and points in Wayne County, NC.

No. MC 114552 (Sub-No. E234), filed September 22, 1975. Applicant: SENN

TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, VA 22210. *Such composition boards as are also materials, supplies, and accessories used in the manufacture and installation of composition boards,* except commodities in bulk, from points in ME, to those points in GA, on and south of a line beginning at the GA-SC State line, then extending along U.S. Hwy 17 to junction U.S. Hwy 82, then along U.S. Hwy 82 to junction U.S. Hwy 84, then along U.S. Hwy 84 to junction U.S. Hwy 129, then along U.S. Hwy 129 to the GA-FL State line. The purpose of this filing is to eliminate the gateway of Roaring River, NC, and points in Wayne County, NC.

No. MC 114552 (Sub-No. E235), filed September 22, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, VA 22210. *Such composition boards as are also materials, supplies, and accessories used in the manufacture and installation of composition boards,* except commodities in bulk, from points in NY, to those points in FL on and south of FL Hwy 84. The purpose of this filing is to eliminate the gateway of Roaring River. NC, and points in Wayne County, NC.

No. MC 114552 (Sub-No. E236), filed September 22, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: Willian P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, VA 22210. *Such composition boards as are also materials, supplies, and accessories used in the manufacture and installation of composition boards,* except commodities in bulk, from those points in NY, on and north of a line beginning at the VT-NY State line, then extending along NY Hwy 7 to junction NY Hwy 8, then along NY Hwy 8 to junction NY Hwy 17, then along NY Hwy 17 to junction NY Hwy 79, then along NY Hwy 79 to the NY-PA State line, to those points in FL, on and south of FL Hwy 40. The purpose of this filing is to eliminate the gateway of Roaring River, NC, and points in Wayne County, NC.

No. MC 114552 (Sub-No. E237), filed September 22, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, VA 22210. *Such composition boards as are also materials, supplies, and accessories used in the manufacture and installation of composition boards,* from those points in NY, on and north of a line beginning at the NY-VT State line, then extending along NY Hwy 22 to junction U.S. Hwy 4, then along U.S. Hwy 4 to junction U.S. Hwy 9, then along U.S. Hwy 9 to junction NY Hwy 29, then along NY Hwy 29 to junction NY Hwy 28, then along NY Hwy 28 to junction NY Hwy 365, then along NY Hwy 365 to junction Interstate Hwy 90, then along Interstate Hwy 90 to junction Intestate Hwy 81, then along Interstate Hwy 81 to junction NY Hwy 13, then along NY Hwy 13 to junction Lake Ontario, to those points GA, on and south of a line beginning at the SC-GA State line, then extending along U.S. Hwy 17 to junction U.S. Hwy 82, then along U.S. Hwy 82 to junction U.S. Hwy 84, then along U.S. Hwy 84 to junction U.S. Hwy 129, then along U.S. Hwy 129 to the GA-FL State line. The purpose of this filing is to eliminate the gateway to Roaring River, NC, and points in Wayne County, NC.

No. MC 114552 (Sub-No. E238), filed September 22, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, VA 22210. *Such composition boards as are also materials, supplies, and accessories used in the manufacture and installation of composition boards,* except commodities, in bulk, from points in CT and RI, to those points in FL, on and south of a line beginning at the Atlantic Ocean, then extending along FL Hwy 60 to junction FL Hwy 630, then along FL Hwy 630 to junction Hwy 27, then along U.S. Hwy 27 to junction FL Hwy 64, then along FL Hwy 64 to the Gulf of Mexico. The purpose of this filing is to eliminate the gateway of Roaring River, NC, and points in Wayne County, NC.

No. MC 114552 (Sub-No. E239), filed September 22, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, VA 22210. *Such composition boards as are also materials, supplies, and accessories used in the manufacture and installation of composition boards,* except commodities, in bulk, from points in CT, on and east of a line beginning at the CT-MA State line, then extending along CT Hwy 198 to junction U.S. Hwy 6, then along U.S. Hwy 6 to junction CT Hwy 32, then along CT Hwy 32 to Hwy 32 to the Atlantic Ocean, and points in RI, to those points in FL, on and south of FL Hwy 40. The purpose of this filing is to eliminate the gateway of Roaring River, NC, and points in Wayne County, NC.

No. MC 114552 (Sub-No. E240), filed September 22, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, VA 22210. *Such composition boards as are also materials, supplies, and accessories used in the manufacture and installation of composition boards,* except commodities in bulk, from points in PA, on and north of a line beginning at the PA-OH State line, then extending along U.S. Hwy 422 to junction PA Hwy 85, then along PA Hwy 85 to junction U.S. Hwy 119, then along U.S. Hwy 119 to junction U.S. Hwy 322, then along U.S. Hwy 322 to junction U.S. Hwy 220 then along U.S. Hwy 220 to junction Interstate Hwy 80, then along Interstate Hwy 80 to junction PA Hwy 147, then along PA Hwy 147 to junction U.S. Hwy 220, then along U.S. Hwy 220 to the PA-NY State line, to points to FL, on and south of FL Hwy 40. The purpose of this filing is to eliminate the gateway of Roaring River, NC, and points in Wayne County, NC.

No. MC 114552 (Sub-No. E241), filed September 22, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, VA 22210. *Such composition boards as are also materials, supplies, and accessories used in the manufacture and installation of composition boards,* except commodities in bulk, from points in PA, on and north of a line beginning at the PA-WV State line, then extending along Interstate Hwy 70 to junction U.S. Hwy 119, then along U.S. Hwy 119 to junction U.S. Hwy 22, then along U.S. Hwy 22 to junction PA Hwy 147, then along PA Hwy 147 to junction U.S. Hwy 209, then along U.S. Hwy 209 to the PA-NY State line, to those points in FL, on and south of a line beginning at the Atlantic Ocean, then extending along FL Hwy 60 to junction FL Hwy 630, then along FL Hwy 630 to junction U.S. Hwy 27, then along U.S. Hwy 27 to junction FL Hwy 64, then along FL Hwy 64 to the Gulf of Mexico. The purpose of this filing is to eliminate the gateway of Roaring River, NC, and points in Wayne County, NC.

No. MC 114552 (Sub-No. E242), filed September 22, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, VA 22210. *Such composition boards as are also materials, supplies, and accessories used in the manufacture and installation of composition boards,* except commodities, in bulk, from points in PA, to those points in FL, on and south of FL Hwy 84. The purpose of this filing is to eliminate the gateway of Roaring

River, NC and points in Wayne County, PA.

No. MC 114552 (Sub-No. E243), filed September 22, 1975. Applicant: SENN TRUCKING CO., P.O. Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, VA 22210. *Such composition boards as are also materials, supplies, and accessories used in the manufacture and installation of composition boards,* except commodities, in bulk, from points in MD, on and west of U.S. Hwy 15, to points in FL, on and south of FL Hwy 84. The purpose of this filing is to eliminate the gateway of Roaring River, NC and points in Wayne County, PA.

No. MC 115554 (Sub-No. E2) (partial correction), filed June 4, 1974, published in the FEDERAL REGISTER issue of August 30, 1974, and republished, as corrected, this issue. Applicant: SCOTT'S TRANSPORTATION SERVICE, INC., P.O. Box 1136, Cedar Rapids, IA 52406. Applicant's representative: James R. Madler, 120 W. Madison, St., Chicago, IL 60606. *Refrigerators, refrigeration and electrical equipment, appliances, and parts, materials, and supplies* used in the manufacture, repair, and distribution of such commodities; (2) between points in WI on, west and north of a line beginning at the WI-IA State line, then northwest on U.S. Hwy 151 to Green Bay, WI on the one hand and, on the other, points in ME on and north of a line beginning at the ME-NH State line, then east on U.S. Hwy 202 to junction ME Hwy 111, then east on ME Hwy 111 to junction ME Hwy 208, then east on ME Hwy 208 to the Atlantic Ocean; (3) between points in WI on, north and west of a line beginning at the IA-WI State line, then west on U.S. Hwy 151 to junction WI Hwy 80, then north on WI Hwy 80 to junction WI Hwy 13, then north on WI Hwy 13 to Lake Superior on the one hand and, on the other, points in TN; (4) between points in WI on, north and west of a line beginning at the WI-IA State line, then northwest on U.S. Hwy 151 to junction WI Hwy 78, then north on WI Hwy 78 to junction U.S. Hwy 12, then north on U.S. Hwy 12 to junction U.S. Hwy 16, then along U.S. Hwy 16 to junction U.S. Hwy 51, then north on U.S. Hwy 51 to the MI-WI State line on the one hand and, on the other, points in SC; (5) between points in WI on, north and west of a line beginning at the WI-IA State line, then northwest on U.S. Hwy 151, to junction WI Hwy 80, then north on WI Hwy 80 to junction WI Hwy 13, then north on WI Hwy 13 to Lake Superior on the one hand and, on the other, points in VA on, south and east of a line beginning at the VA-TN State line, then northeast on Interstate Hwy 81 to junction Interstate Hwy 64, then east on Interstate Hwy 64 to junction U.S. Hwy 29, then northeast on U.S. Hwy 29 to the VA-DC State line; Washington, DC; points in MD on, south and east of a line beginning at the MD-DC State line, then east on U.S. Hwy 50 to junction MD Hwy 404, then east on MD Hwy 404 to the MD-DE State line; points in DE on and south of a line beginning at the DE-MD State line, then east on DE Hwy 404 to junction DE Hwy 18, then east on DE Hwy 18 to junction DE Hwy 14, then southeast on DE Hwy 14 to the Atlantic Ocean; (6) between points in WI on and west of a line beginning at the IA-WI State line, then north on U.S. Hwy 61 to junction WI Hwy 27, then north on WI Hwy 27 to junction U.S. Hwy 8, then north on U.S. Hwy 8 to junction WI Hwy 13, then north on WI Hwy 13 to Lake Superior on the one hand and, on the other, points in WV on and west of Interstate Hwy 77; (7) between points in WI on, west and north of a line beginning at the WI-IA State line, then northwest on U.S. Hwy 151, to junction WI Hwy 80, then north on WI Hwy 80 to junction WI Hwy 58, then north on WI Hwy 58 to junction WI Hwy 82, then north on WI Hwy 82 to junction WI Hwy 13, then north on WI Hwy 13 to Lake Superior on the one hand and, on the other, points in PA on, south and east of a line beginning at the PA-NY State line, then south on Interstate Hwy 81 to junction PA Turnpike Extension, then south on PA Turnpike Extension to junction PA Hwy 10, then south on PA Hwy 10 to PA-MD State line; (8) between points in WI on, north and west of a line beginning at the WI-IA State line, then northwest on U.S. Hwy 151 to junction WI Hwy 80, then north on WI Hwy 80 to junction WI Hwy 13, then north on WI Hwy 13 to Lake Superior on the one hand and, on the other, points in NJ; (9) between points in WI on, west and north of a line beginning at the WI-IA State line, then northwest on U.S. Hwy 151 to junction WI Hwy 80, then north on WI Hwy 80 to junction WI Hwy 13, then north on WI Hwy 13 to Lake Superior on the one hand and, on the other, points in NY on and east of Interstate Hwy 81; (10) between points in WI on, west and north of a line beginning at the IA-WI State line, then northwest on U.S. Hwy 151 to junction U.S. Hwy 51, then north on U.S. Hwy 51 to the WI-MI State line on the one hand and, on the other, points in CT on, east and north of a line beginning at the NY-CT State line, then east on Interstate Hwy 84 to junction U.S. Hwy 7, then south on U.S. Hwy 7 to the Atlantic Ocean at or near Norwalk, CT; VT, NH, MA and RI; (11) between points in WI on, north and west of a line beginning at the IA-WI State line, then northwest on U.S. Hwy 151 to junction WI Hwy 78, then north on WI Hwy 78 to junction U.S. Hwy 12, then north on U.S. Hwy 12 to junction U.S. Hwy 16, then east on U.S. Hwy 16 to junction U.S. Hwy 51, then north on U.S. Hwy 51 to the WI-MI State line on the one hand and, on the other, points in NC on, south and east of a line beginning at the NC-VA State line, then south on NC Hwy 18 to junction NC Hwy 16, then south on NC Hwy 16 to junction U.S. Hwy 321, then south on U.S. Hwy 321 to the NC-SC State line. The purpose of this filing is to eliminate the gateway of Amana, IA.

NOTE.—The purpose of this partial correction is to state the sections (2) through (11) which were omitted in the previous publication. The remainder of this letter-notice remains as previously published.

No. MC 117574 (Sub-No. E73), filed July 16, 1975. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA, 17013. Applicant's representative: E. S. Moore, Jr. (same as above). (1) *Agricultural implements, agricultural machinery, tractors (other than truck tractors), incidental machinery, attachments and parts* when moving with such implements, machinery or tractors (except commodities requiring special equipment), (2) (a) *sewage, water, and refuse treatment systems,* the transportation of which because of size or weight requires the use of special equipment, which is also industrial or processing machinery and (b) *tools, materials, and supplies* used in connection with the erection and construction of sewage, water, and refuse systems (except commodities in bulk), which are also attachments, accessories and parts of industrial or processing machinery (A) between points in Fairfax, Fauquier, Loudoun, Prince William, and Stafford Counties, VA, on the one hand, and, on the other, points in AZ, AR, CA, CO, ID, IL, IN, IA, KS, LA, MI, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI and WY and points in AL on, south and west of a line commencing at Mobile, AL, and proceeding along U.S. Hwy 45 to its junction with U.S. Hwy 57, then along U.S. Hwy 57, to AL-MS State line; points in FL, on and south of a line commencing at the Atlantic Ocean at West Palm Beach, and proceeding along U.S. Hwy 44 to its junction with U.S. Hwy 80, then along U.S. Hwy 80 to its termination at the Gulf of Mexico; points in KY, on north and west of a line commencing at the TN-KY State line and proceeding along KY Hwy 58 to its junction with U.S. Hwy 641, then along U.S. Hwy 641 to its junction with U.S. Hwy 62, then along U.S. Hwy 62 to its junction with KY Hwy 19, then along KY Hwy 19 to the KY-OH State line; points in MS, on and west of a line commencing at the AL-MS State line and proceeding along U.S. Hwy 45 to

its junction with MS Hwy 19, then along MS Hwy 19 to its junction with U.S. Hwy 51, then along U.S. Hwy 51 to its junction with Interstate Hwy 55, then along Interstate Hwy 55 to the TN-MS State line; points in OH, on and north of a line commencing at the OH-KY State line and proceeding along U.S. Hwy 62 to its junction with U.S. Hwy 22, then along U.S. Hwy 22 to the OH-PA State line; points in TN, on and west of a line commencing at the TN-MS State line and proceeding along U.S. Hwy 51 to the KY-TN State line; points in WV, on and north of a line commencing at the OH-WV State line and proceeding along U.S. Hwy 22 in an easterly direction to the WV-PA State line.

(B) Between points in Caroline, and King George Counties, VA, on the one hand, and, on the other, points in AZ, AR, CA, CO, ID, IL, IN, IA, KS, MI, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI and WY and points in KY, on and north of a line commencing at the KY-TN State line and proceeding along KY Hwy 139 to its junction with KY Hwy 164, then along KY Hwy 164 to its junction with U.S. Hwy 41, then along U.S. Hwy 41 to its junction with U.S. Hwy 62, then along U.S. Hwy 62 to its junction with KY Hwy 19, then along KY Hwy 19 to the OH-KY State line; points in LA, on and west of a line commencing at the Gulf of Mexico and proceeding along LA Hwy 23 to its junction with Interstate Hwy 10, then along Interstate Hwy 10 to its junction with U.S. Hwy 51, then along U.S. Hwy 51 to the LA-MS State line; points in MS, on and west of Interstate Hwy 55; points in OH, on and west of a line commencing at the KY-OH State line and proceeding along OH Hwy 41 to its junction with U.S. Hwy 50, then along U.S. Hwy 50 to its junction with U.S. Hwy 23, then along U.S. Hwy 23 to its junction with U.S. Hwy 22, then along U.S. Hwy 22 to its junction with Interstate Hwy 70, then along Interstate Hwy 70 to the OH-WV State line; points in TN, on and west of a line commencing at the MS-TN State line and proceeding along Interstate Hwy 55 to its junction with U.S. Hwy 79, then along U.S. Hwy 79 to its junction with TN Hwy 120, then along TN Hwy 120 to the TN-KY State line; points in WV, on and north of Interstate Hwy 70.

(C) Between points in Albemarle, Buckingham, Cumberland and Fluvanna Conties, VA, on the one hand, and, on the other, points in AZ, CA, CO, ID, IA, KS, MI, MN, MT, NE, NV, NM, ND, OR, SD, UT, WA, WI and WY, and points in AR on and west of a line commencing at the OK-AR State line and proceeding along AR Hwy 59 to junction with U.S. Hwy 62, then along U.S. Hwy 62 to junction with AR Hwy 74, then along AR Hwy 74 to junction with AR Hwy 21, then along AR Hwy 21 to the AR-MO State line; points in IL, on and north of a line commencing at the MO-IL State line and proceeding along U.S. Hwy 40 to junction with IL Hwy 33, then along IL Hwy 33 to junction with IL Hwy 1, then along IL Hwy 1 to junction with IL Hwy 154, then along IL Hwy 154 to the IL-IN State line; points in IN on and west of a line commencing at the IL-IN State line and proceeding along IN Hwy 154 to junction with IN Hwy 54, then along IN Hwy 54 to junction with IN Hwy 59, then along IN Hwy 59 to junction with Interstate Hwy 70, then along Interstate Hwy 70 to junction with IN Hwy 67, then along IN Hwy 67 to the IN-OH State line; points in MO, on and west of a line commencing at the AR-MO State line and proceeding along MO Hwy 86 to junction with U.S. Hwy 65, then along U.S. Hwy 65 to junction with U.S. Hwy 160, then along U.S. Hwy 160 to junction with MO Hwy 181, then along MO Hwy 181 to junction with MO Hwy 76, then along MO Hwy 76 to junction with MO Hwy 137, then along MO Hwy 137 to junction with MO Hwy 32, then along MO Hwy 32 to junction with MO Hwy 21, then along MO Hwy 21 to the MO-IL State line; points in OH, on and north of a line commencing at the IN-OH State line and proceeding along OH Hwy 29 to junction with U.S. Hwy 33, then along U.S. Hwy 33 to junction with OH Hwy 47, then along OH Hwy 47 to junction with OH Hwy 229, then along OH Hwy 229 to junction with U.S. Hwy 36, then along U.S. Hwy 36 to junction with OH Hwy 151, then along OH Hwy 151 to the OH-WV State line; points in OK, on and west of a line commencing at the TX-OK State line and proceeding along U.S. Hwy 81 to junction with OK Hwy 7, then along OK Hwy 7 to junction with OK Hwy 1, then along OK Hwy 1 to junction with U.S. Hwy 69, then along U.S. Hwy 69 to junction with U.S. Hwy 266, then along U.S. Hwy 266 to junction with OK Hwy 82, then along OK Hwy 82 to junction with OK Hwy 100, then along OK Hwy 100 to the OK-AR State line; points in TX, on and west of a line commencing at Port Lavaca and proceeding along U.S. Hwy 87 to junction with U.S. Hwy 281, then along U.S. Hwy 281 to junction with TX Hwy 59, then along TX Hwy 59 to junction with U.S. Hwy 81, then along U.S. Hwy 81 to the TX-OK State line; points in WV, on and north of WV Hwy 27.

(D) Between points in Norfolk and Virginia Beach, VA, on the one hand, and, on the other, points in AZ, CA, CO, ID, IL, IN, IA, KS, MI, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, and WY and points in AR on and north of a line commencing at the AR-LA State line and proceeding along AR Hwy 29 to its junction with U.S. Hwy 67, then along U.S. Hwy 67 to its junction with Interstate Hwy 40, then along Interstate Hwy 40 to its junction with AR Hwy 1, then along AR Hwy 1 to the AR-MO State line; points in KY on and north of a line commencing at the KY-TN State line and proceeding along the Purchase Parkway to its junction with Interstate Hwy 65, then along Interstate Hwy 65 to its junction with U.S. Hwy 60, then along U.S. Hwy 60 to its junction with KY Hwy 43, then along KY Hwy 43 to its junction with KY Hwy 22, then along KY Hwy 22 to its junction with KY Hwy 19, then along KY Hwy 19 to the KY-OH State line; points in MD, on and west of U.S. Hwy 220; points in OH, on, north and west of a line commencing at Ripley, OH and proceeding along U.S. Hwy 68 to its junction with U.S. Hwy 50, then along U.S. Hwy 50 to its junction with OH Hwy 41, then along OH Hwy 41 to its junction with OH Hwy 124, then along OH Hwy 124 to the junction with OH Hwy 7, then along OH Hwy 7 to its junction with U.S. Hwy 50, then along U.S. Hwy 50 to the OH-WV State line; points in WV, on and north of a line commencing at the OH-WV State line and proceeding along U.S. Hwy 50 to its junction with U.S. Hwy 220, then along U.S. Hwy 220 to the MD-WV State line.

(E) Between points in Lunenburg and Mecklenburg Counties, VA, on the one hand, and, on the other, points in AZ, CA, CO, ID, IA, KS, MI, MN, MT, NE, NV, NM, ND, OR, SD, UT, WA, WI, and WY, and points in AR on and north of a line commencing at the AR-OK State line and proceeding along U.S. Hwy 62 to State Hwy 74, then along State Hwy 74 to its junction with State Hwy 68, then along State Hwy 68 to its junction with U.S. State Hwy 65, then along U.S. State Hwy 65, to the AR-MO State line; points in IL on and north of a line commencing at IL-MO State line and proceeding along State Hwy 158, then along State Hwy 158 to its junction with State Hwy 161, then along State Hwy 161 to its junction with Interstate Hwy 57, then along Interstate Hwy 157 to its junction with U.S. Hwy 50, then along U.S. Hwy 50 to the IL-IN State line; points in IN on and north of a line commencing at IN-IL State line and proceeding along Hwy 67 to its junction with State Hwy 54, then along State Hwy 54 to its junction with State Hwy 46, then along State Hwy 46 to the IN-OH State line; points in MO, on and north of a line commencing at MO-AR State line and proceeding along U.S. Hwy 65 to its junction with State Hwy 76, then along State Hwy 76 to its junction with State Hwy 5, then along State Hwy 5 to its junction with U.S. Hwy 60, then along U.S. Hwy 60 to its junction with U.S. Hwy 63, then along U.S.

Hwy 63 to its junction with Interstate Hwy 44, then along Interstate Hwy 44 to its junction with Interstate Hwy 244, then along Interstate Hwy 244 to MO-IL State line; points in OH, on and north of a line commencing at OH-IN State line and proceeding along State Hwy 128, then along State Hwy 128 to State Hwy 4, then along State Hwy 4 to its junction with Interstate Hwy 70, then along Interstate Hwy 70 to the OH-WV State line; points in OK on and west of a line commencing at OK-TX State line and proceeding along U.S. Hwy 81, then along U.S. Hwy 81 to its junction with State Hwy 7, then along State Hwy 7 to its junction with U.S. Hwy 1, then along U.S. Hwy 1 to its junction with U.S. Hwy 75, then along U.S. Hwy 75 to its junction with Interstate Hwy 40, then along Interstate Hwy 40 to its junction with U.S. Hwy 59, then along U.S. Hwy 59 to its junction with U.S. Hwy 62, then along U.S. Hwy 62 to the OK-AR State line; points in TX, on and west of a line commencing at Brownsville, TX, on the Gulf of Mexico and proceeding along U.S. Hwy 77, then along U.S. Hwy 77 to its junction with U.S. Hwy 181, then along U.S. Hwy 181 to its junction with U.S. Hwy 87, than along U.S. Hwy 87 to its junction with U.S. Hwy 283, then along U.S. Hwy 283 to its junction with State Hwy 79, then along State Hwy 79 to the TX-OK State line; points in WV on and north of a line commencing at WV-OH State line and proceeding along Interstate Hwy 70 to the WV-PA State line.

(F) Between points in Bland and Tazewell Counties, VA, on the one hand, and, on the other, points in MT, ID, OR, and WA, and points in CA, on and west of a line commencing at El Centro and proceeding along CA Hwy 111 to junction with Interstate Hwy 10, then along Interstate Hwy 10 to junction with CA Hwy 18, then along CA Hwy 18 to junction with Interstate Hwy 15, then along Interstate Hwy 15 to the CA-NV State line; points in NV, on and west of a line commencing at the CA-NV State line along Interstate Hwy 15 to junction with U.S. Hwy 93, then along U.S. Hwy 93 to junction with NV Hwy 25, then along NV Hwy 25 to the NV-UT State line; points in ND, on and west of a line commencing at the ND-SD State line and proceeding along ND Hwy 49 to junction with ND Hwy 200, then along ND Hwy 200 to junction with U.S. Highway 83, then along U.S. Hwy 83 to junction with ND Hwy 256, then along ND Hwy 256 to the ND-Canadian border; points in SD, on and west of a line commencing at the WY-SD State line and proceeding along Interstate Hwy 90 to junction with U.S. Hwy 85, then along U.S. Hwy 85 to junction with SD Hwy 20, then along SD Hwy 20 to junction with SD Hwy 73, then along SD Hwy 73 to junction with U.S. Hwy 12, then along U.S. Hwy 12 to junction with SD Hwy 49, then along SD Hwy 49 to the SD-ND State line; points in UT, on and west of a line commencing at the NV-UT State line and proceeding along UT Hwy 56 to junction with Interstate Hwy 15, then along Interstate Hwy 15 to junction with UT Hwy 4, then along UT Hwy 4 to junction with U.S. Hwy 89, then along U.S. Hwy 89 to junction with Interstate Hwy 70, then along Interstate Hwy 70 to junction with UT Hwy 10, then along UT Hwy 10 to junction with U.S. Hwy 6, then along U.S. Hwy 6 to junction with UT Hwy 33, then along UT Hwy 33 to junction with U.S. Hwy 40, then along U.S. Hwy 40 to junction with Interstate Hwy 80, then along Interstate Hwy 80 to the UT-WY State line; points in WY, on and west of a line commencing at the UT-WY State line and proceeding along Interstate Hwy 80, then along Interstate Hwy 80 to junction with U.S. Hwy 287, then along U.S. Hwy 287 to junction with WY Hwy 220, then along WY Hwy 220 to junction with U.S. Hwy 20, then along U.S. Hwy 20 to junction with WY Hwy 59, then along WY Hwy 59 to junction with Interstate Hwy 90, then along Interstate Hwy 90 to the WY-SD State line.

(G) Between points in Pittsylvania County, VA, on the one hand, and, on the other, points in AZ, CA, CO, ID, MI, MN, MT, NE, NV, ND, OR, SD, UT, WA, WI, and WY, points in IL on and north of a line commencing at the IA-IL State line and proceeding along IL Hwy 92 to its junction with U.S. Hwy 51, then along U.S. Hwy 51 to its junction with U.S. Hwy 52, then along U.S. Hwy 52 to its junction with Interstate Hwy 80, then along Interstate Hwy 80 to its junction with Interstate Hwy 57, then along Interstate Hwy 51 to Chicago, IL; points in IN on and north of a line commencing at the IL-IN State line and proceeding along U.S. Hwy 20 to its junction with Interstate Hwy 80, then along Interstate Hwy 80 to the IN-OH State line; points in IA on and west of a line commencing at the IA-MO State line and proceeding along U.S. Hwy 63 to its junction with IA Hwy 92, then along IA Hwy 92, to the IA-IL State line; points in KS on and west of a line commencing at the OK-KS State line and proceeding along Interstate Hwy 35 to its junction with KS Hwy 4, then along KS Hwy 4 to its junction with U.S. Hwy 59, then along U.S. Hwy 59 to the KS-MO State line; points in MO on and west of a line commencing at the KS-MO State line and proceeding along U.S. Hwy 36 to its junction with U.S. Hwy 69, then along U.S. Hwy 69 to its junction with U.S. Hwy 136, then along U.S. Hwy 136 to its junction with U.S. Hwy 63, then along U.S. Hwy 63 to the IA-MO State line; points in NM on and west of a line commencing at the TX-NM State line and proceeding along U.S. Hwy 54 to its junction with U.S. Hwy 82, then along U.S. Hwy 82 to the NM-TX State line; points in OH south and west of a line commencing at the IN-OH State line and proceeding along U.S. Hwy 6 to its junction with U.S. Hwy 20, then along U.S. Hwy 20 to its junction with U.S. Hwy 250, then along U.S. Hwy 250 to its junction with OH Hwy 151, then along OH Hwy 151 to the OH-WV State line; points in OK on and west of a line commencing at the TX-OK State line and proceeding along U.S. Hwy 60 to its junction with U.S. Hwy 281, then along U.S. Hwy 28, to its junction with U.S. Hwy 60, then along U.S. Hwy 60 to its junction with Interstate Hwy 35, then along Interstate Hwy 35 to the OK-KS, State line; points in TX south and east of a line commencing at the TX-NM border and proceeding along U.S. Hwy 54 to the TX State line, then along the TX State line to Interstate Hwy 40, then along Interstate Hwy 40 to its junction with U.S. Hwy 60, then along U.S. Hwy 60 to the TX-OK State line; points in WV south and east of WV Hwy 27. The purpose of this filing is to eliminate the gateway of Carlisle, Shadygrove, and Waynesboro.

No. MC 117574 (Sub-No. E74), filed July 16, 1975. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA 17013. Applicant's representative: E. S. Moore, Jr. (same as above). (1) *Agricultural implements, agricultural machinery, tractors (other than truck tractors), incidental machinery, attachments and parts* when moving with such implements, machinery, or tractors, (except commodities requiring special equipment), (2) (a) *sewage, water, and refuse treatment systems,* the transportation of which because of size or weight requires the use of special equipment, which is also industrial or processing machinery, and (2)(b) *tools, materials, and supplies* used in connection with the erection and construction of sewage, water, and refuse systems (except commodities in bulk), which are also attachments, accessories, and parts of industrial or processing machinery.

(A) Between points in Amelia, Dinwiddie, and Nottoway Counties, VA, on the one hand, and, on the other, points in AZ, CA, CO, ID, IA, KS, MI, MN, MT, NE, NV, NM, ND, OR, SD, UT, WA, WI, and WY, and points in IL on and north of a line commencing at the IL-IN State line and proceeding along IN Hwy 67 to its junction with IN Hwy 54, then along IN Hwy 54 to its junction with IN Hwy 45, then along IN Hwy 45 to its junction with IN Hwy 37, then along IN Hwy 37 to its junction with Interstate Hwy 465, then along Interstate Hwy 465 to its

junction with U.S. Hwy 36, then along U.S. Hwy 36 to the OH-IN State line; points in MO on the north of a line commencing at the OK-MO State line and proceeding along U.S. Hwy 60 to its junction with U.S. Hwy 63, then along U.S. Hwy 63 to its junction with Interstate Hwy 44, then along Interstate Hwy 44 to the MO-IL State line; points in OH on and north of a line commencing at the IN-OH State line and proceeding along U.S. Hwy 36 to its junction with OH Hwy 29, then along OH Hwy 29 to its junction with Interstate Hwy 70, then along Interstate Hwy 70 to the WV-OH State line; points in OK on and west of U.S. Hwy 69; points in TX on and west of a line commencing at the Gulf of Mexico at Corpus Christi and proceeding along U.S. Hwy 181 to its junction with U.S. Hwy 281, then along U.S. Hwy 281 to its junction with Interstate Hwy 20, then along Interstate Hwy 20 to its junction with TX Farm Hwy 51, then along TX Farm Hwy 51 to its junction with U.S. Hwy 82, then along U.S. Hwy 82 to its junction with U.S. Hwy 69, then along U.S. Hwy 69 to the TX-OK State line; and points in WV on and north of Interstate Hwy 70.

(B) Between points in Allegany, Craig, Roanoke, and Botetourt Counties, VA, on the one hand, and, on the other, points in AZ, CA, CO, ID, MN, MT, NE, NV, ND, OR, SD, TN, UT, WA, and WY, and points in IA north of a line commencing at the IA-MO State line and proceeding along U.S. Hwy 169, then along U.S. Hwy 169 to its junction with U.S. Hwy 2, then along U.S. Hwy 2 to its junction with U.S. Hwy 65, then along U.S. Hwy 65 to its junction with U.S. Hwy 330, then along U.S. Hwy 330 to its junction with U.S. Hwy 30, then along U.S. Hwy 30 to its junction with U.S. Hwy 63, then along U.S. Hwy 63 to its junction with U.S. Hwy 20, then along U.S. Hwy 20 to its junction with U.S. Hwy 150, then along U.S. Hwy 150 to its junction with U.S. Hwy 18, then along U.S. Hwy 18 to its junction with State Hwy 51, then along State Hwy 51 to its junction with State Hwy 9, then along State Hwy 9 to the WI-IA State line; points in KS west and north of a line commencing at the KS-OK State line and proceeding along U.S. Hwy 281, then along U.S. Hwy 281 to its junction with U.S. Hwy 61, then along U.S. Hwy 61 to its junction with Interstate Hwy 35, then along Interstate Hwy 35 to its junction with Interstate Hwy 70, then along Interstate Hwy 70 to its junction with U.S. Hwy 75, then along U.S. Hwy 75 to its junction with State Hwy 20, then along State Hwy 20 to its junction with State Hwy 120 then along State Hwy 120 to the KS-MO State line; points in MI south and west of a line commencing at Lake Michigan and proceeding along State Hwy 115, then along State Hwy 115 to its junction with U.S. Hwy 10, then along U.S. Hwy 10 to its junction with State Hwy 15, then along State Hwy 15 to its junction with State Hwy 21, then along State Hwy 21 to its termination at Lake Huron; points in MO west of a line commencing at the MO-KS State line and proceeding along Interstate Hwy 29, then along Interstate Hwy 29 to its junction with U.S. Hwy 169, then along U.S. Hwy 169 to the IA-MO State line; points in NM west and north of a line commencing at the NM-TX State line and proceeding along U.S. Hwy 54, then along U.S. Hwy 54 in a northeasterly direction to the TX-NM State line; points in OK west of a line commencing at the OK-TX State line and proceeding along U.S. Hwy 60, then along U.S. Hwy 60 to its junction with U.S. Hwy 281, then along U.S. Hwy 281 to the KS-OK State line; points in TX west and north of a line commencing at the TX-NM State line and proceeding along U.S. Hwy 54, to the NM State line and points west and north of a line commencing at the TX-NM State line and proceeding along U.S. Hwy 60 to the OK-TX State line; points in WI north and west of a line commencing at the WI-IA State line and proceeding along State Hwy 82, then along State Hwy 82 to its junction with State Hwy 80, then along State Hwy 80 to its junction with State Hwy 34, then along State Hwy 34 to its junction with State 66, then along State Hwy 66 to its junction with U.S. Hwy 22, then along U.S. Hwy 22 to its junction with U.S. Hwy 41, then along U.S. Hwy 41 to its termination at Lake Michigan.

(C) Between points in Southampton, Sussex, Surry, and Prince George Counties, VA, on the one hand, and, on the other, points in AZ, CA, CO, ID, IA, KS, MI, MN, MT, NE, NV, NM, ND, OK, OR, SD, UT, WA, WI, and WY, and points in AR west and north of a line commencing at the AR-TX State line and proceeding along State Hwy 41 to its junction with U.S. Hwy 71, then along U.S. Hwy 41 to its junction with State Hwy 45, then along State Hwy 45 to its junction with U.S. Hwy 62, then along U.S. Hwy 62 to its junction with U.S. Hwy 65, then to the AR-MO State line; points in IL north of a line commencing at the IL-MO State line and proceeding along U.S. Hwy 146 to Interstate Hwy 57, then along Interstate Hwy 57 to its junction with U.S. Hwy 13, then along U.S. Hwy 13 to its junction with U.S. Hwy 45, then along U.S. Hwy 45 to its junction with U.S. Hwy 1, then along U.S. Hwy 1 to its junction with U.S. Hwy 460, then along U.S. Hwy 460 to the IL-IN State line; points in IN north of a line commencing at the IN-IL State line and proceeding along U.S. Hwy 460, then along U.S. Hwy 460 to its junction with State Hwy 57, then along State Hwy 57 to its junction with U.S. Hwy 50, then along U.S. Hwy 50 to the OH-IN State line; points in MO west and north of a line commencing at the MO-AR State line and proceeding along U.S. Hwy 65, then along U.S. Hwy 65 to its junction with State Hwy 86, then along State Hwy 86 to its junction with U.S. Hwy 160, then along U.S. Hwy 160 to its junction with State Hwy 17, then along State Hwy 17 to its junction with U.S. Hwy 60, then along U.S. Hwy 60 to its junction with State Hwy 49, then along State Hwy 49 to its junction with U.S. Hwy 25, then along U.S. Hwy 25 to its junction with U.S. Hwy 60, then along U.S. Hwy 60 to its junction with Interstate Hwy 57, then to the IL-MO State line; points in OH north of a line commencing at the OH-IN State line and proceeding along U.S. Hwy 50 to its junction with Alternate U.S. Hwy 50, then to the OH-WV State line; points in TX west of a line commencing at the Gulf of Mexico at Corpus Christi and proceeding along U.S. Hwy 181, to its junction with U.S. Hwy 77, then along U.S. Hwy 77 to its junction with Interstate Hwy 35, then along Interstate Hwy 35 to its junction with Interstate Hwy 30, then along Interstate Hwy 30 to its junction with State Hwy 50, then along State Hwy 50 to its junction with State Hwy 24, then along State Hwy 24 to its junction with U.S. Hwy 82, then along U.S. Hwy 82 to its junction with State Hwy 8, then along State Hwy 8 to the TX-AR State line; points in WV north of a line commencing at the OH-WV State line and proceeding with U.S. Hwy 50 to its junction with U.S. Hwy 19, then along U.S. Hwy 19 to its junction with State Hwy 73, then along State Hwy 73 to its junction with State Hwy 26, then along State Hwy 26 to the WV-PA State line.

(D) Between points in Chesterfield, Goochland, Hanover, Henrico, Louisa, and Powhatan Counties, VA, on the one hand, and, on the other, points in AZ, CA, CO, ID, IL, IN, IA, KS, MI, MN, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, and WY, and points in AR north and west of a line commencing at the AR-LA State line and proceeding along U.S. Hwy 71, then to its junction with Interstate Hwy 30, then along Interstate Hwy 30 to its junction with U.S. Hwy 67, then along U.S. Hwy 67 to its junction with State Hwy 25, then along State Hwy 25 to the MO-AR State line; points in KY north of a line commencing at the KY-IL State line and proceeding along U.S. Hwy 60 to its junction with U.S. Hwy 42, then along U.S. Hwy 42 to the OH-KY State line; points in LA west of a line commencing at the LA-Gulf of Mexico Border line near Lake Charles and proceeding along State

Hwy 27, then along State Hwy 27 to its junction with U.S. Hwy 171, then along U.S. Hwy 171 to its junction with U.S. Hwy 71, then along U.S. Hwy 71 to the AR-LA State line; points in MO west and north of a line commencing at the AR-MO State line and proceeding along U.S. Hwy 25, then along U.S. Hwy 25 to its junction with U.S. Hwy 60, then along U.S. Hwy 60 to the MO-KY State line; points in OH west and north of a line commencing at the OH-KY State line and proceeding along U.S. Hwy 42, then to its junction with U.S. Hwy 50, then along U.S. Hwy 50 to its junction with State Hwy 159, then along State Hwy 159 to its junction with U.S. Hwy 22, then along U.S. Hwy 22 to its junction with Interstate Hwy 70, then along Interstate Hwy 70 to the OH-WV State line; points in WV north of a line commencing at the OH line and proceeding along Interstate Hwy 70 then to the PA-WV State line.

(E) Between points in Bath and Highland Counties, VA, on the one hand, and, on the other, points in AZ, CA, CO, DE, ID, KS, MI, MN, MT, NE, NV, NM, ND, OR, SD, UT, WA, WI, and WY, and points in IL on and north of a line commencing at the IA-IL State line and proceeding along U.S. Hwy 34 to its junction with U.S. Hwy 6, then along U.S. Hwy 6 to the IL-IN State line; points in IN on and north of a line commencing at the IL-IN State line and proceeding along U.S. Hwy 6 to its junction with U.S. Hwy 41, then along U.S. Hwy 41 to its junction with U.S. Hwy 12, then along U.S. Hwy 12 to its junction with U.S. Hwy 20, then along U.S. Hwy 20 to the IN-OH State line; points in IA on and west of a line commencing at the MO-IA State line and proceeding along U.S. Hwy 61 to its junction with U.S. Hwy 218, then along U.S. Hwy 218 in a northerly direction to its junction with U.S. Hwy 34, then along U.S. Hwy 34 to the IA-IL State line; points in MD on and north of a line commencing at the PA-MD State line and proceeding along Interstate Hwy 81 to its junction with Interstate Hwy 70N, then along Interstate Hwy 70N to its junction with MD Hwy 2, then along MD Hwy 2 to its junction with U.S. Hwy 50, then along U.S. Hwy 50 to the Chesapeake Bay; points in MO on and west of a line commencing at the OK-MO State line and proceeding along Interstate Hwy 44 to its junction with MO Hwy 39, then along MO Hwy 39 to its junction with U.S. Hwy 54, then along U.S. Hwy 54 to its junction with MO Hwy 13, then along MO Hwy 13 to its junction with MO Hwy 20, then along MO Hwy 20 to its junction with MO Hwy 23, then along MO Hwy 23 to its junction with U.S. Hwy 24, then along U.S. Hwy 24 to its junction with MO Hwy 11, then along MO Hwy 11 to its junction with MO Hwy 15, then along MO Hwy 15 to its junction with U.S. Hwy 136, then along U.S. Hwy 136 to its junction with U.S. Hwy 61, then along U.S. Hwy 61 to the MO-IA State line, points in OH on and north of a line commencing at the IN-OH State line and proceeding along U.S. Hwy 20 ot its junction with OH Hwy 109, then along OH Hwy 109 to its junction with U.S. Hwy 6, then along U.S. Hwy 6 to its junction with OH Hwy 199, then along OH Hwy 199 to its junction with U.S. Hwy 224, then along U.S. Hwy 224 to the OH-PA State line; points in OK on and west of a line commencing at the TX-OK State line and proceeding along U.S. Hwy 183 to its junction with U.S. Hwy 70, then along U.S. Hwy 70 to its junction with U.S. Hwy 177, then along U.S. Hwy 177 to its junction with OK Hwy 59, then along OK Hwy 59 to its junction with OK Hwy 99, then along OK Hwy 99 to its junction with Interstate Hwy 40, then along Interstate Hwy 40 to its junction with U.S. Hwy 69, then along U.S. Hwy 69 to its junction with Interstate Hwy 44, then along Interstate Hwy 44 to the OK-MO State line; points in TX on and west of a line commencing from the Gulf of Mexico and proceeding along TX Hwy 497 to its junction with TX Hwy 186, then along TX Hwy 186 to its junction U.S. Hwy 281, then along U.S. Hwy 281 to its junction with U.S. Hwy 183, then along U.S. Hwy 183 to the TX-OK State line.

(F) Between points in Carroll, Floyd, Giles, and Montgomery Counties, VA, on the one hand, and, on the other, points in CA, ID, MT, NV, ND, OR, UT, WA, and WY, and points in AZ on and west of a line commencing at the AZ-NM State line and proceeding along AZ Hwy 85 to its junction with U.S. Hwy 80, then along U.S. Hwy 80 to its junction with Interstate Hwy 17, then along Interstate Hwy 17 to its junction with U.S. Hwy 89, then along U.S. Hwy 89 to its junction with U.S. Hwy 160, then along U.S. Hwy 160 to the AZ-NM State line; points in CO on and west of a line commencing at the NM-CO State line and proceeding along U.S. Hwy 160 to its junction with U.S. Hwy 285, then along U.S. Hwy 285 to its junction with U.S. Hwy 24, then along U.S. Hwy 24 to its junction with U.S. Hwy 6, then along U.S. Hwy 6 to the CO-NE State line; points in MN on and west of a line commencing at the MN-SD State line and proceeding along U.S. Hwy 212 to its junction with U.S. Hwy 71, then along U.S. Hwy 71 to its termination at International Falls; points in NE on and west of a line commencing at the WY-NE State line and proceeding along U.S. Hwy 30 to its junction with U.S. Hwy 83, then along U.S. Hwy 83 to the NE-SD State line; points in SD, on, north, and west of a line commencing at the NE-SD State line and proceeding along U.S. Hwy 83 to its junction with U.S. Hwy 16, then along U.S. Hwy 16 to its junction with SD Hwy 45, then along SD Hwy 45 to its junction with U.S. Hwy 212, then along U.S. Hwy 212 to the SD-MN State line.

(G) Between points in Charolotte and Prince Edward Counties, VA, on the one hand, and, on the other, points in AZ, CA, CO, ID, IA, KS, MI, MN, MT, NE, NV, NM, ND, OR, SD, UT, WA, WI, and WY, and points in AR on and west of a line commencing at the OK-AR State line and proceeding along U.S. Hwy 62 to its junction with AR Hwy 59, then along AR Hwy 59 to its junction with AR Hwy 12, then along AR Hwy 12 to its junction with U.S. Hwy 62, then along U.S. Hwy 62 to its junction with AR Hwy 23, then along AR Hwy 23 to the AR-MO State line; points in IL on and north of a line commencing at the MO-IL State line and proceeding along U.S. Hwy 40 to its junction with IL Hwy 33, then along IL Hwy 33 to the IL-IN State line; points in IN on and north of a line commencing at the IL-IN State line and proceeding along IN Hwy 154 to its junction with U.S. Hwy 150, then along U.S. Hwy 150 to its junction with IN Hwy 246, then along Interstate Hwy 246 to its junction with IN Hwy 59, then along IN Hwy 59 to its junction with Interstate Hwy 70, then along Interstate Hwy 70 to the IN-OH State line; points in MO on and west of a line commencing at the AR-MO State line and proceeding along MO Hwy 86 to its junction with MO Hwy 76, then along MO Hwy 76 to its junction with MO Hwy 5, then along MO Hwy 5 to its junction with MO Hwy 38, then along MO Hwy 38 to its junction with U.S. Hwy 63, then along U.S. Hwy 63 to its junction with MO Hwy 32, then along MO Hwy 32 to its junction with MO Hwy 21, then along MO Hwy 21 to the IL State line; points in OH on and north of U.S. Hwy 40; points in OK on and north of a line commencing at the TX-OK State line and proceeding along U.S. Hwy 183 to its junction with U.S. Hwy 70, then along U.S. Hwy 70 to its junction with U.S. Hwy 81, then along U.S. Hwy 81 to its junction with OK Hwy 39 to its junction with OK Hwy 99, then along OK Hwy 99 to its junction with Interstate Hwy 40, then along Interstate Hwy 40 to its junction with U.S. Hwy 69, then along U.S. Hwy 69 to its junction with U.S. Hwy 62, then along U.S. Hwy 62 to the OK-AR State line; points in TX on and west of a line commencing at the NM-TX State line and proceeding along TX Hwy 170 to its junction with U.S. Hwy 385, then along U.S. Hwy 385 to its junction with Interstate Hwy 20, then along Interstate Hwy 20 to its junction with TX Hwy 669, then along TX Hwy 669 to its junction with U.S. Hwy 380, then along U.S. Hwy 380 to its junc-

tion with U.S. Hwy 183, then along U.S. Hwy 183 to the TX-OK State line; points in WV on and north of U.S. Hwy 40.

(H) Between points in Brunswick and Greensville, Counties, VA, on the one hand, and, on the other, points in AZ, CA, CO, ID, IA, KS, MI, MN, MT, NE, NV, NM, ND, OR, SD, UT, WA, WI, and WY, and points in AR on and north of a line commencing at the AR-OK State line and proceeding along Interstate Hwy 40 to its junction with U.S. Hwy 71, then along U.S. Hwy 71 to its junction with U.S. Hwy 62, then along U.S. Hwy 62 to its junction with U.S. Hwy 65, then along U.S. Hwy 65 to the AR-MO State line; points in IL on and north of a line commencing at the MO-IL State line and proceeding along IL Hwy 150 to its junction with IL Hwy 154, then along IL Hwy 154 to its junction with U.S. Hwy 51, then along U.S. Hwy 51 to its junction with IL Hwy 15, then along IL Hwy 15 to the IL-IN State line; points in IN on and north of U.S. Hwy 50; points in MO on, north, and west of a line commencing at the AR-MO State line and proceeding along U.S. Hwy 65 to its junction with US. Hwy 60, then along U.S. Hwy 60 to its junction with MO Hwy 34, then along MO Hwy 34 to its junction with MO Hwy 51, then along MO Hwy 51 to the IL-MO State line; points in OH on and north of a line commencing at the IN-OH State line and proceeding along U.S. Hwy 50 to its junction with U.S. Hwy 50 Bypass, then along U.S. Hwy 50 Bypass to its junction with U.S. Hwy 22, then along U.S. Hwy 22 to its junction with OH Hwy 37, then along OH Hwy 37 to its junction with OH Hwy 60, then along OH Hwy 60 to the OH-WV State line; points in OK on, north, and west of a line commencing at the OK-TX State line and proceeding along U.S. Hwy 69 to its junction with Interstate Hwy 40, then along Interstate Hwy 40 to the AR-OK State line; points in TX on and west of a line commencing at the Gulf of Mexico and proceeding along U.S. Hwy 77 to its junction with TX Hwy 44, then along TX Hwy 44 to its junction with U.S. Hwy 83, then along U.S. Hwy 83 to its junction with U.S. Hwy 377, then along U.S. Hwy 377 to its junction with U.S. Hwy 281, then along U.S. Hwy 281 to the OK-TX State line; points in WV on and west of a line commencing at the OH-WV State line and proceeding along U.S. Hwy 250 to its junction with U.S. Hwy 119, then along U.S. Hwy 119 to the PA-WV State line.

(I) Between points in Isle of Wight and Nansemond Counties, VA, on the one hand, and, on the other, points in AZ, CA, CO, ID, IA, KS, MI, MN, MT, NE, NV, NM, ND, OK, OR, SD, UT, WA, WI, and WY, and points in AR on, north, and west of a line commencing at the AR-TX State line and proceeding along U.S. Hwy 71 to its junction with AR Hwy 23, then along AR Hwy 23 to its junction with AR Hwy 16, then along AR Hwy 16 to its junction with AR Hwy 9, then along AR Hwy 9 to the AR-MO State line; points in IL south and east of a line commencing at the IL-MO State line and proceeding along Interstate Hwy 57 to its junction with IL Hwy 13, then along IL Hwy 13 to the IL-KY State line; points in IN on, north, and west of a line commencing at the IN-KY State line and proceeding along IN Hwy 135 to its junction with IN Hwy 160, then along IN Hwy 160 to the Ohio River; points in KY on, north, and west of a line commencing at the KY-IL State line and proceeding along KY Hwy 56 to its junction with U.S. Hwy 60, then along U.S. Hwy 60 to its junction with KY Hwy 79, then along KY Hwy 79 to the KY-IN State line; points in MD on and west of U.S. Hwy 220; points in MO on, north, and west of a line commencing at the AR-MO State line and proceeding along U.S. Hwy 63 to its junction with MO Hwy 142, then along MO Hwy 142 to its junction with U.S. Hwy 160, then along U.S. Hwy 160 to its junction with U.S. Hwy 60, then along U.S. Hwy 60 to the IL-MO State line; points in OH on, north, and west of a line commencing at the IN-OH State line and proceeding along OH Hwy 41 to its junction with OH Hwy 124, then along OH Hwy 124 to its junction with OH Hwy 7, then along OH Hwy 7 to its junction with U.S. Hwy 50, then along U.S. Hwy 50 to the OH-WV State line; points in TX on, north, and west of a line commencing at the Gulf of Mexico and proceeding along TX Hwy 288 to its junction with U.S. Hwy 290, then along U.S. Hwy 290 to its junction with TX Hwy 6, then along TX Hwy 6 to its junction with U.S. Hwy 79, then along U.S. Hwy 79 to its junction with U.S. Hwy 69, then along U.S. Hwy 69 to its junction with TX Hwy 155, then along TX Hwy 155 to its junction with U.S. Hwy 59, then along U.S. Hwy 59 to the AR-TX State line; points in WV on and north of a line commencing at the OH-WV State line and proceeding along U.S. Hwy 50 to its junction with U.S. Hwy 220, then along U.S. Hwy 220 to the MD-WV State line. The purpose of this filing is to eliminate the gateways of Carlisle, Shadygrove, and Waynesboro, PA.

No. MC 117574 (Sub-No. E81), filed July 16, 1975. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA 17013. Applicant's representative: E. S. Moore, Jr. (same as above). Agricultural implements and machinery, tractors (other than truck tractors), incidental machinery, attachments and parts when moving with such implements, machinery or tractors, except commodities requiring special equipment.

(1) Between points in Buncombe, Henderson and Madison Counties in NC on the one hand, and, on the other hand, points in OR, WA, and points in that portion of CA north of a line beginning at San Jose on the Pacific Ocean and extending along Interstate Hwy 680 to junction with Interstate Hwy 580, then along Interstate Hwy 580 to its junction with CA Hwy 99 then along CA Hwy 99 to junction with U.S. Hwy 50, then along U.S. Hwy 50 to the CA-NV State line, points in that portion of ID west of a line beginning at NV-ID State line and extending along ID Hwy 51 to junction with U.S. Hwy 26, then along U.S. Hwy 26 to junction with Interstate Hwy 80, then along Interstate Hwy 80 to its junction with Interstate Hwy 15, then along Interstate Hwy 15 to junction with ID Hwy 191, then along ID Hwy 191 to the ID-MT State line, points in that portion of MT, on and west of a line beginning at the MT-ID State line along U.S. Highway 191 to junction with Secondary State Road 204, then along Secondary State Road 204 to termination at the United States-Canadian Boundary line to points in that portion of NV west and north of a line beginning at CA-NV State line and extending along U.S. Hwy 50 to junction with NV Hwy 8A, then along NV Hwy 8A to junction with U.S. Hwy 40, then along U.S. Hwy 40 to junction with NV Hwy 51 then along NV Hwy 51 to the NV-ID State line.

(2) Between points in Cabarrus, Mechlenburg and Rowan Counties, NC, on the one hand, and, on the other points in ID, MT, ND, OR, SD, WA, points in that portion of AZ north of a line beginning at AZ Hwy 389, then along AZ Hwy 389, to junction with U.S. Hwy 89, then along U.S. Hwy 89 to its junction with U.S. Hwy 160, then along U.S. Hwy 160 to the AZ-CO State line, points in CO west and north of a line beginning at AZ-CO State line and extending along U.S. Hwy 160 to its junction with CO Hwy 141, then along CO Hwy 141 in a northerly direction to junction with U.S. Hwy 6 then along U.S. Hwy 6 to junction with Interstate Hwy 70, then along Interstate Hwy 70 to junction with CO Hwy 119, then along CO Hwy 119 to junction with CO Hwy 72, then along CO Hwy 72 to junction with CO Hwy 7, then along CO Hwy 7 to its junction with U.S. Hwy 34, then along U.S. Hwy 34 to its junction with Interstate Hwy 25, then along Interstate Hwy 25 to the CO-WY State line, points in that portion of CA north of a line beginning at Oceanside, on the Pacific Ocean and extending along CA Hwy 76, then along CA Hwy 76 to junction with U.S. Hwy 395, then along U.S. Hwy 395 to junction with

CA Hwy 190, then along CA Hwy 190 to its junction with CA Hwy 58, then along CA Hwy 58 to the CA-NV State line, points in that portion of IA west of a line beginning at the NE-IA State line and extending along IA Hwy 12 to its junction with IA Hwy 10, then along IA Hwy 10 to its junction with U.S. Hwy 75, then along U.S. Hwy 75 to the IA-MN State line to points in that portion of MI north of a line beginning at Hancock at Lake Superior and extending along U.S. Hwy 41, to junction with U.S. Hwy 2, then along U.S. Hwy 2 to junction with Interstate Hwy 75, then along Interstate Hwy 75 to its junction with U.S. Hwy 23, then along U.S. Hwy 23 to its termination at Lake Huron, points in that portion on MN west of a line beginning at MN-IA State line, along U.S. Hwy 75 to junction with MN Hwy 23, then along MN Hwy 23 to junction with Interstate Hwy 35, then along Interstate Hwy 35 to its junction with U.S. Hwy 61, then along U.S. Hwy 61 to termination at Lake Superior, points in that portion of NE north of a line beginning at the WY-NE State line and extending along Interstate Hwy 80 to its junction with NE Hwy 281 then along NE Hwy 281 to junction with U.S. Hwy 30, then along U.S. Hwy 30 to junction with U.S. Hwy 81 then along U.S. Hwy 81 to junction with NE Hwy 12, then along NE Hwy 12 to the NE-IA State line, points in that portion of NV north of a line beginning at the CA-NV State line and extending along NV Hwy 58 to junction with U.S. Hwy 95, then along U.S. Hwy 95 to its junction with U.S. Hwy 6, then along U.S. Hwy 6 to its junction with NV Hwy 25 then along NV Hwy 25 to the NV-UT State line points in that portion of OH north of a line beginning at Madison on Lake Erie and extending along OH Hwy 528 to its junction with U.S. Hwy 6 then along U.S. Hwy 6 to the OH-PA State line, points in that portion of UT north of a line beginning at the NV-UT State line and extending along UT Hwy 56 to its junction with UT Hwy 18 then along UT Hwy 18 to junction with Interstate Hwy 15, then along Interstate Hwy 15 to its junctin with UT Hwy 59, then along UT Hwy 59 to UT-AZ State line, points in that portion of WY north and west of a line beginning at CO-WY State line and extending along Interstate Hwy 25 to its junction with Interstate Hwy 80, then along Interstate Hwy 80 to the WY-NE State line.

(3) Between points in Burke and Caldwell Counties, NC, on the one hand, and, on the other, points in ID, MT, OR and WA, points in CA on and north of a line beginning at Santa Maria and extending along U.S. Hwy 101 to its junction with CA Hwy 198, then along CA Hwy 198 to its junction with CA Hwy 145, then along CA Hwy 145 to its junction with CA Hwy 180, then along CA Hwy 180 to junction with U.S. Hwy 395, then along U.S. Hwy 395 to junction with CA Hwy 136, then along CA Hwy 136 to junction with CA Hwy 190, then along CA Hwy 190 to junction with CA Hwy 58, then along CA Hwy 58 to the CA-NV State line, points in that portion of MI on and north of a line beginning at Marquette and extending along MI Hwy 28 to junction with Interstate Hwy 75, then along Interstate Hwy 75 to the United States-Canadian International Boundary line, points in that portion of NE on and north of a line beginning at the WY-NE State line and extending along U.S. Hwy 20 to junction with U.S. Hwy 385, then along U.S. Hwy 385 to the NE-SD State line, points in that portion of NE on and north of a line beginning at the CA-NV State line and extending along NV Hwy 58 to junction with U.S. Hwy 95, then along U.S. Hwy 95 to junction with CA Hwy 25, then along CA Hwy 25 to the NV-UT State line; points in that portion of ND and west of a line beginning at the SD-ND State line and extending along ND Hwy 3 to junction with ND Hwy 13, then along ND Hwy 13 to junction with ND Hwy 30, then along ND Hwy 30 to junction with ND Hwy 15, then along ND Hwy 15 to junction with U.S. Hwy 281, then along U.S. Hwy 281 to junction with ND Hwy 57, then along ND Hwy 57 to junction with ND Hwy 20, then along ND Hwy 20 to junction with ND Hwy 5, then along ND Hwy 5 to the ND-MN State line and then along the ND-MN State line to the United States-Canadian International Boundary line, points in that portion of OH on and east of a line beginning at or near Ashtabula and extending along OH Hwy 45 in that portion of OH Hwy 45 to junction with OH Hwy 88, then along OH Hwy 88 to the OH-PA State line, points in that portion of SD on and west of a line beginning at the NE-SD State line and extending along U.S. Hwy 385 to junction with U.S. Hwy 14, then along U.S. Hwy 14 to junction with U.S. Hwy 83, then along U.S. Hwy 83 to junction with U.S. Hwy 212, then along U.S. Hwy 212 to junction with SD Hwy 47 then along SD Hwy 47 to junction with SD Hwy 10, then along SD Hwy 10 to junction with SD Hwy 45, then along SD Hwy 45 to the SD-ND State line, points in that portion of UT on and west of a line beginning at the NV-UT State line and extending along UT Hwy 56 to junction with U.S. Hwy 91, then along U.S. Hwy 91 to junction with UT Hwy 20, then along UT Hwy 20 to junction with U.S. Hwy 89, then along U.S. Hwy 89 to junction with U.S. Hwy 189, then along U.S. Hwy 189 to junction with Interstate Hwy 80, then along Interstate Hwy 80 to the UT-WY State line, points in that portion of WY on and north of a line beginning at the UT-WY State line and extending along Interstate Hwy 80 to junction with U.S. Hwy 187, then along U.S. Hwy 187 to junction with WY Hwy 28, then along WY Hwy 28 to junction with U.S. Hwy 287, then along U.S. Hwy 287 to junction with WY Hwy 220, then along WY Hwy 220, to junction with U.S. Hwy 20, then along U.S. Hwy 20 to the WY-NE State line.

(4) Between points in Macon and Swain Counties, NC on the one hand, and, on the other, points in that portion of CA north of a line beginning at Santa Rosa on the Pacific Ocean and extending along U.S. Hwy 101 to junction with CA Hwy 37, then along CA Hwy 37 to junction with Interstate Hwy 80, then along Interstate Hwy 80 to junction with U.S. Hwy 50, then along U.S. Hwy 50 to junction with U.S. Hwy 395, then along U.S. Hwy 395 to the CA-OR State line, points in that portion of Idaho north of a line beginning at ID-WA State line and extending along U.S. Hwy 2 to the ID-MO State line, points in that portion on MT north of a line beginning at the MT-ID State line and extending along U.S. Hwy 2 to junction with MT Hwy 16, then along MT Hwy 16 to the points in that portion of OR west of a line beginning at the NV-OR State line and extending along U.S. Hwy 395 to the OR-WA State line, points in that portion of WA west of a line beginning at the WA-OR State line and extending along U.S. Hwy 395 to its junction with WA Hwy 21, then along WA Hwy 21, to junction with WA Hwy 28 then along WA Hwy 28 to junction with U.S. Hwy 2, then along U.S. Hwy 2 to junction with WA Hwy 231, then along WA Hwy 231 to junction with U.S. Hwy 2, then along U.S. Hwy 2 to the ID-WA State line.

(5) Between points in Ashe and Watauga Counties, NC on the one hand, and, on the other, points in ID, MT, OR, WA, points in that portion of CA north of a line beginning at Ventura, on Pacific Ocean, and extending along CA Hwy 126 to junction with Interstate Hwy 5, then along Interstate Hwy 5 to junction with CA Hwy 99, then along CA Hwy 99 to junction with CA Hwy 58, then along CA Hwy 58 to junction with CA Hwy 14, then along CA Hwy 14 to junction with CA Hwy 178, then along CA Hwy 178 to junction with CA Hwy 190, then along CA Hwy 190 to junction with CA Hwy 58, then along CA Hwy 58 to the CA-NV State line, points in that portion of NV along of a line beginning at the CA-NV State line and extending along NV Hwy 58 to junction with U.S. Hwy 95, then along U.S. Hwy 95 to junction with U.S. Hwy 6, then along U.S. Hwy 6 to junction with NV Hwy 25, then along NV Hwy 25 to junction with U.S. Hwy 93, then along U.S. Hwy 93 to junction with NV Hwy 25, then along NV Hwy 25 at the NV-UT State line,

points in that portion of ND west of a line beginning at the ND-SD State line and extending along U.S. Hwy 83 to junction with ND Hwy 11, then along ND Hwy 11 to junction with ND Hwy 3, then along ND Hwy 3 to junction with Interstate Hwy 94, then along Interstate Hwy 94 to junction with ND Hwy 30, then along ND Hwy 30 to junction with ND Hwy 36, then along ND Hwy 36 to junction with U.S. Hwy 281, then along U.S. Hwy 281 to junction with ND Hwy 57, then along ND Hwy 57 to junction with ND Hwy 20, then along ND Hwy 20 to its termination at the United States-Canadian International Boundary line, points in that portion of SD north of a line beginning at the SD-WY State line and extending along U.S. Hwy 18 to its junction with SD Hwy 79, then along SD Hwy 79 to junction with Interstate Hwy 90, then along Interstate Hwy 90 to junction with U.S. Hwy 14, then along U.S. Hwy 14 to junction with SD Hwy 34, then along SD Hwy 34 to junction with U.S. Hwy 83, then along U.S. Hwy 83 to the SD-ND State line, points in that portion of UT north of a line beginning at the UT-NV State line and extending along UT Hwy 56 to junction with Interstate Hwy 15, then along Interstate Hwy 15 to junction with UT Hwy 4, then along UT Hwy 4 to junction with U.S. Hwy 89, then along U.S. Hwy 89 to junction with U.S. Hwy 6, then along U.S. Hwy 6 to its junction with UT Hwy 33, then along UT Hwy 33 to junction with U.S. Hwy 40, then along U.S. Hwy 40 to junction with UT Hwy 44, then along UT Hwy 44 to the UT-WY State line, points in that portion of WY west of a line beginning at WY-UT State line and extending along WY Hwy 530, then along WY Hwy 530 to junction with Interstate Hwy 80, then along Interstate Hwy 220, to junction with Interstate Hwy 25, then along Interstate Hwy 25 to junction with U.S. Hwy 18, then along U.S. Hwy 18 to the WY-SD State line.

(6) Between points in Greene, Pitt, Wayne, and Wilson Counties, NC, on the one hand, and, on the other, points in AZ, CA, CO, ID, IA, MI, MN, MT, NE, NV, ND, OR, SD, UT, WA, WI, WY points in that portion of IL on and north of a line beginning at the MO-IL State line and extending along IL Hwy 16 to junction with U.S. Hwy 150, then along U.S. Hwy 150 to the IL-IN State line, points in that portion of IN on and north of a line beginning at the IL-IN State line and extending along U.S. Hwy 150 to junction Interstate Hwy 70, then along Interstate Hwy 70 to the IN-OH State line, points in that portion of KS on and north of a line beginning at the OK-KS State line and extending along U.S. Hwy 59 to junction with KS Hwy 96, then along KS Hwy 96 to the KS-MO State line, points in that portion of MO on and west of a line beginning at the KS-MO State line and extending along MO Hwy 96 to junction with U.S. Hwy 71, then along U.S. Hwy 71 to junction with U.S. Hwy 54, then along U.S. Hwy 54 to junction with MO Hwy 32, then along MO Hwy 32 to junction with MO Hwy 5, then along MO Hwy 5 to junction with U.S. Hwy 54, then along U.S. Hwy 54 to junction with U.S. Hwy 40, then along U.S. Hwy 40 to junction with MO Hwy 47, then along MO Hwy 47 to the MO-IL State line, points in OH on and north of a line beginning at the IN-OH State line and extending along IN Hwy 70 to junction with OH Hwy 800, then along OH Hwy 800 to OH-WV State line, then along the OH-WV State line to junction WV Hwy 20, points in that portion of OK on and west of a line beginning at the TX-OK State line and extending along U.S. Hwy 62 to junction with U.S. Hwy 283, then along U.S. Hwy 283 to junction with OK Hwy 44, then along OK Hwy 44 to junction with U.S. Hwy 66, then along U.S. Hwy 66 to junction with U.S. Hwy 183, then along U.S. Hwy 183 to junction with OK Hwy 33, then along OK Hwy 33 to junction OK Kwy 99, then along OK Hwy 99 to junction with U.S. Hwy 60, then along U.S. Hwy 60 to junction with OK Hwy 2, then along OK Hwy 2 to the OK-KS State line, points in that portion of NM on and north of a line beginning at the TX-NM State line and extending along U.S. Hwy 54 to junction with U.S. Hwy 82, then along U.S. Hwy 82 to the NM-TX State line, points in that portion of TX on and west of a line beginning at El Paso and extending along U.S. Hwy 54 to the TX-NM State line and points on and north of a line beginning at the NM-TX State line and extending along U.S. Hwy 82 to junction with U.S. Hwy 62, then along U.S. Hwy 62 to the TX-OK State line points in that portion of WV on and north of a line beginning at the OH-WV State line and extending along WV Hwy 20 to junction with U.S. Hwy 18, then along U.S. Hwy 19 to junction with U.S. Hwy 250, then along U.S. Hwy 250 to junction with U.S. Hwy 50, then along U.S. Hwy 50 to the WV-MD State line. The purpose of this filing is to eliminate the gateway of Shady Grove, Carlisle, and Waynesboro, PA.

No. MC 117574 (Sub-No. E84), filed June 29, 1975. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA 17013. Applicant's representative: E. S. Moore, Jr. (same as above). (a) *Sewage, water, and refuse treatment systems*, the transportation of which because of size or eight requires the use of special equipment, which is also industrial or processing machinery, and (b) *tools, materials, and supplies* used in connection with the erection and construction of sewage, water, and refuse systems (except commodities in bulk), which are also attachments, accessories and parts of industrial or processing machinery.

(1) Between points in Pike and Scioto Counties, OH on the one hand, and, on the other, points in that portion of DE; points on and east of a line beginning at the MD-DE State line and extending along U.S. Hwy 13, to the DE-PA State line, points in that portion of MD on and east of a line beginning at the VA-MD State line and extending along U.S. Hwy 13 to the MD-DE State line, points in that portion of OR on and west of a line beginning at the WA-OR State line and extending along Interstate Hwy 101 to Coquille and the Pacific Ocean, points in that portion of VA on and east of a line beginning at Cheriton and extending along U.S. Hwy 13 to the VA-MD State line, points in that portion of Washington on and west of a line beginning at the United States-Canadian International Boundary line and extending along Interstate Hwy 101 to the WA-OR State line.

(2) Between points in Knox and Richland Counties, OH on the one hand, and, on the other, points in DE; points in that portion of CA on and west of a line beginning at the CA-OR State line and extending along Interstate Hwy 5 to junction CA Hwy 20, then along CA Hwy 20 to junction U.S. Hwy 101, then along U.S. Hwy 101 to junction CA Hwy 152, then along CA Hwy 152 to junction CA Hwy 99, then along CA Hwy 99 to junction Interstate Hwy 5, then along Interstate Hwy 5 to the CA-NM State line, points in that portion of FL on and south of a line beginning at the FL-Gulf of Mexico Coast and extending along FL Hwy 580 to junction Interstate Hwy 4, then along Interstate Hwy 4 to junction FL Hwy 50, then along FL Hwy 50 to junction FL Hwy 405, then along FL Hwy 405 to the FL-Atlantic Ocean Coast; points in that portion of MD on and east of Interstate Hwy 81, points in that portion of NC, on and east of a line beginning at Onslow Bay and extending along NC Hwy 50 to junction Interstate Hwy 95, then along Interstate Hwy 95 to the VA-NC State line, points in that portion of OR, on and west of a line beginning at the OR-WA State line and extending along U.S. Hwy 101 to junction OR Hwy 38, then along OR Hwy 38 to junction OR Hwy 99, then along OR Hwy 99 to junction Interstate Hwy 5, then along Interstate Hwy 5 to the CA-OR State line, points in that portion of VA on and east of a line beginning at the VA-NC State line and extending along Interstate Hwy 95 to junction U.S. Hwy 250, then along U.S. Hwy 250 to junction U.S. Hwy 29, then along U.S. Hwy 29 to junction VA Hwy 231, then along VA Hwy 231 to junction U.S. Hwy 522, then along U.S. Hwy 522 to junction

U.S. Hwy 340, then along U.S. Hwy 340 to junction Interstate Hwy 66, then along Interstate Hwy 66 to junction Interstate Hwy 81, then along Interstate Hwy 81 to the VA-WV State line, to points in that portion of WA on and west of a line beginning with U.S. Hwy 101 at Port Angeles and extending along U.S. Hwy 101 to the OR-WA State line, points in that portion of WV on and east of Interstate Hwy 81.

(3) Between points in Cyahona, Holmes, and Wayne Counties, OH, on the one hand, and, on the other, points in that portion of AZ on and west of a line beginning at AZ-NV State line and extending along U.S. Hwy 93 to junction Interstate Hwy 40, then along Interstate Hwy 40 to junction AZ Hwy 95, then along AZ Hwy 95, to the AZ-NM State line, points in that portion of CA on and west of a line beginning at CA-OR State line and extending along U.S. Hwy 395 to the CA-NV State line, beginning again at the NV-CA State line and extending along U.S. Hwy 395, to junction CA Hwy 120, then along CA Hwy 120 to junction U.S. Hwy 6, then along U.S. Hwy 6 to the CA-NV State line, points in that portion of FL on and south of a line beginning at Chiefland and extending along FL Hwy 24 to junction Interstate Hwy 301, then along Interstate Hwy 301 to junction Interstate Hwy 10, then along Interstate Hwy 10 to termination at the Atlantic Ocean, points in that portion of MD on and east of a line beginning at the MD-WV State line and extending along Interstate Hwy 81 to the MD-PA State line, points in that portion of NV on and west of a line beginning at the NV-CA State line and extending along U.S. Hwy 95 to junction U.S. Hwy 93, then along U.S. Hwy 93 to the NV-AZ State line, beginning again at the CA-NV State line and extending along U.S. Hwy 395 to the NV-CA State line, points in that portion of NC on and east of a line beginning at the NC-SC State line and extending along U.S. Hwy 220 to junction U.S. Hwy 29 then along U.S. Hwy 29 to the NC-VA State line, points in that portion of OR on and west of a line beginning at the OR-WA State line and extending along U.S. Hwy 730 to junction U.S. Hwy 395, then along Hwy 395 to junction U.S. Hwy 20, then along U.S. Hwy 20 to junction with U.S. Hwy 395, then along U.S. Hwy 395 to the OR-CA State line, points in that portion of SC on and east of a line beginning at Charleston on the Atlantic Ocean and extending along U.S. Hwy 52 to the SC-NC State line, points in that portion of VA on and east of a line beginning at the VA-NC State line and extending along U.S. Hwy 29 to junction U.S. Hwy 522, then along U.S. Hwy 522 to junction Interstate Hwy 81, then along Interstate Hwy 81, to the VA-WV State line, points in that portion of WA on and west of a line beginning at the United States-Canadian International Boundary line and extending along WA Hwy 25 to junction WA Hwy 28, then along WA Hwy 28 to junction WA Hwy 261, then along WA Hwy 261 to junction WA Hwy 260, then along WA Hwy 260 to junction WA Hwy 21, then along WA Hwy 21 to junction WA Hwy 730, then along WA Hwy 730 to the WA-OR State line, points in that portion of WV on and east of a line beginning at the VA-WV State line and extending along Interstate Hwy 81 to the MD-WV State line.

(4) Between points in the Ashtabula and Trumbull, Counties, OH, on the one hand, and, on the other, points in CA, DE, FL, NC, OR, SC, WA, DC, points in that portion of AL on and south of a line beginning at Mobile and extending along Interstate Hwy 65 to junction U.S. Hwy 84, then along U.S. Hwy 84 to junction U.S. Hwy 29, then along U.S. Hwy 29 to the AL-GA State line, points in that portion of GA on and south of a line beginning at AL-GA State line and extending along Interstate Hwy 85 to the GA-SC State line, points in that portion of ID on and west of a line beginning at the MT-ID State line and extending along U.S. Hwy 93 to the ID-NV State line; points in that portion of MD on and east of a line beginning at the VA-MD State line and extending along Interstate Hwy 81, to the MD-PA State line, points in that portion of MT on and west of a line beginning at the United States-Canadian International Boundary line and extending along U.S. Hwy 93 to the MT-ID State line, points in that portion of NV on and west of a line beginning at the ID-NV State line and extending along U.S. Hwy 93 to junction NV Hwy 25, then along NV Hwy 25 to the NV-UT State line, points in that portion of NC on and east of a line beginning at the SC-NC State line and extending along Interstate Hwy 26, to junction U.S. Hwy 221 then along U.S. Hwy 221 to the NC-VA State line, points in that portion of NM on and west of a line beginning at the UT-NM State line and extending along NM Hwy 504 to junction U.S. Hwy 666, then along U.S. Hwy 666 to junction U.S. Hwy 66, then along U.S. Hwy 66 to junction Interstate Hwy 25, then along Interstate Hwy 25 to the NM-TX State line, points in that portion of SC on and south of a line beginning at the GA-SC State line and extending along Interstate Hwy 85 to junction Interstate Hwy 26, then along Interstate Hwy 26 to the SC-NC State line, points in that portion of TX on and south of a line beginning at the NM-TX State line and extending along Interstate Hwy 10 to junction U.S. Hwy 181 to Corpus Christi, points in that portion of UT on and west of a line beginning at the NV-UT State line and extending along UT Hwy 56 to junction Interstate Hwy 15, then along Interstate Hwy 15 to junction UT Hwy 4, then along UT Hwy 4 to junction U.S. Hwy 89, then along U.S. Hwy 89 to junction Interstate Hwy 70, then along Interstate Hwy 70 to junction U.S. Hwy 163, then along U.S. Hwy 163 to the UT-NM State line, points in that portion of VA on and east of a line beginning at the NC-VA State line and extending along, Interstate Hwy 81 to the VA-MD State line, points in that portion of WV on and east of Interstate Hwy 81.

(5) Between points in Monroe, Noble, and Washington Counties, OH, on the one hand, and, on the other points in CA, OR, WA, points in that portion of AZ on and west of a line beginning at the NV-AZ State line and extending along U.S. Hwy 93 to junction U.S. Hwy 66, then along U.S. Hwy 66 to junction AZ Hwy 95, then along AZ Hwy 95 to junction U.S. Hwy 95, then along U.S. Hwy 95 to junction U.S. Hwy 80, then along U.S. Hwy 80 to junction AZ Hwy 85, then along AZ Hwy 85 to the United States-Mexican International Boundary line, points in that portion of FL on and south of a line beginning at Sarasota and extending along U.S. Hwy 41 to junction U.S. Hwy 301, then along U.S. Hwy 301 to junction FL Hwy 62, then along FL Hwy 62 to junction U.S. Hwy 17, then along U.S. Hwy 17 to its termination at the Atlantic Ocean, points in that portion of ID on and west of U.S. Hwy 93, points in that portion of MD on and east of Interstate 81, points in that portion of MT on and west of U.S. Hwy 93, points in that portion of NV on and west of U.S. Hwy 93, points in that portion of NC on and east of a line beginning at Jacksonville and extending along U.S. Hwy 268 to junction U.S. Hwy 70, then along U.S. Hwy 70 to junction U.S. Hwy 501, then along U.S. Hwy 501 to the VA-NC State line, points in that portion of VA on and east of a line beginning at the VA-NC State line and extending along U.S. Hwy 501 to junction U.S. Hwy 15, then along U.S. Hwy 15 to junction U.S. Hwy 522, then along U.S. Hwy 522 to junction with Interstate Hwy 81, then along Interstate Hwy 81 to the VA-WV State line, points in that portion of WV on and east of Interstate Hwy 81.

(6) Between points in Belmont, Harrison, and Jefferson Counties, OH on the one hand, and, on the other, points in CA, DE, NV, OR, WA, points in that portion of AZ on and west of a line beginning at the UT-AZ State line and extending along U.S. Alternate Hwy 89 to junction U.S. Hwy 89, then along U.S. Hwy 89, to junction Interstate Hwy 17, then along Interstate 17 to junction U.S. Hwy 60, then along

U.S. Hwy 60 to the AZ-NM State line, then along the AZ-NM State line to the United States-Mexican International Boundary line, points in that portion of FL on and east of a line beginning at Keaton Beach and extending along FL Hwy 361 to junction U.S. Hwy 221, then along U.S. Hwy 221 to the FL-GA State line, points in that portion of GA on and south of a line beginning at the FL-GA State line and extending along U.S. Hwy 221 to junction U.S. Hwy 84, then along U.S. Hwy 84, to junction GA Hwy 50, then along GA Hwy 50 to termination at the Atlantic Ocean, points in that portion of ID on and west of a line beginning at the MT-ID State line and extending along U.S. Hwy 91 to junction U.S. Hwy 30N, then along U.S. Hwy 30N to junction ID Hwy 77, then along ID Hwy 77 to junction ID Hwy 81, then along ID Hwy 81 to the ID-UT State line, points in that portion of MD on and east of Interstate Hwy 81, points in that portion of MT on and west of a line beginning at the United States-Canadian International Boundary line and extending along Interstate Hwy 15 to junction MT Hwy 221, then along MT Hwy 221 to junction U.S. Hwy 287 to junction U.S. Hwy 91, then along U.S. Hwy 91 to the MT-ID State line, points in that portion of NC on and east of a line beginning at the NC-SC State line and extending along U.S. Hwy 501 to junction NC Hwy 87, then along NC Hwy 87 to junction U.S. Hwy 29, then along U.S. Hwy 29 to the VA-NC State line, points in that portion of SC on and east of U.S. Hwy 501, points in that portion of TX on and south of a line beginning at Rio Grande City and extending along TX Hwy 755 to junction TX Hwy 490, then along TX Hwy 490 to junction TX Hwy 186, then along TX Hwy 186 to junction TX Hwy 497, then along TX Hwy 497 to its termination at the Gulf of Mexico, points in that portion of UT on and west of a line beginning at the UT-ID State line and extending along UT Hwy 42 to junction UT Hwy 30, then along UT Hwy 30 to the UT-NV State line, then along the UT-NV State line to junction U.S. Hwy 6 then along U.S. Hwy 6 to junction UT Hwy 26, then along UT Hwy 26 to junction Interstate Hwy 15, then along Interstate Hwy 15 to junction UT Hwy 20, then along UT Hwy 20 to junction U.S. Hwy 89, then along U.S. Hwy 89 to the AZ-UT State line, points in that portion of VA on and east of a line beginning at the VA-NC State line and extending along U.S. Hwy 29 to junction with U.S. Hwy 501, then along U.S. Hwy 501 to junction U.S. Hwy 60, then along U.S. Hwy 60 to junction Interstate Hwy 81, then along Interstate Hwy 81 to the VA-MD State line, points in that portion of WV on and east of Interstate Hwy 81.

(7) Between points in Portage and Summit Counties, OH on the one hand, and, on the other, points in CA, DE, OR, WA, the DC, points in that portion of FL on and east of a line beginning at the Gulf of Mexico and extending along FL Hwy 71 to junction FL Hwy 2, then along FL Hwy 2 to the FL-GA State line, points in that portion of GA on and east of a line beginning at the FL-GA State line and extending along GA Hwy 91 to junction GA Hwy 62, then along GA Hwy 62 to junction U.S. Hwy 82, then along U.S. Hwy 82 to junction GA Hwy 257, then along GA Hwy 257 to junction GA Hwy 27, then along GA Hwy 27 to junction GA Hwy 26, then along GA Hwy 26 to junction U.S. Hwy 80, then along U.S. Hwy 80 to junction GA Hwy 56, then along GA Hwy 56 to junction GA Hwy 24, then along GA Hwy 24 to junction U.S. Hwy 301, then along U.S. Hwy 301 to the GA-SC State line, points in that portion of ID on and west of a line beginning at the United States-Canadian international boundary line and extending along ID Hwy 1 to junction U.S. Hwy 95, then along U.S. Hwy 95 to junction ID Hwy 55, then along ID Hwy 55 to junction Interstate Hwy 80N, then along ID Hwy 51 to the ID-NV State line, points in that portion of MD on and east of Interstate Hwy 81, points in that portion of NV on and west of a line beginning at the ID-NV State line and extending along NV Hwy 51 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction NV Hwy 8A, then along NV Hwy 8A, to junction U.S. Hwy 6, then along U.S. Hwy 6 to junction NV Hwy 25, then along NV Hwy 25 to the NV-UT State line, points in that portion of NC on and east of U.S. Hwy 220, points in that portion of SC on and east of a line beginning at GA-SC State line and extending along U.S. Hwy 301 to junction U.S. Hwy 601, then along U.S. Hwy 601 to junction U.S. Hwy 76, then along U.S. Hwy 76 to junction Interstate Hwy 95, then along Interstate Hwy 95 to the NC-SC State line, points in that portion of TX on and south of a line beginning at the United States-Mexican international boundary line and extending along TX Hwy 16 to junction TX Hwy 285, then along TX Hwy 285 to junction U.S. Hwy 77, then along U.S. Hwy 77 to junction TX Hwy 186, then along TX Hwy 186 to junction TX Farm Hwy 497, then along TX Farm Hwy 497, to the Gulf of Mexico, points in that portion of UT on and south of a line beginning at the NV-UT State line and extending along UT Hwy 56 to junction Interstate Hwy 15, then along Interstate Hwy 15 to junction UT Hwy 59, then along UT Hwy 59 to the AZ-UT State line, points in that portion of VA on and east of a line beginning at the VA-NC State line and extending along U.S. Hwy 29 to junction U.S. Hwy 33, then along U.S. Hwy 33 to junction the Blue Ridge Parkway, then along the Blue Ridge Parkway to its termination at U.S. Hwy 522, then along U.S. Hwy 522 to the VA-WV State line, points in that portion of WV on and east of Interstate Hwy 81. The purpose of this filing is to eliminate the gateway of Carlisle, Shady Grove, and Waynesboro, PA.

No. MC 117574 (Sub-No. E91), filed July 1, 1975. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA 17013. Applicant's representative: E. S. Moore, Jr. (same as above). *Agricultural implements and machinery, tractors with or without attachments, cranes, industrial and processing machinery, which are also agricultural, industrial or construction machinery, and equipment, or farm and logging equipment, or machinery,* (except tractors with vehicle beds, bed frames and fifth wheels, and such commodities which because of size or weight require the use of special equipment).

(1) From Georgetown and Williamsburg Counties, SC, to points in CT, ID, ME, MA, MT, NH, ND, OR, RI, VT, WA, WY, points in that portion of CA north of a line beginning at Santa Barbara, CA and extending along Interstate Hwy 10 to junction with Interstate Hwy 5, then along Interstate Hwy 5 to junction with CA Hwy 58, then along Hwy 58 to junction with U.S. Hwy 395, then along U.S. Hwy 395 to junction with U.S. Hwy 6, then along U.S. Hwy 6 to the CA-NV State line, points in that portion of CO north and west of a line beginning at the UT-CO State line and extending along U.S. Hwy 6 to junction with U.S. Hwy 40, then along U.S. Hwy 40 to junction with U.S. Hwy 34, then along U.S. Hwy 34 to junction with Interstate Hwy 80, then along Interstate Hwy 80 to the CO-NE State line, points in that portion of ID west of a line beginning at the NE-ID State line and extending along U.S. Hwy 75 to the ID-MN State line, points in that portion of MI west of a line beginning at the MI-MN State line and extending along MI Hwy 28 to junction with MI Hwy 26, then along MI Hwy 26 to termination at Hancock, on Lake Superior, points in that portion o MN north of a line beginning at the ID-MN State line and extending along U.S. Hwy 75 to junction U.S. Hwy 212, then along U.S. Hwy 212 to the MN-WI State line, points in that portion of NE north of a line beginning at the CO-NE State line, and extending along Interstate Hwy 80 to junction U.S. Hwy 30, then along U.S. Hwy 30 to junction U.S. Hwy 81, then along U.S. Hwy 81 to junction with U.S. Hwy 20, then along U.S. Hwy 20 to the NE-ID State line, points in that portion of NV north of a line beginning at the NV-CA State line and extending along U.S. Hwy 6 to junction NV Hwy 25, then along NV Hwy 25 to the NV-UT State line, points in that portion of NJ

north of a line beginning at the PA-NJ State line and extending along Interstate Hwy 78 to junction with U.S. Hwy 22, then along U.S. Hwy 22 to termination at NY on the Atlantic Ocean, points in that portion of OH east of a line beginning at Ashtabula on Lake Erie and extending along OH Hwy 11 to junction with Interstate Hwy 76, then along Interstate Hwy 76 to the OH-PA State line, points in that portion of PA north of a line beginning at the OH-PA State line and extending along Interstate Hwy 76, to junction with Interstate Hwy 81, then along Interstate Hwy 81 to junction with Interstate Hwy 78, then along Interstate Hwy 78 to the PA-NJ State line, points in that portion of UT north of a line beginning at NV-UT State line and extending along UT Hwy 56 to junction with UT Hwy 14, then along UT Hwy 14 to junction U.S. Hwy 89, then along U.S. Hwy 89 to junction with UT Hwy 4, then along UT Hwy 4 to junction with Interstate Hwy 70, then along Interstate Hwy 70 to junction with U.S. Hwy 6, then along U.S. Hwy 6 to the UT-CO State line, points in that portion of WI northwest of a line beginning at the MN-WI State line and extending along U.S. Hwy 63, to junction with U.S. Hwy 2, then along U.S. Hwy 2 to the WI-MI State line.

(2) From points Dillon and Marion Counties, SC, to points in ID, MT, ND, OR, WA, WY, points in that portion of CA, on and north and west of a line beginning at Ventura and extending along CA Hwy 126, to junction with CA Hwy 14, then along CA Hwy 14 to junction with U.S. Hwy 395, then along U.S. Hwy 395 to junction with U.S. Hwy 6, then along U.S. Hwy 6 to the CA-NV State line, points in that portion of CO, on, north and west of a line beginning at the WA-CO State line and extending along U.S. Hwy 50, to junction with Interstate Hwy 25, then along Interstate Hwy 25 to junction with Interstate Hwy 80, then along Interstate Hwy 80 to the CO-NE State line, point in that portion of MN, on, north and west of a line beginning at the SD-MN State line, and extending along MN Hwy 28, then along MN Hwy 28 to junction with U.S. Hwy 71, then along U.S. Hwy 71 to International Falls, MN, points in that portion of NE, on, north and west of a line beginning at the CO-NE State line and extending along U.S. Hwy 30, to junction with U.S. Hwy 81, then along U.S. Hwy 81 to the NE-SD State line, points in that portion of NV on, north and west of a line beginning at the CA-NV State line and extending along U.S. Hwy 6, to junction with NV Hwy 25, then along NV Hwy 25 to the NV-UT State line, points in that portion of OH, on and east of a line beginning at Cleveland, and extending alone OH Hwy 14 to junction with Interstate Hwy 80, then along Interstate Hwy 80 to the OH-PA State line, points in that portion of SD, on, north and wet of a line beginning at the NE-SD State line and extending along U.S. Hwy 81, to junction with SD Hwy 10, then along SD Hwy 10, to the SD-MN State line, points in that portion of UT, on, north and west of a line beginning at the NV-UT State line and extending along UT Hwy 56 to junction with Interstate Hwy 15, then along Interstate Hwy 15 to junction with UT Hwy 26, then along UT Hwy 26 to junction with Interstate Hwy 70, then along Interstate Hwy 70 to the UT-CO State line.

(3) From points in Darlington and Florence Counties, SC, to points in ID, MT, ND, OR, SD, WA, WY, points in that portion of CA on and north of a line beginning at the CA-NV State line and extending along U.S. Hwy 6 to junction CA Hwy 168, then along CA Hwy 168 to junction CA Hwy 180, then along Hwy 180 to junction with CA Road J-1, then along CA Hwy 68 to Monterey and the Pacific Ocean, points in that portion of CO on, north and west of a line beginning at the CO-NE State line and extending along CO Hwy 71 to junction CO Hwy 14 then along CO Hwy 14 to junction U.S. Hwy 40, then along U.S. Hwy 40 to junction CO Hwy 789, then along CO Hwy 789 to junction U.S. Hwy 6, then along U.S. Hwy 6 to the CO-UT State line, points in that portion of MI on and west of a line beginning at Traverse City and extending along MI Hwy 72 to junction MI Hwy 33, then along Hwy 33 to junction MI Hwy 32, then along Hwy 32 to termination at Lake Huron, points in that portion of MI on and north of a line beginning at Escanaba and extending along MI Hwy 69 to junction with U.S. Hwy 2, then along U.S. Hwy 2 to the MI-WI State line, points in that portion of MN on and west of a line beginning at the MN-WI State line, and extending along U.S. Hwy 12 to junction U.S. Hwy 169, then along U.S. Hwy 169 to junction MN Hwy 60, then along MN Hwy 60 to the ID-MN State line, points in that portion of NE on, north and west of a line beginning at the ID-NE State line and extending along ID Hwy 60 to junction U.S. Hwy 75, then along U.S. Hwy 75 to junction U.S. Hwy 20, then alone U.S. Hwy 20 to the ID-NE State line, points in that portion of NV on and north of a line beginning at the UT-NV State line and extending along NV Hwy 25 to junction with U.S. Hwy 6, then along U.S. Hwy 6 to the CA-NV State line, points in that portion of OH on and east of a line commencing at Lake Erie and extending along OH Hwy 534 to junction with U.S. Hwy 422, then along U.S. Hwy 422 to junction U.S. Hwy 224, then along U.S. Hwy 224 to the OH-PA State line, points in that portion of UT on and north of a line beginning at the CO-UT State line and extending along U.S. Hwy 6 to junction Interstate Hwy 70, then along Interstate Hwy 70 to junction UT Hwy 26, then along UT Hwy 26 to junction Interstate Hwy 15, then along Interstate Hwy 15 to junction UT Hwy 56, then along UT Hwy 56 to the NV-UT State line.

(4) From points in Chesterfield and Marlboro Counties, SC, to points in ID, ME, MA, MN, MT, NH, ND, OR, RI, SD, VT, WA, WY, points in that portion of CA north of a line beginning at Santa Barbara, on the Pacific Ocean and extending along Interstate Hwy 10 to junction with CA Hwy 14, then along CA Hwy 14 to junction with U.S. Hwy 395, then along U.S. Hwy 395 to junction U.S. Hwy 6, then along U.S. Hwy 6 to the CA-NV State line, points in that portion of CO north of a line beginning at the CO-UT State line and extending along U.S. Hwy 6 in an easterly direction to its junction with U.S. Hwy 138, then along U.S. Hwy 138 to the CO-NE State line, points in that portion of CT north and east of a line beginning at the NY-CT State line and extending along Interstate Hwy 95 to its termination at Bridgeport, on the Atlantic Ocean, points in that portion of IA north of a line beginning at NE-IA State line and extending along Interstate Hwy 80 to junction Interstate Hwy 35, then along Interstate Hwy 35 to junction with U.S. Hwy 20, then along U.S. Hwy 20 to the IA-WI State line, points in that portion of MI north and west of a line beginning at Sault Ste. Marie and extending along U.S. Hwy 2 to junction U.S. Hwy 23, then along U.S. Hwy 23 in a southerly direction to its termination at Alpeva on Lake Huron, points in that portion of NE north of a line beginning at the CO-NE State line and extending along Interstate Hwy 80 to the CO State line, points in that portion of NV north of a line beginning at the CA-NV State line and extending along U.S. Hwy 6 to junction with NV Hwy 25, then along NV Hwy 25 to the NV-UT State line, points in that portion of NJ north of a line beginning at the PA-NJ State line and extending along Interstate Hwy 80 to the NJ-NY State line, points in that portion of NY north of a line beginning at NJ-NY State line and extending along Interstate Hwy 95 to the NY-CT State line, points in that portion of OH east of a line beginning at Ashtabula, on Lake Erie and extending along OH Hwy 11 to junction Interstate Hwy 80, then along Interstate Hwy 80 to the OH-PA State line, points in PA north of a line beginning at the PA-OH State line, and extending along Interstate Hwy 80 to the PA-NJ State line, points in that portion of UT north of a line beginning at the NV-UT State line and

extending along UT Hwy 56 to junction UT Hwy 14, then along UT Hwy 14 to junction with U.S. Hwy 89, then along U.S. Hwy 89 to junction with Interstate Hwy 70, then along Interstate Hwy 70 to junction with U.S. Hwy 6, then along U.S. Hwy 6 to the UT-CO State line, points in that portion of WI north of a line beginning at the IA-WI State line and extending along U.S. Hwy 151 to its termination at Manitowoc, on Lake Michigan.

(5) From points in Lancaster and Kershaw Counties, SC, to points in ID, MT, OR, WA, points in that portion of CA on, north and west of a line beginning at Ventura, and extending along CA Hwy 126 to junction CA Hwy 14, then along CA Hwy 14 to junction U.S. Hwy 395, then along U.S. Hwy 395 to junction U.S. Hwy 6, then along U.S. Hwy 6 to the CA-NV State line, points in that portion of ND on, north and west of a line beginning at the SD-ND State line and extending along ND Hwy 6 to junction Interstate Hwy 94, then along Interstate Hwy 94 to junction ND Hwy 1, then along ND Hwy 1 to junction ND Hwy 5, then along ND Hwy 5 to junction Interstate Hwy 29, then along Interstate Hwy 29 to the United States-Canadian international boundary line to points in that portion of NV on, north, and west of a line beginning at the CA-NV State line and extending along U.S. Hwy 6, to the NV-UT State line, points in that portion of SD, on, north and west of a line beginning at the WY-SD State line and extending along U.S. Hwy 14, to junction U.S. Hwy 212, then in a northeasterly direction along U.S. Hwy 212 to junction SD Hwy 63 in a northly direction to the SD-ND State line, points in UT, on, north and west of a line beginning at the NV-UT State line and extending along U.S. Hwy 6, to junction Interstate Hwy 15, then along Interstate Hwy 15 to junction Interstate Hwy 80, then along Interstate Hwy 80 to the UT-WY State line, points in that portion of WY, on, north and west of a line beginning at the UT-WY State line and extending along Interstate Hwy 80, to junction with U.S. Hwy 287, then along U.S. Hwy 287 to junction WY Hwy 220, then along WY Hwy 220 to junction Interstate Hwy 25, then along Interstate Hwy 25 to junction Interstate Hwy 90, then along Interstate Hwy 90 to the WY-SD State line.

(6) From points in Chester and York Counties, SC, to points in ID, OR, WA, points in that portion of OH on and east of a line beginning at Lake Erie and extending along OH Hwy 534 to junction with U.S. Hwy 422, then along U.S. Hwy 422 to junction U.S. Hwy 224, then along U.S. Hwy 224 to the OH-PA State line, points in that portion of MT on and west of a line beginning at the ND-MT State line and extending along U.S. Hwy 12 to junction U.S. Hwy 312, then along U.S. Hwy 312 to junction with U.S. Hwy 212, then along U.S. Hwy 212 to junction U.S. Hwy 87, then along U.S. Hwy 87 to the MT-WY State line, points in that portion of CA on and north of a line beginning at the CA-NV State line and extending along U.S. Hwy 6 to junction CA Hwy 168, then along CA Hwy 168 to junction CA Hwy 145, then along CA Hwy 145 to junction CA Hwy 99, then along CA Hwy 99 to junction CA Hwy 152, then along CA Hwy 152 to Santa Cruz and the Pacific Ocean, points in that portion of ND on and west of a line beginning at the ND-Canadian international boundary line extending along U.S. Hwy 85 to junction U.S. Hwy 12, then along U.S. Hwy 12 to the ND-MT State line, points in that portion of UT on and west of a line beginning at the UT-WY State line and extending along UT Hwy 30 to junction UT Hwy 16, then along UT Hwy 16 to junction UT Hwy 39, then along UT Hwy 39 to junction U.S. Hwy 89, then along UT Hwy 89 to junction U.S. Hwy 40, then along U.S. Hwy 40 to the NV-UT State line, then along the NV-UT State line to junction U.S. Hwy 6, points in that portion of WY on and west of a line beginning at the MT-WY State line and extending along U.S. Hwy 87 to junction U.S. Hwy 16, then along U.S. Hwy 16 to junction WY Hwy 789, then along WY Hwy 789 to junction WY Hwy 28, then along WY Hwy 28 to junction U.S. Hwy 187, then along U.S. Hwy 187 to junction WY Hwy 351, then along WY Hwy 351 to junction WY Hwy 350, then along WY Hwy 350 to junction U.S. Hwy 89, then along U.S. Hwy 89 to the ID-WY State line, then along the ID-WY State line to junction WY-UT State line, then along the WY-Ut State line to junction with UT Hwy 30.

(7) From Greenwood and McCormick Counties, SC, to points in that portion of CA west of a line beginning at Eureka, and extending along U.S. Hwy 101 to junction U.S. Hwy 199, then along U.S. Hwy 199 to the CA-OR State line, points in that portion of ID north of a line beginning at the ID-WA State line and extending along U.S. Hwy 12 to the ID-MT State line, Ashtabula, OH, points in that portion of OR west of a line beginning at the CA-OR State line and extending along U.S. Hwy 199 to junction with Interstate Hwy 5, then along Interstate Hwy 5 to junction OR Hwy 62, then along OR Hwy 62 to junction with U.S. Hwy 97, then along U.S. Hwy 97 to junction with U.S. Hwy 26, then along U.S. Hwy 26 to junction with U.S. Hwy 395, then along U.S. Hwy 395 to junction with OR Hwy 11, then along OR Hwy 11 to OR-WA State line, points in that portion of MT north of a line beginning at ID-MT State line and extending along U.S. Hwy 12 to junction Interstate Hwy 15, then along Interstate Hwy 15 to its termination at the United States-Canadian international boundary line, points in that portion of WA west and north of a line beginning at the WA-OR State line and extending along U.S. Hwy 195 to junction U.S. Hwy 12, then along U.S. Hwy 12 to the WA-ID State line. The purpose of this filing is to eliminate the gateway of Shadygrove, Waynesboro, and Belleville, PA.

No. MC 117574 (Sub-No. E-97), filed July 3, 1975. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA 17013. Applicant's representative: E. S. Moore, Jr. (same as above). *Agricultural implements and machinery, tractors, with or without attachments, cranes, industrial and processing machinery, attachments, accessories, and parts* thereof which, because of size or weight require the use of special equipment, or are self-propelled articles, each weighing 15,000 pounds or more, with related machinery, tools, parts moving in connection therewith, and are also contractors equipment or heavy and bulky articles, machinery, or machinery parts, between points in ME, NH, and VT, on the one hand, and, on the other, points in AL, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OK, OR, SC, SD, TN, TX, UT, WA, WV, WI, WY, DC, points in that portion of MD on and west of a line beginning at the MD-PA State line and extending along MD Hwy 23 to its junction with MD Hwy 152, to its termination at Magnolia, then along the Chesapeake Bay Shore to the MD-VA State line, points in that portion of OH on and west of a line beginning at Cleveland and extending along OH Hwy 21 to its junction with U.S. Hwy 30, then along U.S. Hwy 30 to the OH-PA State line, points in that portion of PA on and west of a line beginning at the OH-PA State line and extending along U.S. Hwy 30 to its junction with Interstate Hwy 83 to the PA-MD State line, and points in VA on, south, and west of the Chesapeake Bay. Restriction: The authority granted here is restricted (1) against the transportation of machinery, equipment, materials, and supplies used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipeline, and (2) the operations involving self-propelled articles, each weighing 15,000 pounds or more as further restricted to the transportation of such commodities which are transported on trailers. The purpose of this filing is to eliminate the gateways of Carlisle, Shady Grove, and Waynesboro, PA.

No. MC 117574 (Sub-No. E-99), filed July 16, 1975. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA 17013. Applicant's representative:

E. S. Moore, Jr. (same as above). (1) *Heating equipment, parts, accessories and supplies* therefor and heavy machinery when used as industrial and processing machinery, and attachments, accessories and parts of all of the above described commodities which because of size or weight require the use of special equipment, and (2) *heating equipment, parts, accessories and supplies* therefor and heavy machinery when used as industrial and processing machinery and attachments, accessories, and parts of all of the above described commodities not requiring special equipment when moving in the same shipment with or on the same vehicle with those which because of size or weight require the use of special equipment, from Phoenixville, PA, to points in AL, AZ, AR, CA, CO, FL, GA, ID, LA, MS, MT, NM, NV, NC (except points in Warren, Halifax, Northampton, Hertford, Gates, Pasquotank, Camden, Currituck, Bertie, Martin, Chowan, Percuimans, Washington, Tyrrell, Dare, Beaufort, Hyde and Pamlico Counties), or, SC, TN, TX, UT, WA, WY, and points in that portion of VA and west of the Frederick, Warren, Rappahannock, Madison, Greene, Albemarle, Buckingham, Prince Edward, Charlotte, and Halifax Counties. The purpose of this filing is to eliminate the gateways of Carlisle and Waynesboro, PA.

No. MC 117574 (Sub-No. E144), filed January 20, 1976. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA 17013. Applicant's representative: William A. Chestnutt, P.O. Box 1166, Harrisburg, PA 17108. (1) *Commodities*, the transportation of which because of size or weight, require the use of special equipment, and *related materials, supplies, and parts* of such commodities when their transportation is incidental thereto, and, (2) *self-propelled articles* each weighing 15,000 pounds or more, and *related machinery, tools, parts, and supplies* moving in connection therewith, restricted to the transportation of self-propelled articles on trailers, (1) between points in Marquette County, MI, on the one hand, and, on the other, points in PA and WV, and points in that part of IN on and east of a line commencing at the KY-IN State line extending along U.S. Hwy 231 to junction U.S. Hwy 40, then along U.S. Hwy 40 to junction IN Hwy 37, then along IN Hwy 37 to junction IN Hwy 18, then along IN Hwy 18 to the IN-OH State line and points in that part of KY on and east of a line commencing at the TN-KY State line extending to U.S. Hwy 41, then along U.S. Hwy 41 to junction U.S. Hwy 62, then along U.S. Hwy 62 to junction U.S. Hwy 231, then along U.S. Hwy 231 to the IN-KY State line.

(2) Between points in Dickinson County, MI, on the one hand, and, on the other, points in PA and WV, and points in that part of IN on and east of a line commencing at the KY-IN State line along U.S. Hwy 231, then along U.S. Hwy 231 to junction U.S. Hwy 40, then along U.S. Hwy 40 to junction IN Hwy 37, then along IN Hwy 37 to junction IN Hwy 18, then along IN Hwy 18 to the IN-OH State line, and points in KY on and east of a line beginning at the TN-KY State line extending along U.S. Hwy 41 to junction U.S. Hwy 62, then along U.S. Hwy 62 to junction U.S. Hwy 231, then along U.S. Hwy 231 to the KY-IN State line.

(3) Between points in Menominee County, MI, on the one hand, and, on the other, points in PA and WV, and points in that part of IN on and east of a line commencing at the IN-KY State line extending to U.S. Hwy 31, to junction IN Hwy 9, then along IN Hwy 9 to junction IN Hwy 32, then along IN Hwy 32 to the IN-OH State line, and points in that part of KY on and east of U.S. Hwy 31-W.

(4) Between points in Iron County, MI, on the one hand, and, on the other, points in PA and WV, and points in that part of IN on and east of a line commencing at the IN-KY State line extending along Interstate Hwy 65 to junction IN Hwy 46, then along IN Hwy 46 to junction IN Hwy 9, then along IN Hwy 9 to junction IN Hwy 32, then along IN Hwy 32 to the IN-OH State line.

(5) Between points in Baraga, Houghton, and Keweenaw Counties, MI, on the one hand, and, on the other, points in PA and WV, and points in that part of IN on and east of a line commencing at the KY-IN State line extending to U.S. Hwy 231 to junction U.S. Hwy 40, then along U.S. Hwy 40 to junction IN Hwy 37, then along IN Hwy 37 to the IN-OH State line, and points in that part of KY on and east of a line commencing at the TN-KY State line along U.S. Hwy 41 extending to junction U.S. Hwy 62, then along U.S. Hwy 62 to junction U.S. Hwy 231, then along U.S. Hwy 231 to the KY-IN State line.

(6) Between points in Cheboygan and Emmet Counties, MI, on the one hand, and, on the other, points in KY, PA, and WV, and points in that part of IN on and east of a line commencing at the IL-IN State line extending to Interstate Hwy 76, then along Interstate Hwy 76 to junction IN Hwy 32, then along IN Hwy 32 to junction IN Hwy 37, then along IN Hwy 37 to junction IN Hwy 18, then along IN Hwy 18 to the IN-OH State line.

(7) Between points in Chippewa County, MI, on the one hand, and, on the other, points in KY, PA, and WV, and points in that part of IN on, south, and east of a line commencing at the IL-IN State line extending to IN Hwy 28 to junction IN Hwy 29, then along IN Hwy 29 to junction IN Hwy 18, then along IN Hwy 18 to junction IN Hwy 13, then along IN Hwy 13 to junction IN Hwy 124, then along IN Hwy 124 to junction IN Hwy 37, then along IN Hwy 37 to junction U.S. Hwy 24, then along U.S. Hwy 24 to the IN-OH State line.

(8) Between points in Mackinac County, MI, on the one hand, and, on the other, points in KY, PA, and WV, and points in that part of IN on and south and east of a line commencing at the IL-IN State line extending to IN Hwy 28, to junction IN Hwy 29, then along IN Hwy 29 to junction IN Hwy 18, then along IN Hwy 18 to junction IN Hwy 13, then along IN Hwy 13 to junction IN Hwy 124, then along IN Hwy 124 to junction IN Hwy 9, then along IN Hwy 9 to junction U.S. Hwy 224, then along U.S. Hwy 224 to the IN-OH State line.

(9) Between points in Antrim and Charlevoix Counties, MI, on the one hand, and, on the other, points in KY, PA, and WV, and points in that part of IN on and east of a line commencing at the IL-IN State line extending to Interstate Hwy 76, then along Interstate Hwy 76 to junction IN Hwy 32, then along In Hwy 32 to junction IN Hwy 37, then along IN Hwy 37 to junction IN Hwy 18, then along IN Hwy 18 to the IN-OH State line.

(10) Between points in Otsego County, MI, on the one hand, and, on the other, points in KY, PA, and WV, and points in that part of IN on and east of a line commencing at the IL-IN State line extending along Interstate Hwy 76, then along Interstate Hwy 76 to junction IN Hwy 32, then along IN Hwy 32 to junction IN Hwy 37, then along IN Hwy 37 to junction IN Hwy 18, then along IN Hwy 18 to the IN-OH State line.

(11) Between points in Presque Isle County, MI, on the one hand, and, on the other, points in KY, PA, and WV, and points in that part of IN on and east of a line commencing at the IL-IN State line along Interstate Hwy 76, then along Interstate Hwy 67 to junction IN Hwy 32, then along IN Hwy 32 to junction IN Hwy 37, then along IN Hwy 37 to junction IN Hwy 18, then along IN Hwy 18 to the IN-OH State line.

(12) Between points in Montmorency County, MI, on the one hand, and, on the other, points in KY, PA and WV, and points in that part of IN on and south and east of a line commencing at the IL-IN State line and extending to IN Hwy 26 to junction IN Hwy 29, then along IN Hwy 29 to junction IN Hwy 18, then along IN Hwy 18 to junction IN Hwy 67, then along IN Hwy 67 to the IN-OH State line.

(13) Between points in Alpena County, MI, on the one hand, and, on the other, points in KY, PA and WV, and points in that part of IN on and south of U.S. Hwy 24.

(14) Between points in Crawford and Roscommon Counties, MI, on the one hand, on the other, points in KY, PA and WV, and points in that part of IN on, south and east of a line commencing at the IL-IN State line extending to IN Hwy 28 to junction IN Hwy 29, then along IN Hwy 29 to junction IN Highway 22, then along IN Hwy 22 to junction IN Hwy 9, then along IN Hwy 9 to junction IN Hwy 18, then along IN Hwy 18 to junction IN Hwy 67, then along IN Hwy 67 to the IN-OH State line.

(15) Between points in Alcona, and Iosco Counties, MI, on the one hand, and, on the other, points in KY, PA, and WV, and points in that part of IN on, south and east of a line commencing at the IL-IN State line extending to IN Hwy 26 to junction IN Hwy 25, then along IN Hwy 25 to junction U.S. Hwy 24, then along U.S. Hwy 24 to junction IN Hwy 124, then along IN Hwy 124 to the IN-OH State line.

(16) Between points in Manistee, and Wexford Counties, MI, on the one hand, and, on the other, points in KY, PA, and WV, and points in that part of IN on and east of a line commencing at the IL-IN State line extending to the U.S. Hwy 40, then along U.S. Hwy 40 to junction IN Hwy 67, then along IN Hwy 67 to the IN-OH State line.

(17) Between points in Mecosta, and Osceola Counties, MI, on the one hand, and, on the other, points in KY, PA and WV, and points in that part of IN on and east of a line commencing at the IL-IN State line extending along U.S. Hwy 40, then along to junction IN Hwy 67, then along IN Hwy 67 to the IN-OH State line.

(18) Between points in Lake County, MI, on the one hand, and, on the other, points in KY, PA and WV, and points in that part of IN on and east of a line commencing at the IL-IN State line extending to IN Hwy 67, then along IN Hwy 67 to the IN-OH State line.

(19) Between points in Mason and Oceana Counties, MI, on the one hand, and, on the other, points in KY, PA and WV, and points in that part of IN on and east of a line commencing at the IL-IN State line extending to IN Hwy 67, then along IN Hwy 67 to the IN-OH State line.

(20) Between points in Newaygo County, MI, on the one hand, and, on the other, points in KY, PA, and WV, and points in that part of IN on and east of a line commencing at the IL-IN State line extending along IN Hwy 67, then along IN Hwy 67 to the IN-OH State line.

(21) Between points in Benzie, Leelanau, and Grand Traverse Counties, MI, on the one hand, and, on the other, points in KY, PA, and WV, and points in that part of IN on, south and east of a line commencing at the IL-IN State line extending to U.S. Hwy 40, then along U.S. Hwy 40 to junction U.S. Hwy 36, then along U.S. Hwy 36 to junction IN Hwy 32, then along IN Hwy 32 to the IN-OH State line.

(22) Between points in Kalkaska, and Missaukee Counties, MI, on the one hand, and, on the other, points in KY, PA, and WV, and points in that part of IN on, and south, and east of a line commencing at the IL-IN State line extending along IN Hwy 28, then along IN Hwy 28 to junction IN Hwy 29, then along IN Hwy 29 to junction IN Hwy 22, then along IN Hwy 22 to junction IN Hwy 9, then along IN Hwy 9 to junction IN Hwy 18, then along IN Hwy 18 to junction IN Hwy 67, then along IN Hwy 67 to the IN-OH State line.

(23) Between points- in Kent and Ottawa Counties, MI, on the one hand, and, on the other, points in KY, PA and WV, and points in that part of IN on and south of a line commencing at the IL-IN State line extending to U.S. Hwy 50, then along U.S. Hwy 50 to junction IN Hwy 3, then along IN Hwy 3 to junction U.S. Hwy 40, then along U.S. Hwy 40 to the IN-OH State line.

(24) Between points in Ionia, and Montcalm Counties, MI, on the one hand, and, on the other, points in KY, PA, and WV, and points in that part of IN on and south of a line commencing at the IL-IN State line extending to U.S. Hwy 50, then along U.S. Hwy 50 to junction IN Hwy 3, then along IN Hwy 3 to junction U.S. Hwy 40, then along U.S. Hwy 40 to the IN-OH State line.

(25) Between points in Allegan County, MI, on the one hand, and on the other, points in KY, PA, and WV, and points in that part of IN on and south of a line commencing at the IL-IN State line extending to U.S. Hwy 50, then along U.S. Hwy 50 to junction IN Hwy 3, then along IN Hwy 3 to junction U.S. Hwy 40, then along U.S. Hwy 40 to the IN-OH State line.

(26) Between points in Barry and Calhoun Counties, MI, on the one hand, and, on the other, points in KY, PA, and WV, and points in that part of IN on and east of a line commencing at the IL-IN State line extending to IN Hwy 64, then along IN Hwy 64 to junction IN Hwy 37, then along IN Hwy 37 to junction IN Hwy 56, then along IN Hwy 56 to the IN-KY State line.

(27) Between points in Clare, and Isabella Counties, MI, on the one hand, and, on the other, points in KY, PA and WV, and points in that part of IN on, south and east of a line commencing at the IL-IN State line extending to U.S. Hwy 40, then along U.S. Hwy 40 to junction IN Hwy 3, then along IN Hwy 3 to junction IN Hwy 32, then along IN Hwy 32 to the IN-OH State line.

(28) Between points in Gladwin, and Midland Counties, MI, on the one hand, and, on the other, points in KY, PA, and WV, and points in that part of IN on and south of a line commencing at the IL-IN State line extending to U.S. Hwy 136 to junction IN Hwy 32, then along IN Hwy 32 to the IN-OH State line.

(29) Between points in Arenac and Bay Counties, MI, on the one hand, and, on the other, points in KY, PA and WV, and points in that part of IN on, south, and east of a line commencing at the IL-IN State line extending along IN Hwy 28 to junction IN Hwy 29, then along IN Hwy 29 to junction IN Hwy 22, then along IN Hwy 22 to junction U.S. Hwy 31, then along U.S. Hwy 31 to junction IN Hwy 18, then along IN Hwy 18 to junction IN Hwy 67, then along IN Hwy 67 to the IN-OH State line.

(30) Between points in Huron County, MI, on the one hand, and, on the other, points in KY, PA and WV, and points in that part of IN on, south, and east of a line commencing at the IL-IN State line extending along IN Hwy 26, then along IN Hwy 26 to junction IN Hwy 25, then along IN Hwy 25 to junction IN Hwy 18, then along IN Hwy 18 to junction IN Hwy 67, then along IN Hwy 67 to the IN-OH State line.

(31) Between points in Muskegon County, MI, on the one hand, and, on the other, points in KY, PA, and WV, and points in that part of IN on, south and east of a line commencing at the IL-IN State line extending to U.S. Hwy 50, then along U.S. Hwy 50 to junction IN Hwy 58, then along IN Hwy 58 to junction Interstate Hwy 65, then along Interstate Hwy 65 to junction IN Hwy 46, then along IN Hwy 46 to junction IN Hwy 3, then along IN Hwy 3 to junction U.S. Hwy 36, then along U.S. Hwy 36 to the IN-OH State line.

(32) Between points in Clinton and Gratiot Counties, MI, on the one hand, and, on the other, points in KY, PA and WV, and points in that part of IN on, and south of a line commencing at the IL-IN State line extending along U.S. Hwy 136 to junction IN Hwy 32, then along IN Hwy 32 to the IN-OH State line.

(33) Between points in Saginaw, and Shiawassee Counties, MI, on the one hand, and, on the other, points in KY, PA and WV, and points in that part of IN on and south of a line commencing at the IL-IN State line extending to U.S. Hwy 136, then along U.S. Hwy 136 to the IN-OH State line.

(34) Between points in Genesee and Lapeer Counties, MI, on the one hand, and, on the other, points in KY, PA and WV, and points in that part of IN on and south of a line commencing at the IL-IN State line extending to IN Hwy 28, then along IN Hwy 28 to junction IN Hwy 29, then along IN Hwy 29 to junction IN Hwy 22, then along IN

Hwy 22 to the IN-OH State line. The purpose of this filing is to eliminate the gateway of Columbus, OH and points within 80 miles thereof.

No. MC 117574 (Sub-No. E145), filed January 19, 1976. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA 17013. Applicant's representative: William A. Chestnutt, P.O. Box 1166, Harrisburg, PA 17108. (1) *Commodities,* the transportation of which because of size or weight, require the use of special equipment, and *related material, supplies, and parts* of such commodities when their transportation is incidental thereto, and, (2) *self-propelled articles* each weighing 15,000 pounds or more, and *related machinery, tools, parts, and supplies* moving in connection therewith, restricted to the transportation of self-propelled articles on trailers: (1) Between points in Fulton, Graves, and Hickman Counties, KY, on the one hand, and, on the other, points in PA and WV and points in that part of IN on, north, and east of a line commencing at the MI-IN State line extending to IN Hwy 19 to junction U.S. Hwy 33, then along U.S. Hwy 33 to junction IN Hwy 5, then along IN Hwy 5 to junction U.S. Hwy 224, then along U.S. Hwy 224 to junction IN Hwy 1, then along IN Hwy 1 to junction IN Hwy 44, then along IN Hwy 44 to the IN-OH State line, and points in that part of MI on, north, and west of a line commencing at the MI-IN State line extending to MI Hwy 62 to junction MI Hwy 60, then along MI Hwy 60 to junction U.S. Hwy 131, then along U.S. 131 to junction Interstate Hwy 96, then along Interstate Hwy 96 to its termination at Lake Michigan, (2) between points in Ballard, Carlisle, and McCracken Counties, KY, on the one hand, and, on the other, points in PA and WV and points in that part of IN on and east of a line commencing at Richmond, IN along U.S. Hwy 35 to junction IN Hwy 3, then along IN Hwy 3 to junction U.S. Hwy 224, then along U.S. Hwy 224 to junction IN Hwy 9, then along IN Hwy 9 to junction U.S. Hwy 33, then along U.S. Hwy 33 to the IN-MI State line and points in that part of MI on and east of a line commencing at the IN-MI State line along U.S. Hwy 12, then along U.S. Hwy 12 to junction U.S. Hwy 131, then along U.S. Hwy 131 to junction MI Hwy 37, then along MI Hwy 37 to Traverse City, MI, (3) between points in Galloway and Marshall Counties, KY, on the one hand, and, on the other, points in PA and WV and points in that part of IN, on, north, and east of a line commencing at the IN-OH State line extending to U.S. Hwy 40 to junction IN Hwy 1, then along IN Hwy 1 to junction U.S. Hwy 224, then along U.S. Hwy 224 to junction IN Hwy 5, then along IN Hwy 5 to junction U.S. Hwy 20, then along U.S. Hwy 20 to junction IN Hwy 13, then along IN Hwy 13 to the IN-MI State line, and points in that part of MI on, north, and west of a line commencing at the Mi-In State line extending to U.S. Hwy 131 to junction Interstate Hwy 96, then along Interstate Hwy 96 to its termination at Lake Michigan, (4) between points in Crittenden and Livingston Counties, KY, on the one hand, and, on the other, points in PA and WV, and points in that part of Richmond, IN along U.S. Hwy 35, then extending to IN Hwy 15, then along IN Hwy 15 to junction U.S. Hwy 24, then along U.S. Hwy 24 to junction U.S. Hwy 31, then along U.S. Hwy to the IN-Mi State line and points in that part of MI on and east of a line commencing at the MI-IN State line extending along IN Hwy 62, then along IN Hwy 62 to junction IN Hwy 40, then along IN Hwy 40 to junction IN Hwy 37, then along IN Hwy 37 to junction U.S. Hwy 10, then along U.S. Hwy 10 to Ludington, MI, (5) between points in Christian and Trigg Counties, KY, on the one hand, and, on the other, points in PA and WV and points in that part of IN on, north, and east of a line commencing at the IN-OH State line extending to U.S. Hwy 40 to junction IN Hwy 1, then along IN Hwy 1 to junction U.S. 224, then along U.S. Hwy 224 to junction IN Hwy 5, then along IN Hwy 5 to junction U.S. Hwy 33, then along, U.S. Hwy 33 to junction IN Hwy 19, then along IN Hwy 19 to the IN-MI State line, and Ashland KY. The purpose of this filing is to eliminate the gateway of Columbus, OH, and points within 80 miles thereof.

No. MC 117574 (Sub-No. E146), filed January 20, 1976. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA 17013. Applicant's representative: William A. Chestnutt, P.O. Box 1166, Harrisburg, PA 17108. (1) *Commodities,* the transportation of which because of size or weight, require the use of special equipment, and *related materials, supplies, and parts* of such commodities when their transportation is incidental thereto, and, (2) *self-propelled articles* each weighing 15,000 pounds or more, and *related machinery, tools, parts, and supplies* moving in connection therewith, restricted to the transportation of self-propelled articles and trailers: (1) between points in Sanilac and Tuscola Counties, MI, on the one hand, and, on the other, points in KY, PA, and WV and points in that part of IN on and south of a line commencing at the IL-IN State line in an easterly direction along IN Hwy 26 to its junction with IN Hwy 25, then in a northeasterly direction along IN Hwy 25 to its junction with IN Hwy 18, then easterly direction along IN Hwy 18 to junction IN Hwy 67, then in an easterly direction along IN Hwy 67 to the IN-OH State line, (2) between points in Eaton and Ingham Counties, MI, on the one hand, and, on the other, points in KY, PA, and WV and points in that part of IN on, south, and east of a line beginning at the IL-IN State line in an easterly direction along U.S. Hwy 40 to junction IN Hwy 46, then in an easterly direction along IN Hwy 46 to junction with IN Hwy 3, then in a northerly direction along IN Hwy 3 to junction U.S. Hwy 36, then east along U.S. Hwy 36 to the IN-OH State line, (3) between points in Livingston and Oakland Counties, MI, on the one hand, and, on the other, points in KY, PA, and WV and points in that part of IN on and south of IN Hwy 28, (4) between points in Macomb and Saint Clair Counties, MI, on the one hand, and, on the other, points in KY, PA, and WV, and points in that part of IN on and south of U.S. Hwy 24, (5) between points in Branch and Hillsdale Counties, MI, on the one hand, and, on the other, points in KY, PA, and WV and points in that part of IN on, south, and east of a line commencing at the IL-IN State line extending along U.S. Hwy 40 to junction with IN Hwy 46, then along IN Hwy 46 to junction U.S. Hwy 40, then along U.S. Hwy 40 to the IN-OH State line, (6) between points in Berrien County, MI, on the one hand, and, on the other, points in PA and WV and points in that part of KY on and east of a line commencing at the TN-KY State line along Interstate Hwy 64, then extending along Interstate Hwy 65 to junction U.S. Hwy 127, then along U.S. Hwy 127 to the KY-OH State line, (7) between points in Cass and Van Buren Counties, MI, on the one hand, and, on the other, points in that part of IN on and east of a line commencing at the KY-IN State line extending along IN Hwy 3, then along IN Hwy 3 to junction U.S. Hwy 40, then along U.S. Hwy 40 to the IN-OH State line; KY, points on and east of a line commencing at the TN-KY State line and extending along U.S. Hwy 41, then along U.S. Hwy 41 to junction U.S. Hwy 62, then extending along 62 to its junction Interstate Hwy 65, then along Interstate Hwy 65 to the KY-IN State line, (8) between points in Kalamazoo and St. Joseph Counties, MI, on the one hand, and, on the other, points in KY, PA, and WV, and points in that part of IN on and east of a line commencing at the IL-IN State line extending to U.S. Hwy 50, then along U.S. Hwy 50 to junction IN Hwy 3, then along IN Hwy 3 to junction U.S. Hwy 40, then along U.S. Hwy 40 to the IN-OH State line, (9) between points in Jacson and Lenawee Counties, MI, on the one hand, and, on the other, points in KY, PA, WV, and points in that part of IN on and south of a line commencing at the IL-IN State line extending to U.S. Hwy 136 to junction IN Hwy 32, then along IN Hwy 32 to the IN-OH State

line, (10) between points in Monroe and Washtenaw Counties, MI, on the one hand, and, on the other, points in KY, PA, and WV, and points in that part of IN on and south of a line commencing at the IL-IN State line extending along to U.S. Hwy 24 to junction IN Hwy 124, then along IN Hwy 124 to the IN-OH State line, and points in that part of MI on and west of U.S. Hwy 41 from Escanaba to Marquette, MI, (11) between points in Wayne County, MI, on the one hand, and, on the other, points in KY, PA, and WV, and points in that part of IN on and south of a line commencing at the IL-IN State line extending to U.S. Hwy 24, then along U.S. Hwy 24 to the IN-OH State line. The purpose of this filing is to eliminate the gateway of Columbus, OH, and points within 80 miles thereof.

By the Commission.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-6727 Filed 3-14-78; 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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[6351-01]

1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., March 17, 1978.

PLACE: 8th Floor Conference Room, 2033 K Street, NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market surveillance matters.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-561-78 Filed 3-13-78; 12:16 pm]

[6714-01]

2

FEDERAL DEPOSIT INSURANCE CORPORATION.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:40 p.m. on Friday, March 10, 1978, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the following matters:

Suspension of trading in the securities of an insured State nonmember bank, pursuant to sections 12(i) and 12(k) of the Securities Exchange Act of 1934.

Application of Camino-California Bank, Palo Alto, Calif., for advance consent to retire subordinated capital notes.

Application of Imperial Bank, Los Angeles, Calif., an insured State nonmember bank, for consent to purchase certain assets and assume the liability to pay deposits made in the San Jose and San Francisco branches of Camino-California Ban, Palo Alto, Calif.

In calling the meeting, the Board of Directors determined, on motion of Chairman LeMaistre, seconded by Director John G. Heimann (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than 7 days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the meeting was exempt from the open meeting requirements of the "Government in the Sunshine Act" by subsections (c)(8) and (c)(9)(A)(ii) thereof (5 U.S.C. 552b(c)(8) and (c)(9)(A)(ii)).

Dated: March 10, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[S-562-78 Filed 3-13-78; 12:17 pm]

[6740-02]

3

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 9929, published March 10, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., March 14, 1978.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No., and Company

CP-15.—CP78-114, Columbia Gas Transmission Corp.

KENNETH F. PLUMB,
Secretary.

[S-558-78 Filed 3-13-78; 10:07 am]

[6210-01]

4

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 11 a.m., Tuesday, March 14, 1976. The business of the Board requires that this meeting be held with less than 1 week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Proposed statement to be presented to the Senate Committee on Banking, Housing and Urban Affairs regarding the results of the special survey undertaken by the three Federal bank regulatory agencies concerning bank stock loans, insider loans, and overdrafts. 2. 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: March 13, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[S-564-78 Filed 3-13-78; 3:45 pm]

[1505-01]

5

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

Correction

In FR Doc. S-495-78 appearing at page 9406 in the issue of Tuesday, March 7, 1978, first column, the tenth line should be corrected to read, "(FR 502S)"

[6750-01]

6

FEDERAL TRADE COMMISSION.

TIME AND DATE: 1:30 p.m., Monday, March 20, 1978.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Monthly Policy Review Session: discussion of current Commission investigations and the problems posed by state regulatory activities.

CONTACT PERSON FOR MORE INFORMATION:

Wilbur T. Weaver, Office of Public Information, 202-523-3830. Recorded Message: 202-523-3806.

[S-559-78 Filed 3-13-78; 11:30 am]

[7020-02]

7

[USITC SE-78-12A]

UNITED STATES INTERNATIONAL TRADE COMMISSION.
"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 9932, March 10, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:30 a.m., Thursday, March 23, 1978.

CHANGES IN THE MEETING: Agenda item No. 6 [Ice hockey sticks from Finland (Inv. AA1921-177)—briefing and vote], previously announced as open to the public, was closed to the public by a vote of a majority of the entire membership of the Commission.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-563-78 Filed 3-13-78; 2:22 pm]

[7905-01]

8

U.S. RAILROAD RETIREMENT BOARD.

TIME AND DATE: 10:30 a.m., March 20, 1978.

PLACE: Board's meeting room on the 8th floor of its headquarters building at 844 Rush Street, Chicago, Ill. 60611.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

(1) General Services Administration proposal for commercial contractual cleaning service.
(2) Delegation of authority.
(3) Membership in professional societies.
(4) Digest of monthly administrative reports.

Portions closed to the public:

(5) Appeal from referee's denial of disability annuity application, Mart H. Lawson.
(6) Appeal from referee's denial of annuity application, Frieda K. Young.

CONTACT PERSON FOR MORE INFORMATION:

R. F. Butler, Secretary of the Board, COM NO. 312-751-4920; FTS NO. 387-4920.

[S-560-78 Filed 3-13-78; 12:16 pm]

[6320-01]

9

[M-108, March 8, 1978]

CIVIL AERONAUTICS BOARD.
TIME AND PLACE: 4:15 p.m., March 8, 1978.

PLACE: Room 1011, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: Ongoing United States-United Kingdom consultations about the low fare dispute and other matters.

STATUS: Closed.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION:

This meeting will concern what positions the Board will recommend in the current consultations with the United Kingdom. Premature public disclosure of the options, plans and opinions of the Board could seriously undermine the current consultations with the United Kingdom.

Accordingly, the following Members have voted that public observation of this meeting would involve matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action within the meaning of the exemption provided under 5 U.S.C. 552 (b), (c)(9)(B) and 14 CFR section 310b.5(9)(B) and that the meeting will be closed:

Chairman, Alfred E. Kahn
Vice Chairman, G. Joseph Minetti
Member, Lee R. West
Member, Elizabeth E. Bailey

So that the Board can consider this matter and promptly determine its positions during the ongoing consultations with the U.K., the following Members have voted that agency business requires that the Board meet on Wednesday, March 8, 1978, on less than seven days notice, and that no earlier announcement of the meeting was possible:

Chairman, Alfred E. Kahn
Vice Chairman, G. Joseph Minetti
Member, Lee R. West
Member, Elizabeth E. Bailey

PERSONS EXPECTED TO ATTEND

Board Members.—Chairman, Alfred E. Kahn; Vice Chairman, G. Joseph Minetti; Member, Lee R. West; Member, Richard J. O'Melia; and Member, Elizabeth E. Bailey.

Assistants to Board Members.—Mr. Mike Roach, Mr. James Casey, Mr. Jon Golden, Mr. Elias Rodriguez, and Mr. Ford Cole.

Office of the Managing Director.—Mr. Dennis Rapp and Mr. John Hancock.

Bureau of International Aviation.—Mr. Donald Farmer, Mr. Donald Litton, Mr. Joseph Chesen, Mr. Tony Largay, and Ms. Mary Pett.

Bureau of Pricing and Domestic Aviation.—Mr. Michael Levine and Ms. Barbara Clark.

Bureau of Fares and Rates.—Mr. Herbert Aswall, Mr. James Deegan, and Mr. James Greene.

Office of the General Counsel.—Mr. Philip Bakes, Mr. Gary Edles, Mr. Peter Schwarzkopf, Ms. Melissa Osborne, and Mr. Mitchell Black.

Office of Economic Analysis.—Mr. Darius Gaskins.

Office of the Secretary.—Mrs. Phyllis T. Kaylor and Ms. Deborah A. Lee. Tape recording of session.

GENERAL COUNSEL CERTIFICATION

I Certify that this meeting may be closed to the public under 5 U.S.C. 552b(c)(9)(B) and 14 CFR section 310b.5(9)(B).

PHILIP J. BAKES, Jr.,
General Counsel.

[S-565-78 Filed 3-13-78; 3:56 pm]

[6320-01]

10

[M-109, March 9, 1978]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., March 1, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.
2. Docket 31737, Proposed Amendment of Separation of Functions Rule (Section 300.4) (Memo No. 7473-B, OGC).
3. Dockets 28475, 31116, 31821, 28251, 31774, 30267, and 30971; cases to be set for hearing in view of current BALJ capacity (Memo No. 7795, 7795-A, BALJ, BOR).
   NOTE.—Includes memos 5708-B, 7297-A and B, 7751, 7700-C, and 7785-A.
4. Docket 31967, Ozark's Petition for Show Cause, or, alternatively, Motion For Hearing on St. Louis-Washington (via Dulles Airport) (Memo No. 7784, BPDA).
5. Fare increase proposed by Continental/Air Micronesia (BPDA).
6. Dockets 32169, 32170, 32173, and 32175, "Super Jackpot" fares proposed by TWA, (BPDA).
7. Fare increase proposed by Aloha and Hawaii (BPDA 100 Series) (BPDA).
8. Docket 30777, IATA agreement on South Pacific fares (BPDA-400 Series) (BPDA).
9. Docket 29591, Complaint of Donald L. Pevsner, Esq., regarding refund provisions for unused tickets, (Memo No. 7670-A, BPDA, BIA).
10. Docket 31856, American's Request to Suspend Segment 6 (Boston-St. Louis-Honolulu) of Route 4, (Memo No. 7805, BPDA).
11. Docket 31131, Cimarron Industries—Exemption to use 75-seat jet aircraft in charter service, (BPDA, OGC).
12. Dockets 31329, 31369, 31659, Continental/Western Application and Motion seeking approval of Equipment interchange agreement to provide Houston-Calgary single-plane service via Denver; Continental Exemption Application to Permit Operation of above Interchange Agreement; Braniff/Western Application and Motion seeking approval of Equipment Interchange Agreement to provide Dallas/Fort Worth-Calgary/Edmonton single-plane service via Denver. (Memo No. 7804 BPDA, OGC, BIA).

13. Dockets 31857, 31858, 31785, 31908, 31847, 31880, 31881, 31893, 31922, 31925, 31859, Application for grandfather all-cargo carrier service certificates and one application for a section 416 exemption from the grandfather criteria in section 418, (Memo No. 7743-A BPDA, OGC).
14. Docket 30236, Subpart N Application of United Air Lines—Cleveland-San Diego Nonstop Authority, (Memo No. 6817-E, BPDA, OGC).
15. Dockets 26183 and 27124, Application of Delta Air Lines (Houston-New Orleans restriction); Continental's Subpart N Application, (Memo No. 5197-G, BPDA).
16. Deregulation of air freight forwarding, (BPDA, OEA, BAS, BOE, OGC).
17. Docket 32122, Travel Divident Voucher Program proposed by Eastern, (BPDA).
18. Docket 28848, Improved Service to Wichita,
19. Dockets 30356, 30515, Transcontinental Low-Fare Route Proceeding, (Memo No. 5393-E, OGC).
20. Docket 29880, Compensation of participants in Board proceedings, (Memo No. 6751-B, 6751-A, OGC).
21. Docket 30240, Accounting and Reporting Requirements Regarding Airline Lobbying Costs and Docket 31333, Accounting and Reporting Requirements Regarding Airline Advertising Costs—Additional comments, (Memo No. 7337-A, OGC).
22. Part 221—Notice of proposed rulemaking to reduce the amount of economic data required in tariff justifications for domestic air freight service, (Memo No. 7796, OGC, BPDA).
23. Docket 30555, Peanuts Fares, TXI moves to terminate proceeding or dispose with hearing and reply on briefs, (Memo No. 7747-A, BALJ).
24. Argentina: Designation of Pan American for All-Cargo Frequencies, (Memo No. 7806, BIA).
25. Docket 28125, Transportes Aereos Benianos, S.A. (TABSA); Permit Cancellation, (Memo No. 5463-B, BIA, OGC).
26. Docket 31205, Advance Notice of Proposed Rulemaking on Model Corporate Disclosure Regulations, issued July 28, 1977, (Memo No. 6897-B, BAS, BPDA, BOE, OGC).
27. Freedom of Information Act appeals from Herbert Rosenthal and Mary DeOreo for section 902(f) material (OGC, BOE).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

[S-566-78 Filed 3-13-78; 3:56 pm]

[6320-01]

11

[Corrected Copy; M-110, March 10, 1978]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 9:30 a.m., March 10, 1978.

PLACE: Room 1011, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: Ongoing consultations with the United Kingdom and the Netherlands.

STATUS: Closed.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: The Board is currently formulating its recommendations in ongoing consultations with the United Kingdom and the Netherlands. Discussion of the Board's position during the consultations is expected to involve a series of meetings. Premature public disclosure of the options, plans, and opinions of the Board could seriously undermine the United States position at any time during the consultations.

Accordingly, the following Members have voted that public observation of the series of meetings expected to involve the subject of consultations with the United Kingdom and Netherlands, would be likely to significantly frustrate the implementation of proposed agency action within the meaning of the exemption provided under 5 U.S.C. 552b(c)(9)(B) and 14 CFR section 301b.5(9)(B) and that the expected series of meetings, which began on March 10, 1978, will be closed as provided in 5 U.S.C. 552b(d) (1) and 14 CFR section 310b.6(b):

Chairman, Alfred E. Kahn
Vice Chairman, G. Joseph Minetti
Member, Lee R. West
Member, Richard J. O'Melia

So that the Board can consider this matter and promptly determine its positions during the ongoing consultations with the United Kingdom and the Netherlands, the following Members have voted that agency business requires that the Board meet on Friday, March 10, 1978, on less than seven days notice, and that no earlier announcement of the meeting was possible:

Chairman, Alfred E. Kahn
Vice Chairman, G. Joseph Minetti
Member, Lee R. West
Member, Richard J. O'Melia

PERSONS EXPECTED TO ATTEND

Board Members.—Chairman, Alfred E. Kahn; Vice Chairman, G. Joseph Minetti; Member, Lee R. West; Member, Richard J. O'Melia; and Member, Elizabeth E. Bailey.

Assistants to Board Members.—Mr. Mike Roach, Mr. James Casey, Mr. John Golden, Mr. Elias Rodriguez, and Mr. Ford Cole.

Office of the Managing Director.—Mr. Dennis Rapp and Mr. John Hancock.

Bureau of International Aviation.—Mr. Donald Farmer, Mr. Donald Litton, Mr. Joseph Chesen, Mr. Tony Largay, and Ms. Mary Pett.

Bureau of Pricing and Domestic Aviation.—Mr. Michael Levine and Ms. Barbara Clark.

Bureau of Fares and Rates.—Mr. Herbert Aswall, Mr. James Deegan, and Mr. James Greene.

Office of the General Counsel.—Mr. Philip Bakes, Mr. Gary Edles, Mr. Peter Schwarzkopf, Ms. Melissa Osborne, and Mr. Mitchell Black.

Office of Economic Analysis.—Mr. Darius Gaskins and Mr. Richard Klem.

Office of the Secretary.—Mrs. Phyllis T. Kaylor and Ms. Deborah A. Lee.

I certify that the expected series of meetings, which began on March 10, 1978, as provided in 5 U.S.C. 552b(d)(1) and 14 CFR section 310b.6(b), be closed to the public under 5 U.S.C. 552b(c)(9)(B) and 14 CFR section 310b.5(9)(B).

PHILIP J. BAKES, Jr.,
General Counsel.

[S-567-78 Filed 3-13-78; 3:56 pm]

[7590-01]

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NUCLEAR REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 10469 dated March 13, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Week of March 13, 1978.

CHANGES IN THE MEETING:

WEDNESDAY, MARCH 15

1:30 p.m. Items 2 and 3 ("Personnel Matter" and "Proposed Licensing Legislation") are postponed to a date to be announced.

FRIDAY, MARCH 17

9:30 a.m. Briefing by DOE on Waste Management Report (approximately 1 hour), (public briefing), (additional meeting).

NOTE.—Commission meetings during the weeks of March 13 and March 20 may take place without a quorum; consequently, final action may not be taken on certain items discussed.

WALTER MAGEE,
Chief, Operations Branch, Office of the Secretary.

MARCH 13, 1978.

[S-571-78 Filed 3-14-78; 10:32 am]

federal register

WEDNESDAY, MARCH 15, 1978
PART II

ENVIRONMENTAL PROTECTION AGENCY

NOISE EMISSION STANDARDS FOR TRANPORTATION EQUIPMENT

Motorcycle Replacement Exhaust Systems

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 205]

[FRL 811-3]

NOISE EMISSION STANDARDS FOR TRANSPORTATION EQUIPMENT

Motorcycle Replacement Exhaust Systems

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: On May 28, 1975, the Environmental Protection Agency identified motorcycles as a major source of noise in the environment. In accordance with the requirement of the Noise Control Act, this notice proposes to add two new subparts to Part 205 of Title 40 of the Code of Federal Regulations establishing noise emission regulations for new motorcycles and new motorcycle replacement exhaust systems distributed in commerce. Compliance with the proposed standards is expected to cause an average 5 decibel reduction in new street motorcycle sound levels by 1985, and a 2 to 9 decibel reduction in sound levels of new offroad motorcycles. Proposed noise standards for motorcycle replacement exhaust systems are anticipated to cause significant reductions in motorcycle noise impact by eliminating the availability of ineffective motorcycle replacement exhaust systems. Under the provisions of the Noise Control Act regulation of motorcycle operation after time of sale is reserved for State and local authorities.

Although the standards and tampering prohibitions proposed herein are expected to significantly reduce motorcycle noise impact, State and local control of in-use motorcycle operation will be necessary to fully realize the potential benefits of these proposed regulations. Although EPA intends to vigorously enforce these proposed regulations to ensure the manufacture and sale of complying products, it will be unable to provide more than minimal enforcement resources to prevent dealer and owner tampering and modification to quiet equipment. EPA expects State and local governments which have a motorcycle noise problem to complement these proposed Federal regulations with legislative and enforcement action to control motorcycle modifications.

DATES: The official docket for the proposed noise emission regulations for motorcycles and motorcycle replacement exhaust systems will remain open for the submittal of comment until June 16, 1978.

Public hearings: Anaheim, Calif., Friday, April 28, 1978; Saturday, April 29, 1978; Monday, May 1, 1978. St. Petersburg, Fla., Friday, May 5, 1978. Washington, D.C., Tuesday, May 9, 1978.

The April 28 hearing will consist of daytime and evening sessions starting at 9 a.m. and 7:30 p.m. All other hearings will commence at 9 a.m. and continue until all who wish to testify have been heard.

Submit intentions to make a statement at public hearings on or before April 12, 1978.

ADDRESSES: Public hearings: Anaheim Convention Center, Anaheim, Calif., Friday, April 28, 1978; Saturday, April 29, 1978; Monday, May 1, 1978. Ramada Inn, St. Petersburg, Fla., Friday, May 5, 1978. Departmental Auditorium, 12th Street and Constitution Avenue, Washington, D.C., Tuesday, May 9, 1978.

Persons submitting written comments for the docket or wishing to make a statement at the public hearings should write to the following address:

Director, Standards and Regulations Division, Attention: ONAC 77-10 (Motorcycles), AW-490 U.S. Environmental Protection Agency, Washington, D.C. 20460

or simply address your comments to:

Motorcycle Noise, AW-490, U.S. Environmental Protection Agency, Washington, D.C. 20460.

It is also requested that speakers submit, if practicable, five (5) copies of their statement prior to the hearing date to the Director, Standards and Regulations Division, at the above address.

All information received, which is not identified as company proprietary in nature, will be open to public inspection and copying during normal business hours at the U.S. Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street SW., Washington, D.C. 20460.

To receive copies of the proposed regulations, draft Environmental and Inflationary Impact Statement (EIS-IIS), or the Background Document for the proposed regulations, please contact:

Mr. Charles Mooney, EPA Public Information Center (PM-215), U.S. Environmental Protection Agency, Washington, D.C. 20460, 202-755-0717.

FOR FURTHER INFORMATION CONTACT:

Mr. Scott Edwards, Program Manager, Standards and Regulations Division (AW-490), U.S. Environmental Protection Agency, Washington, D.C. 20460, 703-557-7666.

SUPPLEMENTARY INFORMATION:

I. Introduction

As part of the Environmental Protection Agency's goal of reducing environmental noise which jeopardizes the public health and welfare, motorcycles were identified under the authority of section 5(b)(1) of the Noise Control Act, Pub. L. 92-574, 42 U.S.C. 4901 et seq. (the "Act"), as a major source of noise on May 28, 1975 (40 FR 23105). Under section 6 of the Noise Control Act, EPA is required to publish proposed regulations for products which are major sources of noise, if, in the Administrator's judgment, noise standards are feasible. Such regulations are to include noise emission standards which are "requisite to protect the public health and welfare, taking into account the magnitude and conditions of use of such product (alone or in combination with other noise sources), the degree of noise reduction achievable through the application of best available technology, and the cost of compliance."

Over 90 million Americans are currently exposed to levels of traffic noise in excess of Ldn 55, the level of noise exposure which EPA has identified as requisite to protect the public health and welfare with an adequate margin of safety.[1] To reduce public exposure to noise from surface transportation vehicles, EPA is pursuing a strategy of studying the various vehicular sources of traffic noise, and establishing noise emission standards for those vehicles where appropriate. The proposed motorcycle noise emission regulations will, in combination with noise standards which have been and which will be established for other types of transportation vehicles, cause a significant lessening of public noise exposure over the coming decades.

The identification of motorcycles as a major noise source was based on the total impact of current motorcycle operations. The identification did not specify which types of motorcycles or motorcycle operations were responsible for the motorcycle noise "problem". EPA is authorized under the Noise Control Act to establish regulations for any product (including any manufactured article or good or component thereof) which significantly contributes to this noise impact problem, the control of which would achieve a meaningful reduction in impact.

It was recognized at the time of identification that much of the current impact from motorcycles comes from owner-modified motorcycles

[1] "Information on Levels of Environmental Noise Requisite To Protect Public Health and Welfare with an Adequate Margin of Safety," EPA, March 1974, 550/9-74-004.

(particularly those with replacement and modified exhaust systems). Studies indicate, however, that unmodified motorcycles, if not regulated, will become the single loudest source of traffic noise when other vehicles are quieted as part of EPA's program to reduce traffic noise impact. Studies and interviews with affected parties have also indicated that noise from motorcycles operated in off-road environments are considered to be a major problem, not only in wilderness areas, but also in backyards, vacant lots and parking lots, and other near-residential areas. Motorcycles operated off-road include both dual purpose on-road/off-road motorcycles (considered to be street motorcycles for the purposes of these propose regulations) and pure off-road motorcycles not intended for any street operation.

After careful consideration of the constituents of total motorcycle noise impact, the Agency had decided that noise emission standards are necessary for newly manufactured street and off-road motorcycles and replacement exhaust systems. Further, labeling requirements are seen as necessary for competition motorcycles, exhaust systems intended for use on competition motorcycles, and exhaust systems intended for use on motorcycles manufactured before the applicability of these regulations.

These regulations propose a total EPA program which addresses all new products which affect motorcycle noise impact. Further, the labeling and other provisions of these proposed regulations are intended to promote a comprehensive Federal, State, local, industry and operator program which can achieve the desired reduction in motorcycle noise. As discussed below, State and local governments will need to play a major role in realizing the benefits achievable from such a comprehensive program.

In arriving at the proposed regulatory standards, the Agency considered information collected from a number of sources with respect to noise control technology, cost and economic impact, and health and welfare. EPA wishes to express its appreciation to the major motorcycle manufacturers, each of which submitted detailed technological and cost information to the EPA in support of this effort. In addition, EPA conducted in-depth interviews with smaller manufacturers and many manufacturers of replacement exhaust systems. Opinions and comments on various regulatory issues were solicited from all States and from local government officials concerned with motorcycle noise, as well as from environmental organizations and motorcycle user and enthusiast groups. Advance copies of draft materials were supplied to manufacturers, States, and other interested parties to allow additional time for review and comment.

These regulations are proposed under the authority of the Noise Control Act in two subparts: Subpart D—Motorcycles, and Subpart E—Motorcycle Replacement Exhaust Systems. Motorcycle replacement exhaust systems are to be regulated as a separate product in accordance with section 3(3) of the Noise Control Act which includes component parts of manufactured articles in the meaning of the word "product."

Manufacturers of motorcycles and motorcycle replacement exhaust systems will also be subject to the provisions of Subpart A (General Provisions) of this part. Subpart A was promulgated in conjunction with Subpart B (Medium and Heavy Trucks) on April 13, 1976 (41 FR 15544). The text of Subpart A is not included in this notice since it is not proposed to be amended at this time. Copies of Subpart A are available from the EPA Public Information Center at the above address.

Two other new subparts to Part 205 have also been recently proposed: Subpart C—Buses, and Subpart F—Truck-Mounted Solid Waste Compactors.

All of the data and analyses collected and performed in support of these proposed regulations have been assembled in a Background Document. Persons desiring such detailed information are encouraged to refer to this publication, entitled Background Document for Proposed Motorcycle Noise Emission Regulations" (EPA ONAC 550/9-77-203).

In addition, analysis of the major regulatory alternatives available to EPA, and a summary description of the benefits and economic impacts of these options is presented in the "Draft Environmental and Inflationary Impact Statement (EIS-IIS) for Proposed Motorcycle Noise Emission Regulations" (EPA ONAC 550/9-77-202). Copies of both the Background Document and the draft EIS-IIS can be received from the EPA Public Information Center at the above address.

II. The Proposed Regulation

A. *Standards.* The proposed noise emission standards and effective dates for street and off-road motorcycles are presented in Table 1.

Table 1.—*Proposed noise emission standards*

Effective date	*Sound level (dB(A))*
Street motorcyles:	
Jan. 1, 1980	83
Jan. 1, 1982	80
Jan. 1, 1985	78
Moped-type street motorcyles:	
Jan. 1, 1980	70
Off-road motorcyles, engine displacement 170 cc and below:	
Jan. 1, 1980	83
Jan. 1, 1982	80
Jan. 1, 1985	78
Off-road motorcyles, engine displacement more than 170 cc:	
Jan. 1, 1980	86
Jan. 1, 1983	82

All motorcyles manufactured after the effective dates would be required to meet the above values. To assure compliance with these not-to-exceed standards, it is expected that manufacturers will produce motorcyles several decibels below the specified limits.

B. *Measurement procedure.* These standards refer to sound levels measured at 15 meters (49.2 feet) perpendicular to the center line of vehicle travel, according to an acceleration-type measurement procedure proposed in these regulations. The complete measurement procedure is presented in Appendix I.

C. *Replacement exhaust systems.* After the above effective dates, replacement exhaust systems that are designed and marketed for motorcycles subject to these proposed standards shall, when installed on any motorcycle for which they are intended, not cause that motorcycle to produce sound levels in excess of the new vehicle standards listed in Table 1.

D. *Warranty.* Manufacturers of Federally regulated street and off-road motorcycles and replacement exhaust systems will be required to warrant to the initial purchaser and subsequent purchasers that the product complies with these regulations at the time of its introduction into commerce.

E. *Acoustical assurance period.* The Agency believes that the estimated health and welfare benefits from this proposed noise emission standard can be attained only if motorcycles meet the not-to-exceed levels in Table 1 for a reasonable in-use period. At a minimum it means the standard must be met for an initial period of time or use, beginning on the date of the product's delivery to the ultimate purchaser. This period is described by the Agency as the Acoustical Assurance Period (AAP). It is defined as that period during which the product must meet the standard when the product is properly used and maintained. In the case of street motorcycles and street motorcycle replacement exhaust systems the Acoustical Assurance Period is 1 year or 6,000 km (3,730 mi), whichever comes first. In the case of off-road motorcycles and off-road motorcycle replacement exhaust systems the Acoustical Assurance Period is 1 year or 3,000 km (1,865 mi), whichever comes first.

Concerning Agency enforcement of the AAP, a manufacturer must develop, pursuant to § 205.163 of Subpart D and § 205.173 of Subpart E, an anticipated increase in the sound level of its products during the AAP. A manufacturer must take this anticipated increase in sound level, expressed in

terms of a Sound Level Degradation Factor (SLDF), into account when performing tests to show compliance with the applicable standard. That is, where an SLDF is anticipated, a manufacturer must show that his product meets a level defined by the applicable standard of Table 1 minus the SLDF value.

F. *Low noise emission product standard.* A subsection of this proposed regulation specifes a Low Noise Emission Product (LNEP) level of 75 dB(A) followed by 73 dB(A) for street motorcycles of displacement greater than 170 cc; 75 dB(A) for off-road motorcycles of displacement greater than 170 cc; 70 dB(A) for street and off-road motorcycles of displacement 170 cc and lower; and 65 dB(A) for Moped-type street motorcycles. Under certain conditions, products meeting LNEP standards are eligible for premium payment when purchased by the U.S. Government (see proposed amendment to Part 203, 40 FR 27442, May 27, 1977).

G. *Stationary Sound Level Labeling.* The proposed regulations require motorcycle manufacturers to determine the sound levels of each motorcycle type according to a stationary test procedure (not the acceleration procedure which defines the standard), and to label all motorcycles with these stationary test values.

H. *Other Labeling Requirements.* The proposed regulations also require "competition" motorcycles and "competition" replacement exhaust systems to be so labeled. In addition, new replacement exhaust systems intended for use on motorcycles built before the applicability of these regulations must be so labeled. Motorcycles and exhaust systems intended for export are to be labeled "For Export Only".

I. *Enforcement.* The proposed regulations include enforcement procedures to assure EPA that manufacturers are producing products in compliance with these regulations. Testing prior to distribution in commerce (Production Verification (PV) and labeling verification) and quality checks by EPA (Selective Enforcement Auditing (SEA) and labeling auditing) are both included. Warranty, maintenance, anti-tampering, and remedial order provisions are also included.

III. Impact of Current Motorcycle Operations

The proposed regulation is one of a series of rulemakings designed to reduce overall noise exposure from surface transportation vehicles. Street motorcycles are the loudest type of vehicle in urban residential/suburban environments where large trucks are not frequently operated. In addition, noise generated from recreational use of motorcycles in a variety of environments is a source of considerable public concern at this time.

Acceleration sound levels of new street motorcycles are generally lower than those of current medium and heavy trucks, but are higher than current automobile sound levels under similar operational conditions. Sound levels of medium and heavy trucks are expected to decrease significantly over the next several years as EPA noise emission standards for trucks become effective. When operated in a stream of traffic dominated by other vehicles, new (unmodified) motorcycles do not at this time contribute greatly to overall traffic noise impact. In the future, however, as other transportation vehicles are quieted, unmodified motorcycles could contribute significantly to traffic noise impact. If not regulated to lower levels, new motorcycles could account for some 10 percent of total traffic noise impact by the year 1990, despite their few numbers (1.5 percent of total traffic mileage).

Exhaust-modified motorcycles, in contrast with new unmodified motorcycles, are often the loudest type of vehicle within a traffic stream. Consequently, the presence of exhaust modified motorcycles in a stream of traffic can cause the noise impact of such traffic to increase by 20 percent or more. Currently, traffic noise impact, as estimated in terms of Equivalent Noise Impact (ENI), is approximately 35 million impacted people per day.

The impact of street motorcycle noise is greatest in residential areas which are outside of the high density urban landscape. In this environment the noise of individual motorcycle operations is not submerged into a general traffic stream comprised of trucks, buses, automobiles, and other vehicles. Rather, noise from street motorcycles is more typically a matter of individual, separately identifiable noise "events" occurring in areas which have relatively low noise backgrounds. Studies indicate nearly two million motorcycle noise events causing interference to persons outdoors occur daily in the United States. In addition there are almost 500,000 daily speech impacts of persons indoors, and many thousands of sleep interferences and awakenings caused by motorcycles. Although over half of the current impact is attributable to modified motorcycles, the impact from unmodified motorcycles is nevertheless substantial.

Sound levels of pure off-road motorcycles average several decibels higher than those of street motorcycles. Such vehicles are often operated in areas having very low ambient noise levels, where noise from motorcycle operations represents an undesirable intrusion for persons other than those engaged in operating motorcycles. In addition, off-road motorcycles are frequently operated on parking or vacant lots and in urban fringe areas where such use impacts nearby residential populations. These operations are often sustained for long periods of time, in contrast to the rapid passby of a street motorcycle. Studies using reasonable assumptions have indicated that perhaps 33,000 square miles of land area in the United States are impacted by off-road motorcycle noise at least once per day. In rural and wilderness areas this could translate into over 500,000 persons impacted daily. However, when impacts in campgrounds and in residential and near-residential areas are included, the impact could rise to nearly 2 million persons per day.

Motorcycles which are designed and intended for competition use typically produce very high sound levels, often in excess of 100 dB(A) when measured by standard acceleration-type tests. Although operation of competition motorcycles on streets is very limited, their use in off-road environments is considered to be a widespread problem. Further, the noise from motorcycle raceways is also reported as a significant problem in some localities.

The Agency's studies have confirmed that controlling exhaust system modifications is an essential part of any strategy designed to lessen the impact of motorcycle noise on the public health and welfare. The "modification" problem consists of two parts: owner alterations to original equipment exhaust systems (tampering); and the availability of replacement systems with poor muffling performance. Motorcycles which are modified by either method can be as much as 20 decibels louder than motorcycles in stock configuration. Sound levels of such vehicles are higher than those of any other (unmodified) road transport vehicle type. It is conservatively estimated that nationwide some 12 percent of street motorcycles, and approximately 26 percent of off-road motorcycles currently have exhaust systems that have been modified by one or the other method. That reducing exhaust system modifications in addition to lower noise emissions for new motorcycles is essential to reducing the overall impact of motorcycle noise is illustrated by the fact that a reduction in the number of exhaust-modified motorcycles by one-half would accomplish the same reduction in impact as lowering new motorcycle sound levels by 10 decibels. Although no accurate method of prediction has been identified by EPA, it is estimated by the Agency that eliminating the availability of loud, ineffective systems, could decrease the incidence of exhaust system modification by half.

The Agency anticipates that this Federal rulemaking will prompt similar complementary regulations at the State and local levels. Enforcement of

these regulations will be made simpler as the labeling requirements and other enforcement-related provisions of this regulation become effective. With vigorous in-use enforcement at the State and local level, combined with Federal noise performance standards for replacement exhaust systems, EPA estimates that in areas where State or local enforcement programs are implemented, the level of motorcycle exhaust modifications (tampering and the use of ineffective replacement systems combined) may be reduced to approximately one quarter of their current numbers (to 3 percent for street motorcycles; 6 to 8percent for off-road motorcycles.)

EPA also examined the impact of motorcycle noise on motorcycle operators and passengers. Analysis of the hearing risk posed by motorcycle operations is complicated by the noise contribution of wind-induced turbulence. Sound levels due to wind turbulence have been found to be highly dependent on head attitude, on the presence of and geometry of a helmet, and on turbulence at the passenger's position caused by the presence of the driver. For street motorcycles, motorcycle-produced noise was found to dominate wind noise only during acceleration at most road speeds and for most operator conditions (see the Background Document). For several sample situations, the motorcycle (alone) contribution to motorcycle operator noise exposure as computed on a yearly basis was found to be very close to the Leq(24) = 70 dB(A) no-effect level for hearing loss which EPA has identified as requisite to protect public health and welfare with an adequate margin of safety (EPA) "Levels" Document, 550/9-74-004, March 1974). Any exposure exceeding this level may have a potential direct impact on hearing. Thus, motorcycle operators and passengers may be using a significant amount, if not all, of the allowable daily noise dose, thereby decreasing the remaining amount of exposure allowed for the rest of the day. This of itself may present a risk. It follows that, for some operators, street motorcycle operation may significantly add to other non-motorcycle exposures to produce some effect on hearing.

Since current off-road motorcycles have sound levels considerably higher than street motorcycles, the contribution of motorcycle (alone) noise to total exposure was found to be greater, and may thus be responsible for some hearing impairment among operators depending upon the number of hours they are exposed. Yearly Leq's of 80 to 83 dB(A) were found for sample situations. Turbulence, however, is not as great a consideration for off-road motorcycles since operational speeds are considerably lower.

IV. Applicability

A. *Street Motorcycles.* Federal noise emission standards for street motorcycles apply to those motorcycles that are designed and equipped for legal street and highway operation. Combination street/off-road motorcycles, which account for a substantial portion of off-road motorcycle mileage, will be required to meet EPA noise and air emission standards applicable to street motorcycles. Some off-road motorcycles are equipped with lighting equipment and other features normally associated with street motorcycles. For the purposes of this regulation, any motorcycle equipped with a stoplight, horn, rear view mirror, turn signals, or other street-related equipment will be considered a street motorcycle.

B. *Off-Road Motorcycles.* Off-road motorcycle noise emission standards apply to those newly manufactured motorcycles which are designed and intended strictly for use in off-road environments.

C. *Replacement Exhaust Systems.* New replacement exhaust systems and components intended for use on federally regulated street and off-road motorcycles will be required to meet Federal sound level performance standards. Regulated components include mufflers, silencers, spark arrestors, expansion chambers, and other noise sensitive devices, but do not include exhaust header pipes sold as separate products, or mounting hardware.

Several manufacturers currently produce "competition" exhaust systems which are designed to be used to modify non-competition motorcycles for certain racing events. Under the proposed regulations this would no longer be allowed. EPA solicits comments and suggestions on any different means by which the Agency can, under its regulatory authority, effectively limit the use of this type of exhaust system in street and off-road motorcycle operations.

D. *Competition Motorcycles.* These regulations do not propose to establish Federal noise emission standards for motorcycles which are designed and intended solely for use in closed course competition events. The Agency's definition of "closed course competition event" was constructed to exclude the several types of motorcycles which are intended for use in events that are held in trail or other off-road environments. Such motorcycles, which include "Enduro" and "cross country" vehicles, are considered by the Agency to be off-road motorcycles, and will be subject to EPA noise emission standards for off-road motorcycles. Since the State of California, where most desert racing occurs, requires off-road non-competition motorcycles to be used in desert racing events, such vehicles are proposed to be considered non-competition motorcycles.

The Agency carefully considered the desirability of Federal noise emission standards for competition motorcycles. Acceleration sound levels of competition motorcycles are often 100 decibels or more. Since several types of competition motorcycles are well suited for off-road operation, the use of such extremely loud vehicles in desert and trail environments is considered to be a serious and widespread problem. One manufacturer suggested components of competition motorcycles be of a distinctive color to aid enforement officials in identifying and controlling their use off-road. EPA has not adopted this suggestion in the proposed regulations but solicits comments on its desirability.

In addition to the problem of off-road use of competition motorcycles, noise generated from racetracks where motorcycle competition events are held has in a number of cases become a source of considerable public annoyance in surrounding residential areas. Although Federal noise regulations for competition vehicles are one approach to solving this problem, other solutions such as boundary line noise ordinances or time limit restrictions are available to local authorities.

EPA has made an initial decision that Federal noise standards for competition motorcycles are not the most effective way to deal either with the racetrack or the improper use problems associated with competition motorcycles. Since racing motorcycles are disassembled between races, vigorous State and local action would still be necessary in any jurisdiction with a competition motorcycle noise problem, even if Federal noise standards were established. EPA has concluded that Federal new product noise emission standards are not the most effective method of addressing the motorcycle raceway problem. In support of State and local efforts, however, these regulations require that all competitive motorcycles be clearly labeled as such. EPA will continue to study the nature and dimensions of the problem of competition motorcycle noise, and invites submission of public comment on this issue.

The distinction between competition and non-competition motorcycles is created in these regulations upon the determination that a limited number of motorcycles solely used in controlled events with little general environmental impact are currently being introduced into commerce. EPA will closely monitor manufacturer classifications and marketing and will take all necessary steps to ensure that this proposed distinction is not abused. If it is found that the number of "competition" motorcycles increases in an apparent attempt to avoid compliance with noise standards, EPA will take whatever steps are necessary to elimi-

nate this problem. For example, EPA might propose eliminating the exclusion of "competition" motorcycles from the noise standards proposed in these regulations.

To provide further insight into this issue, EPA requests manufacturers to estimate what fraction of the off-road and off-road competition motorcycles which they sell will be labeled for competition use. Numbers of models classified as "competition", and absolute and relative numbers forecasted to be sold would be appreciated.

E. *Moped-Type Street Motorcycles.* Moped-type street motorcycles will be required to meet Federal standards. These regulations propose to establish separate standards only for those vehicles which meet certain design and performance specifications. All other vehicles are proposed to be subject to the same standard as full-size motorcycles.

F. *Other.* The very low sound levels and lack of tampering potential of electric and battery-powered motorcycles have led the Agency to conclude that they do not constitute a class of motorcycles requiring regulation, and, accordingly, are excluded from the provisions of the regulations.

Motorcycles which are manufactured in the United States but which are intended for export are likewise not required to comply with these motorcycle noise standards but are required to be labeled in accordance with export provisions.

V. Measurement Methodology

A. *Proposed Federal Motorcycle Noise Test Procedure.* A wide range of existing motorcycle noise measurement methodologies were examined by EPA for possible use in defining the noise emission standard in this rulemaking. Repeatability, safety, simplicity, sensitivity to gearing and sprocket changes, and the degree to which test levels were representative of actual operational modes were among the criteria used in evaluating each procedure. One procedure seriously considered was the standard SAE J-331a which is currently in use in many states. For various reasons, none of the existing methodologies was considered ideal for use in the Federal regulation. Problems with proper gear selection and anomalies in gearing and sprocket ratios were shortcomings common to several of the procedures.

EPA's analysis of motorcycle noise identified acceleration in unconstrained traffic situations as the mode of operation that contributes most to motorcycle noise impact. The proposed test procedure measures motorcycle noise under very rapid acceleration conditions. Actual or representative accelerations in unconstrained situations would display a distribution of acceleration rates somewhat lower than under these test conditions. The health and welfare analysis specifically accounts for this difference. The proposed test procedure, however, is felt to represent a fair comparison between different types of motorcycles under acceleration conditions. The procedure has been proposed in these regulations because of this fair comparison and because of its relative freedom from gearing, sprocket and testing anomalies which affect sound readings.

The proposed measurement methodology, which was developed by EPA based on input from concerned state and industry representatives, measures sound emissions under full throttle acceleration at specified percentages of a motorcycle's maximum horsepower engine speed, at a fixed point in relation to a microphone location. Larger displacement motorcycles are measured at lower percentages of maximum rated RPM than are smaller motorcycles. This feature reflects the fact that during acceleration in urban/suburban areas, large motorcycles are typically operated at lower engine speeds than are smaller motorcycles.

Most of the existing motorcycle noise data base has been developed using the J-331a test or variations thereof. Although EPA considers the proposed procedure to be superior to J-331a in many aspects, relative simplicity, prior experience and familiarity with J-331a may be felt by some to justify its use in defining the Federal noise emission standard. EPA will continue to consider J-331a for use in its final rulemaking.

The proposed measurement methodology is expected to reflect good statistical correlation with J-331a. That is, if a broad range of motorcycles were tested under both procedures, it would be expected that the overall results would be very similar, including comparisons between large and small motorcycles, and between other subcategories of motorcycles. Individual models, however, could be expected to have higher or lower sound levels under one procedure or the other, but the difference should rarely be more than 3 dB(A). Due to the good statistical correlation between J-331a and the proposed procedure, a numerically equivalent J-331a-based standard would be predicted to have cost and benefit implications similar to those of proposed standards.

B. *Tachometer Specifications.* Testing experience with the proposed measurement procedure has determined that the damping characteristics of some vehicle tachometers can affect sound level readings by 1, 2, or sometimes 3 decibels. To eliminate unfair comparison of one motorcycle type with another the proposed testing procedure allows use of tachometers other than the one installed on the motorcycle, or other (indirect) engine speed measurement systems. Tachometers or systems which do not lag the specified engine closing speed by more than 3 percentage points of maximum rated RPM are considered acceptable for all testing purposes. Three percentage points translate into about one-half decibel for most motorcycles tested. In a recent testing program, the vehicle tachometer on three out of four Harley-Davidsons and on one BMW model tested were within this specification. Very few of the Japanese motorcycles tested were within this specification, however, averaging a 5 to 6 percentage point lag (1 to 1½decibels). Consequently, for enforcement actions, enforcement agencies may have to use auxiliary tachometer or engine measurement systems in many cases.

EPA has been employing the indirect engine speed measurement system described in the background document (Appendix H) for conducting sound level tests. In enforcement situations, the Agency would contemplate using the system described (or a similar system) in conducting motorcycle tests, or in determining whether individual tachometers meet the required specification.

EPA will explore the possibility of establishing a tachometer dynamic response specification which achieves the same results as the proposed specification, but which does not refer to the characteristics of an individual motorcycle under test. Vehicle and tachometer manufacturers and enforcement officials are requested to comment on and provide data relative to the tachometer specification in the proposed measurement methodology, possible refinement of the proposed specification, and their implications for compliance and enforcement efforts.

The proposed measurement methodology specifies a minimum acceleration distance of 10 m (32.8 ft). Since this minimum distance may cause some procedural difficulties for certain motorcycle models, EPA invites the submission of comment and test data pertaining to the question of the most appropriate minimum acceleration distance for use in this test procedure.

C. *Test Procedure for Moped-Type Street Motorcycles.* The proposed rules include a new test procedure for Moped-type street motorcycles. This procedure uses the same layout as the above described methodology, but simply requires a full speed, full throttle passby, eliminating the need for speedometers or tachometers. Full-speed, full throttle testing for these motorcycles is fully consistent with the concept of testing smaller motorcycles at or near their full acceleration potential.

D. *Stationary Test Procedure.* During the devleopment of this rulemaking the need was recognized for a simple, static noise test which could be used in state and local noise enforcement situations and for compliance testing by replacement exhaust system manufacturers. The usefulness of such a test is necesssarily dependent upon the degree to which sound levels obtained with the test can be related to those of the acceleration procedure. The stationary sound level procedure proposed in this rulemaking does, to an extent, satisfy this criteria. While the correlation between a motorcycle's acceleration and stationary sound levels is not high, the correlation between changes in a morotcycle's acceleration sound level and associated changes in its stationary sound level is considered high enough to make the stationary test useful both for aftermarket exhaust system manufacturers and for State and local enforcement officials to obtain objective evidence of motorcycle tampering.

E. *Standard Based on a Stationary Test.* Use of the stationary test proposed in these regulations does, however, have two shortcomings. Firstly, the correlation between changes in the acceleration test sound level and changes in the stationary test sound level, while high, is not as high as might be desired. Changes in a motorcycle's characteristics which produce a several decibel rise in a sound level as measured by the stationary test will generally cause a similar rise in sound level as measured by the acceleration procedure, and vice versa. This relationship, however, is not always consistent, and the use of the stationary test in enforcement situations could allow some instances of the sale of loud aftermarket exhaust systems or in-use tampering to go undetected. At the same time, manufacturers of some complying aftermarket exhaust systems might have to use the more difficult acceleration test to demonstrate compliance in some situations. The second areas of concern with the proposed stationary test is that the labeled stationary value can only refer back to the motorcycle's original stationary value. In the case of motorcycles which are considerably quieter than the Federal standard, the tested stationary sound level of a motorcycle could exceed the labeled value, yet the motorcycle might still be in compliance with the standard.

Another approach which the Agency is considering is the concept of establishing a sound level standard based on a stationary test having a higher correlation to the acceleration procedure. Under this concept, a motorcycle would be required to meet both an acceleration and a stationary standard. Such a stationary test and related standard would be developed so that, in the vast majority of cases, a motorcycle which passes the acceleration standard would also pass the stationary standard, and vice versa.

The Agency is studying different stationary test which could be useful in this context. One form of such a test specifies running the engine of a stationary motorcycle (neutral gear) up to the same speed as specified in the acceleration test (between 55 and 95 percent of maximum rated RPM). When the engine is rapidly accelerated in neutral, the engine inertial forces may partially simulate the load of an acceleration test at the closing RPM. Tachometer lag, operator judgment and operator response time are critical to such a test, however, so the feasibility of using an electronic engine cut-off device is being explored. An engine ignition switch, if incorporated with a rapidly-responding tachometer, can repeatably cut-off a motorcycle's engine at the proper speed with little lag and without the problem of exceeding the maximum safe engine speed.

Microphone positions identical to the acceleration test location would be considered for this test, since this arrangement would reproduce virtually the same surface and directional conditions as are measured in that test.

Shorter microphone distances will also be investigated. Distances as short as 10 feet from the motorcycle have already been investigated to some extent with indications of high correlation to the acceleration test. Further testing will be considered, however, with the microphone located along the radius between the motorcycle and the standard microphone position or at other positions relative to the motorcycle.

Depending on the degree of correlation found, the Agency could use such a test in any of several ways: (1) As an alternative method of conducting the official test procedure (including distance correction factors, if appropriate); (2) As a stationary test with its own separate standard; or (3) As a stationary test with specified "cut-points" for use in certain enforcement situations (particularly in the aftermarket area). "Cut-points" in this context would be sound levels established by EPA as an enforcement tool. They would be established such that any exhaust system which displays sound levels above a specific cut-point would have a very high probability of failing an acceleration test. Levels below the cut-point would not necessarily indicate a high probability that the system would pass an acceleration test.

Establishment of a Federal not-to-exceed standard based on a stationary test procedure could be useful to State and local governments in implementing in-use noise control programs. Stationary tests can be administered with relative ease in the field and in other enforcement situations. Programs utilizing stationary tests would thus provide direct evidence of tampering violations, and may be more effective in detecting violations which would not be noticed in a visual inspection type of program.

If a stationary test incorporating an ignition disable shows promise for use as an enforcement test with a corresponding standard or "cut-point", as discussed above, the Agency may want to explore with motorcycle manufacturers the feasibility of manufacturing motorcycles with universal ignition connection to facilitate field testing.

The Agency solicits comments on these alternatives and asks that responses specifically address the potential for establishing high correlation between stationary and acceleration test procedures, the means to do so, and the effectiveness of these alternatives in providing the basis for a strong national in-use enforcement program.

F. *Alternative Test Procedures.* The Agency recognizes that situations may exist or arise where other measurement methodologies may be appropriate for measuring motorcycle sound levels. To this end, the Agency has provided for the inclusion of other measurement methodologies where information is furnished to the satisfaction of the Administrator that the data for such methodologies correlate with the data from the prescribed procedures.

VI. Technology

In its analysis of various regulatory options, EPA carefully considered the technology necessary to achieve different levels of sound reduction. EPA considers the level "achievable through the application of best available technology," required by the Noise Control Act to be taken into account in establishing a new product standard, to be the lowest sound level which can be reliably predicted, based on engineering analysis of products subject to the standard, that can be manufactured by the effective date through application of currently known noise attenuation techniques and materials.

In determining "best available technology" for quieting motorcycles EPA considered techniques involved in reducing noise emissions from a motorcycle's three major subsources: exhaust; intake; and engine mechanical noise. Secondary sound emitting subsources such as tires and aerodynamic noise, due to their limited contributions to overall vehicle noise, were not considered to require quieting treatment at the regulatory levels studied.

Each motorcycle model currently produced has its own unique noise

generating characteristics, with the different noise subsources contributing differently and in varying proportions to the vehicle's overall sound level. EPA's assessments of "best available" motorcycle sound control technology were therefore constructed for each motorcycle subcategory studied using noise attenuation techniques which can feasibly be applied to representative motorcycles within each subcategory studied.

Based on information submitted from manufacturers, and on independent engineering judgment, EPA evaluated different regulatory levels from the standpoint of required technology for street motorcycles, off-road motorcycles, and replacement exhaust systems.

A. *Street Motorcycles.* Nearly all street motorcycles currently sold in the United States produce sound levels of 83 dB(A) or lower as measured by SAE J-331a. Since EPA's standards are specified in not-to-exceed terms, some current models would have to be quieted several decibels to meet a Federal 83 dB(A) requirement.

Nearly all manufacturers currently produce one or more motorcycle models at or below 80 dB(A). Further, nearly all street models of one major manufacturer are at or below 80 dB(A). Accordingly, EPA estimates that the 80 dB(A) (not-to-exceed) standard could be achieved by approximately half of all current motorcycles sold (sales basis) with little or no additional quieting. The remaining half, including many more than half of the total model types produced, however, will require significant noise reduction treatment.

Some current models even produce 78 dB(A) or lower, although quieting to assure compliance with a not-to-exceed standard would be necessary. Very few current models are predicted to be able to meet the 78 dB(A) requirement without substantial treatment to all three major noise subsources.

One of the three major subsources, motorcycle exhaust noise, consists of two distinct sources: outlet noise and shell radiation. Outlet noise is generated by the pressure pulses of exhaust gases from the engine. Shell-related noise consists of radiation from the external surfaces of the pipes and mufflers of the exhaust system.

Street motorcycle exhaust noise can be controlled largely by improved and enlarged muffling systems. The effectiveness of such techniques as increased muffler volume, addition of crossover pipes (on multicylinder models), thickened outer shells, and sophisticated baffling systems have been demonstrated on a number of current motorcycle models.

At the current state of the technology most exhaust system quieting techniques carry penalties in terms of increased weight and increased engine backpressure. At regulatory levels below 80 dB(A), such penalties may be expected to have some appreciable impact on vehicle performance characteristics.

Reducing air intake sound emissions on street motorcycles involves the use of techniques similar to those for quieting exhaust systems. Increased intake volume, thickened walls, use of absorptive linings and modified inlets have been effectively demonstrated on current production motorcycles. Reductions in intake sound levels are generally associated however, with restrictions to engine air flow. At the 80 and 78 dB(A) regulatory study levels, restrictions in air intake may result in horsepower penalties for some models.

Reduction in noise generated by engine mechanical subsources are more difficult to achieve, and can involve a wide range of relatively complex treatments. Examples of mechanical noise reduction techniques include: Improved finishes and modifications to gears, camshafts, bearings and pistons: modifications of belts and chains; thicker and stiffer case covers; reduced tolerances and increased lubrication; isoelastic component damping and others. The effectiveness of a specific treatment or combination of treatments in reducing mechanical sound emissions is largely dependent upon the noise signature of the particular engine/drive train.

Liquid cooling has been demonstrated by several manufacturers to be effective in reducing engine-related sound emissions. Water jacketing serves to dampen high frequency radiations, and closer tolerances allowed with liquid cooled engines can serve to lessen noise generated from striking surfaces of internal engine components. At regulatory levels of 80 and 78 dB(A) a number of street motorcycle models in the medium and large displacement classes may require liquid cooling.

Multi-cylinder engine design (three and four cylinders, rather than one or two) is another technique which appears to facilitate sound reduction. Redesign for increased numbers of cylinders would constitute a major model change at least as significant as use of liquid cooling.

Based on an evaluation of quieting techniques available to manufacturers, the 78 dB(A) regulatory level is considered by the Agency to represent "best available technology" for street motorcycles. Liquid cooling or other major model change is expected to be required for many large current production models at this level. Such treatments to engine mechanical sources, together with those required for control of exhaust and intake sources, are expected to have a noticeable impact on the performance characteristics of many street motorcycles.

B. *Off-Road Motorcycles.* Although much of the technology for quieting street motorcycles can be applied to off-road motorcycles, several factors constrain the feasibility of quieting all off-road models to street levels. Light weight and ground clearance requirements limit the degree to which muffling and intake systems can be enlarged, and horsepower losses due to restricted intake and exhaust backpressure can significantly impact vehicle performance. Liquid cooling is not considered to be feasible for off-road motorcycles, due to the weight involved and the effect of fragile components on the motorcycle's crashworthiness.

Sound levels of currently marketed off-road motorcycles are to a large extent related to a motorcycle's intended use and size. Small off-road motorcycles (170 cc and under) typically have sound levels considerably lower than those of off-road motorcycles in the large displacement categories. In addition, studies indicate that these two groups of off-road motorcycles would require different degrees of treatment to reach reduced sound levels.

Reduction of sound levels of current small off-road motorcycles can be achieved with the use of relatively straightforward treatments to intake, exhaust and engine mechanical sources. At a 78 dB(A) regulatory level some relatively minor impacts on vehicle performance characteristics may be involved.

Substantial reductions to large off-road motorcycle sound levels can be achieved with treatments to exhaust and intake systems. Regulatory levels below 83 dB(A), however, would involve extensive treatments to engine mechanical subsources. The 80 dB(A) level is considered technically achievable, requiring probable four-stroke conversion of many models. This level, however, would be associated with severe performance impacts which could render many models unsuitable for certain types of off-road operation.

EPA's analysis of off-road motorcycle quieting technology has concluded that the 78 dB(A) regulatory level represents "best available technology" for small displacement off-road motorcycles. Due to the infeasibility of liquid cooling for off-road motorcycles, EPA has determined that 80 dB(A) represents "best available technology" for large displacement off-road motorcycles.

C. *Replacement Exhaust Systems.* The technology to reduce exhaust system noise is essentially the same for replacement muffler manufacturers as for vehicle manufacturers. As discussed above for original equipment exhaust systems, progress in muffling

technology will be required for a number of current models in order to achieve quieting necessary to achieve 80 and 78 dB(A) regulatory levels for street motorcycles. Medium and large displacement two-stroke models and large displacement four-stroke models are expected to require the most extensive engineering development to achieve the necessary exhaust level reductions.

"Best available technology" for these products is considered to be identical to that for the muffling systems of "best available technology" motorcycles.

EPA is aware of several four-stroke replacement exhaust systems currently available which have easily removable baffles. Removal of these baffling units can cause a motorcycle's acceleration sound level to increase by as much as twenty decibels. Although the removal of baffles from a Federally regulated motorcycle exhaust system would constitute a tampering violation of Federal law under the provisions of the Noise Control Act, this is and can be expected to remain a major noise problem.

Noise suppression performance of properly designed motorcycle mufflers and silencers generally does not degrade significantly over the life of the product when used and maintained in a proper manner. However, certain types of systems, including some currently marketed "glass pack" mufflers, are designed such that, after relatively short periods of use, a substantial increase in sound emissions can often occur. Other types of "glass pack" mufflers, however, are expected to last as long as an all-metal muffler. Although manufacturers of glass pack systems usually recommend owner replacement of the fiberglass elements when such degradation occurs, EPA does not consider this type of instruction to constitute a reasonable maintenance procedure in ensuring nondegradation of the noise emissions of such products. Accordingly, replacement or repacking of fibrous elements during the first year (or related mileage) will not be allowed for compliance with the Acoustical Assurance Period requirement.

To deal with the problems potentially posed by replacement exhaust systems with removable baffles and degradable components, EPA is considering a program by which exhaust systems would be evaluated on the basis of design characteristics (rather than noise emission as measured over a period of use) to determine the likelihood that the systems would be able to meet the applicable Federal performance standards over the specified Acoustical Assurance Period. The Agency specifically invites public comment on the feasibility of establishing design criteria to make such determinations.

VII. Rationale for Standards Selection

In selecting ultimate regulatory standards, the Agency took under consideration available quieting technology, the costs and economic impacts of applying that technology, and the associated benefits to the public health and welfare.

Consideration of regulatory levels was also based on the expectation that the labeling and other after-sale provisions of these proposed regulations will cause State and local jurisdictions concerned about motorcycle noise to increase their efforts to reduce in-use motorcycle modifications. Violations of antitampering provisions are a local concern that EPA, at the Federal level, cannot effectively control.

A. *Street Motorcycles.* The decision to propose the 78 dB(A) regulatory level for street motorcycles was made by the Administrator after careful examination of the alternative regulatory levels investigated by the Agency, and with full appreciation of the potential impacts of this standard. The Agency is aware that the substantial redesign of current street motorcycles necessitated by the 78 dB(A) standard will make it difficult for smaller manufacturers to remain in the U.S. market. In addition, the Agency appreciates the expected price, performance and styling impacts of such a regulatory level. In establishing noise emission regulations for the foreseeable future, however, EPA considers the long term potential benefits of this standard to outweigh such impacts.

The Administrator seriously considered the 80 dB(A) regulatory level for street motorcycles as an option which would have substantially fewer economic impacts, with most of the health and welfare benefits of the 78 dB(A) standard. A reduction of new motorcycle sound levels to the 80 dB(A) regulatory level would achieve between 70 and 90 percent of the benefits of the 78 dB(A) regulatory level (combined with the same reduced modifications), at one-half the total annualized cost.

However, there is a clear showing that sound control technology is available to reach the 78 dB(A) level, and the economic cost of this level of quieting is considered to be consistent with other noise requirements established by EPA. Moreover, motorcycles are the loudest transportation vehicle type in the urban residential/suburban environment, since medium and heavy trucks are generally not operated in these areas. Reducing street motorcycle sound emissions to the 78 dB(A) level will bring motorcycles closer to parity with sound levels of current automobiles and other vehicles operated in this environment.

Noise emission standards more stringent than 78 dB(A) were also considered by the Administrator. It is possible that some street motorcycle models could be produced to meet a 75 dB(A) standard. However, since a broad range of motorcycle models as currently known cannot be predicted at this level, it does not meet the Agency's interpretation of "best available technology" as required by the Act.

EPA recognizes that several States currently have laws mandating future new motorcycle sound levels of 75 dB(A). However, the not-to-exceed standards proposed in this regulation, as enforced by EPA, are estimated to result in manufacturers producing their motorcycles several decibels below a given standard to be assured of satisfying the Federal requirements. Thus, a 78 dB(A) Federal standard is not significantly different from those state laws which specify future production levels of 75 dB(A).

B. *Off-Road Motorcycles.* In arriving at regulatory decisions for off-road motorcycles EPA considered several alternative methods of dealing with the off-road motorcycle noise problem. Several labeling schemes were evaluated, as was the option of reserving Federal authority and allowing State and local governments to establish their own new product regulations.

It is generally agreed that the fundamental problem with off-road motorcycles is incompatible land-use, and that reducing the noise from such vehicles will only help, not solve, the problem. In-use restrictions and land-use regulation are the most effective methods of dealing with these incompatible land-uses. Although progress is being made in some quarters, State and local officials report great difficulty in getting proper in-use and land-use requirements established and in properly enforcing them once established. These difficulties are exacerbated by the fact that off-road vehicles are usually not licensed, that operators are difficult to apprehend once observed in a violation, and that many jurisdictions cannot effectively exercise authority over juvenile offenders. Virtually all State and local officials contacted felt that reduced sound levels would help the problem and either urged EPA to establish regulatory sound levels or were establishing new off-road motorcycle sound level limits themselves. One danger cautioned both by some officials and by motorcycle users, however, is that if excessive performance penalties are associated with the level chosen, this could increase the tendency of users either to modify their off-road motorcycles or to abuse the intended distinction between genuine competition and non-competition motorcycles by using uncontrolled competition off-road motorcycles for recreational riding.

Since some new off-road motorcycles are extremely loud, any reasonable

Federal standard, with its tampering, replacement muffler and stationary labeling provisions, can help to reduce the impact of off-road motorcycle noise considerably. Provided that Federal regulations do not critically impaired off-road motorcycle performance, EPA has concluded that reduced sound levels from the majority of unmodified off-road motorcycles are a necessary complement to state and local in-use and land-use regulation. At any level of regulation, however, imcompatible land use will continue to exist, and restrictions on the use of off-road motorcycles in certain wilderness areas and in residential areas will still be necessary in many jurisdictions.

EPA's assessment of off-road motorcycle quieting technology indicates that substantial sound level reductions are possible with the application of demonstrated quieting technology. Associated unit price increases are comparable to those of street motorcycles at analogous regulatory levels and are considered reasonable.

1. Small off-road motorcycles. The decision to establish a split level classification scheme for off-road motorcycles was made on the basis of technology, cost, and health and welfare considerations. The 78 dB(A) regulatory level was selected for small off-road motorcycles since the technology to reach this level is available at a reasonable cost and with minimum associated performance penalties. In addition, the Agency has reason to believe that small off-road motorcycles, the most populous class of off-road motorcycles, are more likely to be operated in and around urban fringe areas where sound level reductions would accomplish significant noise impact relief. Although some small off-road motorcycles already meet the proposed levels, play-bikes can range up to 86 dB(A) and small displacement semi-competition models often exceed 90 dB(A).

2. Large off-road motorcycles. Some large off-road motorcycles meet the current California requirement of 86 dB(A), but most are up to 10 dB(A) higher. The currently unclear distinction between competition and non-competition off-road motorcycles means that several current models proposed to be considered non-competition have sound levels which exceed 100 dB(A).

The Administrator seriously considered regulatory levels stricter than the proposed 82 dB(A) for large off-road motorcycles. The performance penalties associated with stricter standards would, however, have a severe impact on the character of the sport of off-road motorcycling as it is known today and could stimulate excessive modification of the resulting motorcycles. In the opinion of the Agency the social cost of such an impact must be weighed against the benefits which would derive from an additional incremental reduction in large off-road motorcycle sound levels. As discussed above, the problem of off-road motorcycle noise is to a great extent a problem of land use. Even with the most stringent Federal noise standards for large off-road motorcycles, this fundamental issue of the proper time and place for off-road motorcycle operation would remain to be resolved.

The Agency also considered standards less stringent than the proposed 82 dB(A) final step for large off-road motorcycles. A less restrictive level such as 86 dB(A) would have a substantially lesser cost and economic impact, with most of the health and welfare benefits of the proposed standard. However, with technology clearly available to achieve lower levels, and in consideration of the seriousness and scope of the problem of off-road motorcycle noise, the Agency is persuaded that the Federal noise emission standard for large off-road motorcycles must be that level which minimizes the noise impact from these vehicles, and at the same time does not significantly alter the nature of the sport.

C. *Moped-Type Street Motorcycles.* Moped-type motorcycles are currently sold in the United States in limited numbers but are undergoing rapid sales increases. Although current models are relatively quiet (under 70 dB(A)), their expected increased numbers, possible competitive trends to increase performance, and the European experience with significant owner exhaust modifications argue for establishing a standard to prevent increased sound levels either from new products or from modified vehicles. The proposed standard of 70 dB(A) (not-to-exceed basis) at 15 m (49.2 ft) as measured by the proposed measurement procedure is intended to be compatible with European regulations.

All labeling, tampering and replacement exhaust system provisions would be applicable to these vehicles. They would be exempted, however, from the stationary sound level labeling requirements.

EPA specifically invites the submission of information regarding recent trends in the moped industry, including estimates of present and future sales of mopeds, and profiles of firms manufacturing in, or exporting mopeds to, the U.S. Information regarding possible cost and other impacts of these noise emission regulations on manufacturers or other segments of the moped industry is also solicited.

D. *Acoustical Assurance Period.* The attainment of the health and welfare benefits from the reduction of motorcycle noise emissions is dependent on the continued compliance of these products with the Federal noise emission standards during actual use. To ensure that manufacturers develop and apply durable sound reduction measures to their products, the Agency believes it is necessary to establish a specific period of time or use during which newly manufactured products must, as a minimum requirement, comply with the Federal standard. The Agency believes that if a motorcycle complies with the standard during this initial period, the Acoustical Assurance Period, it is unlikely that the noise emissions of the motorcycle will degrade (increase) above the standard for the remainder of the expected life of the product, provided that the product is properly maintained and used. This places a burden on several parties. First, it requires the manufacturer to design and build the product so that, if it is properly maintained and operated, the product will be capable of performing at or below the requisite sound level, and second it relies on the owner/user to properly maintain and use the product. (The responsibility of the owner/user is discussed in other portions of this preamble; see later discussion of antitampering.)

The Agency considers the concept of an Acoustical Assurance Period necessary because if the product is not built such that it is even minimally capable of meeting the standards while in use over this initial period when properly used and maintained, the standard itself becomes a nullity and the anticipated health and welfare benefits become illusory.

The Agency considers the concept reasonable because in the information which is available to it, it finds that the noise levels of motorcycles do not increase appreciably over the initial year of operation (or related mileage) when the product is properly used and maintained. Furthermore, the Agency finds that the industry is technologically capable of designing these products to assure minimal degradation in the noise control features. This capability was considered within the technology, maintenance and cost assessments attendant to the standards proposed in this regulation.

In making the determination that the Acoustical Assurance Period for motorcycles should be 1 year or 6,000 km for street motorcycles (3,000 km for off-road motorcycles), EPA took into account the magnitude and conditions of use of these products, the best maintenance attendant to noise control, and the cost of compliance. Among specific factors considered were:

1. The likelihood that acoustical degradation of noise control features and the resultant increase in noise level above the standard, would not occur

during the Acoustical Assurance Period if the manufacturer used proper design and fabrication, quality materials and workmanship;

2. The low maintenance normally required on motorcycles during their early years of use; and

3. The relative usage cycles of these products during their early years of use.

In assessing the noise control technology which is needed for compliance with the proposed motorcycle standards, the Agency found no components which cannot be built to assure minimal or no degradation (increase) in the motorcycle's sound level over the applicable standard, provided that the motorcycle is properly maintained and used. The Agency has also found in its studies of the motorcycle industry that the industry, in general, strives to produce long lasting, durable products by using component parts of high quality and motorcycle designs which can withstand extensive use. As a result of the above studies, the Agency has concluded that the AAP requirement will not impose additional maintenance or equipment costs over those already estimated as attributable to the proposed regulation.

It is important to understand what AAP means to the manufacturer. The manufacturer will be held responsible for producing a product that is capable of meeting the standard. The proposed enforcement provisions of the AAP allow the product to be designed and built at the level of the standard assuming no degradation in noise control features with time, or built with noise levels somewhat below the standard to account for some degradation with time. But in neither event can the product exceed the standard during the Acoustical Assurance Period.

EPA is also proposing a procedure whereby the manufacturer must account for sound level degradation in his compliance testing and verification program by applying a Sound Level Degradation Factor (SLDF) to the noise emission standard. This may result in a model-specific production test level which is lower than that specified by the standard. For example, if a manufacturer estimates that the noise level of his product may increase 3 dB(A) during the AAP the SLDF would be 3 dB(A). Then, for production verification (discussed below), the manufacturer would have to test his product at a level which is 3 dB(A) lower than that specified by the standard. If a product is not expected to degrade during the AAP, the SLDF will be zero. It is EPA's evaluation that in most cases the SLDF would be near or equal to zero.

Manufacturers would be subject to Federal enforcement actions consistent with section 11 of the Noise Control Act if the noise emission level during the AAP exceeds the noise emission standard. It should be clearly understood that this concept does not impose any additional burden on the manufacturer for proper maintenance and use. That is, if the product is not properly maintained and used during the AAP, the manufacturer is relieved of subsequent resulting liability. In this regard, maintenance instructions from the manufacturer to the owner/user may include component part replacement during the AAP, provided that the scheduled replacement of these parts is necessary and reasonable. In the final analysis, the responsibility of properly maintaining and using the product rests with the owner/user.

EPA invites comments on the approach it has taken to attain the health and welfare benefits requisite to this regulatory action. EPA also solicits comments on the length of the AAP together with the rationale and data to support the position taken.

E. *Low Noise Emission Standards.* A subsection of this regulation specifies a Low Noise Emission Product (LNEP) level of 75 dB(A) followed by 73 dB(A) for street motorcycles of displacement greater than 170 cc; 75 dB(A) for off-road motorcycles of displacement greater than 170 cc; 70 dB(A) for street and off-road motorcycles of displacement 170 cc and lower; and 65 dB(A) for Moped-type street motorcycles. Ordinarily the LNEP level is set 5 dB(A) below the regulatory limit allowing 2 dB(A) for manufacturing variation and 3 dB(A) for improved performance. However, for large street motorcycles, the initial LNEP level has been set at 75 dB(A), 8 dB(A) below the initial regulatory limit. The reason for this choice is that certain current motorcycles are close to meeting a 78 dB(A) level, and therefore an LNEP level of 78dB(A) would provide no incentive for further development of technology or acoustical quality control. The LNEP standard for large off-road motorcycles has also been set at 75 dB(A), since best available technology for large off-road motorcycles has been determined to be 80 dB(A).

Since the sound levels of small motorcycles can be reduced greatly by sacrificing performance, the LNEP standard of street and off-road motorcycles of displacement 170 cc and lower has been set at the 70 dB(A) level.

The sound level of a replacement exhaust system is only meaningful as a constituent of total vehicle noise. Thus, no LNEP standard for replacement exhaust systems can be established.

F. *Specification of Effective Dates.* The noise emission standards specified in these regulations are proposed to become effective upon certain designated calendar dates. The Agency also examined the desirability of specifying effective dates in terms of model year designations, as adopted in other EPA rulemakings. The specification of calendar effective dates is based on the understanding that motorcycle marketing patterns often do not exhibit well defined model year distinctions as are found in other motor vehicle industries. For many manufacturers, product line changes are made to individual models on an evolutionary basis, and are often not distinguished as model year changes.

Several manufacturers have suggested that model year specification would be more advantageous for the purposes of this rulemaking. Convenience of manufacture and ease of identification in the field by enforcement officials might argue in favor of such a specification. In addition, shipping time differences between domestic and foreign manufacturers and different inventory situations (discussed below in section X, Impact of the Proposed Regulation, c. Economic Impact) would influence this decision. EPA solicits comment by interested parties on this issue, including information on model year practices, for the Agency's consideration in the final rule.

The Agency recognizes that in some cases exhaust system manufacturers may not be able to market their products until some period of time after the initial effective date of a noise standard. This may occur if new model motorcycles are not available far enough in advance of the effective date to permit exhaust system manufacturers to design, produce and production verify their products by the time of that effective date. It is understood, however, that there is some time lag normally involved between the introduction of a new motorcycle model and the availability of aftermarket exhaust systems for the model. Information relating to any impacts of such time lags on aftermarket exhaust system manufacturers is solicited by the Agency.

VIII. Lead Times

The effective dates proposed by the Agency for compliance with the noise emission standards are based on a balance between cost and economic considerations and the desire to reach noise reduction as rapidly as possible. In reaching its determination, the Agency reviewed current development cycles used in the motorcycle manufacturing industry. Development cycles generally include considerations for development, drawing, prototype construction, durability testing, field testing, and tooling and production lead time. The lead times proposed are consistent with rapid-but-orderly redesign of a major manufacturer's entire model line.

The Agency recognizes that the amount of time necessary for rapid-but-orderly redesign of a product line may vary considerably from manufacturer to manufacturer. Development times for smaller manufacturers are typically longer than those of the largest firms, since a smaller sales base means fewer resources are available for engineering, design and testing. Although smaller firms may have fewer models requiring noise control treatments to be made, several such firms may nevertheless experience difficulty in complying with the standards under the proposed schedule of effective dates. EPA invites submission of information from manufacturers relating to lead time requirements for meeting the noise emission standards proposed in this notice. If information submitted to the docket indicates to the Administrator's satisfaction that limited additional lead time may allow some firms to remain in the U.S. market which otherwise could not, the Agency might consider adjustments to the proposed effective dates in the final rule. Public comment on the desirability of extended lead times upon such a showing is solicited.

IX. Labeling

A. *Compliance Labeling.* The proposed regulation requires motorcycles and motorcycle replacement exhaust systems to be labeled to provide notice to a purchaser that the product complies with Federal noise emission standards. The compliance label affixed to replacement exhaust systems will additionally list those specific motorcycle models for which the product can be marketed.

It is recognized that some problem may occur in the case of exhaust systems labeled and marketed for motorcycle models which are changed only slightly or not at all from year to year. Under the proposed labeling provisions, an exhaust system labeled for use on a specific model year motorcycle could not legally be marketed for a motorcycle manufactured after that model year, even if identical. This situation would also occur in the case of models which are reconfigured and/or redesignated, but on which an exhaust system would still be in compliance. The possibility of some type of inventory relabeling provision for exhaust systems so affected has been suggested. Comments on these and other labeling alternatives are solicited.

B. *Stationary Sound Level Labeling.* The proposed regulation also requires federally-regulated motorcycles to be affixed with a Stationary Sound Level Label. This label will contain the sound level of the motorcycle type as tested according to the proposed stationary sound level test procedure, and the specific engine speed at which the sound level was obtained. This information will provide the necessary data to enforcement officials for conducting stationary sound level measurements in field situations to enforce State in-use motorcycle noise laws. The label will also be of use to replacement exhaust system manufacturers in testing their products for demonstrating compliance with the Federal standards.

The proposed regulation specifies that the labeled value shall be the stationary sound level which represents the 90th percentile of the distribution of sound levels for each specific motorcycle model. Several alternative statistics have been proposed as being more appropriate or useful for in-use enforcement. These suggestions include labeling at the 50th percentile, the 95th percentile, or adding a constant factor of several decibels to the sound level of one of the above percentile values. EPA invites comment on which statistic would provide the most useful information to law enforcement officials in noise enforcement situations. Proponents of labeled values which add a constant factor to a distribution statistic should explain in full the meaning and potential use of the suggested value. EPA does not intend to add any increment to a stationary value solely to account for field measurement variations or enforcement tolerances.

To assist in resolving this issue, EPA requests manufacturers to submit any date available on stationary sound level distributions of current or recent model motorcycles.

C. *Other Labeling Provisions.* Competition motorcycles and exhaust systems will be required to be labeled as such and as not meeting Federal noise emission standards. This will assist enforcement officials in restricting the use of competition motorcycles in off-road environments.

New replacement exhaust systems intended for use on motorcycles built before the applicability of these regulations will be required to be labeled as such and as not meeting Federal noise emission standards.

Motorcycles and exhaust systems manufactured in the United States and intended for export will be required to be labeled "For Export Only."

X. Impact of the Proposed Regulation

A. *Noise Reduction.* The proposed regulation will reduce individual new street motorcycle sound levels by an average of 5 to 7 decibels by 1985. Sound levels of new off-road motorcycles of 170 cc displacement and less will be reduced by an average of 2 to 4 decibels, and large off-road motorcycles (over 170 cc displacement) will experience sound level reductions of an average of 7 to 9 decibels.

Much of the noise produced by the current population of street motorcycles is attributable to the operation of motorcycles with exhaust system modifications. As discussed above, "modifications" refers both to tampering and to replacing exhaust systems with commercially available loud, ineffective systems. Tampering by motorcycle operators is addressed in these regulations by the Federal anti-tampering prohibition and by the labeling provisions intended to facilitate State and local in-use enforcement. The incidence of use of loud replacement systems is expected to be significantly curtailed by limiting the availability of these ineffective systems. Because sound levels of exhaust modified motorcycles average over 90 decibels, anticipated decreases in exhaust modifications will substantially lower total noise impact from the street motorcycle population.

The incidence of exhaust modifications to off-road motorcycles is, based on current estimation, considerably higher than that for street motorcycles. Federal regulation of exhaust systems for off-road motorcycles is therefore expected to have the effect of reducing total noise generated from off-road motorcycles in proportion equal to or greater than that of the street motorcycle case.

B. *Health and Welfare.* Public health and welfare impacts associated with the proposed regulation were assessed separately for street motorcycles and off-road motorcycles.

1. Street Motorcycles. Two different methods of assessing the current noise impact and impact reductions due to Federal regulation of street motorcycles were studied by the Agency. The reduction in the impact of single event motorcycle accelerations was assessed, as was the effect of lowered motorcycle sound levels and exhaust modifications on total urban/suburban traffic noise levels.

Assessment of the intrusive nature of motorcycle noise accelerations led the Agency to a single event activity interference analysis as the most meaningful measure for assessing the health and welfare impact of motorcycle noise. At the 78 dB(A) regulatory level, the Agency estimates that the extent and severity of outdoor speech interference attributable to motorcycle noise will be reduced from current levels by 55–75 percent, and that the incidence of disturbance of sleep will fall by 50–65 percent. These figures assume that regulation of replacement exhaust systems will reduce the numbers of exhaust-modified motorcycles from the currently estimated 12 percent of the street motorcycle population (nationwide) to between 3 and 7 percent.

Since motorcycles account for less than 2 percent of total vehicular traf-

fic mileage, reductions to overall traffic noise levels and equivalent numbers of people impacted due to Federal motorcycle noise regulation are expected to be relatively small. From current levels, with medium and heavy trucks regulated to 80 dB(A), reducing new motorcycle sound emissions to the 78 dB(A) regulatory level will cause a relative reduction in equivalent noise impacts of less than 2 percent. However, if the level of modifications can be reduced from 12 to 3 percent, an additional 18 percent reduction in equivalent noise impact can be achieved.

With the advent of Federal noise regulations for the other major types of transportation vehicles, urban/suburban population noise impact from transportation-related sources is expected to be significantly lessened over the next several decades. From the perspective of this future noise environment, noise standards for motorcycles assume an even larger significance than when viewed from current baseline levels of transportation noise impact. In this future "regulated" noise environment, wherein the present vehicle population will have been replaced with quieter, federally regulated vehicles (for purposes of analysis, heavy and medium trucks at the 75 dB(A) regulatory level are assumed), the impact of a 78 dB(A) street motorcycle standard would be a 7 percent reduction in total equivalent noise impacts. Reducing exhaust system modifications to 7 percent would account for an additional 24 percent reduction.

2. Off-Road Motorcycles. The reductions in noise impact achieved by Federal regulations for off-road motorcycles are less easily quantified in terms of population impacts. However, relative reductions in land area which is impacted by off-road motorcycle noise can be estimated using a detectability criterion and certain realistic sound propagation loss assumptions. At sound level standards of 82 dB(A) and 78 dB(A) for large and small off-road motorcycles, the Agency estimates a resulting 25–35 percent reduction in the area impacted by off-road motorcycle noise. This figure assumes a 78 dB(A) regulatory level for dual purpose motorcycles, and a reduction in the proportion of exhaust system modifications from the currently estimated 26 percent of the off-road population to 10 to 15 percent. Using reasonable assumptions about the locations of off-road motorcycle operations, these reductions could result in about 500,000 fewer people impacted daily.

If the number of street or off-road motorcycle miles rises significantly above the current levels (utilized in the health and welfare analysis), the actual benefits as compared to current noise impact may be less, but the relative benefits, when compared with projections using an increased motorcycle useage with no regulation established, should remain the same.

3. Reduction in Operator/Passenger Impact. EPA has found that motorcycle sound levels as measured at the wayside (50 ft) and as measured at the operator's ear position show a certain degree of correlation. Accordingly, the environmental standards proposed herein are expected to lower operator/passenger exposure and have a beneficial impact on possible hearing risk. As discussed above, for street motorcycles, motorcycle-produced noise dominates wind turbulence noise only during acceleration. These standards, then, would benefit the operator during that mode of operation only. Analysis indicates that lowered sound levels will reduce motorcycle-produced noise contribution to total exposure to below the no-effect level for most operators. Wind turbulence, however, would remain as a possible contributor to other exposures which may contribute to hearing loss.

Since some current off-road motorcycles are extemenly loud, these standards are expected to significantly lessen operator exposure. Reductions in exposure to levels approaching the no-effect level are predicted for moderate users of off-road motorcycles. Although operators who use off-road motorcycles intensively will also benefit, they can, however, still be exposed to levels which might pose a hazard over several decades of exposure.

C. *Economic Impact.* Costs of applying sound reduction technology to meet proposed regulatory levels, and the associated increases in purchase prices, vary according to the type and size of the specific motorcycle model. Expected unit purchase price increases range from 5 percent for the smallest displacement category (under 100 cc) of street motorcycles to 13 percent for medium sized street motorcycles at the 78 dB(A) regulatory level (average $140 price rise). Unit prices of large off-road motorcycles are projected to increase on an average of 5 percent at the 82 dB(A) level. Price increases of small off-road motorcycles range to 10 percent at the ultimate 78 dB(A) level.

The total annualized cost of the proposed noise emission standards for street and off-road motorcycles is estimated to be approximately $200 million per year. This figure, projected through the year 1969, accounts for increases in purchase prices and the increased costs of operating and maintaining the vehicles due to noise control regulation.

Federal noise standards for replacement exhaust systems are expected to cause retail prices of current quiet systems (meeting California's 83 dB(A) requirement) to rise to levels roughly comparable to those predicted for stock replacement systems for 78 dB(A) motorcycles, or approximately 50 percent more than the average price of current original equipment systems ($50 price rise). Additionally, a significant shrinkage of the total market for replacement systems is forecast, since styling and performance advantages of many current systems will largely disappear.

The assessed costs and impacts of this proposed regulation will be in addition to those costs and impacts attributable to EPA's motorcycle air emission regulations (40 FR 1122, January 5, 1977). EPA studies using information supplied by various manufacturers indicated that the cost of compliance with the air emission standards for 1978 would result in an average increase in retail cost of $47 per motorcycle. This cost would be partially offset by an average discounted lifetime fuel savings of $33 and an undetermined savings in maintenance and improved reliability of the product. The average incremental cost increase for the 1980 air emission standards was estimated to be $9, which included a small additional improvement in fuel economy. The manufacturers estimated that fuel economy improvements associated with the 1978 emission standards would range as high as 65 percent with an average increase of 20 percent. No significant decrease in sales or shift in market shares (between manufacturers) was expected to result from the implementation of that regulation.

A number of different potential economic impacts were assessed by EPA in determining possible effects of noise control regulations on the various segments of the motorcycle industry. These impacts, many of which do not readily lend themselves to quantification, are summarized as follows:

1. Impacts on Motorcycle Manufacturers. A net reduction in motorcycle demand is expected as a result of the proposed noise standards. Forecasting based on historical price-demand relationships indicates that the demand for street and off-road motorcycles combined would be about 10 percent below expected demand in the absence of noise regulations. Significant shifts in historic market shares due to Federal noise standards, however, are not expected to occur among the major Japanese motorcycle manufacturers. Their profitability is likewise not expected to be impacted to any large extent. Cost increases due to noise control are expected to be largely passed on to consumers, and although higher retail prices will result in some lost sales, total industry sales in terms of both units and dollars are projected to significantly expand in the next decade.

The economic impact of the proposed 78 dB(A) standard on AMF/Harley-Davidson, the principal domes-

tic manufacturer, is expected to be primarily manifested in terms of the ability of the firm to manufacture large displacement motorcycles which conform to EPA standards. For Harley-Davidson to achieve an 80 dB(A) standard it is apparent that, at the very least, major redesign of their current large engine types incorporating most known engine quieting techniques would be necessary. One attraction of Harley-Davidson motorcycles is a uniquely identifiable exhaust tone that must dominate other subsources to be heard. Engine redesign could exact tonal characteristics and performance penalties that might, in themselves, impact demand for Harley-Davidson motorcycles.

The proposed regulatory level of 78 dB(A) is not considered achievable with modification to current Harley-Davidson engine designs. Complete redesigns, in addition to major exhaust and intake treatment, are likely to be necessary.

It is well accepted that Harley-Davidson motorcycles occupy a unique position in the U.S. motorcycle market. Harley-Davidson motorcycles have a devoted following and are expected to be relatively insensitive to small price rises. Consequently, if engine designs acceptable to the consumer can be developed which meet the proposed standard, the firm would be expected to be able to raise necessary capital from its large parent corporation, AMF, and sell the new designs at little sacrifice in profitability.

As with other smaller manufacturers, the timing of the proposed standards may be a significant factor in Harley-Davidson's ability to manufacture motorcycles at the proposed regulatory level.

The other major North American manufacturer of street motorcycles is Canada's Bombardier, Ltd., which manufactures high-performance dual purpose motorcycles based on off-road and competition models. The remaining street motorcycle manufacturers predominantly are European firms which export large displacement models on a limited scale to the United States, although several export a sizeable portion of their total production to this country. Most of these firms are considered capable of producing motorcycles at the 80 dB(A) regulatory level. However it is questionable whether Bombardier or many of the European manufacturers would continue exporting street motorcycles to the United States with the establishment of a 78 dB(A) standard. Again, the timing of the proposed standards may be crucial to these manufacturers' ability to remain in the U.S. market.

Japanese manufacturers of off-road motorcycles are not expected to experience serious technical difficulty in being able to produce off-road motorcycles which comply with the proposed sound level standards. As discussed above, the technology is well understood. Overcoming weight and horsepower penalties to produce high performance motorcycles, however, will be a challenge. Smaller manufacturers, which often rely on superior performance for marketing advantages, however, are expected to experience difficulty in maintaining their present positions at the proposed levels, due to the considerable impacts to the capabilities of current models. The 82 dB (A) regulatory level for large off-road motorcycles is considered to be technically achievable for almost all current manufacturers without requiring conversion to four-stroke engines. However, the performance and cost impacts of this level may make it unprofitable for some of these firms to remain in the U.S. market.

Since moped-type street motorcycles will not require quieting beyond what is necessary to satisfy European regulations, the limited additional testing, labeling and reporting requirements of these regulations are expected to have minimal impact on manufacturers of these vehicles.

2. Impact of Inventoried Motorcycles. In recent petitions filed with the Agency and the U.S. Department of Treasury by AMF/Harley-Davidson it is claimed that stockpiles (inventories not distributed to dealers for sale to ultimate purchasers) of imported motorcycles in this country currently exceed 1 million units, or more than 1 year's supply at the current rate of demand. It is further claimed that these inventories will cause domestic firms which do not have large stockpiles to be at a competitive disadvantage as Federal air emission standards become effective and as more expensive, complying motorcycles are offered for sale in competition with this large supply of vehicles manufactured prior to the effective date of the standards. A similar argument may be made concerning these motorcycle noise standards.

EPA has and will continue to examine the issue of stockpiling of motorcycle inventories, and invites submission of relevant information and data. Specifically of interest are estimates of current manufacturer inventories, foreign and domestic, by manufacturer model and year of manufacture, including sound levels and designations between off-road and competition motorcycles. Comment should specifically address the extent to which these noise regulations, if finalized as proposed, would create any further market impact than would otherwise be the case in the absence of these regulations.

If the information received indicates that these regulations could result in significant market or adverse health and welfare impacts, based on the release into commerce of stockpiled motorcycles which do not meet the regulatory noise levels, EPA would consider other action, on which comment is likewise invited, to prevent the stockpiling of inventories to circumvent the purpose of the standards.

The Agency has established the proposed effective dates on the basis that no motorcycles may be manufactured after the designated date not complying with the prescribed noise emission standard. It has been requested that the Agency consider requiring, instead or in addition to such a requirement, that no motorcycle be sold to the ultimate purchaser after a designated effective date, that fails to meet the prescribed noise emission standard. Under this suggestion, any time-of-sale effective date would be established to allow a reasonable interval between manufacture, distribution and sale. The purpose of this suggested approach would be to preclude the dealer or seller of motorcycles, or for that matter any other elements of the manufacturing-distribution chain of new motorcycles, from essentially stockpiling motorcycles of a model/design which cannot comply with the Federal standards, for sale after the effective dates. Comment is invited on this suggestion.

3. Impact on Replacement Exhaust System Manufacturers. The proposed regulations are expected to have a very substantial impact on the replacement exhaust system industry. Of the more than 100 firms currently in the market, most are small, low volume enterprises devoted exclusively to manufacturing motorcycle exhaust systems, with little or no capability for innovative product design or development. Such firms are not expected to be able to manufacture exhaust systems for regulated motorcycles which comply with these regulations. Although some firms may continue to produce systems for motorcycles manufactured prior to the applicability of Federal noise regulations, in the longer term most of these small-volume manufacturers will ultimately be forced to switch to alternate product lines, or go out of business.

Some 10 to 20 replacement exaust system manufacturers are expected to be able to produce systems which comply with Federal regulations. Although a net shrinkage in the replacement exhaust system market is forecast, these firms may actually experience increased sales volumes as other manufacturers exit from the market.

4. Impacts on Foreign Trade. Since motorcycles comprise substantially less than 1 percent of total U.S. foreign trade with Europe and North America, the impact of a Federal motorcycle noise regulation on the balance of trade with these areas is ex-

pected to be negligible. Motorcycles do, however, account for some 15 percent of the approximately $10 billion in annual imports from Japan. EPA does not, however, anticipate any substantial changes in net revenue to Japanese motorcycle manufacturers resulting from noise standards, and thus no appreciable change in the U.S.-Japan balance of trade is forecast.

5. Impact on Exports. The small percentage of AMF/Harley-Davidson's domestic motorcycle production that is currently exported is not expected to change significantly as a result of noise regulations.

6. Impacts on Employment. If demand reduction forecasts based on historical relationships are applicable, eventual reductions in current U.S. motorcycle industry employment resulting from the proposed Federal noise standards could range between 3,000 and 5,000 positions from future levels in the absence of noise regulations. There is reason to believe, however, that this impact would be considerably less. In addition, projected growth in the industry is expected to more than compensate for any losses that do occur.

However, if the standards or lead times established in the final rule prevent Harley-Davidson from being able to remain in the market, their 3,000 motorcycle-related positions in Milwaukee, Wis. and York, Pa. would be affected. The aftermarket exhaust system industry is the only segment of the total industry predicted to experience an actual net decline in employment (possibly impacting some 600 positions).

7. Impacts on Gross National Product. The proposed regulations are not expected to have any consequential effect, either directly or indirectly, on the U.S. gross national product (GNP).

8. Impacts on Energy Consumption. Additional weight and increased backpressure due to noise suppression componentry could negatively impact motorcycle fuel economy, in the worst instance, by some 5 to 10 percent. The superior carburetion required by air emission regulations is expected, however, to improve street motorcycle fuel economy. Although this increase in fuel economy may more than off-set any fuel penalties resulting from noise regulations, a worst case increase in fuel consumption of 3 to 4 gallons yearly per vehicle could occur in the absence of air emission regulations.

XI. Enforcement

A. *General.* The EPA enforcement strategy applicable to the new motorcycle noise emission standards will place a major share of the responsibility on the manufacturers of the new motorcycles for presale testing to determine the compliance of their products with these standards and regulations. This approach leaves the manufacturers in control of many aspects of the compliance program, and imposes a minimal burden on their business. To be effective, this strategy requires monitoring by EPA personnel of the tests conducted and actions taken by the manufacturers in compliance with these regulations.

The enforcement strategy proposed in these regulations consists primarily of four parts: (1) Production Verification; (2) Label Verification for the labeled stationary value; (3) Selective Enforcement Auditing; and (4) In-use Compliance.

The enforcement strategy for motorcycle replacement exhaust systems will place a major share of the responsibility on replacement exhaust system manufacturers and on original equipment manufacturers for presale testing to determine compliance with these regulations and standards. The effectiveness of this strategy will again necessitate monitoring by EPA personnel of tests conducted and actions taken by manufacturers in complying with these regulations.

In the development of the enforcement procedures for motorcycle replacement exhaust systems several preliminary issues were given careful consideration. The major issues were: (a) What test procedure can be required of aftermarket exhaust system manufacturers; (b) should the aftermarket be required to meet original equipment production sound levels or, instead, be allowed to assign their own Sound Level Degradation Factor in complying with the Acoustical Assurance Period; and (c) what testing and labeling requirements should be made applicable to "universal" mufflers.

B. *Test Procedures.* Motorcycle manufacturers are required to verify compliance with the new product noise emission standard by conducting the acceleration test proposed by EPA. However, it does not appear at this time to be feasible to require exhaust system manufacturers to perform all required testing using this procedure. Manufacturers of replacement exhaust systems have indicated that requiring the use of the acceleration test procedure for all testing could pose a major problem, due to the difficulty of acquiring new motorcycles for testing purposes (although it is not an EPA requirement that the test motorcycle be a new motorcycle). These manufacturers have indicated, however, that new motorcycles are readily available from dealers for design purposes, as long as mileage is not accumulated on the vehicles. The acceleration test procedure would require some mileage accumulation, hence a stationary test would be desirable.

The Agency has investigated the relationship between test results of the proposed acceleration and stationary test procedures. Test data indicate that if a replacement exhaust system causes a motorcycle to emit sound levels higher than original equipment levels on the stationary test, then in most cases it would cause the sound levels as measured by the acceleration test to be increased as well.

The regulations prohibit manufacturers from distributing exhaust systems into commerce if such systems cause vehicles for which they are designed and marketed to exceed the applicable Federal standard. In this way both aftermarket and original equipment manufacturers must meet the same standard. However, the strategy proposed herein allows aftermarket manufacturers to demonstrate compliance using the stationary procedure to show that their exhaust system does not cause the test vehicle to exceed its labeled stationary sound level. This labeled value is determined by the original equipment manufacturer using the same stationary test procedure. If the vehicle exceeds the labeled value, the aftermarket manufacturer must conduct the acceleration test and demonstrate that his system does not cause the vehicle to exceed the Federal standard.

The Agency realizes that there may be instances where an exhaust system passes the stationary test procedure, but is later determined by the Agency to not be in compliance with the standard when tested with the acceleration procedure. In these cases, the Agency will exercise its discretion in formulating a remedial order to be issued to the manufacturer of the replacement system. At a minimum, however, the Agency would require that the manufacturer cease further marketing of that system for the particular model motorcycle until such time as the nonconformity is remedied.

C. *Original Equipment Sound Level.* The manufacturers of new product motorcycles and motorcycle replacement exhaust systems are required to design their products so that they will meet the noise standard for the period of time specified as the Acoustical Assurance Period (as explained in paragraph K of this preamble). It has been explained to the Agency that the expected degradation in motorcycle noise level, if any, will likely be attributable to muffler system deterioration. For this reason it is reasonable to require a replacement muffler manufacturer to assign a sound level degradation factor (as explained in paragraph M) to his exhaust systems to assure compliance with the AAP. These regulations do not require the aftermarket manufacturer to account also for the vehicle SLDF as determined by the motorcycle manufacturer, on the presumption that the vehicle SLDF is predominantly exhaust

system related. The SLDF attributable to the remainder of the vehicle is considered to be zero.

The SLDF concept is employed when conducting the acceleration test which defines the standard. It is not employed when conducting the stationary sound level test procedure.

D. *Universal Muffler.* A universal muffler is one which is designed to fit many models of motorcycles. If a universal muffler is marketed for federally-regulated motorcycles, the manufacturer must show that it meets the Federal standard for each of these motorcycles. Exhaust system manufacturers have commented that they do not know how the sound level performance of their mufflers varies from one model motorcycle to another. They further maintain that it would not be possible to categorize motorcycles in order to test a worst case to assure that all other motorcycle models in that category would meet the standard with the same replacement exhaust system. The strategy proposed herein requires testing of all motorcycle/replacement exhaust system combinations that are marketed. EPA solicits comments and information which would deal with representative testing for universal mufflers.

It is not certain what problems may arise from requiring the universal muffler to be labeled for those motorcycles for which it is marketed. In cases where a universal muffler is marketed for only a limited number of models, labeling may not prove to be a burden to the manufacturer. Where they are marketed for several models, labeling may be more difficult. The Agency is considering several alternative methods of dealing with this situation. One would require manufacturers to list on the label all motorcycle models for which the muffler is marketed. Another would allow exhaust system manufacturers to supply the mufflers with different labels. In this way the manufacturer could include a partial list of models on each exhaust system. Comments are solicited specifically on these or other labeling alternatives.

E. *Production Verification.* Production verification (PV) is the testing by a motorcycle or motorcycle replacement exhaust system manufacturer of early production models of a category or configuration (replacement exhaust systems will be tested by categories only) of the product, and submitting a report of the results to the EPA. This process, using the proposed methodology, gives the EPA some assurance that the manufacturer has the requisite noise control technology in hand and the capability to apply it to the production process. Models selected for testing must have been assembled using the manufacturer's normal assembly process and must be units assembled for sale.

PV does not involve any formal EPA approval or issuance of certificates subsequent to manufacturer testing. The proposed regulations would require that, prior to the distribution in commerce of any regulated product, such products must undergo production verification. Responsibility for testing lies with the manufacturer. However, the Administrator reserves the right to be present to monitor any test (including simultaneous testing with his equipment) or to require that a manufacturer ship products for testing to the EPA's Noise Enforcement Facility in Sandusky, Ohio or to any other site the Administrator may find appropriate. Section 205.157-2(a) would allow a conditional and temporary waiver of the PV testing requirement under special circumstances such as inclement weather conditions to motorcycle manufacturers.

The basic production unit selected for testing purposes is a product configuration or category. Motorcycle manufacturers will be required to test configurations of their products. Configurations are sets of vehicles which are grouped together on the basis of parameters which likely will affect their noise levels and are proposed in section 205.157-3.

The motorcycle manufacturer would be required to verify production products of each configuration. The regulations, however, also allow manufacturers to group configurations into categories based on the parameters proposed in section 205.157-2 and to verify by category. This is done by selecting and testing the configuration in each category that the manufacturer determines will have the highest level of noise emissions at the end of its Acoustical Assurance Period (AAP) (based on tests or on engineering judgment). If when tested in accordance with the test procedures, that configuration does not exceed a sound level defined by the new product standard minus that configuration's expected noise degradation over the period of its AAP, then all configurations in that same category are considered product verified.

Replacement exhaust system manufacturers will be testing exhaust system categories. A category is a model line of an exhaust system which is marketed for a particular model of motorcycle. The category is described by the parameters of section 205.168-2. Any exhaust system comprised of different combinations of these parameters constitutes a separate and distinct category. The manufacturer is required to production verify each category.

The Administrator reserves the right to test vehicles or exhaust systems at a manufacturer's test facility using either his own equipment or the manufacturer's equipment. This will provide the Administrator an opportunity to determine that the manufacturer's test facility and test equipment meet the specifications proposed in Appendix I-1 or I-2. If it is determined that the facility or equipment do not meet these specifications, he may disqualify them from further use for testing under this subpart.

Under proposed §§ 205.159(a)(1) and 205.170(a)(1), the Administrator may require that manufacturers submit to him any product tested or scheduled to be tested pursuant to these regulations or other untested products at such time and place as he may designate.

If a manufacturer proposes to add a new configuration or category to his product line, or to change or deviate from an existing configuration or category with respect to any of the parameters which define a configuration or category, the manufacturer must verify the new configuration or category either by testing a product and submitting data or by filing a report which demonstrates verification on the basis of previously submitted data.

A motorcycle manufacturer may production verify a configuration or category at any time during the model year or in advance of the model year if he so desires. Manufacturers may not, however, distribute into commerce any products within a configuration or category which have not been production verified.

Production verification is an annual requirement. However, the Administrator, upon request by a manufacturer, may permit the use of data from previous production verification reports for specific configurations or categories.

Production verification performed on early production models provides EPA with confidence that production models can conform to applicable noise emission standards and limits the possibility that nonconforming products are distributed in commerce. Because the possibility still exists that subsequently produced vehicles or exhaust systems may not conform, selective enforcement auditing (SEA) testing is incorporated in these proposed regulations.

F. *Selective enforcement auditing.* Selective enforcement auditing (SEA) is the testing of a statistical sample of assembly line (production) products from a specified product configuration or category to determine whether the motorcycle and motorcycle replacement exhaust systems comply with the applicable noise emission standards.

SEA testing is initiated when a test request is issued to the manufacturer by the Assistant Administrator for Enforcement or his designated represen-

tative. The test request will require the manufacturer to test a sample of products of a specified category or configuration produced at a specified plant. An alternative category or configuration may be designated in the event that products of the first category or configuration are not available for testing.

MOTORCYCLE SEA: NOISE EMISSION STANDARD

This SEA plan employs a technique known as inspection by attributes. The basic criterion for acceptance or rejection of a batch is the number of sample products in the batch which fail to meet the standard.

A multiple batch sampling inspection plan will be used on motorcycles for SEA testing. Multiple sampling differs from single sampling in that small test samples are drawn from consecutive batches rather than one large sample being drawn from a single batch. It offers the advantage of keeping the number of products tested to a minimum when the majority of such vehicles are meeting the standards.

A batch will be defined as the number of products produced during a time period specified in the test request. This will allow the Administrator to select batch sizes small enough to keep the number of products to be tested at a minimum and still draw statistically valid conclusions about the noise emission levels of all vehicles in that category or configuration.

The sampling plans proposed in these regulations are arranged according to the size of the batch from which a sample is to be drawn. Each plan specifies the sample size and the acceptance and rejection number for the established acceptance quality level (AQL). This AQL is the maximum percentage of products exceeding the applicable noise emission standard that for purposes of sampling inspection can be considered satisfactory. An AQL of 10 percent was chosen for new motorcycles to take into account some test variability. The number of failing products in a sample is compared to the acceptance and rejection numbers for the appropriate sampling plan. If the number of failing products is greater than or equal to the rejection number, then there is a high probability that the percentage of non-complying products in the batch is greater than the AQL and the batch fails.

Since the sampling strategy involves a multiple sampling plan, in some instances the number of failures in a test sample may not allow acceptance or rejection of a batch so that continued testing may be required until a decision can be made to either accept or reject a batch.

When a batch sequence is tested and accepted in response to a test request, the testing is terminated. When a batch sequence is tested and rejected, the manufacturer must cease introducing these products into commerce. If the manufacturer desires to continue production and introduction into commerce of the failed configuration (category), he may do so provided he tests all of the vehicles in that category or configuration produced at that plant. He may then distribute the individual products that pass the test.

Regardless of whether a batch is accepted or rejected, failed products would have to be repaired or adjusted and pass a retest before they can be distributed in commerce.

The manufacturer can request a hearing on the issue of noncompliance of the rejected category or configuration.

Since the number of vehicles tested in response to a test order may vary considerably, a fixed time limit cannot be placed on completing all testing. The proposed approach is to establish a limit on test time per product. It is estimated that motorcycle manufacturers can test a minimum of ten (10) products per day. However, manufacturers are requested to present any data or information that may effect a revision of this estimate.

REPLACEMENT EXHAUST SYSTEM SEA

This SEA plan also employs the inspection by attributes technique. The basic criterion for acceptance or rejection of an exhaust system category is the number of failing exhaust systems in the test sample. A single sampling inspection plan will be used on replacement exhaust systems for SEA testing.

The proposed inspection plan defines a rejection number for each test sample size. The test sample size will be designated by the Administrator in the test request. The rejection number specifies the number of allowable failing exhaust systems in a test sample for the established acceptance quality level (AQL). This AQL is the maximum percentage of failing exhaust systems exceeding the applicable noise emission standard that for purposes of sampling inspection can be considered satisfactory. An AQL of 10 percent was chosen to take into account some test variability. If the number of failing exhaust systems is greater than or equal to the rejection number, then there is a high probability that the percentage of non-complying exhaust systems of the specified category is greater than the AQL and the exhaust system category is considered in noncompliance.

When an exhaust system category is rejected and therefore considered in noncompliance, the manufacturer must cease introducing these products into commerce. If the manufacturer desires to continue production and introduction into commerce of the failed category, he may do so provided he proceeds with one of the following options: (1) He tests all of the exhaust systems in that category produced at that plant and then he may distribute the individual products that pass the test. (2) If he was required to conduct the original SEA using the stationary test procedure, he may elect to conduct an identical SEA (using the same products) with the acceleration test to show compliance.

The manufacturer can request a hearing on the issue of noncompliance of the rejected category.

One of the advantages to this single sampling plan is that the exact number of exhaust systems tested in response to a test request is known in advance. The replacement exhaust system manufacturer knows when he receives the test request the exact number of products he must select and test to determine compliance. In some cases the number of products tested under single sampling could be greater than under multiple sampling. However, since the replacement exhaust system manufacturer will know how many products he will be required to test, he is able to plan his complete testing requirements before he begins testing, and therefore, it is expected that his administrative burden will be less. Also, under this sampling plan, EPA can more easily proportion a manufacturer's testing requirements to his actual production, so as to minimize the burden on his time and business.

EPA solicits comments from the replacement exhaust system manufacturers, regarding adoption of a single or multiple sampling scheme.

A fixed time limit will be placed on completing all testing. It is currently estimated that replacement exhaust system manufacturers can test a minimum of five (5) exhaust systems per day if the acceleration procedure is used or fifteen (15) per day with the stationary test. However, manufacturers are requested to present any data or information that may effect a revision of this estimate.

One of the problems that replacement exhaust system manufacturers may have in completing the testing under the fixed time limit will be the acquisition of motorcycles on which to conduct the acceleration test. It is expected that no motorcycle acquisition problem will be incurred with the stationary test. In almost all cases the test request will specify a particular model motorcycle that will be tested with a particular model exhaust system. Therefore, the replacement exhaust system manufacturer will, in most cases only have to acquire one particular model motorcycle to conduct his SEA testing. Again, manufacturers comments are requested to pre-

sent any data or information concerning these requirements.

G. *Stationary Sound Level Verification.* The labeling scheme included in these proposed regulations would require that the manufacturer label each motorcycle at a sound level representative of the 90th percentile sound level of all vehicles of that class. A class is described by the parameters of section 205.155-3. These regulations do not specify the amount of testing a manufacturer must conduct to establish that value but rather require the manufacturer to conduct whatever testing is necessary to determine it accurately. The manufacturer must maintain the records and data which were used to determine the class stationary sound level.

Every new motorcycle subject to the standards prescribed in this subpart prior to distribution into commerce shall satisfy the stationary sound level verification requirements. This requires the manufacturer to determine a class stationary sound level for each class of motorcycles and to retain in his files the calculations on which these determinations were based. In addition, each class must pass a stationary sound level audit (described in the next section), and the manufacturer must submit to EPA a label verification report. Once these stationary sound level verification requirements are met, the manufacturer may distribute products of that class into commerce.

H. *SEA: (Stationary Sound Level).* Selective enforcement auditing for stationary sound levels is the testing of a statistical sample of assembly line (production) products from a specified class to determine whether the products are properly labeled.

One such test must be conducted each year for each class prior to distribution into commerce for stationary sound level verification. Additional required testing, if any, will be initiated by a test request issued to the manufacturer by the Assistant Administrator for Enforcement or his designated representative. The test request will require the manufacturer to test a specific number of products of a class produced at a specific plant. An alternative class may be designated in the event that products of the first are not available for testing.

The testing plan employs a technique known as inspection by attributes. The basic criterion for determination of compliance or noncompliance of a class stationary sound level is the number of sample products in the test group which exceed the labeled value.

The proposed inspection plan defines a maximum and minimum number of vehicles in a sample which may exceed the labeled stationary sound level, consistent with the requirement that 10 percent of the vehicles must exceed that value. See Table IV of Appendix II.

If the number of vehicles exceeding the labeled value is outside of the acceptable range then there is a significant probability that the labeled value is not representative of the 90th percentile and the class is deemed mislabeled and in noncompliance.

It is estimated that motorcycle manufacturers can test a minimum of thirty (30) products per day during a stationary sound level audit. Manufacturers are requested to present any data or information that may effect a revision of this estimate.

The Administrator may require at his discretion that test vehicles be submitted to him for testing at a site and time of his choice. In addition, he reserves the right to be present to monitor any testing by the manufacturer.

I. *Labeling.* These regulations require that motorcycles subject to them be labeled to provide notice that the product complies with the noise emission standard and to display the stationary sound level for that vehicle. The label shall also contain a notice of tampering prohibitions. These regulations also require that motorcycle replacement exhaust systems, marketed for federally-regulated motorcycles, be labeled to provide notice that the product complies with the noise emission standard and that it should only be used on the motorcycle models specified on the label. The label shall also contain the full corporate name and trademark of the manufacturer along with month and year of manufacture.

J. *In-Use Compliance.* In-use compliance provisions are included to ensure that degradation of emitted noise levels is minimized provided that the vehicles or exhaust systems are properly maintained and used.

These provisions include a requirement that the motorcycle manufacturer provide a noise emission warranty to purchasers (required by section 6(d) of the Noise Control Act), provide information to the Administrator which will assist in fully defining those acts which constitute tampering (under section 10(a)(2)(A) of the Act), and provide retail purchasers with instructions specifying the maintenance, use, and repair required to reasonably assure elimination or minimization of noise level degradation (authorized by section 6(c)(1) of the Act).

Under the warranty provisions, intended to implement 6(d)(1) of the Act, it is required that the motorcycle manufacturer warrant to the ultimate and subsequent purchasers that new motorcycles subject to these regulations are designed, built, and equipped so as to conform at the time of sale with the Federal noise control regulations. The manufacturer must furnish this time-of-sale warranty to the ultimate purchaser in a prescribed written form, which will be reviewed by EPA in order that the Agency can determine whether the manufacturer's warranty policy is consistent with the intent of the Act.

The tampering provisions require the manufacturer of the motorcycles to furnish a list of acts which may be done to motorcycles in use and which, if done, are likely to have a detrimental impact on noise emissions. The Administrator will then use this information to develop a final list of those acts which are presumed by EPA to constitute tampering. A statement of the Federal law on tampering, which will include the final list of acts which constitute tampering as determined by EPA, must be provided in written form to the ultimate purchaser.

The sections dealing with instruction for proper maintenance, use, and repair of the motorcycle are intended to ensure that purchasers know exactly what is required to minimize or eliminate degradation of the noise level of the motorcycle during its life. A record or log book also must be provided to the ultimate purchaser in order that the purchaser may record maintenance performed during the life the product. The instructions may not contain language which tends to give the manufacturer or his dealers an unfair competitive advantage over the aftermarket. Finally, the regulations provide for Agency review of instructions and related language.

The in-use provisions for motorcycle replacement exhaust system manufacturers are similar to the requirements for motorcycle manufacturers and require that the manufacturer provide a noise emission warranty to purchasers, a statement on tampering prohibitions and a warning statement on use of the product when it is not meeting the prescribed standard.

Under the warranty provisions, again intended to implement section 6(d)(1) of the Act, it is required that the manufacturer warrant to the ultimate and subsequent purchasers that replacement exhaust systems subject to these regulations are designed, built, and equipped so as to conform at the time of sale with the Federal noise control regulations. The manufacturer must furnish this time-of-sale warranty to the ultimate purchaser in a prescribed written form.

The tampering provisions require the manufacturer to include a statement explaining to the ultimate purchaser what tampering is and what acts are likely to constitute tampering.

The warning statement which the manufacturer is required to provide to the ultimate purchaser is intended to warn purchasers that if the system has degraded significantly through use and is no longer meeting the stan-

dard, the owner may become subject to penalties under State and local ordinances. The warning statement, the statement on tampering prohibitions and the warranty must be submitted to the ultimate purchaser with the exhaust system inside any packaging in the format specified by EPA. If there is no packaging, the information shall be affixed to the exhaust system such that it will not be accidentally removed in shipping.

K. *Acoustical Assurance Period (AAP) Compliance.* The motorcycle and replacement exhaust system manufacturer must design their products so that the products will meet the noise standard for the period of time specified as the Acoustical Assurance Period beginning at the date of sale to an ultimate purchaser.

EPA does not specify what testing or analysis a manufacturer must conduct to determine that his vehicle or exhaust system will meet the standard during the Acoustical Assurance Period of these regulations. However, these regulations do require the manufacturers to make a determination regarding the expected degradation and maintain records of the test data and/or other information upon which the determination was based. This determination may be based on information such as tests of critical noise producing or abatement components, rates of noise control deterioration, engineering judgments based on previous experience, and physical durability characteristics of the product or product subcomponents.

The mechanism used in these regulations to express the amount of expected degradation, if any, is the sound level degradation factor (SLDF). The SLDF is the degradation (noise level increase in A-weighted decibels) which the manufacturer expects will occur on a configuration or category during the period of time specified as the AAP. The motorcycle manufacturer must determine and SLDF for each of his vehicle configurations. The replacement exhaust system manufacturer must determine an SLDF for each of his exhaust system categories (motorcycle/exhaust system combination). As previously explained in paragraph (C), it will not be necessary for the replacement exhaust system manufacturer to know the SLDF of the motorcycle as determined by the motorcycle manufacturer, in determining his own SLDF. The replacement exhaust system manufacturer is only concerned with the sound level increase that would occur on a particular motorcycle due to his own replacement exhaust system.

To ensure that the vehicles or exhaust systems will meet the noise standard throughout the AAP, they must emit a time of sale sound level less than or equal to the applicable new product noise emission standard minus the SLDF (exhaust system manufacturers who use the stationary test will not be required to take into account the SLDF). In no case shall this noise level exceed the Federal standard; i.e., a negative SLDF may not be used. Production verification and selective enforcement audit testing both embody this principle.

If the product's noise level is not expected to deteriorate during the AAP when properly used and maintained, the SLDF is zero. If a manufacturer determines that a vehicle configuration or exhaust system category will become quieter during the acoustical assurance period, the configuration or category must still meet the standard on the time of sale and an SLDF of zero must also be used for that configuration or category.

This strategy for determining whether a product complies with the AAP, should impose little, if any, additional cost on the manufacturers. In fact a basic assumption in our analysis has been that the noise level of a motorcycle which is properly used and maintained will not degrade, at least not any appreciable amount. With the exception of certain glass pack mufflers, it is also expected that the majority of replacement exhaust systems will not degrade significantly during the AAP.

EPA is not dictating that a product's noise level cannot deteriorate during its AAP, but rather merely requiring that it not deteriorate above the standard. It may be that most of the data required to determine an SLDF will already be in the hands of the manufacturer since this information is typically used for general product development work. In any event, EPA is not now proposing to require long term durability tests to be run as a matter of course.

L. *Administrative orders.* Section 11(d)(1) of the Act provides that: "Whenever any person is in violation of section 10 (a) of this Act, the Administrator may issue an order specifying such relief as he determines is necessary to protect the public health and welfare."

This provision grants the Administrator discretionary authority to issue remedial orders to supplement the criminal penalties of Section 11(a). The proposed regulations provide for orders to: (1) Recall for failure of products to comply with regulations; (2) cease to distribute products not properly production verified; and (3) cease to distribute products for failure to test.

In addition, 40 CFR § 205.4(f) provides for cease to distribute orders for substantial infractions of regulations requiring entry to manfacturers' facilities and reasonable assistance. These provisions do not limit the Administrator's authority to issue orders, but give notice of cases where such orders would in his judgment be appropriate. In all such cases notice and opportunity for a hearing will be given.

XII. Preemption

Under subsection 6(e)(1) of the Noise Control Act, after the effective date of a Federal regulation limiting noise emissions from a new product, no state or political subdivision may adopt or enforce any law or regulation which sets a limit on noise emissions from such new product, or components of such new product, which is not identical to the standard prescribed by the Federal regulation. Subsection 6(e)(2), however, provides that nothing in Section 6 precludes or denies the right of any state or political subdivision to establish and enforce controls on environmental noise (or one or more sources thereof) through the licensing, regulation or restriction of the use, operation or movement of any product or combination of products.

The noise controls which are reserved to state and local authority by section 6(e)(2) include, but are not limited to, the following:

1. Controls on the manner of operation of products.
2. Controls on the time of day or night in which products may be operated.
3. Controls on the places in which products may be operated.
4. Controls on the number of products which may be operated together.
5. Controls on noise emissions from the property on which products are used.
6. Controls on the licensing of products.
7. Controls on environmental noise level.

EPA strongly encourages state and local government authorities to adopt and enforce laws and ordinances which complement this Federal motorcycle noise rulemaking. The Agency specifically urges in-use noise regulations which are consistent with reasonable operation of Federally regulated vehicles. Restrictions on the registration of off-road motorcycles for highway operations are also encouraged, as are vehicle inspection programs which involve either stationary sound level testing or visual inspection of motorcycle exhaust systems.

XIII. Future Intent

The Agency is pursuing a strategy through which major contributors to overall transportation noise will be identified and subsequently regulated. EPA intends to continue its investigations pursuant to noise regulatory actions for other transportation vehicles. Consequently, the levels specified for

the standards in this proposed rulemaking are consistent with the Agency's overall objective to quiet all major noise producing products in order to ultimately reduce the total noise emitted from all transportation vehicles.

XIV. Background Document

Information gathered relative to this proposed rulemaking and which is discussed in this preamble is contained in the document entitled "Background Document for Proposed New Motorcycle Noise Emission Regulations". This document may be obtained from the EPA Public Information Center (PM-215), U.S. Environmental Protection Agency, Washington, D.C. 20460.

XV. Environmental and Inflationary Impact Statements

The Environmental Protection Agency has determined that this notice proposes a major regulation requiring preparation of an Inflationary Impact Statement (IIS) under Executive Order 11821 and OMB Circular A-107. In addition the Agency has prepared an Environmental Impact Statement (EIS).

The document entitled "Draft Environmental and Inflationary Impact Statement for Proposed New Motorcycle Noise Emission Regulations" may be obtained from the EPA Public Information Center.

XVI. Additional Information on Public Hearings and Submissions to the Docket

It is requested that comments to the docket exceeding ten pages be submitted with five (5) copies, if practicable.

Persons wishing to present their views at any of the public hearings should notify the Director, Standards and Regulations Division, at the above noted address, no later than April 12, 1978 of their intention to make a statement so that presentations may be scheduled. It is requested that presentations at the public hearings be limited to 20 minutes in length to enable all pre-scheduled persons an opportunity to speak and to permit a question and answer period following each presentation. Persons who have not given notice of their intent to speak will be heard following the scheduled statements. It is also requested that speakers submit, if practicable, five (5) copies of their statement prior to the hearing date to the Director, Standards and Regulations Divisions.

XVII. Public Comment

The Agency is committed by statute and policy to public participation in the decision making process for its environmental regulations. That policy encourages and solicits communications and comments to the public docket on all aspects of the proposed regulation, including EPA's determination that motorcycles are a major source of noise, 40 FR 23107 (May 28, 1975). These contributions are desired from as many diverse views as possible. When received, such information is fully analyzed. Necessary changes in proposed rules will be made and explained in the final regulation (NRM).

These regulations are proposed under the authority of Sections 3, 6, 10, 11, 13 and 15 of the Noise Control Act, Public Law 92-574, 86 Stat. 1234, 1237, 1242, 1244, and 1245 (42 U.S.C. 4902, 4905, 4909, 4910, 4912, and 4914).

Dated: March 1, 1978.

Douglas M. Costle,
Administrator.

It is proposed to amend 40 CFR Chapter 1, Part 205 by adding new Subparts D and E, reading as follows:

Subpart D—Motorcycles

Sec.
205.150 Applicability.
205.151 Definitions.
205.152 Noise emission standards.
205.153 Engine displacement.
205.154 Consideration of alternative test procedures.
205.155 Stationary sound level verification.
205.155-1 General requirements.
205.155-2 Stationary sound level verification.
205.155-3 Class identification.
205.155-4 Label verification report; stationary data.
205.155-5 Test sample selection.
205.155-6 Test preparation.
205.155-7 Testing.
205.155-8 Addition of, changes to and deviation from a vehicle class during the year.
205.155-9 Stationary labeling based on data from previous years.
205.156 [Reserved].
205.157 Production verification.
205.157-1 General requirements.
205.157-2 Production verification procedures.
205.157-3 Configuration identification.
205.157-4 Production verification report; required data.
205.157-5 Test sample selection.
205.157-6 Test preparation.
205.157-7 Testing.
205.157-8 Addition of, changes to and deviation from a vehicle configuration during the year.
205.157-9 Production verification based on data from previous years.
205.157-10 Cessation of distribution.
205.158 Labeling requirements.
205.159 Testing by the Administrator.
205.160 Selective enforcement auditing requirements.
205.160-1 Test requests.
205.160-2 Test sample selection.
205.160-3 Test preparation.
205.160-4 Testing procedures.
205.160-5 Reporting of the test results.
205.160-6 Acceptance and rejection of a class stationary sound level.
205.160-7 Acceptance and rejection of batches; noise emission standard.
205.160-8 Acceptance and rejection of batch sequences; noise emission standard.
205.160-9 Continued testing; noise emission standard.
205.160-10 Prohibition on distribution in commerce; manufacturer's remedy; noise emission standard.
205.161 Maintenance of records: submittal of information.
205.162 In-use requirements.
205.162-1 Warranty.
205.162-2 Tampering.
205.162-3 Instructions for maintenance, use and repair.
205.162-4 Sound level degradation factor (SLDF) and retention of durability data.
205.163 Recall of non-complying motorcycles; relabeling of mislabeled motorcycles.

Authority: Section 6 of the Noise Control Act (42 U.S.C. 4905) and additional authority as specified.

Subpart E—Motorcycle Replacement Exhaust Systems

Sec.
205.165 Applicability.
205.166 Definitions.
205.167 Noise emission standards.
205.168 Production verification.
205.168-1 General requirements.
205.168-2 Production verification; compliance with standards.
205.168-3 Production verification report; required data.
205.168-4 Test exhaust system sample selection.
205.168-5 Test exhaust system preparation.
205.168-6 Test motorcycle selection.
205.168-7 Test motorcycle preparation.
205.168-8 Testing.
205.168-9 Addition of, changes to and deviation from an exhaust system category during the calendar year.
205.168-10 Production verification based on data from previous calendar years.
205.168-11 Cessation of distribution.
205.169 Labeling requirements.
205.170 Testing by the Administrator.
205.171 Selective enforcement auditing requirements.
205.171-1 Test request.
205.171-2 Test exhaust system sample selection.
205.171-3 Test motorcycle sample selection.
205.171-4 Test exhaust system preparation.
205.171-5 Test motorcycle preparation.
205.171-6 Testing.
205.171-7 Reporting of test results.
205.171-8 Acceptance and rejection of an exhaust system category.
205.171-9 Continued testing.
205.171-10 Prohibition of distribution in commerce; manufacturer's remedy.
205.172 Maintenance of records: submittal of information.
205.173 In-use requirements.
205.173-1 Warranty.
205.173-2 Tampering.
205.173-3 Warning statement.
205.173-4 Information sheet.
205.173-5 Sound level degradation factor (SLDF) and retention of durability data.
205.174 Remedial orders.

Appendix I—Motorcycle Noise Emission Test Procedure.
Appendix I-1(a)—Test Procedure.
I-1(b)—Test Procedure for Street Motorcycles That Meet the Definition of § 205.151(a)(2)(ii) (moped-type street motorcycles).

Appendix I-2—Stationary Noise Emission Test Procedure.
Appendix II—Sampling Tables.

AUTHORITY: Secs. 3 and 6 of the Noise Control Act (42 U.S.C. 4902 and 4905) and additional authority as specified.

Subpart D—Motorcycles

§ 205.150 Applicability.

(a) Except as otherwise provided for in these regulations, the provisions of this subpart apply to any motorcycle manufactured after January 1, 1980, which meets the definition of "new product" in the Act.

(b) The provisions of this subpart do not apply to electric or battery-powered motorcycles.

(c) Except as provided for in § 205.158, the provisions of this subpart do not apply to competition motorcycles as defined in § 205.151 (a)(3).

(d) The following provisions of this subpart do not apply to street motorcycles that meet the definition of § 205.151(a)(2)(ii) (moped-type street motorcycles): Section 205.155 (Stationary Sound Level Requirements); § 205.158(a)(4)(v) (Stationary Sound Level Labeling Requirements); and § 205.161 (Stationary Sound Level Auditing Requirements).

§ 205.151 Definitions.

(a) As used in this subpart and in Subpart E, all terms not defined herein shall have the meaning given them in the Act or in other subparts of this part.

(1) "Motorcycle" means any motor vehicle, other than a tractor, that:

(i) Has two or three wheels;

(ii) Has a curb mass less than or equal to 680 kg (1499 lb); and

(iii) Is capable, with an 80 kg (176 lb) driver, of achieving a maximum speed of at least 24 km/h (15 mph) over a level paved surface.

(2) "Street motorcycle" means:

(i) Any motorcycle that:

(A) With an 80 kg (176 lb) driver, is capable of achieving a maximum speed of at least 40 km/h (25 mph) over a level paved surface; and

(B) Is equipped with features customarily associated with practical street or highway use, such features including but not limited to any of the following: stoplight, horn, rear view mirror, turn signals; or

(ii) Any motorcycle that:

(A) Has an engine displacement less than 50 cubic centimeters;

(B) Produces no more than two brake horse power;

(C) With an 80 kg (176 lb) driver, cannot exceed 48 km/h (30 mph) over a level paved surface; and

(D) Is equipped with fully operative pedals for propulsion by human power.

(3) "Competition motorcycle" means any motorcycle designed and marketed solely for use in closed course competition events, and labeled according to § 205.158(c).

(4) "Off-road motorcycle" means any motorcycle that is not a street motorcycle or competition motorcycle.

(5) "Acceleration test procedure" means the measurement methodologies specified in appendix I-1.

(6) "Acceptable quality level" (AQL) means the maximum percentage of failing vehicles or exhaust systems that, for purposes of sampling inspection, can be considered satisfactory as a process average.

(7) "Acceptance of a batch" means that the number of noncomplying vehicles or exhaust systems in the batch sample is less than or equal to the acceptance number as determined by the appropriate sampling plan.

(8) "Acceptance of a batch sequence" means that the number of rejected batches in the sequence is less than or equal to the acceptance number as determined by the appropriate sampling plan.

(9) "Acceptance of a vehicle" means that the noise emissions of the vehicle, when measured in accordance with the applicable procedure as delineated in this subpart, conform to the applicable standard minus the applicable Sound Level Degradation Factor.

(10) "Batch" means the collection of vehicles of the same category or configuration, as designated by the Administrator in a test request, from which a batch sample is to be drawn and inspected to determine conformance with the acceptability criteria.

(11) "Batch sample" means the collection of vehicles of the same category or configuration which are drawn from a batch from which test samples are drawn.

(12) "Batch sample size" means the number of vehicles of the same category or configuration in a batch sample.

(13) "Batch size" means the number, as designated by the Administrator in the test request, of vehicles of the same category or configuration in a batch.

(14) "Category" means a group of vehicle configurations which are identical in material aspects with respect to the parameters listed in § 205.157-2 of this subpart.

(15) "Class" means a group of vehicles which are identical in all material aspects with respect to the parameters listed in § 205.155 of this subpart for the purpose of stationary sound level labeling.

(16) "Class stationary sound level" means the lowest A-weighted sound level (in whole numbers) that represents the 90th percentile or above of the distribution of stationary sound levels of new production motorcycles of a given class.

(17) "Closed course competition event" means any organized competition event covering an enclosed, repeated or confined route intended for easy viewing by spectators. Such events include competition motocross, oval track, dirt track and road racing events. Such events do not include cross country, enduro or desert racing events.

(18) "Configuration" means the basic classification unit of a manufacturer's product line and is comprised of all vehicle designs, models or series which are identical in all material aspects with respect to the parameters listed in § 205.157-3 of this subpart.

(19) "Engine displacement" means volumetric engine capacity as defined in § 205.153.

(20) "Exhaust system" means the system comprised of a combination of components which provides for the enclosed flow of exhaust gas from engine exhaust port to the atmosphere. "Exhaust system" further means any constituent components sold as separate products which conduct exhaust gases. Constituent components which do not conduct exhaust gases, such as brackets and other mounting hardware, are not included in this definition.

(21) "Failing vehicle" means that the noise emissions of the vehicle, when measured in accordance with the applicable procedure, exceed the applicable standard minus the Sound Level Degradation Factor.

(22) "Group" means a collection of vehicles from the same class, as designated by the Administrator in a test request, from which a test sample is to be drawn and inspected to determine conformance with the acceptability criteria.

(23) "Inspection criteria" means the rejection and acceptance numbers associated with a particular sampling plan.

(24) "Low noise emission product" (LNEP) means any product which emits noise in amounts significantly below the levels specified in noise emission standards under the applicable regulation.

(25) "Maximum rated RPM" means the engine speed measured in revolutions per minute (RPM) at which peak net brake power (SAE J-245) is developed for motorcycles of a given configuration. For purposes of determining closing RPM (appendix I-1), test RPM (appendix I-2) and label values (§ 205.158), maximum rated RPM shall be rounded to the nearest whole 500 RPM increment.

(26) "Model year" means the manufacturer's annual production period, as determined by the Administrator, which includes January 1 of any calendar year. If the manufacturer has no annual production period, the term "model year" shall mean the calendar year.

(27) "Motorcycle sound level" means the A-weighted sound level of a motorcycle as measured by the acceleration test procedure.

(28) "Noise control system" means any vehicle part, component or

system, the purpose of which includes control or the reduction of noise emitted from a vehicle, including all exhaust system components.

(29) "Noise emission test" means a test conducted pursuant to a measurement methodology specified in this subpart.

(30) "Production verification vehicle" means any vehicle selected for testing, tested or verified pursuant to the production verification requirements of this subpart.

(31) "Rejection of a batch" means that the number of noncomplying vehicles in the batch sample is greater than or equal to the rejection number as determined by the appropriate sampling plan.

(32) "Rejection of a batch sequence" means that the number of rejected batches in a sequence is greater than or equal to the rejection number as determined by the appropriate sampling plan.

(33) "Rejection of a vehicle" means that the noise emissions of the vehicle, when measured in accordance with the applicable procedures as delineated in this subpart, exceed the applicable standard minus the Sound Level Degradation Factor.

(34) "Shift" means the regular production work period for one group of workers.

(35) "Sound level degradation factor" (SLDF) means the increase in A-weighted sound level which the motorcycle configuration is projected to undergo during the Acoustical Assurance Period when properly maintained and used.

(36) "Stationary sound level" means the A-weighted sound level of a motorcycle as measured by the stationary test procedure.

(37) "Stationary test procedure" means the measurement methodology specified in appendix I-2 of this subpart.

(38) "Tampering" means those acts prohibited by section 10(a)(2) of the Act.

(39) "Test sample" means the collection of vehicles or exhaust systems from the same category or configuration which is drawn from the batch sample or group and which will receive noise emissions tests.

(40) "Test sample size" means the number of vehicles or exhaust systems of the same category, configuration or class in a test sample.

(41) "Test vehicle" means a vehicle in a test sample or a production verification category.

(42) "Tractor" means, for the purposes of this subpart, any two or three wheeled vehicle intended exclusively for agricultural purposes, or for snow plowing, including self-propelled machines used exclusively in growing, harvesting or handling farm produce.

(43) "Vehicle" means any motorcycle regulated pursuant to this subpart.

(44) "Warranty" means the warranty required by section 6(d)(1) of the Act.

§ 205.152 Noise emission standards.

(a) *Noise emission standards.*

(1) Street motorcycles manufactured after the following dates shall be designed, built and equipped so that, at the time of sale, they will not produce sound emissions in excess of the levels indicated:

(i) Street motorcycles other than those that meet the definition of § 205.151(a)(2)(ii):

Date and *sound level*

(A) January 1, 1980—83 dB(A).
(B) January 1, 1982—80 dB(A).
(C) January 1, 1985—78 dB(A).

(ii) Street motorcycles that meet the definition of § 205.151(a)(2)(ii) (Moped-type street motorcycles):

Date and *sound level*

(A) January 1, 1980—70 dB(A).

(2) Off-road motorcycles manufactured after the following dates shall be designed, built and equipped so that, at the time of sale, they will not produce sound emissions in excess of the levels indicated:

(i) Off-road motorcycles with engine displacement of 170 cc and lower:

Date and *sound level*

(A) January 1, 1980—83 dB(A).
(B) January 1, 1982—80 dB(A).
(C) January 1, 1985—78 dB(A).

(ii) Off-road motorcycles with engine displacements greater than 170 cc:

Date and sound level

(A) January 1, 1980—86 dB(A).
(B) January 1, 1983—82 dB(A).

(3) Street motorcycles shall be designed, built and equipped so that, when properly maintained and used, they will not produce sound emissions in excess of the levels specified in paragraph (a) of this section, for a period of 1 year or a distance of 6,000 km (3,730 mi) after the time of sale to the ultimate purchaser, whichever comes first.

(4) Off-road motorcycles shall be designed, built and equipped so that, when properly maintained and used, they will not produce sound emissions in excess of the levels specified in subparagraph (a), above, for a period of 1 year or a distance of 3,000 km (1,865 mi) after the time of sale to the ultimate purchaser, whichever comes first.

(5) At the time of sale to the ultimate purchaser all products must comply with the standards set forth in paragraphs (a) (1) and (2) of this section minus the sound level degradation factor (SLDF) for that configuration developed in accordance with § 205.162

(b) *Measurement procedure.* (1) The standards set forth in paragraph (a) of this section refer to sound emissions as measured in accordance with the measurement methodology specified in appendix I-1(a) for all motorcycles except those street motorcycles that meet the definition of § 205.151(a)(2)(ii).

(2) The standards set forth in paragraph (a) of this section for street motorcycles that meet the definition of § 205.151(a)(2)(ii) (Moped-type street motorcycles) refer to sound emissions measured in accordance with the measurement methodology specified in appendix I-1(b).

(c) *Low noise emission product standard.* For the purpose of Low-Noise-Emission Product certification pursuant to 40 CFR Part 203, motorcycles procured after the following dates shall not produce sound emissions in excess of the levels indicated:

(1) For street motorcycles with engine displacement greater than 170 cc:

Date and sound level

(i) January 1, 1979—75 dB(A).
(ii) January 1, 1984—73 dB(A).

(2) For off-road motorcycles with engine displacements greater than 170 cc:

Date and sound level

(i) January 1, 1979—75 dB(A).

(3) For off-road motorcycles with engine displacement 170 cc and lower and street motorcycles with engine displacement 170 cc and lower that do not meet the definition of § 205.151(a)(2)(ii):

Date and sound level

(i) January 1, 1979—70 dB(A).

(4) For street motorcycles that meet the definition of § 205.151(a)(2)(ii) (Moped-type street motorcycles):

Date and sound level

(i) January 1, 1979—65 dB(A).

These levels refer to sound emissions as measured in accordance with the measurement methodologies specified in appendix I. LNEP products must also meet all requirements contained in paragraphs (c) (3), (4), and (5), above.

(Secs. 10 and 15 of the Noise Control Act (42 U.S.C. 4909, 4914).)

§ 205.153 Engine displacement.

(a) Engine displacement shall be calculated using nominal engine values and rounded to the nearest whole cubic centimeter, in accordance with ASTM E 29-67.

(b) For rotary engines, displacement means the maximum volume of a combustion chamber between two rotor tip seals minus the minimum volume of

that combustion chamber between those two rotor seals times three times the number of rotors.

cc=(Maximum chamber volume−minimum chamber volume)×3×number of rotors.

§ 205.154 Consideration of alternative test procedures.

The Administrator may approve applications from manufacturers of motorcycles for the approval of test procedures which differ from those contained in this part so long as the alternate procedures have been demonstrated to correlate with the prescribed procedure. To be acceptable, alternative test procedures shall be such that the test results obtained will identify all those test motorcycles which would not comply with the noise emission limit prescribed in § 205.152 when tested in accordance with the measurement methodology specified in appendix I-1. After approval by the Administrator, testing conducted by manufacturers using alternative test procedures may be accepted by the Administrator for all purposes including, but not limited to, production verification testing, and selective enforcement audit testing.

§ 205.155 Stationary sound level verification.

§ 205.155-1 General requirements.

(a) Every new vehicle manufactured for distribution in commerce in the United States which is subject to the standards prescribed in this subpart and not exempted in accordance with § 205.5:

(1) Shall have a class stationary sound level established and verified for that class in accordance with the procedures described in § 205.155-2 of this subpart;

(2) Shall be represented in a product information report, as required by § 205.155-4 of this subpart; and

(3) Shall have its class stationary sound level included on the vehicle label in accordance with the requirements of § 205.158 of this regulation.

(b) The requirements of paragraph (a) of this section apply to new products at the time they first conform to the definition of motorcycle in these regulations. The responsibility for meeting the requirements of paragraph (a) of this section rests with the manufacturer of the new product at the time the product first conforms to the definition of vehicle in this regulation.

(c) Subsequent manufacturers of a new product which conforms to the definition of vehicle in these regulations when received by them from a prior manufacturer need not fulfill the requirements of paragraph (a)(1), (2) or (3) of this section where such requirements have already been complied with by a prior manufacturer.

(d) The manufacturer who is required to conduct stationary sound level verification testing shall satisfy all other provisions of this subpart including, but not limited to, record keeping, reporting, and in-use requirements.

(Secs. 10 and 13 of the Noise Control Act (42 U.S.C. 4909, 4912).)

§ 205.155-2 Stationary sound level verification.

(a) A class stationary sound level shall be established by the manufacturer for each class described in accordance with § 205.155-3.

(b) Prior to distribution in commerce of motorcycles of a specific class, the class stationary sound level shall be verified in the following manner:

(1) For manufacturers who distribute into commerce in the U.S. more than 10,000 motorcycles per model year, conduct one stationary sound level audit of at least 30 vehicles, in accordance with the provisions of this section and § 205.160-4, and § 205.160-6. The motorcycles to be tested may be selected either randomly or consecutively, and from any plant or storage facility.

(2) For manufacturers who distribute into commerce in the U.S. less than 10,000 motorcycles per model year, conduct one stationary sound level audit of at least 10 vehicles in accordance with the provisions of this section and § 205.160-4, and § 205.160-6. The motorcycles to be tested may be selected either randomly or consecutively, and from any plant or storage facility.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.155-3 Class identification.

Motorcycles shall be grouped into stationary classes determined by a separate combination of the following parameters:

(a) Engine type:

(1) Gasoline—two stroke.
(2) Gasoline—four troke.
(3) Gasoline—rotary.
(4) Other.

(b) Engine displacement.

(c) Engine configuration:

(1) Number of cylinders.
(2) Cylinder arrangement (i.e., in line, opposed, etc.).

(d) Exhaust system:

(1) Muffler: (A) Type, (B) Location, (C) Number.
(2) Expansion chambers: (A) Location, (B) Size.
(3) Spark arrestors.
(4) Other exhaust system components.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.155-4 Label verification report; stationary data.

(a) Prior to the distribution in commerce of any product to which this regulation applies, the manufacturer shall submit a label verification report to the Director, Noise Enforcement Division (EN-387), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. A manufacturer may choose to submit separate label verification reports for different parts of his product line.

(b) The report shall be signed by an authorized representative of the manufacturer and shall include the following:

(1) The name, location and description of the manufacturer's noise emission test site which meet the specifications of Appendix I-2 and have been utilized to conduct stationary tests pursuant to this subpart; except that a test site that has been described in a previous submission under this part need not again be described but must be identified as such.

(2) A description of all vehicle classes for which class stationary sound levels were verified in accordance with § 205.155-2.

(3) For each class, the class stationary sound level shall be reported.

(4) The following information for each class stationary sound level verification:

(i) A complete description of all computations used in verifying the class stationary sound level.

(ii) A complete description of any preparation, maintenance or testing which was performed on the test audit vehicles and which will not be performed on all other production vehicles.

(iii) The reason for replacement where a replacement vehicle was necessary, and test results, if any, for replaced vehicles.

(iv) The data for each class stationary sound level audit conducted in accordance with § 205.155-2.

(5) A complete description of the sound measurement system if other than those specified in appendix I-2.

(6) The following statement and endorsement:

This report is submitted pursuant to section 6 and section 13 of the Noise Control Act of 1972. All testing for which data is reported herein is conducted in strict conformance with applicable regulations under 40 CFR Part 205. All the data reported herein is a true and accurate representation of such testing. All other information reported herein is to the best of ———— (company name) knowledge, true and accurate. I am aware of the penalties associated with violations of the Noise Control Act of 1972 and the regulations thereunder. ———— (authorized representative)

(c) Where a manufacturer elects to submit separate product information reports for portions of his product line as provided for in paragraph (a) of

this section, information provided in previous reports need not be resubmitted. However, information necessary to update or make current previously submitted information must be submitted.

(d) Any change with respect to any information reported pursuant to this subpart shall be reported as soon as the information becomes available.

(Sec. 13 of the Noise control Act (42 U.S.C. 4912).)

§ 205.155-5 Test sample selection.

Test vehicles of a class for which stationary testing is required by § 205.155-2(b) shall be vehicles of the subject class which have been assembled using the manufacturer's normal production processes and will be sold or offered for sale in commerce.

(Secs. 10 and 13 of the Noise Control Act (42 U.S.C. 4909, 4912).)

§ 205.155-6 Test preparation.

(a) Prior to the audit test, the test vehicle shall be selected in accordance with § 205.155-5 and shall be prepared in accordance with § 205.157-6.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.155-7 Testing.

(a) The manufacturer shall conduct one valid test on each test sample vehicle in accordance with the test procedures specified in appendix I-2 of this subpart for each vehicle selected for verification testing.

(b) No maintenance will be performed on the test vehicle except as provided for by § 205.155-6. In the event a vehicle is unable to complete the emission test the manufacturer may replace the vehicle. Any replacement vehicle will be a production vehicle of the same class as the replaced vehicle and will be subject to all the provisions of these regulations. Any replacement shall be reported in the label verification report including the reasons for replacement.

(Sec. 13 of the Noise control Act (42 U.S.C. 4912).)

§ 205.155-8 Addition of, changes to and deviation from a vehicle category during the year.

(a) Any change to a class with respect to any of the parameters stated in § 205.155-3 shall constitute the addition of a new and separate class to the manufacturer's product line.

(b) When a manufacturer introduces a new class to his product line, he shall proceed in accordance with § 205.155-2.

(Sec. 13 of the Noise control Act (42 U.S.C. 4912).)

§ 205.155-9 Stationary labeling based on data from previous years.

(a) Stationary sound level verification of each class will be required at the beginning of each year except that in certain instances, the Administrator, upon request by the manufacturer, may permit the use of stationary labeling data for specific classes from previous product information reports. Considerations relevant to his decision may include, but are not limited to:

(1) Performance based on stationary test data for previous years.

(2) Performance based on data obtained from enforcement testing during previous years.

(3) The number and type of noise emission design changes incorporated in the new models that affect the stationary sound level of that model.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.156 [Reserved]

§ 205.157 Production verification.

§ 205.157-1 General Requirements.

(a) Every new vehicle manufactured for distribution in commerce in the United States which is subject to the standards prescribed in this subpart and not exempted in accordance with § 205.5:

(1) Shall be verified in accordance with the production verification procedures described in this subpart;

(2) Shall be represented in a product verification report, as required by § 205.157-4 of this subpart;

(3) Shall be labeled in accordance with the requirements of § 205.158 of this regulation; and

(4) Shall conform to the applicable noise emission standard established in § 205.152 of this regulation.

(b) The requirements of paragraph (a) of this section apply to new products at the time they first conform to the definition of vehicles in these regulations. The responsibility for complying with the requirement of paragraph (a) of this section rests with the manufacturer of the new product at the time the product first conforms to the definition of vehicle in this regulation.

(c) Subsequent manufacturers of a new product which conforms to the definition of vehicle in these regulations when received by them from a prior manufacturer, need not fulfill the requirements of paragraphs (a)(1), (2) or (3) of this section where such requirements have already been complied with by a prior manufacturer.

(d) The manufacturer who is required to conduct product verification testing, for a particular standard, shall satisfy all other provisions of this subpart applicable to that standard, including but not limited to, record keeping, reporting and in-use requirements.

(Secs. 10 and 13 of the Noise Control Act (42 U.S.C. 4909 and 4912).)

§ 205.157-2 Production verification procedures.

(a) (1) Prior to distribution in commerce of vehicles of a specific configuration, the manufacturer must verify such configuration in accordance with the requirements of this subpart. However, production verification of a configuration is automatically and conditionally waived by the Administrator without request by a manufacturer for a period of up to 45 consecutive days from the date of distribution in commerce by the manufacturer of the first vehicle of that configuration in order to enable a manufacturer to distribute vehicles in commerce and to avoid disruption of the manufacturing process. To qualify for such a waiver, a manufacturer must conduct any tests required in paragraphs (b) or (c) of this section as soon as weather conditions at a manufacturer's test facility permit after distribution in commerce of the first vehicle of a configuration. Such conditions must be documented by the manufacturer and provided to the Administrator on request. Failure to test on such first suitable day will result in automatic and retroactive recision of the waiver and will render the manufacturers liable for illegally distributing vehicles in commerce.

(2) At the completion of any 45 day period the conditional waiver granted under paragraph (a)(1) of this section is rescinded for that configuration unless the manufacturer has complied with the requirements of paragraph (b) or (c) of this section as appropriate; except that upon application by a manufacturer and a showing that the weather conditions at the manufacturer's test facility or other conditions beyond the control of the manufacturer made it impossible to conduct the required testing and that documentation of such conditions is submitted by the manufacturer, the Administrator, at his option, may extend for a specified period (not to exceed 45 days) conditional production verification for a configuration to enable the manufacturer to comply with the requirements of paragraph (b) or (c) of this section or he may require that the manufacturer ship the test vehicle to the EPA test facility for testing by the Administrator.

(b) The production verification requirements with regard to each vehicle configuration consist of:

(1) Testing in accordance with Appendix I-1 of a vehicle selected in accordance with § 205.157-5;

(2) Compliance of the test vehicle with a sound level such that the measured noise emissions of the vehicle do not exceed the applicable standard minus the Sound Level Degradation Factor (SLDF determined in accordance with § 205.162-4 of this subpart) when tested in accordance with Appendix I-1 and

(3) Submission of a production verification report pursuant to § 205.157-4.

(c) (1) In lieu of testing vehicles of every configuration as described in paragraph (b) of this section, the manufacturer may elect to verify the configuration based on representative testing, the requirements of which consist of:

(i) Grouping configurations into a category where each category will be determined by a separate combination of at least the following parameters (a manufacturer may use more parameters):

(A) Engine type: (*1*) Gasoline—two stroke; (*2*) gasoline—four stroke; (*3*) gasoline—rotary; and (*4*) other.

(B) Engine displacement.

(C) Engine configuration: (*1*) Number of cylinders; and (*2*) cylinder arrangement (i.e., in line, opposed, etc.).

(ii) (A) Identifying the configuration within each category which would emit the highest sound level (dB(A)) at the end of its defined acoustical assurance period based on his best technical judgment or emission test data or both;

(B) If two or more configurations would emit the same level described in paragraph (c)(1)(ii)(A) of this section, then identifying the configuration which emits the highest sound level when distributed into commerce;

(iii) Testing in accordance with Appendix I-1 of a vehicle selected in accordance with § 205.157-5 which must be a vehicle of the configuration which is identified pursuant to paragraph (c)(1)(ii) of this paragraph as having the highest sound level (estimated or actual) within the category;

(iv) Compliance of the test vehicle with a sound level such that the measured noise emissions of the vehicle do not exceed the applicable standard minus the SLDF when tested in accordance with § 205.154; and

(v) Submission of a production verification report pursuant to § 205.157-4.

(2) Where the requirements of paragraph (c)(1) of this section are complied with, all those configurations contained within a category are considered to be represented by the tested vehicle and are considered to be production verified.

(3) Where all other requirements of paragraph (c)(1) of this section are complied with except that the manufacturer tests a configuration which does not have the highest sound level in a category (as identified in (c)(1)(ii) of this section), all those configurations in the category which have sound levels no greater than the tested vehicle are considered to be production verified; however, a manufacturer must production verify according to the requirements of paragraphs (b)(1) and/or (c)(1) of this section any configurations in the subject category which have a higher sound level than the vehicle configuration tested.

(d) A manufacturer may elect to production verify using representative testing pursuant to paragraph (c) of this section, all or part of his product line.

(e) The manufacturer may, at his option, proceed with either of the following alternatives with respect to any vehicle determined not in compliance with applicable standards:

(1) Delete that configuration from the production verification report. Configurations so deleted may be included in a later report under § 205.157-4. However, in the case of representative testing, a new test vehicle from another configuration must be selected and production verified according to the requirements of paragraph (c) of this section, in order to production verify the category represented by the non-compliant vehicle.

(2) Modify the test vehicle and demonstrate by testing that it meets applicable standards. All modifications and test results must be reported in the production verification report. The manufacturer must modify all production vehicles of the same configuration in the same manner as the test vehicle before distribution into commerce.

(f) Upon request by the Director, Noise Enforcement Division, the manufacturer shall notify the Director of any production verification testing scheduled by the manufacturer pursuant to this section so that EPA Enforcement Officers may be present to observe and monitor such testing or conduct the testing in lieu of the manufacturer.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.157-3 Configuration identification.

(a) A separate vehicle configuration shall be determined by each combination of the following parameters:

(1) Exhaust system (engine): (i) Mufflers; (ii) expansion chambers; (iii) spark arrestors; and (iv) other exhaust system components.

(2) Air induction system (engine): (i) Intake muffler; (ii) intake ducting; and (iii) air cleaner element.

(3) Vehicle drive train: (i) Chain; and (ii) shaft.

(4) Transmission gear ratio: (i) Standard transmission; and (ii) automatic transmission.

(5) Cooling system configuration: (i) Natural air cooled; (ii) liquid cooled; and (iii) forced air cooled.

(6) Category parameters listed in § 205.157-2.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.157-4 Production verification report; required data.

(a) Prior to the distribution in commerce of any product to which this regulation applies, the manufacturer shall submit a production verification report to the Director, Noise Enforcement Division (EN-387), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. A manufacturer may choose to submit separate production verification reports for different parts of his product line.

(b) The report shall be signed by an authorized representative of the manufacturer and shall include the following:

(1) The name, location, and description of the manufacturer's noise emission test facilities which meet the specifications of appendix I-1 and have been utilized to conduct testing pursuant to this subpart, except that a test facility that has been described in a previous submission under this subpart need not again be described but must be identified as such.

(2) A description of normal predelivery maintenance procedure.

(3) A description of all vehicle configurations, as determined in accordance with § 205.157-3, to be distributed in commerce by the manufacturer, including the sound level degradation factor (see § 205.162-4) for each configuration and a list identifying or defining any device or element of design (including its location and method of operation) incorporated into vehicles for the purpose of noise control and any device that affects noise emission from the vehicle and does not operate during the normal operating modes of the vehicle. The manufacturer may satisfy the vehicle configuration description requirements of this paragraph by submitting as part of the production verification report a copy of his sales literature that describes his product line including options: Provided, that this literature is supplemented with any additional information necessary to fulfill the requirements of this section. If a manufacturer elects to production verify pursuant to § 205.157-2(c), the configuration, within each category, which is estimated to have the highest A-weighted sound level at the end of the acoustical assurance period shall be identified. The manufacturer may estimate the sound level based on his best technical judgment or data. The criteria used to estimate each sound level shall be stated with the estimates.

(4) The following information for each noise emission test conducted:

(i) The individual record for the test vehicles required by § 205.161(a)(2) for all official tests conducted in accordance with § 205.157-7 including, for each invalid test, the reason for invalidation.

(ii) A complete description of any preparation, maintenance or testing which was performed on the test vehicle and which will not be performed on all other production vehicles.

(iii) The reason for replacement where a replacement vehicle was necessary, and test results, if any, for replaced vehicles.

(5) A complete description of the sound data acquisition system if other than those specified in appendix I-1.

(6) The following statement and endorsement:

This report is submitted pursuant to section 6 and section 13 of the Noise Control Act of 1972. All testing for which data is reported herein is conducted in strict conformance with applicable regulations under 40 CFR Part 205 et seq. All the data reported herein is a true and accurate representation of such testing. All other information reported herein is, to the best of

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(company name)

knowledge, true and accurate. I am aware of the penalties associated with violations of the Noise Control Act of 1972 and the regulations thereunder.

(authorized representative)

(c) Where a manufacturer elects to submit separate production verification reports for portions of his production line as provided for in paragraph (a) of this section, information provided in previous reports need not be resubmitted. Except, that information necessary to update or make current previously submitted information must be submitted.

(d) Any change with respect to any information reported pursuant to this subpart shall be reported as soon as the information becomes available.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.157-5 Test sample selection.

Test vehicles of a configuration for which production verification testing is required by § 205.157-1 shall be a vehicle of the subject configuration which has been assembled using the manufacturer's normal production processes and will be sold or offered for sale in commerce.

(Secs. 10, 13 of the Noise Control Act (42 U.S.C. 4904, 4912).)

§ 205.157-6 Test preparation.

(a) Prior to an official test, a test vehicle selected in accordance with § 205.157-5 shall not be prepared, tested, modified, adjusted, or maintained in any manner unless such adjustments, preparation, modification or tests are part of the manufacturer's prescribed manufacturing and inspection procedures, and documented in the manufacturer's internal vehicle assembly and inspection procedures, or unless such adjustments or tests are required or premitted under this subpart, or are approved in advance by the Administrator. The manufacturer may perform adjustments, preparations, modifications or tests normally performed at the port of entry by the manufacturer to prepare the vehicle for delivery to a dealer or customer, provided that such adjustments, preparation, modification, or tests are documented in the production verification report.

(b) Equipment or fixtures necessary to conduct the test may be installed on the vehicle; Provided, that such equipment or fixtures shall have no effect on the noise emissions of the vehicle, as determined by the measurement methodology.

(c) In the event of a vehicle malfunction (i.e., failure to start, etc.) the manufacturer may perform the maintenance that is necessary to enable the vehicle to operate in a normal manner; Provided, that such maintenance is documented and reported in the final report prepared and submitted in accordance with this subpart.

(d) No quality control, testing, assembly or selection procedures shall be used on the test vehicle or any portion thereof, including parts and subassemblies, that will not normally be used during the production and assembly of all other vehicles of the category which will be distributed in commerce, unless such procedures are required or permitted under this subpart of are approved in advance by the Administrator.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.157-7 Testing.

(a) The manufacturer shall conduct one valid test in accordance with the test procedures specified in Appendix I-1 of this subpart for each vehicle selected for verification testing.

(b) No maintenance will be performed on the test vehicle except as provided for by § 205.157-6.

(c) In the event a vehicle is unable to complete the noise test, the manufacturer may replace the vehicle. Any replacement vehicle will be a production vehicle of the same configuration as the replaced vehicle or a noiser configuration and will be subject to all the provisions of these regulations. Any replacement shall be reported in the production verification report including the reason for the replacement.

(d) In the event a vehicle fails to comply with the standards of this subpart when tested in accordance with the procedures specified in paragraph (a) of this section, the manufacturer may proceed in accordance with § 205.157-2(e) of this subpart.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.157-8 Addition of, changes to and deviation from a vehicle configuration during the year.

(a) Any change to a configuration with respect to any of the parameters stated in § 205.157-3 shall constitute the addition of a new and separate configuration or category to the manufacturer's product line.

(b) (1) When a manufacturer introduces a new category or configuration to his product line, he shall proceed in accordance with § 205.157-2.

(2) If the configuration to be added can be grouped within a verified category and the new configuration is estimated to have a lower A-weighted sound level at the end of the acoustical assurance period than a previously verified configuration within the same category, the configuration shall be considered verified; Provided, that the manufacurer submits a report pursuant to § 205.157-4 with respect to such configuration.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.157-9 Production verification based on data from previous years.

(a) Production verification of each configuration will be required at the beginning of each model year except that in certain instances the Administrator, upon request by the manufacturer, may permit the use of production verification data for specific configurations from previous production verification reports. Considerations relevant to his decision may include, but are not limited to:

(1) The level of the standard in effect for the year in question.

(2) Performance based on production verification data from previous years.

(3) Performance based on data obtained from selective enforcement testing during previous years.

(4) The number and type of noise emission design changes incorporated in the new models that affect the noise emission level of that model.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.157-10 Cessation of distribution.

(a) If a category or configuration is found to be non-conforming to this subpart by reason of failure to be properly verified, as required by § 205.157-2, the Administrator may issue an order to the manufacturer to cease to distribute in commerce vehicles of that category or configuration. However, such an order shall not be issued if the manufacturer has made a good faith attempt to properly production verify the category or configuration. The burden of establishing such good faith shall rest with the manufacturer.

(b) Any such order shall be issued after notice and opportunity for a hearing.

(Sec. 11 of the Noise Control Act (42 U.S.C. 4910).)

§ 205.158 Labeling requirements.

(a)(1) The manufacturer of any vehicle subject to the standards prescribed in § 205.152 shall, at the time of manufacture, affix a permanent, legible label, of the type and in the manner described in paragraphs (a) (2), (3), and (4) of this section, containing the information specified in this section, to all such vehicles to be distributed in commerce.

(2) A plastic or metal label shall be welded, riveted, or otherwise permanently attached in a readily visible position.

(3) The label shall be affixed by the vehicle manufacturer who has verified such vehicle pursuant to § 205.157-2, in such a manner that it cannot be removed without destroying or defacing the label, and shall not be affixed to any piece of equipment that is easily detached from such vehicle.

(4) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(i) The label heading: Motorcycle Noise Emission Control Information;

(ii) Full corporate name and trademark of manufacturer;

(iii) Date (month/year) of manufacture, which may consist of a serial number or code in those instances where records specified in § 205.161 are maintained;

(iv) The statement: "This motorcycle conforms to U.S. EPA Noise Regulations applicable to street (off road, where appropriate) motorcycles. Federal law prohibits any modifications of this motorcycle which cause it to exceed the Federal noise standard. Use of this motorcycle after such modification is also prohibited."; and,

(v) The following information:

(A) The heading "Stationary Sound Level".

(B) The class stationary sound level including the units ["dB(A)"].

(C) The symbol "@".

(D) The engine speed S/2, where S is the maximum rated RPM, including the units ("RPM").

(b) Any vehicle manufactured in the United States solely for use outside the United States and not conforming to the noise emission standards for this regulation shall be clearly labeled in accordance with the provisions of paragraphs (a)(1), (2), and (3) of this section with the statement: "For Export Only".

(c) Any competition motorcycle as defined in § 205.151(a)(3), that does not conform to the noise emission standards for this regulation shall be labeled in accordance with the provisions of paragraphs (a)(1), (2) and (3) of this section with the statement:

This motorcycle is designed for closed course competition use only. It does not conform to U.S. EPA Motorcycle Noise standards.

(d) It will be permissible for manufacturers to meet the requirements of this section by consolidating these labeling requirements with other governmental labeling requirements in one or more labels, so long as the provisions of paragraphs (a)(1), (2), and (3) of this section are met.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.159 Testing by the Administrator.

(a)(1) The Administrator may require that any vehicle to be tested pursuant to these regulations or any untested vehicles be submitted to him, at such place and time as he may designate for the purpose of conducting tests in accordance with the test procedures described in Appendix I to determine whether such vehicles conform to applicable regulations.

(2) The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment of the type required by these regulations shall be made available by the manufacturer for test operations. The Administrator may conduct such tests with his own equipment, which shall equal or exceed the performance specification of the instrumentation and equipment specified by the Administrator in these regulations.

(b)(1) If, based on tests conducted by EPA or other relevant information, the Administrator determines that the test facility does not meet the requirements of Appendix I (including any alternative procedures that may be approved thereunder), he will notify the manufacturer in writing of his determination and the reasons therefor.

(2) After any notification in paragraph (b)(1) of this section, no data derived from such test facility will be acceptable for purposes of this part and the Administrator may issue an order to the manufacturer, with respect to the vehicle category or configuration in question, to cease to distribute in commerce vehicles of such category or configuration: Except, that any such order shall be issued only after notice and opportunity for a hearing. Such notification may be included in any notifications under paragraph (b)(1) of this section. A manufacturer may request that the Administrator grant a hearing. Such request shall be made not later than fifteen (15) days, or other such period as may be allowed by the Administrator, subsequent to notification of the Administrator's intent to issue an order to cease to distribute.

(3) The manufacturer may request in writing that the Administrator reconsider his determination in paragraph (b)(1) of this section based on data or information which indicates that changes have been made to the test facility and such changes have resolved the reasons for disqualification.

(4) The Administrator will notify the manufacturer of his determination with regard to the requalification of the test facility within 10 days of the manufacturer's request for reconsideration pursuant to paragraph (b)(3) of this section.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.160 Selective enforcement auditing requirements.

§ 205.160-1 Test request.

The provisions of this section are applicable to audits of either the Federal section 6 standard or the class stationary sound level.

(a) The Administrator will request all testing under this subpart by means of a test request addressed to the manufacturer.

(b) The test request will be signed by the Assistant Administrator for Enforcement or his designee. The test request will be delivered by an EPA Enforcement Officer to the plant manager or other responsible official as designated by the manufacturer.

(c)(1) *Noise emission standard.* The test request will specify the vehicle category or configuration selected for testing, the batch selected for testing, the batch size, the manufacturer's plant or storage facility from which the vehicle must be selected, and the time at which a vehicle must be selected. The test request will also provide for situations in which the selected configuration or category is unavailable for testing. The test request may include an alternative category or configuration selected for testing in the event that vehicles of the first specified category or configuration are not available for testing because the vehicles are not being manufactured at the specified plant, are not being manufactured during the specified time, or are not being stored at the specified plant or storage facility.

(c)(2) *Stationary labeling requirement.* The test request will specify the vehicle class selected for testing, the test sample size, the manufacturer's plant or storage facility from which the vehicle must be selected, the time at which a vehicle must be selected, and the method in which a vehicle must be selected. The test request will also provide for situations in which the selected class is unavailable for testing. The test request may include an alternative class selected for testing in the event that vehicles of the first specified class are not available for testing because the vehicles are not being manufactured at the specified plant, are not being manufactured

during the specified time, or are not being stored at the specified plant or storage facility.

(d) *Noise emission standard.* Any manufacturer shall, upon receipt of the test request, select and test a batch sample of vehicles from consecutively produced batches of the vehicle category or configurations specified in the test request in accordance with these regulations and the conditions specified in the test request.

(e)(1) Any testing conducted by the manufacturer pursuant to a test request shall be initiated within such period as is specified within the test request. Such initiation may be delayed for increments of 24 hours or one business day where ambient test site weather conditions in any 24-hour period do not permit testing: Provided, that the ambient test site weather conditions for that period are recorded.

(2) The manufacturer shall complete noise emission testing on a minimum of 10 vehicles per day, if the acceleration test is required and 30 vehicles if the stationary test is required, unless otherwise provided for by the Administrator or unless ambient test site conditions permit only the testing of a lesser number: Provided, that ambient test site weather conditions for that period are recorded.

(3) The manufacturer shall be allowed 24 hours to ship vehicles from a batch or test sample from the assembly plant to the testing facility if the facility is not located at the plant or in close proximity to the plant: Except, that the Administrator may approve more time based upon a request by the manufacturer accompanied by a satisfactory justification.

(f) The Administrator may issue an order to the manufacturer to cease to distribute in commerce vehicles of a specified category, configuration, or class being manufactured at a particular facility if:

(1) The manufacturer refuses to comply with the provisions of a test request issued by the Administrator pursuant to this section; or

(2) The manufacturer fails to comply with any of the requirements of this section.

(g) A cease-to-distribute order shall not be issued under paragraph (f) of this section if such refusal is caused by conditions and circumstances outside the control of the manufacturer which render it impossible to comply with the provisions of a test request or any other requirements of this section. Such conditions and circumstances shall include, but are not limited to, any uncontrollable factors which result in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment breakdown or failure, or illness of personnel, but shall not include failure of the manufacturer to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(h) Any such order shall be issued only after a notice and opportunity for a hearing.

(Secs. 11 and 13 of the Noise Control Act (42 U.S.C. 4910, 4912).)

§ 205.160–2 Test sample selection.

(a)(1) *Noise emission standard.* Vehicles comprising the batch sample which are required to be tested pursuant to a test request in accordance with this subpart will be selected in the manner specified in the test request from a batch of vehicles of the category or configuration specified in the test request. If the test request specifies that the vehicles comprising the batch sample must be selected randomly, the random selection will be achieved by sequentially numbering all of the vehicles in the batch and then using a table of random numbers to select the number of vehicles as specified in (c) of this section based on the batch size designated by the Administrator in the test request. An alternative random selection plan may be used by a manufacturer: Provided, that such a plan is approved by the Administrator. If the test request does not specify that test vehicles must be randomly selected, the manufacturer shall select test vehicles consecutively. The provisions of § 205.157–5 shall also pertain to this section.

(2) *Stationary labeling requirement.* Vehicles comprising the test sample which are required to be tested pursuant to a test request in accordance with this subpart will be selected in the manner specified in the test request from a group of vehicles of the class specified in the test request. If the test request specified that the vehicles comprising the test sample must be selected randomly, the test request will specify the size of the group and how it is to be selected. Random selection will be achieved by sequentially numbering all of the vehicles in the group and then using a table of random numbers to select the number of vehicles as specified by the Administrator in the test request. An alternative random selection plan may be used by a manufacturer: Provided, that such a plan is approved by the Administrator. If the test request does not specify that test vehicles must be randomly selected, a the manufacturer shall select test vehicles consecutively. The provisions of section 205.155 shall also pertain to this section.

(b)(1) *Noise emission standard.* The Acceptable Quality Level (AQL) is 10 percent. The appropriate sampling plans associated with the designated AQL are contained in table II of appendix I subpart E.

(2) *Stationary labeling requirement.* A confidence interval of 95 percent has been established with respect to determining that a class has not been labeled at the 90th percentile. The appropriate sampling plans are contained in table IV of appendix II.

(c) *Noise emission standard.* The appropriate batch sample size will be determined by reference to tables I and II of appendix I to subpart E. A code letter is obtained from table I based on the batch size designated by the Administrator in a test request. The batch sample size will be obtained from table II. The batch sample size will be equal to the maximum cumulative sample size for the appropriate code letter obtained from table I plus an additional 10 percent rounded off to the next highest number.

(d) *Noise emission standard.* If the test request specifies that vehicles comprising the batch sample must be selected randomly, individual vehicles comprising the test sample will be randomly selected from the batch sample using the same random selection plan as in paragraph (a) of this section. Test sample size will be obtained from Table II of Appendix II.

(e) The test vehicles of the category, configuration, or class selected for testing shall have been assembled by the manufacturer for distribution in commerce using the manufacturer's normal production process.

(f) Unless otherwise indicated in the test request, the manufacturer will select the batch or test sample from the production batch or group next scheduled after receipt of the test request, of the category, configuration, or class specified in the test request.

(g) Unless otherwise indicated in the test request, the manufacturer shall select the vehicle designated in the test request for testing.

(h) At their discretion, EPA Enforcement Officers, rather than the manufacturer may select the vehicles designated in the test request.

(i)(1) *Noise emission standard.* The manufacturer will keep on hand all vehicles in the batch sample until such time as the batch is accepted or rejected in accordance with § 205.160–6: Except, that vehicles actually tested and found to be in conformance with these regulations need not be kept.

(2) *Stationary labeling requirement.* The manufacturer will keep on hand all vehicles in the test sample until such time as the class stationary sound level is accepted or rejected in accordance with § 205.160–6.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4219).)

§ 205.160–3 Test preparation.

Prior to the official test, the test vehicle selected in accordance with

§ 205.160-2 will be prepared in accordance with § 205.157-6.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.160-4 Testing procedures.

(a) The manufacturer shall conduct one valid test in accordance with the test procedures specified in Appendix I, where appropriate, for each vehicle selected for testing pursuant to this subpart.

(b) No maintenance will be performed on test vehicles except as provided for by § 205.160-3. In the event a vehicle is unable to complete the noise emission test, the manufacturer may replace the vehicle. Any replacement vehicle will be a production vehicle of the same configuration or class as the replaced vehicle. It will be randomly selected from the batch sample or group and will be subject to all the provisions of these regulations.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.160-5 Reporting of the test results.

(a)(1) The manufacturer shall submit a copy of the test report for all testing conducted pursuant to § 205.160 at the conclusion of each 24-hour period during which testing is done.

(2) *Noise emission standard.* For each test conducted the manufacturer will provide the following information:

(i) Configuration and category identification where applicable;

(ii) Sound Level Degradation Factor (SLDF);

(iii) Year, manufacturing date, and model of vehicle;

(iv) Vehicle serial number; and,

(v) Test results by serial numbers.

(3) *Noise emission standard.* The first test report for each batch sample will contain a listing of all serial numbers in that batch.

(4) *Stationary labeling requirement.* For each test conducted the manufacturer will provide the following information:

(i) Class information;

(ii) Year, manufacturing date, and model of vehicle; and,

(iii) Test results by serial numbers.

(b) In the case where an EPA Enforcement Officer is present during testing required by this subpart, the written reports requested in paragraph (a) of this section may be given directly to the Enforcement Officer.

(c) Within 5 days after completion of testing of all vehicles in a batch sample or test sample, the manufacturer shall submit to the Administrator a final report which will include the information required by the test request in the format stipulated in the test request in addition to the following:

(1) The name, location, and description of the manufacturer's noise emission test facilities which meet the specifications of appendix I, where appropriate, and were utilized to conduct testing reported pursuant to this section: Except, that a test facility that has been described in a previous submission under this subpart need not again be described, but must be identified as such.

(2) A description of the random vehicle selection method used, referencing any tables of random numbers that were used, name of the person in charge of the random number selection, if the vehicle test request specifies a random vehicle selection.

(3) The following information for each noise emission test conducted.

(i) The individual records for the test vehicles required by § 205.161(a)(2) for all noise emission tests including for each invalid test, the reason for invalidation.

(ii) A complete description of any modification, repair, preparation, maintenance, or testing which was performed on the test vehicle and will not be performed on all other production vehicles.

(iii) The reason for the replacement and test results for the replaced vehicles.

(4) A complete description of the sound data acquisition system if other than those specified in Appendix I.

(5) The following statement and endorsement:

This report is submitted pursuant to section 6 and section 13 of the Noise Control Act of 1972. All testing for which data is reported herein was conducted in strict conformance with applicable regulations under 40 CFR 205 et seq. All the data reported herein is a true and accurate representation of such testing. All other information reported herein is, to the best of _____ (company name) knowledge, true and accurate. I am aware of the penalties associated with violations of the Noise Control Act of 1972 and the regulations thereunder.

_____ (authorized representative).

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.160-6 Acceptance and rejection of a class stationary sound level.

(a) Determination of compliance with the stationary sound level labeling requirement will be based on the number of vehicles in a test sample of a specific class which exceed the labeled stationary sound level.

(b) If the number of vehicles in the test sample exceeding the labeled value is within its acceptable range specified in table IV of appendix II, and,

(1) That number is not zero, then the labeled class stationary sound level is accepted and no further testing is required;

(2) That number is zero, then additional testing in increments of 10 vehicles shall be performed until a decision can be made on compliance under paragraph (b)(1) of this section or non-compliance under (c) of this section.

(c) If the number of vehicles in the test sample exceeding the labeled value is not within the acceptable range specified in table IV of appendix II, then the class stationary sound level is rejected and the class is deemed to be mislabeled and in noncompliance.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.160-7 Acceptance and rejection of batches; noise emission standard.

(a) A failing product is one whose measured sound level is in excess of the sound level equal to the applicable noise emission standard set forth in § 205.152 minus the SLDF as determined in § 205.162-4 for the category or configuration being tested.

(b) The batch from which a batch sample is selected will be accepted or rejected based upon the number of failing vehicles in the batch sample. A sufficient number of test samples will be drawn from the batch sample until the cumulative number of failing vehicles is less than or equal to the acceptance number, or greater than or equal to the rejection number appropriate for the cumulative number of vehicles tested. The acceptance and rejection numbers listed in table II of appendix II at the appropriate code letter obtained according to § 205.160-2 will be used in determining whether the acceptance or rejection of a batch has occurred.

(c) Acceptance or rejection of a batch takes place when the decision that a vehicle is a failing vehicle is made on the last vehicle required to make a decision under paragraph (b) of this section.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.160-8 Acceptance and rejection of batch sequence: noise emission standard.

(a) The manufacturer will continue to inspect consecutive batches until the batch sequence is accepted or rejected. The batch sequence will be accepted or rejected based upon the number of rejected batches. A sufficient number of consecutive batches will be inspected until the cumulative number of rejected batches is less than or equal to the sequence acceptance number, or greater than or equal to the sequence rejection number appropriate for the cumulative number of batches inspected. The acceptance and rejection numbers listed in table III of appendix II at the appropriate code letter obtained according to § 205.160-2 will be used in determining whether the acceptance or rejection of a batch sequence has occurred.

(b) Acceptance or rejection of a batch sequence takes place when the decision that a vehicle is a failing vehicle is made on the last vehicle required to made a decision under paragraph (a) of this section.

(c) If the batch sequence is accepted, the manufacturer will not be required to perform any additional testing on vehicles from subsequent batches pursuant to the initiating test request.

(d) The Administrator may terminate testing earlier than required in paragraph (b) based on a request by the manufacturer, accompanied by voluntary cessation of distribution in commerce, from all plants, of vehicles from the configuration in question, provided that once production is reinitiated the manufacturer must take the action described in § 205.160-10 (a)(1) and (a)(2) prior to distribution in commerce of any vehicle from any plant of the vehicle category or configuration in question.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.160-9 Continued testing; noise emission standard.

(a) If a batch sequence is rejected in accordance with paragraph (b) of § 205.160-7, the Administrator may require continued 100 percent testing with respect to all vehicles of that category or configuration produced at that plant.

(b) The Administrator will notify the manufacturer in writing of his intent to require any 100 percent testing of vehicles pursuant to paragraph (a) of this section.

(c) Any tested vehicle which demonstrates conformance with the applicable standards may be distributed into commerce.

(d) Any knowing distribution into commerce of a vehicle which does not comply with the applicable standards is a prohibited act.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.160-10 Prohibition of distribution in commerce; manufacturer's remedy: noise emission standard.

(a) The Administrator will permit the cessation of continuous testing under § 205.160-8 once the manufacturer has taken the following actions:

(1) Submits a written report to the Administrator which identifies the reason for the noncompliance of the vehicles, describes the problem and describes the proposed quality control or quality assurance remedies to be taken by the manufacturer to correct the problem or follows the requirements for an engineering change pursuant to § 205.157-9; and,

(2) Demonstrates that the specified vehicle category or configuration has passed a retest conducted in accordance with appendix I-1, and the conditions specified in the initial test request.

(b) Any vehicle failing the prescribed noise emission tests conducted pursuant to § 205.160 of this subpart, may not be distributed in commerce until necessary adjustments or repairs have been made and the vehicle passes a retest.

(c) No vehicles of a rejected batch which are still in the hands of the manufacturer may be distributed in commerce unless the manufacturer has demonstrated to the satisfaction of the Administrator that such vehicles do in fact conform to the regulations: Except, that any vehicle that has been tested and does, in fact, conform with these regulations may be distributed in commerce.

(Secs. 11 and 13 of the Noise Control Act (42 U.S.C. 4909, 4912).)

§ 205.161 Maintenance of records: submittal of information.

(a) Except as otherwise provided for in the regulation, the manufacturer of any new vehicle subject to any of the standards or procedures prescribed in this subpart shall establish, maintain and retain the following adequately organized and indexed records:

(1) General records: (i) Identification and description by category, configuration, and class parameters of all vehicles composing the manufacturer's product line for which testing is required under this subpart and the identification and description of all devices incorporated into the vehicle for the purpose of noise control and attenuation.

(ii) A description of any procedures other than those contained in these regulations used to perform noise tests on any test vehicle.

(iii) A record of the calibration of the acoustical instrumentation as is required by Appendix I.

(iv) A record of the date of manufacture of each vehicle subject to this part, keyed to the serial number or other coded identification contained on the label affixed to each vehicle pursuant to § 205.158.

(2) Individual records for test vehicles:

(i) A complete record of all noise emission tests performed for stationary sound level verification, PV and SEA (except tests performed by EPA directly), including all individual worksheets and/or other documentation relating to each test, or exact copies thereof.

(ii) A record of the information required to be recorded pursuant to Appendix I.

(iii) A record and description of all repairs, maintenance and other servicing performed on stationary sound level verification, PV and SEA products, giving the date and time of the maintenance or service, the reason for it, the person authorizing it, and the names of supervisory personnel responsible for the conduct of the maintenance or service.

(3) A properly filed production verification report or label verification report following the format prescribed by the Administrator in § 205.157-4 and § 205.155-4 fulfills the requirements of paragraphs (a)(1) (i), (ii), and (a)(2) (i), (ii) of this section.

(4) All records required to be maintained under this part shall be retained by the manufacturer for a period of three (3) years from the production verification date. Records may be retained as hard copy or alternatively reduced to microfilm, punch cards, etc., depending on the record retention procedures of the manufacturer; however, all of the information contained in the hard copy shall be retained in the alternative method if this method is used.

(b) The manufacturer shall, pursuant to a request made by the Administrator, submit to the Administrator the following information with regard to new vehicle production:

(1) Number of vehicles, by category, configuration, or class scheduled for production for the time period designated in the request.

(2) Number of vehicles, by category, configuration, or class produced during the time period designated in the request.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.162 In-use requirements.

§ 205.162-1 Warranty.

(a) The vehicle manufacturer who is required to production verify under this part shall include in the owner's manual or in other information supplied to the ultimate purchaser the following statement:

NOISE EMISSION WARRANTY

The manufacturer warrants to the first person who purchases this vehicle for purposes other than resale and to each subsequent purchaser that this vehicle was designed, built and equipped to conform at the time of sale to such first purchaser with all applicable U.S. EPA noise control regulations.

This warranty is not limited to any particular part, component or system of the vehicle. Defects in the design, assembly, or in any part, component, or system of the vehicle which at the time of sale to such first purchaser, caused noise emission levels to exceed Federal standards are covered by this warranty for the actual life of the vehicle.

(b) Not later than the date of submission of the product verification report required by § 205.157-4, the manufacturer shall submit to the Administrator two (2) copies of the written noise emission warranty required

by paragraph (a) of this section and two (2) copies of all other information provided to the ultimate purchaser which could reasonably be construed as impacting on the warranty.

(c) Not later than ten (10) days after dissemination, the manufacturer shall submit two (2) representative copies of all information of a general nature, or modifications thereto, which is provided to dealers, zone representatives, or other agents of the manufacturer regarding the administration and application of the noise emission warranty. Information regarding noise emission warranty claims which is provided to a dealer or representative in response to a particular warranty claim or dealer inquiry is not considered to be information of a general nature, if such information does not receive broad dissemination to dealers.

(d) All information required to be forwarded to the Administrator pursuant to this section shall be addressed to: Director, Noise Enforcement Division (EN-387), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.162-2 Tampering.

(a) For each model year and for each configuration of vehicles covered by this part, the manufacturer shall submit to the Administrator a list of those acts which, in the manufacturer's estimation, might be done to the vehicle in use, on more than an occasional basis, and result in an increase in noise emissions above the standards prescribed in section 205.152. If, in the manufacturer's estimation, the same acts might be done for all configurations, and no additional acts would be done on any one or more configurations, then the manufacturer may submit one list to cover his entire product line. The manufacturer, wherever possible, should indicate the amount of this increase in sound level.

(b) The above information shall be submitted to the Administrator within adequate time prior to the introduction into commerce of each configuration to allow for the development and printing of tampering lists, as provided in paragraphs (c) and (d) of this section.

(c) On the basis of the above information, the Administrator will develop a list of acts which, in the Administrator's judgment, constitute the removal or rendering inoperative, totally or partially other than for purposes of maintenance, repair, or replacement, of noise control devices or elements of design of the vehicle. This list shall be provided to the manufacturer by the Administrator within 30 days of the date on which the information required in paragraph (a) of this section is submitted by the manufacturer and shall be included in the statement to the ultimate purchaser as required by paragraph (d)(2) of this section. If the list is not provided by the Administrator within 30 days of the date on which the information required in paragraph (a) of this section is submitted, the manufacturer shall include only the statement in paragraph (d)(1) of this section until such time as the list has been provided and the owner's manual is reprinted for other purposes.

(d) The manufacturer shall include in the owner's manual the following information:

(1) The statement:

TAMPERING WITH NOISE CONTROL SYSTEM PROHIBITED

Federal law prohibits the following acts or the causing thereof: (1) The removal or rendering inoperative by any person other than for purposes of maintenance, repair, or replacement, of any device or element of design incorporated into any new vehicle for the purpose of noise control prior to its sale or delivery to the ultimate purchaser or while it is in use, or (2) the use of the vehicle after such device or element of design has been removed or rendered inoperative by any person.

(2) The statement:

AMONG THOSE ACTS PRESUMED TO CONSTITUTE TAMPERING ARE THE ACTS LISTED BELOW

Immediately following this statement, the manufacturer shall include the list developed by the Administrator under paragraph (c) of this section.

(e) Any act included in the list prepared pursuant to paragraph (c) of this section is presumed to constitute tampering; however, in any case in which a proscribed act has been committed and it can be shown that such act resulted in no increase in the sound level of the vehicle or that the vehicle still meets the noise emission standard of § 205.152, such act will not constitute tampering.

(f) The provisions of this section are not intended to preclude any State or local jurisdiction from adopting and enforcing its own prohibitions against the removal or rendering inoperative of noise control systems on vehicles subject to this part.

(g) All information required by this section to be furnished to the Administrator shall be sent to the following address:

Director, Noise Enforcement Division (EN-387), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

(Secs. 10, 13 of the Noise Control Act (42 U.S.C. 4909, 4912).)

§ 205.162-3 Instructions for maintenance, use, and repair.

(a) (1) The manufacturer shall provide to the ultimate purchaser of each vehicle covered by this subpart written instructions for the proper maintenance, use, and repair of the vehicle in order to provide reasonable assurance of the elimination or minimization of noise emission degradation throughout the life of the vehicle.

(2) The purpose of the instructions is to inform purchasers and mechanics of those acts necessary to reasonably assure that degradation of noise emission level is eliminated or minimized during the life of the vehicle. Manufacturers shall prepare the instructions with this purpose in mind. The instructions shall be clear and, to the extent practicable, written in nontechnical language.

(3) The instructions must not be used to secure an unfair competitive advantage. They shall not restrict replacement equipment to original equipment or service to dealer service unless such manufacturer makes public the performance specifications on such equipment.

(b) For the purpose of encouraging proper maintenance, the manufacturer shall provide a record or log book which shall contain a schedule for the performance of all required noise emission control maintenance. Space shall be provided in this record book so that the purchaser can note what maintenance was done, by whom, where, and when.

(c) Not later than the date of submission of the production verification report required by § 205.157-4, the manufacturer shall submit to the Administrator two (2) copies of the maintenance instructions (including the record book) required by paragraphs (a) and (b) of this section.

(d) The Administrator will require modifications to the instructions if they are not sufficient to fulfill the requirements of paragraph (a) of this section.

(e) Information required to be submitted to the Administrator pursuant to this section shall be sent to the following address:

Director, Noise Enforcement Division (EN-387), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.162-4 Sound level degradation factor (SLDF) and retention of durability data.

(a) Each manufacturer responsible for compliance with the applicable standards specified in § 205.152 shall develop a Sound Level Degradation Factor (SLDF) for each of its vehicle configurations utilizing the records compiled under paragraph (b) of this section.

(b) (1) The manufacturer shall establish and maintain records which demonstrate the increase in sound

level which will occur for each vehicle configuration during the specified acoustical assurance period.

(2) The records may include, but need not be limited to, the following: (i) Durability data and actual noise testing on critical noise producing or attenuating components, (ii) sound level deterioration curves on the entire vehicle, (iii) data from products in actual use.

(c) The SLDF is to be used in all Production Verification testing and Selective Enforcement Audit testing to determine compliance.

(d) If the manufacturer determines the product's sound levels will not increase during the acoustical assurance period when properly used and maintained, the SLDF is zero.

(e) If a manufacturer determines that a vehicle's sound level does not increase, but rather decreases with use, yielding a negative SLDF, he shall use zero as the SLDF in all testing under these regulations, but shall determine and record the actual SLDF.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.163 Recall of noncomplying motorcycles; relabeling of mislabeled motorcycles.

(a) Pursuant to section 11(d)(1) of the Act, the Administrator may issue an order to the manufacturer to recall, repair, modify, or relabel any vehicles distributed in commerce which are not in compliance with this subpart.

(b) A recall order issued pursuant to this section shall be based upon a determination by the Administrator that vehicles of a specified category, configuration, or class have been distributed in commerce which do not conform to the regulations or are improperly labeled. Such determination may be based on: (1) A technical analysis of the noise emission characteristics of the category, configuration, or class in question; or (2) any other relevant information, including test data.

(c) For the purposes of this section, noise emissions may be measured by any test prescribed in Appendix I-1 for compliance and Appendix I-2 for labeling for testing prior to sale or any other test which has been demonstrated to correlate with the prescribed test procedure.

(d) Any order to recall shall be issued only after notice and an opportunity for a hearing.

(e) All costs, including labor and parts, associated with the recall and repair or modification of noncomplying vehicles and relabeling of mislabeled vehicles under this section shall be borne by the manufacturer.

(f) This section shall not limit the discretion of the Administrator to take any other actions which are authorized by the Act.

(Sec. 11 of the Noise Control Act (42 U.S.C. 4910).)

Subpart E—Motorcycle Replacement Exhaust Systems

§ 205.165 Applicability.

(a) Except as otherwise provided for in these regulations, the provisions of this subpart apply to any motorcycle replacement exhaust system or motorcycle replacement exhaust system component which: (1) Meets the definition of the term "new product" in the Act; and (2) is designed and marketed for use on any motorcycle subject to the provisions of subpart D of this part.

(b) The provisions of § 205.169 additionally apply to motorcycle exhaust systems installed on newly manufactured motorcycles subject to the requirements of subpart D of this part.

(c) The provisions of § 205.169 additionally apply to motorcycle replacement exhaust systems designed and marketed for use on motorcycles manufactured before January 1, 1980.

(d) Except as provided for in § 205.169, the provisions of this subpart do not apply to exhaust systems which are designed and marketed solely for use on competition motorcycles as defined in § 205.151(a)(3).

(e) The provisions of this subpart do not apply to exhaust header pipes sold as separate products.

§ 205.166 Definitions.

(a) As used in this subpart, all terms not defined herein have the meaning given them in the Act or in other subparts of this part.

(1) "Category" means a group of replacement exhaust systems which are identical in all material aspects with respect to the parameters listed in § 205.168 of this subpart.

(2) "Exhaust header pipe" means any tube of constant diameter which conducts exhaust gas from an engine exhaust port to other exhaust system components which provide sound attenuation. Tubes with cross connections or internal baffling are not considered to be "exhaust header pipes" in the meaning of this definition.

(3) "Failing exhaust system" means an exhaust system that, when installed on any federally-regulated motorcycle for which it is designed and marketed, causes that motorcycle to exceed the standards specified in § 205.167 minus the applicable Sound Level Degradation Factor, when measured in accordance with the applicable procedure. However, any replacement exhaust system which does not meet the requirement of § 205.168-8(b) will be considered a failing exhaust system unless the requirements of § 205.168-8(c) are met.

(4) "Federally-regulated motorcycle" means, for the purpose of this subpart, any motorcycle subject to the noise standards of subpart D of this part.

(5) "Federal standards" means, for the purpose of this subpart, the standards specified in § 205.152(a) (1).

(6) "Group" means a collection of exhaust systems from the same category, designated by the Administrator in a test request, from which a test sample is to be drawn and inspected to determine conformance with the acceptability criteria.

(7) "Stock configuration" means that no modifications have been made to the original equipment motorcycle that would affect the noise emissions of the vehicle when measured according to the stationary or acceleration test procedures.

(8) "Production verification exhaust system" means any exhaust system selected for testing, tested or verified pursuant to the production verification requirements of this subpart.

(9) "Sound level degradation factor (SLDF)" means the increase in vehicle sound level (acceleration test) due to exhaust system degradation over the AAP, provided the exhaust system is properly maintained and used.

(10) "Test exhaust system" means an exhaust system in a test sample or a production verification exhaust system.

§ 205.167 Noise emission standards.

(a) *Noise emission standards.* (1) Exhaust systems and exhaust system components manufactured after the following dates that are designed and marketed for use on any Federally regulated street motorcycle shall be designed and built so that, at the time of sale, when installed on any such motorcycle which is in compliance with the requirements of subpart D of this part, they will not cause that motorcycle to produce sound levels in excess of the levels indicated:

(i) Systems designed and marketed for use on street motorcycles other than those that meet the definition of § 205.151(a)(2)(ii):

Date	*Sound level*
(A) Jan. 1, 1980	83 dB(A).
(B) Jan. 1, 1982	80 dB(A).
(C) Jan. 1, 1985	78 dB(A).

(ii) Systems designed and marketed for street motorcycles that meet the definition of § 205.151(a)(2)(ii) (moped-type street motorcycles):

Date	*Sound level*
(A) Jan. 1, 1980	70 dB(A).

(2) Exhaust systems and exhaust system components manufactured after the following dates that are designed and marketed for use on any Federally regulated off-road motorcycle shall be designed and built so that, at the time of sale, when installed on any such motorcycle which is in compliance with the requirements of subpart D of this part, they will not cause that motorcycle to produce sound levels in excess of the levels indicated:

(i) Systems designed and marketed for use on off-road motorcycles with engine displacements of 170 cc and lower:

Date	Sound level
(A) Jan. 1, 1980	83 dB(A).
(B) Jan. 1, 1982	80 dB(A).
(C) Jan. 1, 1985	78 dB(A).

(ii) Systems designed and marketed for use on off-road motorcycles with engine displacements greater than 170 cc:

Date	Sound level
(A) Jan. 1, 1980	86 dB(A).
(B) Jan. 1, 1983	82 dB(A).

(3) Exhaust systems and exhaust system components that are designed and marketed for use on any Federally regulated street motorcycle shall be designed and built so that, when installed on any such motorcycle which is in compliance with the requirements of subpart D of this part, and when both the motorcycle and the exhaust system are properly maintained and used, they will not cause that motorcycle to produce sound emissions in excess of the levels specified in subparagraph (1) above, for a period of 1 year or a distance of 6,000 km (3,729 mi) after the time of sale to the ultimate purchaser, whichever comes first.

(4) Exhaust systems and exhaust system components that are designed and marketed for use on any Federally regulated off-road motorcycle shall be designed and built so that, when installed on any such motorcycle which is in compliance with the requirements of subpart D of this part, and when both the motorcycle and the exhaust system are properly maintained and used, they will not cause that motorcycle to produce sound emissions in excess of the levels specified in subparagraph (2) above, for a period of 1 year or a distance of 3,000 km (1,865 mi) after the time of sale to the ultimate purchaser, whichever comes first.

(5) At the time of sale to the ultimate purchaser all products must comply with the standards set forth in paragraphs (1) and (2) of this section minus the sound level degradation factor (SLDF) for that category developed in accordance with § 205.173.

(b) *Measurement procedure.* (1) (i) The standards set forth in paragraph (a) of this section refer to the sound emissions as measured in accordance with the acceleration measurement methodology specified in Appendix I-1(a) for all motorcycles except those street motorcycles meeting the definition of § 205.151(a)(2)(ii). Exhaust systems which alter a motorcycle's maximum rated RPM shall be tested using the unmodified motorcycle's maximum rated RPM to determine closing RPM or test RPM.

(ii) The standards set forth in paragraph (a) of this section for street motorcycles meeting the definition of § 205.151(a)(2)(ii) (moped-type street motorcycles) refer to sound emissions measured in accordance with the measurement methodology specified in Appendix I-1(b).

(2) Exhaust system components sold as separate products shall be tested as part of a system made up of that part and original equipment components to complete the system.

(3) Exhaust system components sold as separate products which are incompatible with original equipment components necessary to make a complete exhaust system, or which would not meet standards as prescribed in this subpart in such configuration, may be tested with non-original equipment components provided that the provisions of § 205.169(d)(1)(iii)(F) are carried out.

§ 205.168 Production verification.

§ 205.168-1 General requirements.

(a) Every motorcycle replacement exhaust system manufactured for Federally regulated motorcycles and distributed in commerce in the United States which is subject to the noise emission standards prescribed in this subpart and not exempted in accordance with § 205.5:

(1) Shall conform to the applicable noise emission standard established in § 205.167 of this regulation when installed on any Federally regulated motorcycle for which it has been designed and marketed;

(2) Shall be verified in accordance with the production verification procedures described in this subpart;

(3) Shall be represented in a production verification report, as required by § 205.168-4 of this subpart; and

(4) Shall be labeled in accordance with the requirements of § 205.169 of this subpart.

(b) The manufacturer who is required to conduct product verification testing, for a particular standard, shall satisfy all other provisions of this subpart applicable to that standard, including, but not limited to, record keeping, reporting, and in-use requirements.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.168-2 Production verification; compliance with standards.

(a) Prior to distribution in commerce of replacement exhaust systems of a specific category, the manufacturer of such exhaust systems must verify such categories in accordance with the requirements of this subpart.

(b) The production verification requirements for each exhaust system category consist of:

(1) Testing in accordance with § 205.168-8 of an exhaust system selected in accordance with § 205.168-4;

(2) Compliance of the test exhaust system with a sound level such that the measured noise emissions of the exhaust system do not exceed the applicable standard minus the Sound Level Degradation Factor (SLDF, determined in accordance with § 205.173-5 of this subpart) when tested in accordance with Appendix I-1; and

(3) Submission of a production verification report pursuant to § 205.168-3.

(c) A manufacturer is required to verify all categories of exhaust systems within his product line for each class of Federally regulated motorcycle for which it is designed and marketed. A category of a replacement exhaust system is defined by a separate combination of at least the following parameters:

(1) Muffler/Silencer: (i) Volume; (ii) shape; (iii) length; (iv) diameter; (v) directional flow of exhaust gas; (vi) interior construction; (vii) absorption material; (viii) shell and inner construction material; (ix) number of header pipes entering muffler; and (x) specific motorcycle application.

(2) Expansion Chamber: (i) Volume; (ii) shape; (iii) diameter; (iv) construction material; (v) directional flow of exhaust gas; (vi) length; and (vii) specific motorcycle application.

(3) Spark Arrestors: (i) Volume; (ii) shape; (iii) construction material; (iv) directional flow of exhaust gas; (v) length; (vi) diameter; and (vii) specific motorcycle application.

(4) Other Exhaust System Components: (i) Volume; (ii) shape; (iii) length; (iv) diameter; (v) material; (vi) directional flow of exhaust gas; and (vii) specific motorcycle application.

(d) Exhaust system components sold as separate products shall be tested pursuant to section 205.167(b) (1), (2), and (3).

(e) Original equipment exhaust systems that are sold as replacement systems need not be tested under this subpart if they have been tested or represented in a test report under Subpart D of this part.

(f) A manufacturer may, at his option, proceed with any of the following alternatives with respect to any exhaust system determined not in compliance with applicable standards:

(1) Delete that category from the production verification report. Categories so deleted may be included in a later report under § 205.168-3.

(2) Modify the test exhaust system and demonstrate by testing that it meets applicable standards. All modifications and test results must be reported in the production verification report. The manufacturer must modify all production exhaust systems of the same category in the same manner as the test exhaust system before distribution in commerce.

(g) Upon request by the Director, Noise Enforcement Division, the manufacturer shall notify the Director of any production verification testing scheduled by the manufacturer pursu-

ant to this section so that EPA Enforcement Officers may be present and observe such testing or conduct the testing in lieu of the manufacturer.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.168–3 Production verification report; required data.

(a) Prior to distribution in commerce of any product to which this regulation applies the manufacturer shall submit a production verification report to the Director, Noise Enforcement Division (EN–387), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. A manufacturer may choose to submit separate production verification reports for different parts of his product line.

(b) The report shall be signed by an authorized representative of the manufacturer and shall include the following:

(1) The name, location, and description of the manufacturer's noise emission test facilities which meet the specifications of Appendix I and have been utilized to conduct testing pursuant to this subpart; except, that a test facility that has been described in a previous submission under this subpart need not again be described but must be identified as such.

(2) A description of all replacement exhaust systems to be distributed in commerce by the manufacturer (including those exhaust systems not intended for use on federally-regulated motorcycles). The Sound Level Degradation Factor (see § 205.173–5) and part number for each exhaust system category that is designed and marketed for a federally-regulated motorcycle. The manufacturer may satisfy the exhaust system description requirements of this paragraph by submitting as part of the production verification report a copy of his sales data literature that describes his product line (by part number) including options: Provided, that this literature is supplemented with any additional information necessary to fulfill the requirements of this section.

(3) The following information for each noise emission test conducted:

(i) The individual record for the test vehicles required by § 205.172(a)(2) for all official tests conducted in accordance with § 205.168–8 including, for each invalid test, and the reason for invalidation;

(ii) A complete description of any preparation, maintenance, or testing which was performed on the test motorcycle or the test replacement exhaust system and which will not be performed on all other production vehicles or exhaust systems; and

(iii) The reason for replacement, where a substitute exhaust system or replacement motorcycle was necessary, and test results, if any, for replaced exhaust systems and motorcycles.

(4) A complete description of the sound data acquisition system if other than those specified in Appendix I.

(5) The following statement and endorsement:

This report is submitted pursuant to Section 6 and Section 13 of the Noise Control Act of 1972. All testing for which data is reported herein was conducted in strict conformance with applicable regulations under 40 CFR Part 205. All the data reported herein is a true and accurate representation of such testing. All other information reported herein is, to the best of

_____

(company name)

knowledge, true and accurate. I am aware of the penalties associated with violations of the Noise Control Act of 1972 and the regulations thereunder.

_____

(authorized representative)

(c) Where a manufacturer elects to submit separate production verification reports for portions of his product line as provided for in paragraph (a) of this section, information provided in previous reports need not be resubmitted; except, that information necessary to update or make current previously submitted information must be submitted.

(d) Any change with respect to any information reported pursuant to this subpart shall be reported as soon as the information becomes available.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.168–4 Test exhaust system sample selection.

A test replacement exhaust system for which production verification testing is required by § 205.168–2 shall be a replacement exhaust system of the subject category which has been assembled using the manufacturer's normal production processes and will be sold or offered for sale in commerce.

(Secs. 10, 13 of the Noise Control Act (42 U.S.C. 4909, 4912).)

§ 205.168–5 Test exhaust system preparation.

(a) Prior to the official test, the test exhaust system selected in accordance with § 205.168–4 shall not be prepared, tested, modified, adjusted, or maintained in any manner unless such adjustments, preparation, modification or tests are part of the manufacturer's prescribed manufacturing and inspection procedures, and are documented in the manufacturer's internal exhaust system assembly and inspection procedures or unless such adjustments or tests are required or permitted under this subpart or are approved in advance by the Administrator.

(b) No quality control, testing, assembly or selection procedures shall be used on the completed exhaust system or any portion thereof, including parts and subassemblies, that will not normally be used during the production and assembly of all other exhaust systems of the category which will be distributed in commerce, unless such procedures are required or permitted under this subpart or are approved in advance by the Administrator.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.168–6 Test motorcycle selection.

Test motorcycles to be used for production verification testing of replacement exhaust systems shall be of the subject class which has been assembled using the manufacturer's normal production processes, in stock configuration including exhaust system, and sold or offered for sale in commerce. These test motorcycles shall have a stationary sound level which is equal to or no more than 3 dB(A) below the stationary sound level value displayed on the label of the motorcycle.

(Secs. 10, 13 of the Noise Control Act (42 U.S.C. 4909, 4912).)

§ 205.168–7 Test motorcycle preparation.

(a) Prior to the official test, the test motorcycle selected in accordance with § 205.168–6 shall not be prepared, tested, modified, adjusted, or maintained in any manner unless such adjustments, preparation, modification, or tests are part of the original equipment manufacturer's prescribed manufacturing and inspection procedures, and documented in the manufacturer's internal motorcycle assembly and inspection procedures or unless such adjustments or tests are required or permitted under this subpart or are approved in advance by the Administrator.

(b) Equipment or fixtures necessary to conduct the test may be installed on the motorcycle; provided, that such equipment or fixtures shall have no effect on the noise emissions of the motorcycle, as determined by the measurement methodology.

(c) In the even of a motorcycle malfunction (i.e., failure to start, etc.) maintenance that is necessary may be performed to enable the vehicle to operate in a normal manner: Provided that such maintenance is documented and reported in the final report prepared and submitted in accordance with this subpart.

(d) No quality control, testing, assembly or selection procedures shall be used on the test vehicle or any por-

tion thereof, including parts and subassemblies, that will not normally be used during the production and assembly of all other motorcycles of that class which will be distributed in commerce, unless such procedures are required or permitted under this subpart or are approved in advance by the Administrator.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.168–8 Testing.

(a) The manufacturer shall conduct one valid test on the test motorcycle before installing his replacement exhaust system in accordance with the stationary test procedure specified in appendix I–2, or, at his option, may proceed directly with the requirements of paragraph (c) of this section. The test motorcycle must exhibit a stationary sound level equal to or no more than 3 dB(A) below the stationary sound level labeled value appearing on the motorcycle [except as provided for in paragraph (c) of this section]. Manufuacturers of replacement exhaust systems designed and marketed for street motorcycles that meet the definition of § 205.151(a)(2)(ii) (Moped-type street motorcycles) must proceed directly with the requirements of paragraph (c) of this section.

(b) The manufacturer of the replacement exhaust system shall conduct one valid test in accordance with the stationary test procedure specified in appendix I–2 the test motorcycle with his replacement exhaust system installed in place of the original equipment exhaust system. Components shall be tested as provided for in § 205.168–2(d). The test values for that test motorcycle with the replacement exhaust system shall equal or be lower than the stationary sound level appearing on the motorcycle label.

(c) If the replacement exhaust system does not meet the requirements of paragraph (b) of this section, or if the manufacturer, at his option, decides to initiate testing under this paragraph he may conduct one valid test in accordance with the acceleration test procedure specified in appendix I–1 to determine if the motorcycle meets Federal standards with the original equipment exhaust system. If the motorcycle meets applicable noise standards it may be used as a test motorcycle to conduct a valid test in accordance with the requirements of appendix I–1 with the replacement exhaust system installed in place of the original equipment exhaust system. Components shall be tested as provided for in § 205.168–2(d). In order to be considered a passing exhaust system, the test values for the test motorcycle with the replacement exhaust system must not exceed the applicable standard (§ 205.167) minus the Sound Level Degradation Factor as determined in § 205.173–5.

(d) No maintenance will be performed on test motorcycles or test replacement exhaust systems except as provided for by § 205.168–5 and § 205.168–7.

(e) In the event a motorcycle or test replacement exhaust system is unable to complete the emission test, the motorcycle or exhaust system may be substituted. Any substitute motorcycle or exhaust system will be a production motorcycle or exhaust system of the same model as the motorcycle or exhaust system that was replaced and will be subject to all the provisions of these regulations. Any replacement shall be reported in the production verification report including the reason for the replacement.

(f) In the event an exhaust system category fails to comply with the requirements of this section when tested in accordance with the procedures specified in paragraphs (b) or (c) of this section, the manufacturers may proceed in accordance with § 205.168–2(f) of this subpart.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.168–9 Addition of, changes to and deviation from an exhaust system category during the calendar year.

(a) Any change to a replacement exhaust system category with respect to any of the parameters stated in § 205.168–2 shall constitute the addition of a new and separate category to the manufacturer's product line.

(b) When a manufacturer introduces a new category to his product line, he shall proceed in accordance with § 205.168–2.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.168–10 Production verification based on data from previous calendar years.

(a) Production verification of each category will be required at the beginning of each calendar year except that in certain instances, the Administrator, upon request by the manufacturer, may permit the use of production verification data for specific categories from previous production verification reports. Considerations relevant to his decision may include, but are not limited to:

(1) The level of the standard in effect for the year in question;

(2) Performance based on production verification data for previous years;

(3) Performance based on data obtained from selective enforcement testing during previous years;

(4) The number and type of noise emission design changes incorporated in the new model motorcycles; and

(5) The number and type of noise attenuation design changes incorporated in the new model exhaust systems.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.168–11 Cessation of distribution.

(a) If a category of replacement exhaust systems is found to be non-conforming to this subpart by reason of failure to be properly verified or labeled, as required by § 205.168–2 and § 205.169, the Administrator may issue an order to the manufacturer to cease to distribute in commerce exhaust systems of that category. However, such an order shall not be issued if the manufacturer has made a good faith attempt to properly production verify the category. The burden of establishing such good faith shall rest with the manufacturer.

(b) Any such order shall be issued after notice and opportunity for a hearing.

(Sec. 11 of the Noise Control Act (42 U.S.C. 4910).)

§ 205.169 Labeling requirements.

(a) The manufacturer of any product (including the manufacturer of newly produced motorcycles) subject to the provisions of this subpart shall, at the time of manufacture, affix a permanent, legible label, or mark of the type and in the manner described below, containing the information hereinafter provided, to all such exhaust systems or exhaust system components to be distributed in commerce. The labels or marks shall be affixed in such a manner that they cannot be removed without destroying or defacing them, and shall not be applied to any part which is easily detached from such product.

(b) The label or mark shall be in a readily visible position when the product is installed on all motorcycles for which it is designed and marketed.

(c) All required language shall be lettered in the English language in block letters and numerals in a color that contrasts with the background of the label.

(d) The label or mark shall contain the following information:

(1) For exhuast systems subject to the noise emission standards of § 205.167:

(i) Full corporate name and trademark of manufacturer;

(ii) Month and year of manufacture;

(iii) The following statement:

(A) For exhaust systems installed on new street motorcycles at the time of purchase or exhaust systems which are identical to systems installed on new street motorcycles at the time of purchase, the statement:

This original equipment exhaust system, when installed on (list of motorcycles by manufacturer, model and model year), conforms to U.S. EPA Noise Regulations applicable to Street Motorcycles.

(B) For exhaust systems installed on new off-road motorcycles at the time

of purchase or exhaust systems which are identical to systems installed on new off-road motorcycles at the time of purchase, the statement:

This original equipment exhaust system, when installed on (list of motorcycles by manufacturer, model and model year), conforms to U.S. EPA Noise Regulations applicable to Off-road Motorcycles.

(C) For replacement exhaust systems and replacement exhaust system components designed and marketed for use on street motorcycles, the statement:

This product, when installed on (list of motorcycles by manufacturer, model and model year), conforms to U.S. EPA Noise Regulations applicable to Street motorcycles.

(D) For replacement exhaust systems and replacement exhaust system components designed and marketed for use of off-road motorcycles, the statement:

This product, when installed on (list of motorcycles by manufacturer, model and model year), conforms to U.S. EPA Noise Regulations applicable to Off-road motorcycles.

(E) For exhaust system components designed and marketed for street motorcycles, and tested in accordance with § 205.168 as a constituent of a complete exhaust system comprising non-original equipment components (other than itself), as provided for in § 205.167(b)(3), the statement:

This product, when installed with the following components (list components by manufacturer and type) on (list of motorcycles by manufacturer, model and model year), conforms to U.S. EPA Noise Regulations applicable to Street motorcycles. Use on motorcycles subject to EPA Noise Regulations without the designated components constitutes tampering and is a violation of Federal law unless it can be shown that such use does not cause the motorcycle to exceed applicable Federal standards.

(F) For exhaust system components designed and marketed for off-road motorcycles, and tested in accordance with § 205.168 as a constituent of a complete exhaust system comprising non-original equipment components (other than itself), as provided for in § 205.167(b)(3), the statement:

This product, when installed with the following components (list components by manufacturer and type) on (list of motorcycles by manufacturer, model and model year), conforms to U.S. EPA Noise Regulations applicable to Off-road motorcycles. Use on motorcycles subject to EPA Noise Regulations without the designated components constitutes tampering and is a violation of Federal law unless it can be shown that such use does not cause the motorcycle to exceed applicable Federal standards.

(2) For exhaust systems designed solely for use on competition motorcycles (as defined by § 205.151(a) (3) and so designated and labeled by the manufacturer) that do not conform to the standards for this regulation; the statement:

This product is designed for use on closed course competition motorcycles only and does not conform to U.S. EPA noise emission standards. Use on motorcycles subject to EPA noise regulations constitutes tampering and is a violation of Federal law unless it can be shown that such use does not cause the motorcycle to exceed applicable Federal standards.

(3) For exhaust systems designed solely for use on motorcycles manufactured before January 1, 1980; the statement:

This product is designed for use on pre-1980 model year motorcycles only and does not conform to U.S. EPA noise emission standards. Use on motorcycles subject to EPA noise regulations constitutes tampering and is a violation of Federal law unless it can be shown that such use does not cause the motorcycle to exceed applicable Federal standards.

(4) For replacement exhaust systems manufactured in the United States solely for use outside the U.S. and not conforming to the noise emissions standards for this regulation; the statement:

For Export Only.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.170 Testing by the Administrator.

(a) (1) The Administrator may require that any replacement exhaust system to be tested pursuant to these regulations or any untested replacement exhaust systems be submitted to him, at such place and time as he may designate for the purpose of conducting tests in accordance with the test procedures described in Appendix I to determine whether such replacement exhaust systems conform to applicable regulations.

(2) The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment of the type required by these regulations shall be made available by the manufacturer for test operations. The Administrator may conduct such tests with his own equipment, which shall equal or exceed the performance specifications of the instrumentation and equipment specified by the Administrator in these regulations.

(b) (1) If, based on tests conducted by EPA or on other relevant information, the Administrator determines that the test facility does not meet the requirements of Appendix I (including any alternative procedures that may be approved thereunder) he will notify the manufacturer in writing of his determination and the reasons therefor.

(2) After the notification in paragraph (b)(1) of this section, no data derived from the subject test facility will be acceptable for the purpose of this part and the Administrator may issue an order to the manufacturer, with respect to the replacement exhaust system category in question, to cease to distribute in commerce replacement exhaust systems of such category: Except, that any such order shall be issued only after notice and opportunity for a hearing. Such notifications may be included in any notification under paragraph (b)(1) of this section. A manufacturer may request that the Administrator grant a hearing. Such request shall be made not later than fifteen (15) days, or other such period as may be allowed by the Administrator, subsequent to notification of the Administrator's intent to issue an order to cease to distribute.

(3) The manufacturer may request in writing that the Administrator reconsider his determination in paragraph (b)(1) of this section based on data or information which indicates that changes have been made to the test facility and such changes have resolved the reasons for disqualification.

(4) The Administrator will notify the manufacturer of his determination with regard to the requalification of the test facility within 10 days of the manufacturer's request for reconsideration pursuant to paragraph (b)(3) of this section.

(Secs. 11 and 13 of the Noise Control Act (42 U.S.C. 4910, 4912).)

§ 205.171 Selective enforcement auditing requirements.

§ 205.171-1 Test request.

(a) The Administrator will request all testing under this subpart by means of a test request addressed to the manufacturer.

(b) The test request will be signed by the Assistant Administrator for Enforcement or his designee. The test request will be delivered by an EPA Enforcement Officer to the plant manager or other responsible official as designated by the manufacturer.

(c) The test request will specify the replacement exhaust system category, model and model year of motorcycle selected for testing, the group selected for testing, the test sample size, the test procedure (stationary or acceleration), the manufacturer's plant or storage facility from which the exhaust systems must be selected, the method of selection and the time at which exhaust systems must be selected. The test request will also provide for situations in which the selected exhaust system is unavailable for testing. The test request may include an alternative exhaust system category selected for testing in the event that exhaust systems of the first specified category are not available for testing because the exhaust systems are not being manufactured at the specified

plant or are not being manufactured during the specified time or are not being stored at the specified plant or storage facility.

(d)(1) Any testing conducted by the manufacturer pursuant to a test request shall be initiated within such period as is specified within the test request. Such test initiation may be delayed for increments of 24 hours or one business day where ambient test site weather conditions in any 24-hour period do not permit testing: Provided, that the ambient test site weather conditions for that period are recorded.

(2) The manufacturer shall complete noise emission testing on a minimum of fifteen (15) exhaust systems if the stationary test procedure is required, or five (5) exhaust systems per day if the acceleration test procedure is required, unless otherwise provided for by the Administrator or unless ambient test site conditions only permit the testing of a lesser number: Provided, that ambient test site weather conditions for that period are recorded.

(3) The manufacturer will be allowed 24 hours to ship exhaust systems from a test sample to the testing facility if the facility is not located at the plant or in close proximity to the plant: Except, that the Administrator may approve more time based upon a request by the manufacturer accompanied by a satisfactory justification.

(e) The Administrator may issue an order to the manufacturer to cease to distribute into commerce exhaust systems of a specified category being manufactured at a particular facility if:

(1) The manufacturer refuses to comply with the provisions of a test request issued by the Administrator pursuant to this section; or

(2) The manufacturer fails to comply with any of the requirements of this section.

(f) A cease-to-distribute order shall not be issued under paragraph (e) of this section if such refusal is caused by conditions and circumstances outside the control of the manufacturer which renders it impossible to comply with the provisions of a test request or any other requirements of this section. Such conditions and circumstances shall include, but are not limited to, any uncontrollable factors which result in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment breakdown or failure, or illness of personnel, but shall not include failure of the manufacturer to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(g) Any such order shall be issued only after a notice and opportunity for a hearing.

(Secs. 11, 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.171–2 Test exhaust system sample selection.

(a) Exhaust systems comprising the test sample that are required to be tested pursuant to a test request in accordance with this subpart will be selected in the manner specified in the test request from a group of exhaust systems of the category specified in the test request. If the test request specifies that the exhaust systems comprising the test sample must be selected randomly, the test request will specify the size of the group and how it is to be selected. Random selection will be achieved by sequentially numbering all of the exhaust systems in the group and then using a table of random numbers to select the number of exhaust systems as specified by the Administrator in the test request. An alternative random selection plan may be used by a manufacturer: Provided, that such a plan is approved by the Administrator. If the test request does not specify that test exhaust systems must be randomly selected, the manufacturer shall select test exhaust systems consecutively. The provisions of § 205.168–4 shall also pertain to this Section.

(b) The Acceptable Quality Level is 10 percent. That is, at least 90 percent of a manufacturer's production of exhaust systems that are designed and marketed for a class of Federally regulated motorcycles must meet the requirements of § 205.171–6 in order to not fail the audit. The appropriate sampling plan used to determine whether the manufacturer is producing at the designated AQL are contained in Appendix II, Table V.

(c) The test exhaust systems of the category selected for testing shall have been assembled by the manufacturer for distribution in commerce using the manufacturer's normal production process.

(d) Unless otherwise indicated in the test request, the manufacturer will select the test sample from the production group next scheduled after receipt of the test request, of the category specified in the test request.

(e) Unless otherwise indicated in the test request, the manufacturer shall select the exhaust systems designated in the test request for testing.

(f) At their discretion, EPA Enforcement Officers, rather than the manufacturer, may select the exhaust systems designated in the test request.

(g) The manufacturer will keep on hand all exhaust systems in the test sample until such time as the category is accepted or rejected in accordance with § 205.171–8: Except, that exhaust systems actually tested and found to be in conformance with these regulations need not be kept.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.171–3 Test motorcycle sample selection.

A test motorcycle to be used for selective enforcement audit testing of replacement exhaust systems shall be a motorcycle of the subject class which has been assembled using the manufacturer's normal production process, in stock configuration including exhaust system, and sold or offered for sale in commerce. The stationary sound level of the test motorcycle must be equal to or no more than 3 dB(A) below the stationary sound level value displayed on the label of the motorcycle if the stationary test is required. If the acceleration test is required, the motorcycle must be tested in accordance with the acceleration test and must meet applicable standards to be acceptable.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.171–4 Test exhaust system preparation.

Prior to the official test, the test exhaust system selected in accordance with § 205.171–2 will be prepared in accordance with § 205.168–6.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.171–5 Test motorcycle preparation.

Prior to the official test the test motorcycle selected in accordance with § 205.171–3 will be prepared in accordance with § 205.168–7.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.171–6 Testing.

(a) The manufacturer shall conduct one valid test on the test motorcycle before installing his replacement exhaust system in accordance with the test procedure specified in § 205.171–1 of the test request.

(b) The manufacturer of the replacement exhaust system shall conduct one valid test in accordance with the test procedure specified in the test request for each exhaust system selected for testing pursuant to this subpart.

(c) No maintenance will be performed on test exhaust systems except as provided for by § 205.171–4. In the event an exhaust system is unable to complete the emission test, the manufacturer may replace the exhaust system. Any replacement exhaust system will be a production exhaust system of the same category as the replaced exhaust system. It will be randomly selected from the group and will be subject to all the provisions of these regulations.

(d) If the acceleration test procedure is specified in the test request, in order to be considered a passing exhaust system, the measured exhaust system sound level must not exceed the applicable standard minus the Sound Level Degradation Factor.

(e) If the stationary test procedure is specified in the test request, in order to be considered a passing exhaust system, the measured exhaust system sound level must not exceed the stationary sound level value appearing on the motorcycle label.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.171-7 Reporting of the test results.

(a)(1) The manufacturer shall submit a copy of the test report for all testing conducted pursuant to § 205.171 at the conclusion of each 24-hour period during which testing is done.

(2) For each test conducted in accordance with this section the manufacturer will provide the following information:

(i) Category identification;

(ii) Year, manufacturing date, serial number and model of exhaust system;

(iii) Year, make, serial number, and model of test motorcycle;

(iv) Test result of the test motorcycle before installation of replacement exhaust system;

(v) Test results for replacement exhaust system by serial number; and

(vi) Sound Level Degradation Factor for exhaust system.

(3) The first test report for the test sample will contain a listing of all serial numbers of exhaust systems in that sample.

(b) In the case where an EPA Enforcement Officer is present during testing required by this subpart, the written reports requested in paragraph (a) of this section may be given directly to the Enforcement Officer.

(c) Within 5 days after completion of testing of all exhaust systems in a test sample, the manufacturer shall submit to the Administrator a final report which will include the information required by the test request in the format stipulated in the test request in addition to the following:

(1) The name, location, and description of the emission test facility(s) which meets the specifications of Appendix I and were utilized to conduct testing reported pursuant to this section: Except, that a test facility that has been described in a previous submission under this subpart need not again be described, but must be identified as such;

(2) A description of the random exhaust system selection method, if used, referencing any tables of random numbers and name of the person in charge of the random number selection.

(3) The following information for each noise emission test conducted:

(i) The completed data sheet required by section § 205.172-1 for all noise emission tests including for each invalid test, the reason for invalidation;

(ii) A complete description of any modification, repair, preparation, maintenance, or testing which was performed on the test exhaust system or test motorcycle and will not be performed on all other production exhaust systems or motorcycles; and,

(iii) The reason for replacement and the test results for the replaced exhaust system or motorcycle.

(4) A complete description of the sound instrumentation system if other than those specified in Appendix I.

(5) The following statement and endorsement:

This report is submitted pursuant to section 6 and section 13 of the Noise Control Act of 1972. All testing for which data is reported herein was conducted in strict conformance with applicable regulations under 40 CFR 205 et seq. All the data reported herein is a true and accurate representation of such testing. All other information reported herein is, to the best of

_____

(Company name)

knowledge, true and accurate. I am aware of the penalties associated with violations of the Noise Control Act of 1972 and the regulations thereunder.

_____

(Authorized representative)

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.171-8 Acceptance and rejection of an exhaust system category.

(a) The exhaust system category will be accepted or rejected based upon the number of failing exhaust systems in the test sample. A determination of whether an exhaust system is a failing system is made in accordance with procedures in § 205.171-6.

(b) If the number of failing exhaust systems in the test sample is less than the rejection number specified in Appendix II, table V for the appropriate test sample size (the size specified in the test request), the exhaust system category is accepted and no further testing is required.

(c) If the number of failing exhaust systems in the test sample is equal to or greater than the rejection number for the appropriate test sample size, the exhaust system category is rejected and considered in noncompliance.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.171-9 Continued testing.

(a) If a test sample is rejected in accordance with paragraph (c) of § 205.171-8, the Administrator may require continued 100 percent testing of all exhaust systems of that category produced at that plant using the same test procedure that was specified in the test request.

(b) If a test sample is rejected in accordance with § 205.171-8 and the stationary test was specified in the test request, the manufacturer may show compliance by conducting another audit using the acceleration test on the same exhaust systems and motorcycles that were originally tested. The results of these tests shall be compared to the Federal standard. Acceptance of the test sample is made under § 205.171-8. If the test sample is again rejected in accordance with this paragraph, the Administrator may require that the manufacturer test pursuant to paragraph (a) of this section using the acceleration test.

(c) The Administrator will notify the manufacturer in writing of his intent to require 100 percent testing of exhaust systems pursuant to paragraph (a) of this section.

(d) Any tested exhaust system which demonstrates conformance with the labeled value of the motorcycle it is designed and marketed for, or the applicable standards may be distributed into commerce.

(e) Any knowing distribution into commerce of an exhaust system which does not comply with the applicable stantards is a prohibited act.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.171-10 Prohibition on distribution in commerce; manufacturer's remedy.

(a) The Administrator will permit the cessation of continuous testing under section 205.171-9 once the manufacturer has taken the following actions:

(1) Submits a written report to the Administrator which identifies the reason for the non-compliance of the exhaust systems, describes the problem and describes the proposed quality control or quality assurance remedies to be taken by the manufacturer to correct the problem, or follows the requirements for an engineering change pursuant to § 205.168-9; and

(2) Demonstrates that the specified exhaust system category has passed a retest conducted in accordance with § 205.171-9(b), and the conditions specified in the initial test request.

(b) Any exhaust system failing the prescribed noise emission tests conducted pursuant to this subpart may not be distributed into commerce until necessary adjustments or repairs have been made and the exhaust system passes a retest.

(c) No exhaust systems of a rejected test sample which are still in the hands of the manufacturer may be distributed in commerce unless the manufacturer has demonstrated to the sat-

isfaction of the Administrator that such exhaust systems do in fact conform to the regulations: Except, that any exhaust system that has been tested and does, in fact, conform with these regulations may be distributed into commerce.

(Secs. 11 and 13 of the Noise Control Act (42 U.S.C. 4910, 4912).)

§ 205.172 Maintenance of records: submittal of information.

(a) Except as otherwise provided for in the regulation, the manufacturer of any new exhaust system subject to any of the standards or procedures prescribed in this subpart shall establish, maintain and retain the following adequately organized and indexed records:

(1) General records:

(i) Identification and description by category parameters of all exhaust systems composing the manufacturer's product line;

(ii) A description of any procedures other than those contained in these regulations used to perform noise tests on any test exhaust system;

(iii) A record of the calibration of the acoustical instrumentation as is required by appendix I;

(iv) A record of the date of manufacture of each exhaust system subject to this part, keyed to the serial number or other coded identification contained on the label affixed to each exhaust system pursuant to section 205.169.

(2) Individual records for test exhaust systems:

(i) A complete record of all noise emission tests performed for PV and SEA (except tests performed by EPA directly), including all individual worksheets or other documentation relating to each test, or exact copies thereof;

(ii) A record of the information required to be recorded pursuant to appendix I; and,

(iii) A record and description of all repairs, maintenance and other servicing performed for PV and SEA, giving the date and time of the maintenance or service, the reason for it, the person authorizing it, and the names of supervisory personnel responsible for the conduct of the maintenance or service.

(3) A properly filed production verification report following the format prescribed by the Administrator in section 205.168-4 fulfills the requirements of paragraphs (a)(1) (i), (ii), and (a)(2) (i), (ii) of this section; and

(4) All records required to be maintained under this part shall be retained by the manufacturer for a period of three (3) years from the production verification date. Records may be retained as hard copy or alternatively reduced to microfilm, punch cards, etc., depending on the record retention procedures of the manufacturer; however, all the information contained in the hard copy shall be retained in the alternative method if this method is used.

(b) The manufacture shall, pursuant to a request made by the Administrator, submit to the Administrator the following information with regard to new exhaust system production:

(1) Number of exhaust systems, by category scheduled for production for the time period designated in the request.

(2) Number of exhaust systems, by category produced during the time period designated in the request.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.173 In-use requirements.

§ 205.173-1 Warranty.

(a) The manufacturer that conducts production verification on a category shall include the following statement pursuant to section 205.173-4 with each product of that category the manufacturer distributes into commerce:

NOISE EMISSION WARRANTY

[The manufacturer] warrants that his exhaust system, at time of sale, will not cause any Federally regulated motorcycle for which it is intended to exceed the U.S.E.P.A. Federal noise standards. This warranty extends to the first person who buys this exhaust system for purposes other than resale, and to all subsequent buyers. Warranty claims should be directed to _____. (Manufacturer shall fill in this blank with his name, address and telephone number.)

(b) The manufacturer shall submit to the Administrator a copy of all information of a general nature provided to dealers and other agents on the administration or coverage of the noise emission warranty.

Submission should be sent to:

Director, Noise Enforcement Division (EN-387), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 206.173-2 Tampering.

The manufacturer who conducts production verification of a category shall include the following statement pursuant to section 205.173-4 with each product of that category the manufacturer distributes into commerce.

TAMPERING PROHIBITION

Federal law prohibits any modification to this exhaust system which causes the motorcycle to exceed the Federal noise standard. Use of the motorcycle with such a modified exhaust system is also prohibited.

Acts likely to constitute tampering include removal or puncturing the muffler, baffles, header pipes, or any other component which conducts exhaust gases.

(Secs. 10, 13 of the Noise Control Act (42 U.S.C. 4909, 4912).)

§ 205.173-3 Warning statement.

The manufacturer who conducts production verification on a category shall include the following statement pursuant to § 205.173-4 with each product of that category the manufacturer distributes into commerce:

WARNING: This product should be checked for repair or replacement if the motorcycle noise has increased significantly through use. Otherwise, the owner may become subject to penalties under state and local ordinances.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.173-4 Information sheet.

The manufacturer shall include the Noise Emission Warranty statement, the Tampering Prohibition statement and the Warning statement with each product. This shall be done by printing all three statements on a white sheet or card of size at least 8½" x 10", each statement covering no more than ⅓ the sheet. No other printing shall be on the sheet. The statements shall be printed in black ink, the statement headings should be in capital letters, a minimum of 12 point (pica type) or equal, and the text of the statement should be a minimum of 10 point (elite type) or equal, The sheet shall be placed with the exhaust system inside any packaging. If there is no packaging, the sheet shall be affixed to the exhaust system in a way so that it will not be accidentally removed in shipping.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.173-5 Sound level degradation factor (SLDF) and retention of durability data.

(a) Each manufacturer responsible for compliance with the standards specified in § 205.167 shall develop a Sound Level Degradation Factor (SLDF) for each of his exhaust system categories utilizing the records compiled under paragraph (b) of this section.

(b) (1) The manufacturer shall establish and maintain records which demonstrate the increase in sound level which will occur for each exhaust system category during the specified acoustical assurance period.

(2) The records may include, but need not be limited to, the following:

(i) Durability data and actual noise testing on critical noise attenuating components.

(ii) Sound level deterioration curves on the entire exhaust system—motorcycle combination.

(iii) Data from products in actual use.

(c) The SLDF is to be used in all Production Verification testing and Selective Enforcement Audit testing when the acceleration test procedure

of Appendix I-1 is specified or used, to determine compliance with the applicable standard.

(d) If the manufacturer determines the product's sound levels will not increase during the acoustical assurance period when properly used and maintained, the SLDF is zero.

(e) If a manufacturer determines that an exhaust system sound level does not increase, but rather decreases with use, yielding a negative SLDF, he shall use zero as the SLDF in all testing under these regulations, but shall determine and record the actual SLDF.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912).)

§ 205.174 Remedial orders.

The Administrator may issue appropriate remedial orders to a manufacturer if products are distributed into commerce not in compliance with the regulations of this Subpart. Potential orders are stop sale orders, orders to cease distribution, relabel, replace, recall, or any other orders appropriate in the specific circumstances. A remedial order will be issued only after notice and opportunity for a hearing.

(Sec. 11 of the Noise Control Act (42 U.S.C. 4910).)

APPENDIX I.—MOTORCYCLE NOISE EMISSION TEST PROCEDURES

Appendix I-1(a)

Test procedure.—(a) *Instrumentation.* The following instrumentation shall be used, where applicable:

(1) A sound level measurement system which meets the type S1A requirements of American National Standard Specification for Sound Level Meters, ANSI S1.4-1971. As an alternative to making direct measurements using a sound level meter, a microphone or sound level meter may be used with a magnetic tape recorder and/or a graphic level recorder or indicating instrument provided that the system meets the performance requirements of ANSI SA1.4-1971.

(2) An acoustic calibrator with an accuracy of within ±0.5 dB(A). The calibrator shall be checked annually to verify that its output is within the specified accuracy.

(3) (i) An engine speed measurement system having the following characteristics:

(A) Steady-state accuracy of within ±3 percent of actual engine speed in the range of 45 percent to 100 percent of the engine speed (RPM) where peak net brake power (maximum rated RPM) is developed; and

(B) Response characteristics such that, when closing RPM is indicated under an acceleration as described below, actual engine speed is no more than 3 percentage points (of maximum rated RPM) greater than the specified closing RPM.

(ii) The vehicle tachometer may be used provided it meets the above criteria.

(iii) Indirect engine speed measurement systems, such as systems which determine engine speed from vehicle speed measurement, may be used provided the specifications of subparagraph (i) are met.

(4) Instrumentation external to the vehicle which allows engine speed measurements to be made with an accuracy of within ±3 percent of actual engine speed in the range of 45 percent to 100 percent of maximum rated RPM. This instrumentation shall be used to verify tachometer measurement of steady-state engine speed.

(5) An anemometer with steady-state accuracy of within ±10 percent at 20 km/h (12.4 mph).

(6) A microphone wind screen which does not affect microphone response more than ±0.5 dB(A) for frequencies of 20–4000 Hz or ±1.0 dB(A) for frequencies of 4000–10,000 Hz, taking into account the orientation of the microphone.

(b) *Test site.* (1) The measurement area within the test site shall meet the following requirements and be laid out as described:

(i) The following points shall be established:

(A) Microphone target point—a reference point on the vehicle path;

(B) End point—a point on the vehicle path 7.5±0.3 m (24.6±1.0 ft) beyond the microphone target point; and

(C) Microphone location point—a point 15±0.3 m (49.2±1.0 ft) from the microphone target point on a normal to the vehicle path through the microphone target point.

(ii) The microphone shall be:

(A) Positioned at the microphone location point 1.2±0.1 m (3.9±0.3 ft) above the ground plane; and

(B) Oriented in a plane perpendicular to the vehicle path, and at an angle for which the microphone was calibrated to have the flatest response characteristics over the frequency range of 100 Hz to 10,000 Hzs when measured with respect to the motorcycle source.

(iii) The surface of the ground within at least the triangular area formed by the microphone location and the points 15±0.3 m prior to and 15±0.3 m beyond the microphone target point shall be flat (±5 cm (2.0 in)) and level (grade not more than 0.5 percent along vehicle path), have a concrete or sealed asphalt surface, and be free from snow, soil or other extraneous material.

(iv) The vehicle path shall be relatively smooth and of sufficient length for safe acceleration, deceleration and stopping of the motorcycle.

(2) The test site shall be a flat, open space free of large sound-reflecting surfaces (other than the ground), such as parked vehicles, signboards, buildings or hillsides located within a 30±0.3 m (98.4±1.0 ft) radius of the microphone location and the following points on the vehicle path (see Figure 1):

(i) The microphone location point;

(ii) A point 15±0.3 m before the microphone target point; and

(iii) A point 15±0.3 m beyond the microphone target point.

(c) *Measurement procedure.* (1) To establish the acceleration point, the end point shall be approached in second gear from the reverse of the intended test direction at a constant engine speed of 50 percent of maximum rated RPM or closing RPM less ten percentage points, whichever is lower (±2.5 percent of observed reading). When the front of the motorcycle reaches the end point (approached from the reverse direction), the throttle shall be smoothly and fully opened to accelerate the motorcycle past the microphone target point under wide open throttle. When the motorcycle reaches closing RPM the throttle shall be smoothly and fully closed. The location of the front of the motorcycle at the time of throttle closure shall be the acceleration point for the test runs. The test runs shall be made in the opposite direction. Sufficient trial runs shall be made to assure accurate establishment of the acceleration point.

(2) Closing RPM shall be determined according to the motorcycle engine displacement, as follows (see Figure 2):

Displacement (cc)	Closing RPM [1]
0 to 175	95
176 to 675	([2])
676 and above	55

[1] Fraction of maximum rated RPM—Percent.
[2] 109 – 0.08×(engine displacement in cc).

(3) The distance from the acceleration point to the end point shall be at least 10 m (32.8 ft). If this distance is less than 10 m by the procedure specified in paragraph (c)(1), above, third gear, if the motorcycle is so equipped, shall be used. If the distance is still less than 10 m, fourth gear, and so on, shall be used, if the motorcycle is equipped. If closing RPM is reached before the vehicle travels 10 m with the vehicle in its highest gear, the throttle shall be opened less rapidly, but in such a manner that full throttle and closing RPM are attained at the end point.

(4) If the motorcycle is equipped with an automatic transmission, the procedure specified in paragraph (c)(1), above, shall be followed except that the lowest selectable range shall be employed, and the procedure specified in paragraph (c)(3) shall be followed using the next selectable higher range if necessary and if the vehicle is so equipped. If closing RPM is reached before the vehicle travels 10 m, the throttle shall be opened less rapidly, but in such a manner that full throttle and closing RPM are attained at the end point.

(5) Throttle opening shall be controlled to avoid excessive wheel slip or lift-off.

(6) To conduct a sound measurement, the motorcycle shall proceed along the vehicle path in the forward direction in second gear (or higher gear as applicable under paragraph (c)(3)) at a constant engine speed of 50 percent of maximum rated RPM or at closing RPM less 10 percentage points, whichever is lower. When the front of the vehicle reaches the acceleration point, the throttle shall be smoothly and fully opened. Full acceleration shall continue until closing RPM is reached, which shall occur within ±1.0 m (3.3 ft) of the end point, and at which time the throttle shall be smoothly and fully closed.

(7) Sufficient preliminary runs shall be conducted before the testing to familiarize the rider with the test procedure and operating conditions of the vehicle. The engine temperature shall be within the normal operating range prior to each run.

(d) *Measurements.* (1) The sound level meter shall be set for fast response and for the A-weighting network. The microphone wind screen shall be used. The sound level meter shall be calibrated as often as is necessary throughout testing to maintain the accuracy of the measurement system. Calibrations shall be performed with the sound level meter in the flat response mode rather than the A-weighted mode.

(2) The meter shall be observed throughout the acceleration period. The highest sound level obtained for the run shall be recorded.

(3) At least six measurements shall be made for each side of the motorcycle. Mea-

surements shall be made until at least four readings from each side are within 2 dB(A) of each other. The highest and the lowest readings shall be discarded; the sound level for each side shall be the average of the four which are within 2 dB(A) of each other. The sound level reported shall be for that side of the motorcycle having the highest sound level.

(4) While making sound level measurements, not more than one person other than the rider and the observer reading the meter shall be within 15 m of the vehicle or microphone, and that person shall be directly behind the observer reading the meter, on a line through the microphone and the observer.

(5) The ambient sound level (including wind effects) at the test site due to sources other than the motorcycle being measured shall be at least 10 dB(A) lower than the sound level at the microphone location produced by the motorcycle under test.

(6) Wind speed at the test site during tests shall be less than 20 km/h (12.4 mph).

(e) *Required data.* For each valid test, the following data shall be recorded:

(1) Motorcycle type, serial number, model year, and date of manufacture.

(2) Names of persons conducting test.

(3) Test location.

(4) Wind speed and ambient sound level measured on the same day as the test and representative of conditions during the test.

(5) Motorcycle engine displacement, maximun rated RPM, and closing RPM.

(6) The gear used for testing if other than second gear; or type of transmission and description of testing if motorcycle is equipped with automatic transmission.

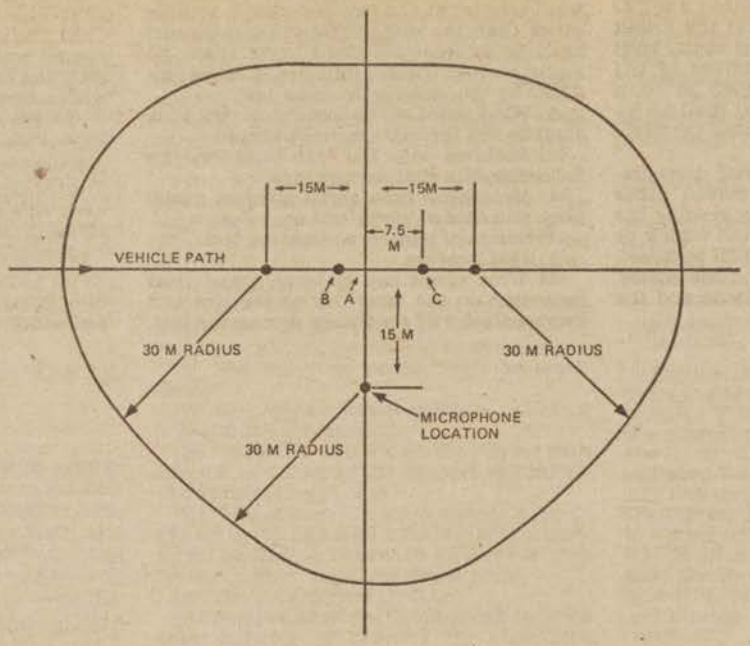
(7) Description of the tachometer or engine speed measurement system used for conducting the test.

(8) Maximum sound level for each pass on each side of the motorcycle including invalid readings and reasons for invalidation.

(9) Reported sound level.

(10) Other information as appropriate to completely describe testing conditions and procedure.

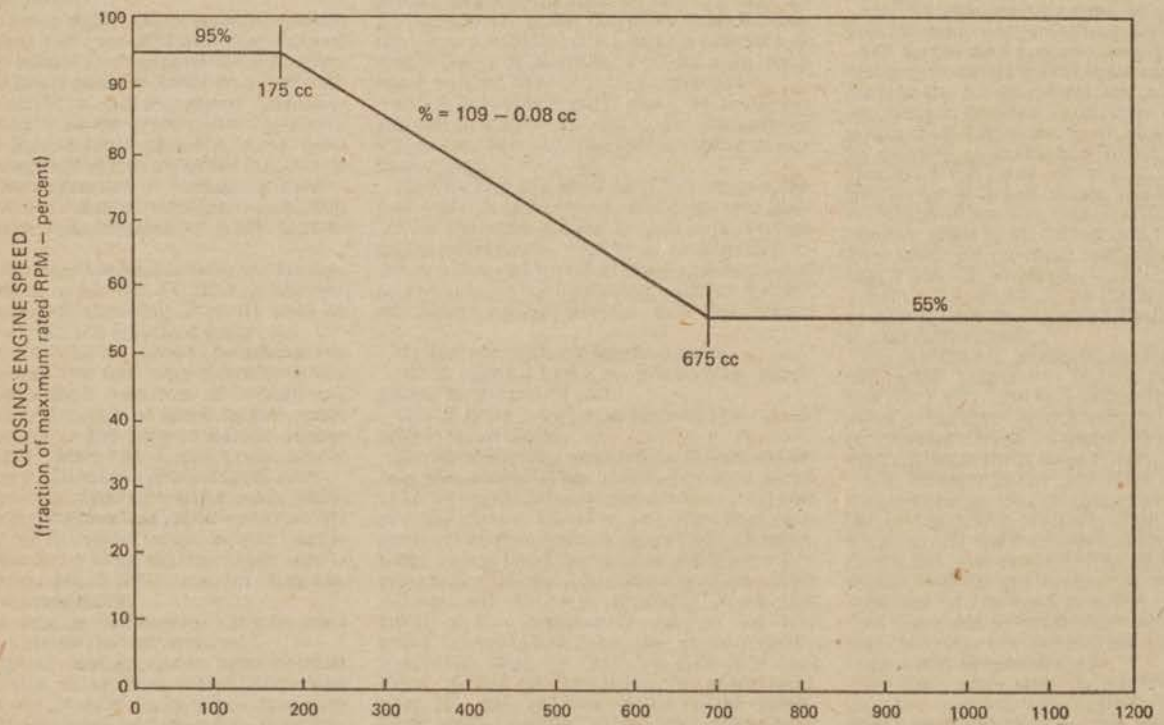
FIGURE 1 – TEST MEASUREMENT AREA



A – MICROPHONE TARGET POINT
B – ACCELERATION POINT (VARIABLE)
C – END POINT

TEST MEASUREMENT AREA

FIGURE 2 – CLOSING RPM



Appendix I-1(b)

Test procedure for street motorcycles that meet the definition of § 205.151(a)(2)(ii) (moped-type street motorcycles).—(a) *Instrumentation.* The following instrumentation shall be used, where applicable:

(1) A sound level measurement system which meets the type SIA requirements of American National Standard Specification for Sound Level Meters, ANSI S1.4-1971. As an alternative to making direct measurements using a sound level meter, a microphone or sound level meter may be used with a magnetic tape recorder and/or a graphic level recorder or indicating instrument provided that the system meets the performance requirements of ANSI S1.4-1971.

(2) An acoustic calibrator with an accuracy of within ±0.5 dB(A). The calibration shall be checked annually to verify that its output is within the specified accuracy.

(3) An anemometer with steady-state accuracy of within ±10 percent at 20 km/h (12.4 mph).

(4) A microphone wind screen which does not affect microphone response more than ±0.5 Db(A) for frequencies of 20–4,000 Hz or ±1.0 dB(A0 for frequencies of 4,000–10,000 Hz, taking into account the orientation of the microphone.

(b) *Test site.* (1) The measurement area within the test site shall meet the following requirements and be laid out as described:

(i) The following points shall be established:

(A) Microphone target point—a reference point on the vehicle path;

(B) End point—a point on the vehicle path 7.5±0.3 m (24.6±1.0 ft) beyond the microphone target point; and

(C) Microphone location point—a point 15±0.3 m (49.2±1.0 ft) from the microphone target point on a normal to the vehicle path through the microphone target point.

(ii) The microphone shall be:

(A) Positioned at the microphone location point 1.2±0.1 m (3.9±0.3 ft) above the ground plane; and

(B) Oriented in a plane perpendicular to the vehicle path, and at an angle for which the microphone was calibrated to have the flattest response characteristics over the frequency range of 100 Hz to 10,000 Hz when measured with respect to the motorcycle source.

(iii) The surface of the ground within at least the triangular area formed by the microphone location and the points 15±0.3 m prior to and 15±0.3 m beyond the microphone target point shall be flat (±5 cm (2.0 in)) and level (grade not more than 0.5 percent along vehicle path), have a concrete or sealed asphalt surface, and be free from snow, soil or other extraneous material.

(iv) The vehicle path shall be relatively smooth and of sufficient length for safe acceleration, deceleration, and stopping of the motorcycle.

(2) The test site shall be a flat, open space free of large sound-reflecting surfaces (other than the ground), such as parked vehicles, signboards, buildings or hillsides located within a 30±0.3 m (98.4±1.0 ft) radius of the microphone location and the following points on the vehicle path (see figure 1):

(i) The microphone location point;

(ii) A point 15±0.3 m before the microphone target point; and

(iii) A point 15±0.3 m beyond the microphone target point.

(c) *Measurement procedure.* (1) The combined weight of the test rider and test equipment used on the motorcycle shall be not more than 80 kg (176 lb) nor less than 75 kg (165 lb). Weights shall be placed on the motorcycle saddle behind the rider to compensate for any difference between the actual driver/equipment load and the required 75 kg (165 lb) minimum.

(2) The motorcycle shall approach the microphone target point with the throttle fully open and in the highest gear. The motorcycle shall start such that maximum speed is reached before the vehicle is within 7.5 m of the microphone target point. The motorcycle shall continue along the vehicle path with fully open throttle and at maximum speed past the end point, at which time the throttle shall be closed.

(3) If the motorcycle is equipped with an automatic transmission, the procedure of subparagraph (1), above, shall be followed except that the highest selectable range shall be employed.

(d) *Measurements.* (1) The sound level meter shall be set for fast response and for the A/weighting network. The microphone wind screen shall be used. The sound level meter shall be calibrated as often as is necessary throughout testing to maintain the accuracy of the measurement system. Calibrations shall be performed with the sound level meter in the flat response mode rather than the A-weighted mode.

(2) The meter shall be observed throughout the pass-by period. The highest sound level obtained for the run shall be recorded.

(3) At least three measurements shall be made for each side of the motorcycle. Measurements shall be made until at least three readings from each side are within 2 dB(A) of each other. The sound level for each side shall be the average of the three. The sound level reported shall be for that side of the motorcycle having the highest sound level.

(4) While making sound level measurements, not more than one person other than the rider and the observer reading the meter shall be within 15 m of the vehicle or microphone, and that person shall be directly behind the observer reading the meter, on a line through the microphone and the observer.

(5) The ambient sound level (including wind effects) at the test site due to sources other than the motorcycle being measured shall be at least 10 dB(A) lower than the sound level at the microphone location produced by the motorcycle under test.

(6) Wind speed at the test site during tests shall be less than 20 km/h (12.4 mph).

(e) *Required data.* For each valid test, the following data shall be recorded:

(1) Motorcycle type, serial number, model year, and date of manufacture.

(2) Names of persons conducting test.

(3) Test location.

(4) Wind speed and ambient sound level measured on the same day as the test and representative of conditions during the test.

(5) Maximum sound level for each pass on each side of the motorcycle including invalid readings and reasons for invalidation.

(6) Reported sound level.

(7) Other information as appropriate to completely describe testing conditions and procedure.

Appendix I-2

Stationary noise emission test procedure.—(a) *Instrumentation.* The following instrumentation shall be used, where applicable:

(1) A sound measurement system which meets the type 2 requirements of American National Standard Specification for Sound Level Meters, ANSI S1.4-1971. As an alternative to making direct measurements using a sound level meter, a microphone or sound level meter may be used with a magnetic tape recorder and/or a graphic level recorder or indicating instrument provided that the system meets the performance requirements of ANSI S1.4-1971.

(2) An acoustic calibrator with an accuracy of within ±0.5 dB(A). The calibrator shall be checked annually to verify that its output is within the specified accuracy.

(3) An engine speed tachometer having a steady-state accuracy of within ±3 percent of actual engine speed at 50 percent of the engine speed (RPM) where peak net brake power (maximum rated RPM) is developed. The vehicle tachometer may be used provided its steady-state accuracy meets the above criterion.

(4) A microphone wind screen which does not affect the microphone response more than ±0.5 dB(A) for frequencies of 20–4,000 Hz or ±1.0 dB(A) for frequencies of 4,000–10,000 Hz, taking into account the orientation of the microphone.

(b) *Test site.* (1) The test site shall be a flat, open surface free of large sound-reflecting surfaces (other than the ground) such as parked vehicles, signboards, buildings, or hillsides, located within a 5 m (16.4 ft) radius of the motorcycle being tested and the location of the microphone.

(2) The surface of the ground within a one meter radius of the exhaust outlet shall be flat and level and have a concrete or sealed asphalt surface.

(3) The microphone shall be located behind, 0.5±0.01 m (19.7±0.4 in) from, and at the same height as, the rearmost exhaust outlet and at a 45-degree angle (±10 degree) to the normal line of travel of the motorcycle. The microphone shall be oriented with respect to the source so that the sound strikes the diaphragm at the angle for which the microphone was calibrated to have the flattest frequency response characteristics over the frequency range 100 Hz to 10,000 Hz.

(c) *Measurement procedure.* The rider shall sit astride the motorcycle in normal riding position with both feet on the ground and run the engine with the gearbox in neutral at a speed equal to 50 percent (±2.5 percent of observed reading) of maximum rated RPM. If no neutral is provided the motorcycle shall be operated either with the rear wheel 5–10 cm (2.0–4.0 in) clear of the ground, or with the drive chain or belt removed.

(d) *Measurements.* (1) The sound level meter shall be set for slow response and for the A-weighting network. The microphone wind screen shall be used. The sound level meter shall be calibrated as often as is necessary throughout testing to maintain the accuracy of the measurement system. Calibrations shall be performed with the sound level meter in the flat response mode rather than the A-weighted mode.

(2) The sound level recorded shall be that measured during steady-state operation at the above-mentioned engine speed, measured on the loudest side of the motorcycle.

(3) While making sound level measurements, not more than one person other than the rider and the observer reading the meter shall be within 3 m (9.8 ft) of the motorcycle under test or the microphone, and that person shall be directly behind the observer reading the meter on a line through the microphone and the observer.

(4) The ambient sound level (including wind effects) at the test site due to sources other than the motorcycle being measured shall be at least 10 dB(A) lower than the sound level at the microphone location produced by the motorcycle under test.

(5) Wind speed at the test site during test shall be less than 32 km/h (20 mph).

(e) *Required data.* For each valid test, the following data shall be recorded:

(1) Motorcycle type, serial number, model year, and date of manufacture.

(2) Names of persons conducting the test.

(3) Test location.

(4) Ambient sound level measured on the same day as the test and representative of the conditions during the test.

(5) Motorcycle engine displacement, maximum rated RPM, and test RPM.

(6) Description of testing if motorcycle is equipped with automatic transmission.

(7) Reported sound level.

(8) Other information as appropriate to completely describe testing conditions and procedure.

APPENDIX II.—SAMPLING LABELS

TABLE I.—*Sample size code letters*

Batch size:	Code letters
4 to 8	A
9 to 15	B
16 to 25	C
25 and larger	D

TABLE II.—*Sampling plans for inspecting batches*

Sample size code letter	Test sample	Test sample size	Cumulative test sample size	Batch inspection criteria	
				Acceptance No.	Rejection No.
A	1st	4	4	0	1
B	1st	3	3	0	1
C	1st	3	3	0	2
	2d	2	6	1	2
D	1st	2	2	([1])	2
	2d	2	4	([1])	2
	3d	2	6	0	2
	4th	2	8	0	3
	5th	2	10	1	3
	6th	2	12	1	3
	7th	2	14	2	3

[1]Batch acceptance not permitted at this sample size.

TABLE III.—*Batch sequence plans*

Sample size code letter	Number of batches	Cumulative number of batches	Batch inspection criteria	
			Acceptance No.	Rejection No.
A	2	2	1	([2])
	2	4	2	4
	2	6	3	5
	2	8	4	5
B	2	2	0	
	2	4	1	4
	2	6	2	5

TABLE III.—*Batch sequence plans*—Continued

Sample size code letter	Number of batches	Cumulative number of batches	Batch inspection criteria	
			Acceptance No.	Rejection No.
B	2	8	4	6
	2	10	5	6
	2	12		
C	2	2	([1])	2
	2	4	0	2
	2	6	0	3
	2	8	1	3
	2	10	2	4
	2	12	3	4
D	2	2	0	2
	2	4	1	3
	2	6	2	4
	2	8	3	4

[1]Batch sequence acceptance not permitted for this number of batches.
[2]Batch sequence rejection not permitted for this number of batches.

TABLE IV.—*Stationary sound level acceptance ranges for test samples*

Size of test sample	Acceptance range [number of allowable vehicles in sample exceeding labeled stationary sound level]	
	Minimum[1]	Maximum
10	0	3
20	0	5
30	0	7
40	1	9
50	1	10
60	2	12

[1]Acceptance not permitted if zero. 10 additional vehicles must be tested.

TABLE V.—*Exhaust system category acceptance and rejection*

Size of test sample	Rejection number[1]	Size of test sample	Rejection number[1]
10	4	40	8
20	5		
30	7	45	9

[1]If the number of failing exhaust systems is equal to or greater than this number, the category is rejected; if less, then the category is accepted.

[FR Doc. 78-5973 Filed 3-14-78; 8:45 am]

federal register

WEDNESDAY, MARCH 15, 1978
PART III

ENVIRONMENTAL PROTECTION AGENCY

■

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Petroleum Refinery Claus Sulfur Recovery Plants

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 836-1]

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Petroleum Refinery Claus Sulfur Recovery Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes standards of performance which will limit emissions of sulfur dioxide (SO_2) and reduced sulfur compounds from new, modified, and reconstructed petroleum refinery Claus sulfur recovery plants. The standards implement the Clean Air Act and are based on the Administrator's determination that emissions from petroleum refinery Claus sulfur recovery plants contribute significantly to air pollution. The intended effect of the standards is to require new, modified, and reconstructed petroleum refinery Claus sulfur recovery plants to use the best technological system of continuous emission reduction.

EFFECTIVE DATE: March 15, 1978.

ADDRESSES: Copies of the standard support documents are available on request from the U.S. EPA Library (MD-35), Research Triangle Park, N.C. 27711. The requestor should specify "Standards Support and Environmental Impact Statement, Volume I: Proposed Standards of Performance for Petroleum Refinery Sulfur Recovery Plants" (EPA-450/2-76-016a) and/or "Standards Support and Environmental Impact Statement, Volume II: Promulgated Standards of Performance for Petroleum Refinery Sulfur Recovery Plants" (EPA-450/2-76-016b). Comment letters responding to the proposed rules published in the FEDERAL REGISTER on October 4, 1976 (41 FR 43866), are available for public inspection and copying at the U.S. Environmental Protection Agency, Public Information Reference Unit (EPA Library), Room 2922, 401 M Street SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Don R. Goodwin, Emission Standards and Engineering Division (MD-13), Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone number 919-541-5271.

SUPPLEMENTARY INFORMATION:

SUMMARY

On October 4, 1976 (41 FR 43866), EPA proposed standards of performance for new petroleum refinery Claus sulfur recovery plants under section 111 of the Clean Air Act, as amended. The promulgated standards are essentially the same as those proposed, although an exemption for small petroleum refineries has been included in the promulgated standards. The standards are based on the use of tail gas scrubbing systems which have been determined to be the best technological system of continuous emission reduction, taking into consideration the cost of achieving such emission reduction, any nonair quality, health, and environmental impact and energy requirements. Compliance with these standards will increase the overall sulfur recovery efficiency of a typical refinery Claus sulfur recovery plant to about 99.9 percent, compared to a recovery efficiency of about 94 percent for an uncontrolled refinery Claus sulfur recovery plant, or a recovery efficiency of about 99 percent for a Claus sulfur recovery plant complying with typical State emission control regulations for these plants.

The promulgated standards will apply to: (1) any Claus sulfur recovery plant with a sulfur production capacity of more than 20 long tons per day (LTD) which is associated with a small petroleum refinery (i.e., a petroleum refinery having a crude oil processing capacity of 50,000 barrels per stream day (BSD) or less which is owned or controled by a refiner whose total combined crude oil processing capacity is 137,500 BSD or less) and (2) any size Claus sulfur recovery plant associated with a large petroleum refinery. Specifically, the standards limit the concentration of sulfur dioxide (SO_2) in the gases discharged into the atmosphere to 0.025 percent by volume at zero percent oxygen on a dry basis. Where the emission control system installed to comply with these standards discharges residual emissions of hydrogen sulfide (H_2S), carbonyl sulfide (COS), and carbon disulfide (CS_2), the standards limit the concentration of H_2S and the total concentration of H_2S, COS and CS_2 (calculated as SO_2) in the gases discharged into the atmosphere to 0.0010 percent and 0.030 percent by volume at zero percent oxygen on a dry basis, respectively.

Compliance with these standards will reduce nationwide sulfur dioxide emissions by some 55,000 tons per year by 1980. This reduction will be achieved without any significant adverse impact on other aspects of environmental quality, such as solid waste disposal, water pollution, or noise. This reduction in emissions will also be accompanied by a reduction in the growth of nationl energy consumption equivalent to about 90,000 barrels of fuel oil per year by 1980.

The economic impact of the promulgated standards is reasonable. They will result in an increase in the annual operating costs of the petroleum refining industry by some $16 million per year in 1980. An individual refiner who installs alternative II controls will need to increase his prices from 0.1 to 1 percent to maintain his profitability.

It should be noted that standards of performance for new sources established under section 111 of the Act reflect the degree of emission limitation achievable through application of the best adequately demonstrated technological system of continuous emission reduction (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements). State implementation plans (SIPs) approved or promulgated under section 110 of the Act, on the other hand, must provide for the attainment and maintenance of national ambient air quality standards (NAAQS) designed to protect public health and welfare. For that purpose, SIPs must in some cases require greater emission reduction than those required by standards of performance for new sources. Section 173(2) of the Act requires, among other things, that a new or modified source constructed in an area which exceeds the NAAQS must reduce emissions to the level which reflects the "lowest achievable emission rate" for such category of source, unless the owner or operator demonstrates that the source cannot achieve such an emission rate. In no event can the emission rate exceed any applicable standard of performance.

A similar situation may arise when a major emitting facility is to be constructed in a geographic area which falls under the prevention of significant deterioration of air quality provisions of the Act (part C). These provisions require, among other things, that major emitting facilities to be constructed in such areas are to be subject to the best available control technology. The term "best available control technology" (BACT) means "an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this Act emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall appli-

cation of 'best available control technology' result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 111 or 112 of this Act."

Standards of performance should not be viewed as the ultimate in achievable emission control and should not preclude the imposition of a more stringent emission standard, where appropriate. For example, while cost of achievement may be an important factor in determining standards of performance applicable to all areas of the country (clean as well as dirty), costs must be accorded far less weight in determining the "lowest achievable emission rate" for new or modified sources locating in areas violating statutorily-mandated health and welfare standards. Although there may be emission control technology available that can reduce emissions below those levels required to comply with standards of performance, this technology might not be selected as the basis of standards of performance due to costs associated with its use. This in no way should preclude its use in situations where cost is a lesser consideration, such as determination of the "lowest achievable emission rate."

In addition, States are free under section 116 of the Act to establish even more stringent emission limits than those established under section 111 or those necessary to attain or maintain the NAAQS under section 110. Thus, new sources may in some cases be subject to limitations more stringent than standards of performance under section 111, and prospective owners and operators of new sources should be aware of this possibility in planning for such facilities.

Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the Federal Register of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the standards recommended for proposal. This meeting was open to the public and each person attending was given ample opportunity to comment on the standards recommended for proposal. The standards were proposed on October 4, 1976, and copies of the proposed standards and the Standards Support and Environmental Impact Statement (SSEIS) were distributed to members of the petroleum refining industry and several environmental groups at this time. The public comment period extended from October 4, 1976, to December 3, 1976.

Twenty-two comment letters were received on the proposed standards of performance. These comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the standards which were proposed.

Major Comments

Comments on the proposed standards were received from several oil industry representatives, State and local air pollution control agencies, a vendor of emission source testing equipment, and several Federal agencies. These comments covered four major areas: the costs of implementing the standards, the ability of emission control technology to meet the standards, the environmental impacts of the standards, and the energy impacts of the standards.

COSTS

The major comments concerning costs were that the costs of the emission control systems required to meet the standards were underestimated, that these costs were excessive; and that small sulfur recovery plants, or small petroleum refineries should be exempt from the standard.

The basic cost data used to develop the cost estimates were obtained from pretroleum refinery sources. No specific data or information was provided in the public comments, however, which would indicate that these costs are significantly in error.

In the preamble to the proposed standards, comments were specifically invited concerning the impact of the standards on the small refiner. After considering these comments, EPA has concluded that some relief from the standards is appropriate. The major factor involved in this decision was a consideration of the cost effectiveness of the standards on large and small refiners. The incremental cost per incremental unit of sulfur emissions that must be controlled to meet the standards is substantially greater for the small refiner than for the large refiner. Furthermore, the impact of these costs on the small refiner is more severe than the impact on the large refiner, because the small refiner cannot readily pass on the cost of emission control equipment. Consequently, as discussed in volume II of the Standards Support and Environmental Impact Statement (SSEIS), the promulgated standards include a lower size cutoff for small petroleum refineries and Claus sulfur recovery plants. Claus sulfur recovery plants with a sulfur production capacity of 20 long tons per day or less associated with a petroleum refinery with a crude oil processing capacity of 50,000 BSD or less, which is owned or controlled by a refiner whose total combined crude oil processing capacity is 137,500 BSD or less, are exempt from the standards. This definition of a small petroleum refinery is consistent with that included in section 211 of the Clean Air Act, as amended.

EMISSION CONTROL TECHNOLOGY

A major concern of many commenters was the limited amount of source test data used in support of the numerical emission limits included in the standards and the fact that some of these data were collected at refineries where the emission control system was operating below design capacity. Also, some commenters questioned the ability of the alternative II emission control systems to continuously operate at a 99.9 percent control efficiency because of the adverse impact of Claus sulfur recovery plant fluctuations and CO_2-rich waste gas streams.

In arriving at the numerical emissions limits included in the standards, source test data collected by a local agency at times when the emission control systems were operating at normal capacities, information from vendors of emission control equipment, published literature on emission control technology, and contractor reports on the performance of emission control technology were considered, in addition to the data collected during EPA's source tests. Based on the information and data from these sources and the lack of any new information and data submitted by the commenters, no change in the emission limits of the standards is warranted. Furthermore, the numerical emission limits in the standards contain an adequate safety margin to allow for increased emissions due to Clause sulfur recovery plant fluctuations.

With repect to the potential adverse impact of high CO_2 gas streams, this is not likely to impair the overall emission control system efficiency since high CO_2 gas streams are seldom found in the gases treated in refinery Claus sulfur recovery plants.

ENVIRONMENTAL IMPACT

Several commenters felt that the assessment of the environmental impact of the standards was, in some cases, biased and not always clear. One of these commenters suggested that a thorough environmental impact statement should be prepared to clarify the impacts of the standards.

Litigation involving standards of performance has established that preparation of a formal environmental impact statement under the National Environmental Policy Act is not necessary for actions under section 111 of the Clean Air Act. While a formal environmental impact statement is not prepared, the beneficial as well as the adverse impacts of standards of performance are considered. The promulgated standards will significantly reduce emissions of sulfur from petroleum refineries without resulting in any significant adverse environmental, energy, or economic impacts.

Other commenters felt that standards based on 99 percent control (al-

ternative I) would be essentially as environmentally beneficial as standards based on 99.9 percent control and would be less costly to the public. This argument was based on the premise that most State regulations do not require control of Claus sulfur plant emissions at the 99 percent level as claimed in volume I of the SSEIS. Hence, standards based on alternative I would significantly reduce national sulfur emissions from refinery Claus sulfur recovery plants.

A review of State regulations for controlling emissions from refinery sulfur recovery plants has shown that the majority of the States with the largest petroleum refining capacities require 99 percent control of emissions from new and existing sulfur recovery plants. Since refinery sulfur recovery plant growth will likely occur in these States, the conclusion that standards based on 99 percent control would have little or no beneficial impact is essentially correct.

ENERGY IMPACT

Several commenters questioned the conclusion that compliance with standards based on alternative II could lead to an energy savings, compared to standards based on alternative I. A review of the information and data available confirms this conclusion. In any case, the important consideration is whether the energy impact of the standards is reasonable. No information was submitted which would indicate that the energy impact of the standards is unreasonable.

OTHER CONSIDERATIONS

At proposal comments were requested relative to EPA's decision to regulate reduced sulfur compound emissions, which are designated pollutants, without implementing section 111(d) of the Clean Air Act at this time. The one commenter who responded to this issue was in agreement with this decision.

As discussed in both the preamble to the proposed standards and volumes I and II of the SSEIS, petroleum refinery Claus sulfur recovery plants are sources of SO_2 emissions, not reduced sulfur compound emissions. One of the emission control technologies for reducing SO_2 emissions, however, first converts these emissions to reduced sulfur compounds and then controls these compounds. Consequently, this technology may discharge residual emissions of reduced sulfur compounds to the atmosphere.

Currently, there are about 30 refinery Claus sulfur recovery plants in the United States which have installed reduction emission control systems to reduce SO_2 emissions. A review of these plants indicates that these emission control systems are well designed and well maintained and operated. Emissions of reduced sulfur compounds are less than 0.050 percent (i.e., 500 ppm), which is only slightly higher than the numerical emission limit included in the promulgated standard. Thus, there is little to gain at this time by requiring States to develop regulations limiting emissions from these sources. Consequently, section 111(d) will not be implemented until resources permit, taking into consideration other requirements of the Clean Air Act, as amended, which EPA must implement.

Several commenters were concerned that Reference Method 15 might not be practical for use in a refinery environment. The basis for most of these objections was that the commenters thought this method was being proposed as a continuous monitoring method. However, Reference Method 15 was not proposed for use as a continuous monitoring method. Performance specifications for continuous monitors for reduced sulfur compounds have not been developed and therefore such monitors are not required to be installed until performance specifications for these monitors are proposed and promulgated under Appendix B of 40 CFR Part 60.

Reference Method 15 has been revised to allow greater flexibility in operating details and equipment choice. The user is now permitted to design his own sampling and analysis system as long as he preserves the operating principle of gas chromatography with flame photometric detection and meets the design and performance criteria.

MISCELLANEOUS

The effective date of this regulation is March 15, 1978. Section 111(b)(1)(B) of the Clean Air Act provides that standards of performance or revisions of them become effective upon promulgation and apply to affected facilities, construction or modification of which was commenced after the date of proposal (October 4, 1976).

ECONOMIC IMPACT ASSESSMENT: An economic assessment has been prepared as required under section 317 of the Act. This also satisfies the requirements of Executive Orders 11821 and 11949 and OMB Circular A-107.

Dated: March 1, 1978.

DOUGLAS M. COSTLE,
Administrator.

1. Section 60.100 is amended as follows:

§ 60.100 Applicability and designation of affected facility.

(a) The provisions of this subpart are applicable to the following affected facilities in petroleum refineries: fluid catalytic cracking unit catalyst regenerators, fuel gas combustion devices, and all Claus sulfur recovery plants except Claus plants of 20 long tons per day (LTD) or less associated with a small petroleum refinery. The Claus sulfur recovery plant need not be physically located within the boundaries of a petroleum refinery to be an affected facility, provided it processes gases produced within a petroleum refinery.

(b) Any fluid catalytic cracking unit catalyst regenerator of fuel gas combustion device under paragraph (a) of this section which commences construction or modification after June 11, 1973, or any Claus sulfur recovery plant under paragraph (a) of this section which commences construction or modification after October 4, 1976, is subject to the requirements of this part.

(Secs. 111 and 301(a), Clean Air Act, as amended (42 U.S.C. 7411, 7601 (a)), and additional authority as noted below.)

2. Section 60.101 is amended as follows:

§ 60.101 Definitions.

* * * * *

(i) "Claus sulfur recovery plant" means a process unit which recovers sulfur from hydrogen sulfide by a vapor-phase catalytic reaction of sulfur dioxide and hydrogen sulfide.

(j) "Oxidation control system" means an emission control system which reduces emissions from sulfur recovery plants by converting these emissions to sulfur dioxide.

(k) "Reduction control system" means an emission control system which reduces emissions from sulfur recovery plants by converting these emissions to hydrogen sulfide.

(l) "Reduced sulfur compounds" mean hydrogen sulfide (H_2S), carbonyl sulfide (COS) and carbon disulfide (CS_2).

(m) "Small petroleum refinery" means a petroleum refinery which has a crude oil processing capacity of 50,000 barrels per stream day or less, and which is owned or controlled by a refinery with a total combined crude oil processing capacity of 137,500 barrels per stream day or less.

3. Section 60.102 is amended by revising paragraph (a) introductory text and paragraph (b) as follows:

§ 60.102 Standard for particulate matter.

(a) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from any fluid catalytic cracking unit catalyst regenerator:

(1) * * *

(2) * * *

(b) Where the gases discharged by the fluid catalytic cracking unit catalyst regenerator pass through an in-

cinerator or waste heat boiler in which auxiliary or supplemental liquid or sold fossil fuel is burned, particulate matter in excess of that permitted by paragraph (a)(1) of this section may be emitted to the atmosphere, except that the incremental rate of particulate matter emissions shall not exceed 43.0 g/MJ (0.10 lb/million Btu) of heat input attributable to such liquid or solid fossil fuel.

4. Section 60.104 is amended as follows:

§ 60.104 Standard for sulfur dioxide.

(a) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall:

(1) Burn in any fuel gas combustion device any fuel gas which contains hydrogen sulfide in excess of 230 mg/dscm (0.10 gr/dscf), except that the gases resulting from the combustion of fuel gas may be treated to control sulfur dioxide emissions provided the owner or operator demonstrates to the satisfaction of the Administrator that this is as effective in preventing sulfur dioxide emissions to the atmosphere as restricting the H_2 concentration in the fuel gas to 230 mg/dscm or less. The combustion in a flare of process upset gas, or fuel gas which is released to the flare as a result of relief valve leakage, is exempt from this paragraph.

(2) Discharge or cause the discharge of any gases into the atmosphere from any Claus sulfur recovery plant containing in excess of:

(i) 0.025 percent by volume of sulfur dioxide at zero percent oxygen on a dry basis if emissions are controlled by an oxidation control system, or a reduction control system followed by incineration, or

(ii) 0.030 percent by volume of reduced sulfur compounds and 0.0010 percent by volume of hydrogen sulfide calculated as sulfur dioxide at zero percent oxygen on a dry basis if emissions are controlled by a reduction control system not followed by incineration.

(b) [Reserved]

5. Section 60.105 is amended as follows:

§ 60.105 Emission monitoring.

(a) * * *

(2) An instrument for continuously monitoring and recording the concentration of carbon monoxide in gases discharged into the atmosphere from fluid catalytic cracking unit catalyst regenerators. The span of this continuous monitoring system shall be 1,000 ppm.

(3) * * *

(4) An instrument for continuously monitoring and recording concentrations of hydrogen sulfide in fuel gases burned in any fuel gas combustion device, if compliance with § 60.104(a)(1) is achieved by removing H_2S from the fuel gas before it is burned; fuel gas combustion devices having a common source of fuel gas may be monitored at one location, if monitoring at this location accurately represents the concentration of H_2S in the fuel gas burned. The span of this continuous monitoring system shall be 300 ppm.

(5) An instrument for continuously monitoring and recording concentrations of SO_2 in the gases discharged into the atmosphere from any Claus sulfur recovery plant if compliance with § 60.104(a)(2) is achieved through the use of an oxidation control system or a reduction control system followed by incineration. The span of this continuous monitoring system shall be sent at 500 ppm.

(6) An instrument(s) for continuously monitoring and recording the concentration of H_2S and reduced sulfur compounds in the gases discharged into the atmosphere from any Claus sulfur recovery plant if compliance with § 60.104(a)(2) is achieved through the use of a reduction control system not followed by incineration. The span(s) of this continuous monitoring system(s) shall be set at 20 ppm for monitoring and recording the concentration of H_2S and 600 ppm for monitoring and recording the concentration of reduced sulfur compounds.

* * * * *

(e) * * *

(1) * * *

(2) Carbon monoxide. All hourly periods during which the average carbon monoxide concentration in the gases discharged into the atmosphere from any fluid catalytic cracking unit catalyst regenerator subject to § 60.103 exceeds 0.050 percent by volume.

(3) Sulfur dioxide. (i) Any three-hour period during which the average concentration of H_2S in any fuel gas combusted in any fuel gas combustion device subject to § 60.104(a)(1) exceeds 230 mg/dscm (0.10 gr/dscf), if compliance is achieved by removing H_2S from the fuel gas before it is burned; or any three-hour period during which the average concentration of SO_2 in the gases discharged into the atmosphere from any fuel gas combustion device subject to § 60.104(a)(1) exceeds the level specified in § 60.104(a)(1), if compliance is achieved by removing SO_2 from the combusted fuel gases.

(ii) Any twelve-hour period during which the average concentration of SO_2 in the gases discharged into the atmosphere from any Claus sulfur recovery plant subject to § 60.104(a)(2) exceeds 250 ppm at zero percent oxygen on a dry basis if compliance with § 60.104(b) is achieved through the use of an oxidation control system or a reduction control system followed by incineration; or any twelve-hour period during which the average concentration of H_2S, or reduced sulfur compounds in the gases discharged into the atmosphere of any Claus sulfur plant subject to § 60.104(a)(2)(b) exceeds 10 ppm or 300 ppm, respectively, at zero percent oxygen and on a dry basis if compliance is achieved through the use of a reduction control system not followed by incineration.

6. Section 60.106 is amended as follows:

§ 60.106 Test methods and procedures.

* * * * *

(c) For the purpose of determining compliance with § 60.104(a)(1), Method 11 shall be used to determine the concentration of H_2S and Method 6 shall be used to determine the concentration of SO_2.

(1) If Method 11 is used, the gases sampled shall be introduced into the sampling train at approximately atmospheric pressure. Where refinery fuel gas lines are operating at pressures substantially above atmosphere, this may be accomplished with a flow control valve. If the line pressure is high enough to operate the sampling train without a vacuum pump, the pump may be eliminated from the sampling train. The sample shall be drawn from a point near the centroid of the fuel gas line. The minimum sampling time shall be 10 minutes and the minimum sampling volume 0.01 dscm (0.35 dscf) for each sample. The arithmetic average of two samples of equal sampling time shall constitute one run. Samples shall be taken at approximately 1-hour intervals. For most fuel gases, sample times exceeding 20 minutes may result in depletion of the collecting solution, although fuel gases containing low concentrations of hydrogen sulfide may necessitate sampling for longer periods of time.

(2) If Method 6 is used, Method 1 shall be used for velocity traverses and Method 2 for determining velocity and volumetric flow rate. The sampling site for determining SO_2 concentration by Method 6 shall be the same as for determining volumetric flow rate by Method 2. The sampling point in the duct for determining SO_2 concentration by Method 6 shall be at the centroid of the cross section if the cross sectional area is less than 5 m^2 (54 ft^2) or at a point no closer to the walls than 1 m (39 inches) if the cross sectional area is 5 m^2 or more and the centroid is more than one meter from the wall. The sample shall be extracted at a rate proportional to the gas velocity at the sampling point. The minimum sampling time shall be 10 minutes and the minimum sampling volume 0.01 dscm (0.35 dscf) for each sample. The arithmetic average of two

samples of equal sampling time shall constitute one run. Samples shall be taken at approximately 1-hour intervals.

(d) For the purpose of determining compliance with § 60.104(a)(2), Method 6 shall be used to determine the concentration of SO_2 and Method 15 shall be used to determine the concentration of H_2S and reduced sulfur compounds.

(1) If Method 6 is used, the procedure outlined in paragraph (c)(2) of this section shall be followed except that each run shall span a minimum of four consecutive hours of continuous sampling. A number of separate samples may be taken for each run, provided the total sampling time of these samples adds up to a minimum of four consecutive hours. Where more than one sample is used, the average SO_2 concentration for the run shall be calculated as the time weighted average of the SO_2 concentration for each sample according to the formula:

$$C_R = \sum_{i=1}^{N} C_{S_i} \frac{t_{S_i}}{T}$$

Where:

C_R = SO_2 concentration for the run.
N = Number of samples.
C_{Si} = SO_2 concentration for sample i.
t_{Si} = Continuous sampling time of sample i.
T = Total continuous sampling time of all N samples.

(2) If Method 15 is used, each run shall consist of 16 samples taken over a minimum of three hours. The sampling point shall be at the centroid of the cross section of the duct if the cross sectional area is less than 5 m^2 (54 ft^2) or at a point no closer to the walls than 1 m (39 inches) if the cross sectional area is 5 m^2 or more and the centroid is more than 1 meter from the wall. To insure minimum residence time for the sample inside the sample lines, the sampling rate shall be at least 3 liters/minute (0.1 ft^3/min). The SO_2 equivalent for each run shall be calculated as the arithmetic average of the SO_2 equivalent of each sample during the run. Reference Method 4 shall be used to determine the moisture content of the gases. The sampling point for Method 4 shall be adjacent to the sampling point for Method 15. The sample shall be extracted at a rate proportional to the gas velocity at the sampling point. Each run shall span a minimum of four consecutive hours of continuous sampling. A number of separate samples may be taken for each run provided the total sampling time of these samples adds up to a minimum of four consecutive hours. Where more than one sample is used, the average moisture content for the run shall be calculated as the time weighted average of the moisture content of each sample according to the formula:

$$B_{wo} = \sum_{i=1}^{N} B_{si} \left[\frac{t_{si}}{T}\right]$$

B_{wo} = Proportion by volume of water vapor in the gas stream for the run.
N = Number of samples.
B_{si} = Proportion by volume of water vapor in the gas stream for the sample i.
t_{si} = Continuous sampling time for sample i.
T = Total continuous sampling time of all N samples.

(Sec. 114 of the Clean Air Act, as amended [42 U.S.C. 7414]).

* * * * *

APPENDIX A—REFERENCE METHODS

7. Appendix A is amended by adding a new reference method as follows:

METHOD 15. DETERMINATION OF HYDROGEN SULFIDE, CARBONYL SULFIDE, AND CARBON DISULFIDE EMISSIONS FROM STATIONARY SOURCES

INTRODUCTION

The method described below uses the principle of gas chromatographic separation and flame photometric detection (FPD). Since there are many systems or sets of operating conditions that represent usable methods of determining sulfur emissions, all systems which employ this principle, but differ only in details of equipment and operation, may be used as alternative methods, provided that the criteria set below are met.

1. Principle and applicability

1.1 Principle. A gas sample is extracted from the emission source and diluted with clean dry air. An aliquot of the diluted sample is then analyzed for hydrogen sulfide (H_2S), carbonyl sulfide (COS), and carbon disulfide (CS_2) by gas chromatographic (GC) separation and flame photometric detection (FPD).

1.2 Applicability. This method is applicable for determination of the above sulfur compounds from tail gas control units of sulfur recovery plants.

2. Range and sensitivity

2.1 Range. Coupled with a gas chromtographic system utilizing a 1-milliliter sample size, the maximum limit of the FPD for each sulfur compound is approximately 10 ppm. It may be necessary to dilute gas samples from sulfur recovery plants hundredfold (99:1) resulting in an upper limit of about 1000 ppm for each compound.

2.2 The minimum detectable concentration of the FPD is also dependent on sample size and would be about 0.5 ppm for a 1 ml sample.

3. Interferences

3.1 Moisture Condensation. Moisture condensation in the sample delivery system, the analytical column, or the FPD burner block can cause losses or interferences. This potential is eliminated by heating the sample line, and by conditioning the sample with dry dilution air to lower its dew point below the operating temperature of the GC/FPD analytical system prior to analysis.

3.2 Carbon Monoxide and Carbon Dioxide. CO and CO_2 have substantial desensitizing effects on the flame photometric detector even after 9:1 dilution. (Acceptable systems must demonstrate that they have eliminated this interference by some procedure such as eluding CO and CO_2 before any of the sulfur compounds to be measured.) Compliance with this requirement can be demonstrated by submitting chromatograms of calibration gases with and without CO_2 in the diluent gas. The CO_2 level should be approximately 10 percent for the case with CO_2 present. The two chromatographs should show agreement within the precision limits of section 4.1.

3.3 Elemental Sulfur. The condensation of sulfur vapor in the sampling line can lead to eventual coating and even blockage of the sample line. This problem can be eliminated along with the moisture problem by heating the sample line.

4. Precision

4.1 Calibration Precision. A series of three consecutive injections of the same calibration gas, at any dilution, shall produce results which do not vary by more than ±13 percent from the mean of the three injections.

4.2 Calibration Drift. The calibration drift determined from the mean of three injections made at the beginning and end of any 8-hour period shall not exceed ±5 percent.

5. Apparatus

5.1.1 Probe. The probe must be made of inert material such as stainless steel or glass. It should be designed to incorporate a filter and to allow calibration gas to enter the probe at or near the sample entry point. Any portion of the probe not exposed to the stack gas must be heated to prevent moisture condensation.

5.1.2 The sample line must be made of Teflon,[1] no greater than 1.3 cm (½ in) inside diameter. All parts from the probe to the dilution system must be thermostatically heated to 120° C.

5.1.3 Sample Pump. The sample pump shall be a leakless Teflon coated diaphragm type or equivalent. If the pump is upstream of the dilution system, the pump head must be heated to 120° C.

5.2 Dilution System. The dilution system must be constructed such that all sample contacts are made of inert material (e.g. stainless steel or Teflon). It must be heated to 120° C and be capable of approximately a 9:1 dilution of the sample.

5.3 Gas Chromatograph. The gas chromatograph must have at least the following components:

5.3.1 Oven. Capable of maintaining the separation column at the proper operating temperature ±1° C.

5.3.2 Temperature Gauge. To monitor column oven, detector, and exhaust temperature ±1° C.

5.3.3 Flow System. Gas metering system to measure sample, fuel, combustion gas, and carrier gas flows.

5.3.4 Flame Photometric Detector.

5.3.4.1 Electrometer. Capable of full scale amplification of linear ranges of 10^{-9} to 10^{-4} amperes full scale.

5.3.4.2 Power Supply. Capable of delivering up to 750 volts.

5.3.4.3 Recorder. Compatible with the output voltage range of the electrometer.

[1] Mention of trade names or specific products does not constitute an endorsement by the Environmental Protection Agency.

5.4 Gas Chromatograph Columns. The column system must be demonstrated to be capable of resolving three major reduced sulfur compounds: H_2S, COS, and CS_2.

To demonstrate that adequate resolution has been achieved the tester must submit a chromatograph of a calibration gas containing all three reduced sulfur compounds in the concentration range of the applicable standard. Adequate resolution will be defined as base line separation of adjacent peaks when the amplifier attenuation is set so that the smaller peak is at least 50 percent of full scale. Base line separation is defined as a return to zero ±5 percent in the interval between peaks. Systems not meeting this criteria may be considered alternate methods subject to the approval of the Administrator.

5.5.1 Calibration System. The calibration system must contain the following components.

5.5.2 Flow System. To measure air flow over permeation tubes at ±2 percent. Each flowmeter shall be calibrated after a complete test series with a wet test meter. If the flow measuring device differs from the wet test meter by 5 percent, the completed test shall be discarded. Alternatively, the tester may elect to use the flow data that would yield the lowest flow measurement. Calibration with a wet test meter before a test is optional.

5.5.3 Constant Temperature Bath. Device capable of maintaining the permeation tubes at the calibration temperature within ±1.1° C.

5.5.4 Temperature Gauge. Thermometer or equivalent to monitor bath temperature within ±1° C.

6. Reagents

6.1 Fuel. Hydrogen (H_2) prepurified grade or better.

6.2 Combustion Gas. Oxygen (O_2) or air, research purity or better.

6.3 Carrier Gas. Prepurified grade or better.

6.4 Diluent. Air containing less than 0.5 ppm total sulfur compounds and less than 10 ppm each of moisture and total hydrocarbons.

6.5 Calibration Gases. Permeation tubes, one each of H_2S, COS, and CS_2, gravimetrically calibrated and certified at some convenient operating temperature. These tubes consist of hermetically sealed FEP Teflon tubing in which a liquified gaseous substance is enclosed. The enclosed gas permeates through the tubing wall at a constant rate. When the temperature is constant, calibration gases covering a wide range of known concentrations can be generated by varying and accurately measuring the flow rate of diluent gas passing over the tubes. These calibration gases are used to calibrate the GC/FPD system and the dilution system.

7. Pretest Procedures

The following procedures are optional but would be helpful in preventing any problem which might occur later and invalidate the entire test.

7.1 After the complete measurement system has been set up at the site and deemed to be operational, the following procedures should be completed before sampling is initiated.

7.1.1 Leak Test. Appropriate leak test procedures should be employed to verify the integrity of all components, sample lines, and connections. The following leak test procedure is suggested: For components upstream of the sample pump, attach the probe end of the sample line to a manometer or vacuum gauge, start the pump and pull greater than 50 mm (2 in.) Hg vacuum, close off the pump outlet, and then stop the pump and ascertain that there is no leak for 1 minute. For components after the pump, apply a slight positive pressure and check for leaks by applying a liquid (detergent in water, for example) at each joint. Bubbling indicates the presence of a leak.

7.1.2 System Performance. Since the complete system is calibrated following each test, the precise calibration of each component is not critical. However, these components should be verified to be operating properly. This verification can be performed by observing the response of flowmeters or of the GC output to changes in flow rates or calibration gas concentrations and ascertaining the response to be within predicted limits. If any component or the complete system fails to respond in a normal and predictable manner, the source of the discrepancy should be identifed and corrected before proceeding.

8. Calibration

Prior to any sampling run, calibrate the system using the following procedures. (If more than one run is performed during any 24-hour period, a calibration need not be performed prior to the second and any subsequent runs. The calibration must, however, be verified as prescribed in section 10, after the last run made within the 24-hour period.)

8.1 General Considerations. This section outlines steps to be followed for use of the GC/FPD and the dilution system. The procedure does not include detailed instructions because the operation of these systems is complex, and it requires an understanding of the individual system being used. Each system should include a written operating manual describing in detail the operating procedures associated with each component in the measurement system. In addition, the operator shuld be familiar with the operating principles of the components; particularly the GC/FPD. The citations in the Bibliography at the end of this method are recommended for review for this purpose.

8.2 Calibration Procedure. Insert the permeation tubes into the tube chamber. Check the bath temperature to assure agreement with the calibration temperature of the tubes within ±0.1°C. Allow 24 hours for the tubes to equilibrate. Alternatively equilibration may be verified by injecting samples of calibration gas at 1-hour intervals. The permeation tubes can be assumed to have reached equilibrium when consecutive hourly samples agree within the precision limits of section 4.1.

Vary the amount of air flowing over the tubes to produce the desired concentrations for calibrating the analytical and dilution systems. The air flow across the tubes must at all times exceed the flow requirement of the analytical systems. The concentration in parts per million generated by a bube containing a specific permeant can be calculated as follows:

$$C = K \times P_r / ML$$

Equation 15-1

where:

C = Concentration of permeant produced in ppm.

P_r = Permeation rate of the tube in μg/min.

M = Molecular weight of the permeant: g/g-mole.

L = Flow rate, l/min, of air over permeant @ 20°C, 760 mm Hg.

K = Gas constant at 20°C and 760 mm Hg = 24.04 l/g mole.

8.3 Calibration of analysis system. Generate a series of three or more known concentrations spanning the linear range of the FPD (approximately 0.05 to 1.0 ppm) for each of the four major sulfur compounds. Bypassing the dilution system, inject these standards in to the GC/FPD analyzers and monitor the responses. Three injects for each concentration must yield the precision described in section 4.1. Failure to attain this precision is an indication of a problem in the calibration or analytical system. Any such problem must be identified and corrected before proceeding.

8.4 Calibration Curves. Plot the GC/FPD response in current (amperes) versus their causative concentrations in ppm on log-log coordinate graph paper for each sulfur compound. Alternatively, a least squares equation may be generated from the calibration data.

8.5 Calibration of Dilution System. Generate a know concentration of hydrogen sulfied using the permeation tube system. Adjust the flow rate of diluent air for the first dilution stage so that the desired level of dilution is approximated. Inject the diluted calibration gas into the GC/FPD system and monitor its response. Three injections for each dilution must yield the precision described in section 4.1. Failure to attain this precision in this step is an indication of a problem in the dilution system. Any such problem must be identified and corrected before proceeding. Using the calibration data for H_2S (developed under 8.3) determine the diluted calibration gas concentration in ppm. Then calculate the dilution factor as the ratio of the calibration gas concentration before dilution to the diluted calibration gas concentration determined under this paragraph. Repeat this procedure for each stage of dilution required. Alternatively, the GC/FPD system may be calibrated by generating a series of three or more concentrations of each sulfur compound and diluting these samples before injecting them into the GC/FPD system. This data will then serve as the calibration data for the unknown samples and a separate determination of the dilution factor will not be necessary. However, the precision requirements of section 4.1 are still applicable.

9. Sampling and Analysis Procedure

9.1 Sampling. Insert the sampling probe into the test port making certain that no dilution air enters the stack through the port. Begin sampling and dilute the sample approximately 9:1 using the dilution system. Note that the precise dilution factor is that which is determined in paragraph 8.5. Condition the entire system with sample for a minimum of 15 minutes prior to commencing analysis.

9.2 Analysis. Aliquots of diluted sample are injected into the GC/FPD analyzer for analysis.

9.2.1 Sample Run. A sample run is composed of 16 individual analyses (injects) performed over a period of not less than 3 hours or more than 6 hours.

9.2.2 Observation for Clogging of Probe. If reductions in sample concentrations are observed during a sample run that cannot be explained by process conditions, the sampling must be interrupted to determine if

the sample probe is clogged with particulate matter. If the probe is found to be clogged, the test must be stopped and the results up to that point discarded. Testing may resume after cleaning the probe or replacing it with a clean one. After each run, the sample probe must be inspected and, if necessary, dismantled and cleaned.

10. Post-Test Procedures

10.1 Sample Line Loss. A known concentration of hydrogen sulfide at the level of the applicable standard, ±20 percent, must be introduced into the sampling system at the opening of the probe in sufficient quantities to ensure that there is an excess of sample which must be vented to the atmosphere. The sample must be transported through the entire sampling system to the measurement system in the normal manner. The resulting measured concentration should be compared to the known value to determine the sampling system loss. A sampling system loss of more than 20 percent is unacceptable. Sampling losses of 0–20 percent must be corrected by dividing the resulting sample concentration by the fraction of recovery. The known gas sample may be generated using permeation tubes. Alternatively, cylinders of hydrogen sulfide mixed in air may be used provided they are traceable to permeation tubes. The optional pretest procedures provide a good guideline for determining if there are leaks in the sampling system.

10.2 Recalibration. After each run, or after a series of runs made within a 24-hour period, perform a partial recalibration using the procedures in section 8. Only H_2S (or other permeant) need be used to recalibrate the GC/FPD analysis system (8.3) and the dilution system (8.5).

10.3 Determination of Calibration Drift. Compare the calibration curves obtained prior to the runs, to the calibration curves obtained under paragraph 10.1. The calibration drift should not exceed the limits set forth in paragraph 4.2. If the drift exceeds this limit, the intervening run or runs should be considered not valid. The tester, however, may instead have the option of choosing the calibration data set which would give the highest sample values.

11. Calculations

11.1 Determine the concentrations of each reduced sulfur compound detected directly from the calibration curves. Alternatively, the concentrations may be calculated using the equation for the least squares line.

11.2 Calculation of SO_2 Equivalent. SO_2 equivalent will be determined for each analysis made by summing the concentrations of each reduced sulfur compound resolved during the given analysis.

$$SO_2 \text{ equivalent} = \Sigma(H_2S, COS, 2\,CS_2)d$$

Equation 15-2

where:

SO_2 equivalent = The sum of the concentration of each of the measured compounds (COS, H_2S, CS_2) expressed as sulfur dioxide in ppm.

H_2S = Hydrogen sulfide, ppm.

COS = Carbonyl sulfide, ppm.

CS_2 = Carbon disulfide, ppm.

d = Dilution factor, dimensionless.

11.3 Average SO_2 equivalent will be determined as follows:

$$\text{Average } SO_2 \text{ equivalent} = \frac{\sum_{i=1}^{N} SO_2 \text{ equiv.}_i}{N\,(1 - Bwo)}$$

Equation 15-3

where:

Average SO_2 equivalent$_i$ = Average SO_2 equivalent in ppm, dry basis.

Average SO_2 equivalent$_i$ = SO_2 in ppm as determined by Equation 15-2.

N = Number of analyses performed.

Bwo = Fraction of volume of water vapor in the gas stream as determined by Method 4—Determination of Moisture in Stack Gases (36 FR 24887).

12. Example System

Described below is a system utilized by EPA in gathering NSPS data. This system does not now reflect all the latest developments in equipment and column technology, but it does represent one system that has been demonstrated to work.

12.1 Apparatus.

12.1.1 Sample System.

12.1.1.1 Probe. Stainless steel tubing, 6.35 mm (¼ in.) outside diameter, packed with glass wool.

12.1.1.2 Sample Line. 3/16 inch inside diameter Teflon tubing heated to 120° C. This temperature is controlled by a thermostatic heater.

12.1.1.3 Sample Pump. Leakless Teflon coated diaphragm type or equivalent. The pump head is heated to 120° C by enclosing it in the sample dilution box (12.2.4 below).

12.1.2 Dilution System. A schematic diagram of the dynamic dilution system is given in Figure 15-2. The dilution system is constructed such that all sample contacts are made of inert materials. The dilution system which is heated to 120° C must be capable of a minimum of 9:1 dilution of sample. Equipment used in the dilution system is listed below:

12.1.2.1 Dilution Pump. Model A-150 Kohmyhr Teflon positive displacement type, nonadjustable 150 cc/min. ±2.0 percent, or equivalent, per dilution stage. A 9:1 dilution of sample is accomplished by combining 150 cc of sample with 1350 cc of clean dry air as shown in Figure 15-2.

12.1.2.2 Valves. Three-way Teflon solenoid or manual type.

12.1.2.3 Tubing. Teflon tubing and fittings are used throughout from the sample probe to the GC/FPD to present an inert surface for sample gas.

12.1.2.4 Box. Insulated box, heated and maintained at 120° C, of sufficient dimensions to house dilution apparatus.

12.1.2.5 Flowmeters. Rotameters or equivalent to measure flow from 0 to 1500 ml/min. ±1 percent per dilution stage.

12.1.3.0 Gas Chromatograph.

12.1.3.1 Column—1.83 m (6 ft.) length of Teflon tubing, 2.16 mm (0.085 in.) inside diameter, packed with deactivated silica gel, or equivalent.

12.1.3.2 Sample Valve. Teflon six port gas sampling valve, equipped with a 1 ml sample loop, actuated by compressed air (Figure 15-1).

12.1.3.3 Oven. For containing sample valve, stripper column and separation column. The oven should be capable of maintaining an elevated temperature ranging from ambient to 100° C, constant within ±1° C.

12.1.3.4 Temperature Monitor. Thermocouple pyrometer to measure column oven, detector, and exhaust temperature ±1° C.

12.1.3.5 Flow System. Gas metering system to measure sample flow, hydrogen flow, oxygen flow and nitrogen carrier gas flow.

12.1.3.6 Detector. Flame photometric detector.

12.1.3.7 Electrometer. Capable of full scale amplification of linear ranges of 10^{-9} to 10^{-4} amperes full scale.

12.1.3.8 Power Supply. Capable of delivering up to 750 volts.

12.1.3.9 Recorder. Compatible with the output voltage range of the electrometer.

12.1.4 Calibration. Permeation tube system (Figure 15-3).

12.1.4.1 Tube Chamber. Glass chamber of sufficient dimensions to house permeation tubes.

12.1.4.2 Mass Flowmeters. Two mass flowmeters in the range 0–3 l/min. and 0–10 l/min. to measure air flow over permeation tubes at ±2 percent. These flowmeters shall be cross-calibrated at the beginning of each test. Using a convenient flow rate in the measuring range of both flowmeters, set and monitor the flow rate of gas over the permeation tubes. Injection of calibration gas generated at this flow rate as measured by one flowmeter followed by injection of calibration gas at the same flow rate as measured by the other flowmeter should agree within the specified precision limits. If they do not, then there is a problem with the mass flow measurement. Each mass flowmeter shall be calibrated prior to the first test with a wet test meter and thereafter at least once each year.

12.1.4.3 Constant Temperature Bath. Capable of maintaining permeation tubes at certification temperature of 30° C within ±0.1° C.

12.2 Reagents.

12.2.1 Fuel. Hydrogen (H_2) prepurified grade or better.

12.2.2 Combustion Gas. Oxygen (O_2) research purity or better.

12.2.3 Carrier Gas. Nitrogen (N_2) prepurified grade or better.

12.2.4 Diluent. Air containing less than 0.5 ppm total sulfur compounds and less than 10 ppm each of moisture and total hydrocarbons, and filtered using MSA filters 46727 and 79030, or equivalent. Removal of sulfur compounds can be verified by injecting dilution air only, described in section 8.3.

12.2.5 Compressed Air. 60 psig for GC valve actuation.

12.2.6 Calibration Gases. Permeation tubes gravimetrically calibrated and certified at 30.0° C.

12.3 Operating Parameters. The operating parameters for the GC/FPD system are as follows: nitrogen carrier gas flow rate of 100 cc/min, exhaust temperature of 110° C, detector temperature 105° C, oven temperature of 40° C, hydrogen flow rate of 80 cc/minute, oxygen flow rate of 20 cc/minute, and sample flow rate of 80 cc/minute.

12.4 Analysis. The sample valve is actuated for 1 minute in which time an aliquot of diluted sample is injected onto the separation column. The valve is then deactivated for the remainder of analysis cycle in which time the sample loop is refilled and the separation column continues to be foreflushed. The elution time for each compound will be determined during calibration.

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federal register

WEDNESDAY, MARCH 15, 1978
PART IV

SECURITIES AND EXCHANGE COMMISSION

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EXAMINATION OF THE EFFECTS OF RULES AND REGULATIONS ON THE ABILITY OF SMALL BUSINESSES TO RAISE CAPITAL AND THE IMPACT ON SMALL BUSINESSES OF DISCLOSURE REQUIREMENTS UNDER THE SECURITIES ACTS

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 210, 230, 239, 240 and 249]

[Release No. 33-5914, 34-14529, S7-734]

EXAMINATION OF THE EFFECTS OF RULES AND REGULATIONS ON THE ABILITY OF SMALL BUSINESSES TO RAISE CAPITAL AND THE IMPACT ON SMALL BUSINESSES OF DISCLOSURE REQUIREMENTS UNDER THE SECURITIES ACTS

AGENCY: Securities and Exchange Commission.

ACTION: Publication of issues to be considered at hearings and order of hearings, and solicitation of written submissions and requests for oral presentations.

SUMMARY: In Securities Act Release No. 5889 (December 14, 1977), (42 FR 64163), the Commission announced that it would hold public hearings concerning the effects of its rules and regulations on the ability of small businesses to raise capital and the impact on small businesses of the disclosure requirements under the Securities Acts. The Commission has today published a list of issues to be considered at the hearings. The Commission has also published an order which specifies procedures for the hearings.

DATES: Hearings will commence on April 11, 1978, in Washington, D.C.; on April 18, 1978, in Los Angeles, Calif.; on April 25, 1978, in Denver, Colo.; on May 2, 1978 in Atlanta, Ga.; on May 9, 1978, in Chicago, Ill.; and on May 16, 1978, in Boston, Mass. Specific times and room locations will be determined later and may be obtained by phoning or writing those persons listed below. The hearing record for these proceedings will remain open until June 1, 1978, unless extended by the Commission.

ADDRESSES: Interested members of the public may comment on the following proposals through oral presentations (for which a prepared text is required), written submissions, or both. Any written submissions not prepared in connection with an oral presentation should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 and should refer to File No. S7-734.

All witnesses desiring to make oral presentations should submit copies of their prepared statements to the Commission office in the city in which they wish to testify and such materials should be directed to the attention of those persons listed below.

All written submissions, including the written texts submitted in connection with oral presentations and the transcripts of such oral presentations, will be available for public inspection at the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C. 20549, and at the following Regional Offices of the Commission: 10960 Wilshire Boulevard, Suite 1710, Los Angeles, Calif. 90024; Two Park Central, Room 640, 1515 Arapahoe Street, Denver, Colo. 80202; 1375 Peachtree Street NE., Suite 788, Atlanta, Ga. 30309; Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1204, Chicago, Ill. 60604; 150 Causeway Street, Boston, Mass. 02114.

FOR FURTHER INFORMATION CONTACT:

Paul A. Belvin or John A. Granda, Office of Disclosure Policy and Proceedings, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549, 202-755-1750 or 202-376-8090; or the following persons located at the Commission's Regional Offices; James W. Mercer, 10960 Wilshire Boulevard, Suite 1710, Los Angeles, Calif. 90024, 213-984-0011; William J. Klein, Two Park Central, Room 640, 1515 Arapahoe Street, Denver, Colo. 80202, 303-327-2071; Everett Leo Mast, 1375 Peachtree Street NE., Suite 788, Atlanta, Ga. 30309, 404-257-4844; Dennis B. O'Boyle, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1204, Chicago, Ill. 60604, 312-353-3378; Katherine W. Keane, 150 Causeway Street, Boston, Mass. 02114, 617-223-2721.

SUPPLEMENTARY INFORMATION: The public hearings which are scheduled to commence on April 11, 1978, are for the purpose of giving the Commission the benefit of the views of interested members of the public with respect to the effects of its rules and regulations on the ability of small businesses to raise capital and the impact on small businesses of the disclosure requirements under the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq., as amended by Pub. L. 94-29 (June 4, 1975)). At the conclusion of these hearings, the Commission will determine whether it is necessary or appropriate in the public interest or for the protection of investors to propose amendments to its rules and regulations or to recommend legislation to Congress. Persons interested in testifying or furnishing a written submission for the record should consult the procedural instructions contained under the heading "Procedures" at the conclusion of this release.

I. INTRODUCTION

A. BACKGROUND

The study of the problems confronting small businesses, while a topic of longstanding interest, has recently become the focus of considerable public attention. The wealth of concern for the well-being of that sector stems from the pivotal role it plays in the vitality of the general economy. The contribution of small businesses in supplying jobs, technical innovation, and generally in keeping our system competitive requires that unnecessary obstacles to their formation and growth be removed.

Recent Congressional hearings[1] and studies,[2] studies by Government agencies[3] and the professional literature[4] have attempted to isolate and analyze the factors which impede the success of small businesses. These investigations have shown that the small business problem is exceedingly complex. In large part, it appears that the obstacles faced by small businesses are the product of factors deeply rooted in the economic environment as well as taxation and regulatory policies which are outside the scope of the federal securities laws.[5] Nevertheless, there have been suggestions that the Commission's registration and periodic reporting requirements impose a relatively greater compliance burden on small companies than on large ones. Some have contended further that the net effect of these policies is to endanger the continued existence of smaller companies and to inhibit the formation of new enterprises.

This concern has given rise to legislative initiatives which would relax

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[1] "Hearings on Small Business Access to Equity and Venture Capital" Before the Subcommittee on Capital, Investment and Business Opportunities of the House Committee on Small Business, 95th Cong., 1st Sess. (1977); "Hearings on the Economic Problems of Small Business" Before the Subcommittee on Energy and Environment of the House Committee on Small Business, 94th Cong., 2d Sess. (1977); "Hearings on the Overregulation of Small Business" Before the Subcomm. on Government Regulation of the Senate Select Comm. on Small Business, 94th Cong., 2d Sess. (1976).

[2] See, e.g., Doyle, "Foundations for a National Policy to Preserve Private Enterprise in the 1980's"; A Study Prepared for the Use of the Subcomm. on Economic Growth and Stabilization of the Joint Economic Comm., 95th Cong., 1st Sess. (1977).

[3] See, e.g., U.S. Small Business Administration, "The Study of Small Business" (1977).

[4] See, e.g., "Legal Reforms for Small Business—A Symposium", 33 Bus. Law. 847 (1978).

[5] See, e.g., "Report of the SBA Task Force on Venture and Equity Capital for Small Business" (U.S. Small Business Administration (1977)).

the federal securities laws and regulations promulgated thereunder as they relate to small issuers.[6] The Commission has also been urged to take similar action by the Small Business Administration,[7] venture capital groups, and a substantial number of professional commentators.[8]

In addition, The Report of the Advisory Committee on Corporate Disclosure cited a number of factors which suggest that a reduction in the reporting requirements under the Exchange Act, to lessen their impact on small businesses, may be warranted.[9] First, the cost data collected in the Advisory Committee's survey of publicly held companies indicates that the burden of reporting weighs more heavily on small than large companies.[10] Second, data from the Advisory Committee's studies and consultations with information disseminators revealed that institutional investors and their advisers evidence little or no interest in the securities of small companies.[11] Third, it did not appear that the reduction of reporting would adversely affect the possibility that smaller companies will attract analyst interest.[12] This was thought to be the case because it would be possible for companies to voluntarily meet a higher disclosure standard if that were perceived as necessary and because the limited nature of investor interest in small companies appeared to be unrelated to the amount or quality of disclosure.[13]

The Advisory Committee recognized that further study was needed before a definitive conclusion could be reached because of "the sketchy nature of the evidence, the highly judgmental nature of an evaluation of the data's implications, and particularly the difficulty of assessing the information needs of shareholders who do invest in these companies."[14] Accordingly, it recommended that public hearings be held to address the following issues:

(1) Whether and, if so, to what extent, the Commission should attempt to define a category of "small companies" for the purpose of requiring less burdensome periodic reporting requirements?

(2) Assuming that such a classification is desirable, how should it be defined?

(3) Assuming that classification is desirable and definition possible, what reduction of periodic reporting requirements can occur consistent with the purposes of the Federal Securities Laws?[15]

The Advisory Committee clearly pointed out, however, that the protection of investors, through the disclosure to them of all material information necessary to an informed investment or corporate suffrage decision, should not be subordinated to other social and economic objectives, such as the encouragement of small business enterprises.[16] This hierarchy of objectives does not, however, forceclose the inquiry for the Committee also noted that the cost of compliance must be weighed in any evaluation of a disclosure policy.[17] In their view, the "small company problem" possibly presents a situation where the compliance burden may be unduly expensive and where a reduction in Exchange Act disclosure obligations might be achieved without an adverse effect on disclosure to investors.[18]

Similarly, a reduction in the amount or quality of disclosure to be furnished to prospective investors in connection with the public offering of securities by small businesses and the liberalization for such issuers of the requirements for an exemption from the registration provisions of the Securities Act involves an inherent conflict between protecting investors and facilitating the raising of capital. Thus, the creation of a simplified registration form for the public sale of securities by small businesses might eliminate necessary decisionmaking information, thereby undercutting the objective of protecting investors through disclosure. Based on its reading of the legislative history of the federal securities laws, the Advisory Committee recommended that all such conflicts be resolved in favor of assuring the availability of investor oriented information.[19] In its view, "to the extent other objectives conflict they must give way."[20]

Other observers, however, argue that in striking a balance between these objectives the Commission must give appropriate effect to the "public interest." In their view, the public interest includes more than the protection of investors as such.[21] It requires the Commission to look beyond these immediate interests and to take into consideration the welfare of the economy as a whole.[22] Thus, while it is looking to the protection of prospective investors in dealing with small business, or big business for that matter, it must be careful not to erect such burdensome requirements as to discourage the raising of the capital necessary to the growth of business and industry.[23]

Particularly with the advent of the "140 series" of rules, many writers have espoused the view that the pendulum has swung too far in favor of investor protection.[24] While it is acknowledged that compliance with those rules does not pose a serious problem for large issuers, it is argued that they unnecessarily restrict the ability of small business to raise capital.[25]

Moreover, it should be recognized that offerings of securities by small businesses range from those in which the issuer is a relatively seasoned company with concrete business prospects, to those in which the issuer has never done any business and the investor is entirely dependent upon the viability of a proposal and the good faith of the promoter. In connection with the specific issues to be dealt with at these hearings, the Commission requests that commentators and interested persons consider the significant issue of whether special safeguards for investors are necessary in the latter case, what these safeguards should be, as for example, an escrow or other control over the disposition of funds raised from public investors, and, if such safeguards should be provided,

[6] See, e.g., H.R. 10717, 95th Cong., 2d Sess., which would raise the ceiling in Section 3(b) of the Securities Act from $500,000 to $3,000,000 and liberalize Rules 144 and 146. See Also, H.R. 9549, 95th Cong. 1st Sess., S. 2305, 95th Cong., 1st Sess.; S. 1815, 95th Cong., 1st Sess.

[7] U.S. Small Business Administration, supra note 3, at 20.

[8] See, e.g., Casey, "SEC Rules 144 and 146 Revisited", 43 Brooklyn L. Rev. 571 (1977).

[9] Report of the Advisory Committee on Corporate Disclosure (1977), at 511 (1977). It should be noted that the Advisory Committee focused only on the 1934 Act because of its awareness of the continuing efforts of the Commission to develop less burdensome 1933 Act registration procedures. Id., at 512, n. 1.

[10] Id. at 513.

[11] Id. at 514.

[12] Id. at 519.

[13] Id.

[14] Id. at 520.

[15] Id. at 520-521.

[16] Id. at 309-310 and 511-512.

[17] Id. at 317 and 512.

[18] Id. at 512.

[19] Id. at 310.

[20] Id.

[21] Gadsby, "The Securities and Exchange Commission and the Financing of Small Business," 14 Bus. Law. 144, 145 (1958).

[22] Id.

[23] Id.

[24] See, e.g., Coles, "Has Securities Law Regulation in the Private Capital Markets Become a Deterrent to Capital Growth: A Critical Review, 58 Marq. L. Rev. 1 (1975).

[25] See, e.g., Carney, "Exemptions from Securities Registration for Small Issuers: Shifting from Full Disclosure—Part I: The Private Offering Exemption, Rule 146 and an End to Access for Small Issuers", 10 Land and Water L. Rev. 507 (1975); Carney, "Exemptions from Securities Registration for Small Issuers: Shifting from Full Disclosure—Part II: The Intrastate Exemption and Rule 147," 11 Land and Water L. Rev. 161 (1976); Carney, "Exemptions from Securities Registration for Small Issuers: Shifting from Full Disclosure—Part III: The Small Offering Exemption and Rule 240," 11 Land and Water L. Rev. 483 (1976).

the standards for determining their applicability.

For these reasons, among others, the Commission directed the staff to undertake consideration of possible revisions of its rules relating to registrations, small offerings, private placements and resales of securities which might be made to facilitate capital formation by small businesses and to lessen the overall burden in a manner consistent with the protection of investors.[26]

In addition, the Commission, in early 1977, began to examine how securities regulation affects the capital-raising ability of small technology-based businesses. Under an agreement with the Department of Commerce's National Bureau of Standards Experimental Technology Incentive Program (ETIP), the Commission's Directorate of Economic and Policy Research is studying the effect of present and proposed policies on small issuers, investors, broker-dealers and other economic agents in the venture capital industry.[27]

Because of the complexity of these issues and their importance to the administration of the securities laws, the Commission is seeking the views of interested members of the public in a broad reexamination of its rules as they relate to small businesses. This will assist the Commission in identifying specific issues and facilitate the participation of constituencies with the special expertise and data conducive to the appropriate resolution of these concerns.

B. REGULATORY FRAMEWORK OF THE FEDERAL SECURITIES LAWS AS IT RELATES TO SMALL BUSINESSES[28]

A basic purpose of the Federal securities laws is to provide disclosure to investors of material financial and other information so that they might make informed investment and corporate suffrage decisions. Investors are apprised of this information, in connection with a public offering of securities, through the Securities Act and, in connection with the trading of securities or the solicitation of proxies, through the Exchange Act. The two Acts are administered with a view to integrating their requirements in such a way as to provide a continuous system of corporate disclosure at the least possible social cost.

1. Securities Act of 1933

Absent an available exemption, the Securities Act requires that before securities may be offered for sale to the public a registration statement must be filed with the Commission disclosing prescribed categories of information. The securities cannot be sold until the registration statement becomes effective. In addition, prospective investors must be furnished with a prospectus containing the most significant information in the registration statement.

While the Securities Act specifies the information to be included in a registration statement, the Commission has the authority to prescribe appropriate forms and to vary the particular items of information required to be disclosed. To facilitate the registration of securities by different types of issuers, the Commission has adopted special registration forms which vary in their disclosure requirements so as to provide maximum disclosure of the essential facts pertinent in a given type of offering while at the same time minimizing the burdens and expense of compliance with the law. In recent years, it has adopted certain short forms, notably Forms S-7 (17 CFR 239.26) and S-16 (17 CFR 239.27), which do not require disclosure of certain matters already covered in reports and proxy material filed under provisions of the Exchange Act. Small businesses are, however, generally unable to avail themselves of these forms because they either do not report under the Exchange Act or do not meet the earnings test prescribed for their use. Accordingly, Form S-1 (17 CFR 239.11), the Commission's most extensive registration form, must ordinarily be used by small businesses who wish to register an offering osecurities.[29]

The costs of registration on Forms S-1—the greatest portion of which appear to be for professional services required in order to prepare certified financial statements, attorneys' preparation and review of documents to be filed with the Commission and the attendant printing costs—are particularly substantial for a small business.[30]

Because of this the Commission has, as indicated previously, proposed Form S-18 to provide a simplified form of registration for non-reporting companies who seek to raise up to three million dollars. Nevertheless, even simplified registration may prove too costly or for other reasons may not meet the capital raising needs of small businesses. Thus, the exemptions from the registration requirements take on added significance for such enterprises.

Congress recognized that there are certain situations "where there is no practical need for * * * [registration] or where the public benefits [therefrom] are too remote."[31] Accordingly, a number of exemptions to the registration requirements are contained in the Securities Act. The exemptions which are typically most significant to small business are those provided by sections 3(a)(11), 3(b) and 4(2).[32]

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[26]Thus, the Commission, in a companion release, has today announced a proposed registration Form S-18 under the Securities Act which would reduce the narrative and financial statement disclosure requirements for sales of securities not exceeding three million dollars. Securities Act Release No. 5915 (March 6, 1977) (— FR —). The staff is also reviewing the desirability and feasibility of revising Rule 240 [17 CFR 230.144] to increase the limitation on aggregate sales price of securities offered, of simplifying the procedure for Regulation A offerings, and revising Rule 144. In response to its invitation for public comment, the Commission has also received the views of interested persons on the operation of Rule 146 [17 CFR 230.146], including the volume of transactions in reliance thereon and the practices issuers have utilized in complying with the Rule. Securities Act Release No. 5779 (December 6, 1976) (41 FR 53808). In a separate release also published today the Commission proposed amendments to Rule 146 which would (1) prohibit persons who receive compensation from the issuer in connection with the offering from also serving as an offeree representative and (2) revise the disclosure requirements when an offering is for less than $500,000. Securities Act Release No. 5913 (March 6, 1978) (— FR —).

[27]The first phase of this effort analyzes the principal rules, regulations and procedures that influence the flow of capital to new or recently established technology-based ventures. This will include investigation of Securities and Exchange Commission Regulation A and Rules 144, 145, 146, 147 and 240 in an effort to understand the workings of these rules and to determine the costs and benefits associated with their provisions.

The second phase refines and tests the analytical models developed in phase one so that an approach to monitoring the effects of SEC regulation in venture capital markets can be established. The overall objective is to institutionalize a monitoring system to provide timely economic information to the Commission about the impact of regulatory activity on issuers and the investing public. It is anticipated that this experimental system will require two years to complete.

[28]In Order to assist interested persons in understanding and responding to the issues set forth in Part II of this release, a general discussion of the background, purpose and general effect of the Federal securities laws, and the rules and regulations promulgated thereunder, which have a significant bearing on small businesses has been included. The full text of these laws and regulations should be consulted for a more complete understanding of their provisions.

[29]Development stage companies without a substantial operating history are currently required to register on Form S-2 (17 CFR 239.12).

[30]See Report of the Advisory Committee on Corporate Disclosure (1977), at 28-29.

[31]H.R. Rep. No. 85, 73rd Cong., 1st Sess. 5 (1933).

[32]It should be noted, however, that these sections do not provide an exemption from the anti-fraud provisions of the Securities Acts or from the civil liability provisions of section 12(2) of the Securities Act or other provisions of the Federal securities laws.

Section 3(a)(11), commonly referred to as the "intrastate offering exemption," exempts from the registration requirements of section 5 of the Securities Act securities that are part of an issue offered and sold only to persons resident within a single state or territory, if the issuer is a person resident and doing business within that state or territory. The legislative history reveals that the Congressional purpose underlying that exemption was to permit local financing of companies primarily intrastate in character without registration.[33] Thus, it was thought that by restricting the offering to persons who are within the same locality as the issuer the protections afforded by registration would not be needed since, by virtue of their proximity, they are likely to be familiar with the issuers and protected by the state law governing the issuer. Accordingly, to satisfy the exemption, the entire issue must be offered and sold exclusively to residents of the state in which the issuer is resident and doing business. An offer or sale of part of the issue to a single non-resident will destroy the exemption for the entire issue.

The primary interpretative questions which have arisen in connection with attempts to comply with the intrastate offering exemption involve a determination of the statutory terms: (1) "part of an issue," (2) "resident within," and (3) "doing business within." Rule 147 [17 CFR 230.147] was adopted to provide objective standards as to the meaning of those terms and thereby to facilitate compliance with section 3(a)(11). Thus, the intrastate offering exemption will be deemed available for offers and sales of securities that meet all the terms and conditions of the Rule. Those conditions are: (1) the issuer must be resident and doing business within the state or territory in which the securities are offered and sold (Rule 147(c)); (2) the offerees and purchasers must be resident within such state or territory (Rule 147(d)); resales for a period of 9 months after the last sale which is part of an issue must be limited as provided in Rule 147 (e) and (f). In addition, the Rule provides that certain offers and sales of securities by or for the issuer will be deemed not "part of an issue" for purposes of the rule only (Rule 147(b)).

The Commission is authorized under Section 3(b) of the Securities Act to exempt securities from registration if it finds that registration for these securities is not necessary to the public interest because of the small amount involved or the limited character of the public offering.[34] The section imposes a maximum limitation of $500,000 upon the size of the issues which may be exempted by the Commission. Pursuant to this authority the Commission has adopted various exemptive rules and regulations, the most significant of which, from a small business standpoint, are Regulation A [17 CFR 230.251-264] and Rule 240 [17 CFR 230.240].

Regulation A permits an issuer to obtain needed capital not in excess of $500,000 (including underwriting commissions) in any one year from a public offering of its securities without registration, provided specified conditions are met. Among other things, a notification and offering circular supplying basic information about the issuer and the securities offered must be filed with the regional office of the Commission for the region in which the issuer's principal business operations are conducted. The offering circular must be furnished to prospective investors at or prior to the time the securities are offered for sale.

Rule 240 provides a conditional exemption from registration for limited offers and sales of small dollar amounts of securities by small, closely-held businesses. It was adopted for the purpose of benefiting small businesses who do not have other exemptions, such as the intrastate or non-public offering exemption, available to them. The conditions which must be satisfied in order to use the Rule are: (1) the securities may not be offered or sold by any means of general advertising or general solicitation (Rule 240(c)); (2) no commission or similar remuneration may be paid for solicitation of prospective buyers or in connection with sales of securities (Rule 240(d)); (3) the aggregate sales price of all sales of securities in reliance on the Rule or otherwise without registration under the Securities Act within the preceding twelve months may not exceed $100,000 (Rule 240(e)); (4) immediately before and after any transaction in reliance on the Rule the securities are owned by not more than 100 persons (Rule 240(f)); (5) the issuer must exercise reasonable care to assure that the purchasers of the securities are not underwriters (Rule 240(g)); and (6) with a certain exception for an initial offering under Rule 240, a notice on Form 240 must be filed with the Commission's Regional Office for the region in which the issuer's principal business operations are conducted within ten days after the close of the first month in which a sale in reliance on the Rule is made (Rule 240(h)).

Section 4(2), commonly referred to as the private-offering exemption, exempts from the registration requirements of section 5 of the Securities Act transactions by an issuer which do not involve a public offering. The Supreme Court in the *Ralston Purina*[35] case established the basic criteria to be considered in determining the availability of that exemption. The main consideration is whether the offerees need the protection afforded by the Securities Act as evidenced by whether the offerees have "access" to the same kind of information that registration would disclose and whether they are able to fend for themselves. The application of these criteria and other guidelines set forth from time to time by the Commission and the courts was asserted to have created uncertainty about the availability of the exemption. In order to provide more objective standards for determination of the availability of the exemption and to enhance the protection of investors the Commission adopted Rule 146.

Rule 146 provides that transactions by an issuer involving the offer or sale of its securities shall be deemed not to involve any public offering within the meaning of section 4(2) of the Securities Act if they are part of an offering that meets all the conditions of the Rule. These conditions relate to limitations on the manner of offering (Rule 146(c)), the nature of the offerees (Rule 146(d)), access to or furnishing of information about the issuer (Rule 146(e)), limitations on the number of purchasers (Rule 146(g)), and limitations on the subsequent disposition of securities acquired pursuant to the rule (Rule 146(h)). When Rule 146 is used as the basis for an exemption, there may be no general advertising or solicitation in connection with the offering; offers for sale may only be made to persons the issuer reasonably believes have the requisite knowledge and experience in financial and business matters or who can bear the economic risks; sales may only be made to such persons except that persons meeting only the economic risk test must also have an offeree representative capable of providing the requisite knowledge and experience; offerees must have access to or be provided information comparable to that required by Schedule A of the Act; the issuer must inform each offeree in writing that he must continue to bear the risk of the investment indefinitely

[33] H.R. Rep. No. 85, 73d Cong., 1st Sess. 6-7 (1933). H.R. Rep. No. 1838, 73 Cong., 2nd Sess. 40-41 (1934).

[34] The House Committee report commenting on section 3(b) stated that this power "is expected to be used only in a sparing manner." H.R. Rep. No. 85, 73d Cong. 1st Sess. 6-7 (1933). Subsequent efforts by the Commission to use its exemptive power, whether to "facilitate public financing by small business," S. Rep. No. 1036, 83 Cong. 2d Sess. 8 (1954) or to reflect the effect of inflation, S. Rep. No. 1036, 82 Cong., 2d Sess. 3 (1954), have been met with some concern and skepticism.

[35] *SEC* v. *Ralston Purina Co.*, 346 U.S. 119 (1953).

since resale can only be effectuated through registration or an appropriate exemption under the Act; there may be no more than 35 purchasers in the offering; and reasonable care must be taken by the issuer to ensure that resales are not made in violation of the Act's registration provisions which would include making inquiry to determine whether the purchaser is purchasing for his own account, legending certificates, issuing stop-transfer instructions and having the purchaser agree in writing not to resell absent registration or suitable exemption.

2. Securities Act of 1934

Companies with a class of securities listed on a national securities exchange or those with total assets exceeding $1 million and a class of equity securities held of record by 500 or more persons must register those securities with the Commission under section 12(b) or 12(g), respectively. Upon registration these companies become subject to, inter alia, the periodic reporting and proxy solicitation provisions of the Exchange Act.

Section 13 of the Exchange Act requires issuers with securities registered pursuant to section 12(b) or 12(g) to file annual, quarterly and current reports on Forms 10-K (17 CFR 249.310), 10-Q (17 CFR 249.308(a)) and 8-K (17 CFR 249.308) respectively. These reports are for the purpose of keeping current the information contained in the issuers' registration application or statement. Similar reports are required pursuant to section 15(d) of certain issuers which have filed registration statements under the Securities Act which have become effective.

Where proxies are solicited from holders of securities registered under section 12, the Commission's proxy rules require that those persons be furnished with a proxy statement disclosing all material facts concerning the matter(s) on which they are being asked to vote. Where proxies are not solicited with respect to a stockholder meeting, issuers with a class of securities registered under section 12 must transmit an information statement, which is comparable to a proxy statement, to the holders thereof who are entitled to vote or give an authorization or consent in regard to any matter to be acted upon at the meeting. If a solicitation by management or the information statement relates to an annual meeting of security holders at which directors are to be elected, each proxy or information statement must be accompanied or preceded by an annual report to security holders which discloses certain basic information about the company, including audited financial statements for its latest fiscal year.

As a general matter, issuers required to file periodic reports with the Commission, whether by reason of their registration under section 12 or pursuant to section 15(d) of the Exchange Act, presently are required to provide essentially the same type and quality of information regardless of their size.[36] Similarly, the present proxy solicitation and information statement provisions do not recognize differences among issuers by size.

The Commission is authorized by section 12(h) of the Exchange Act to exempt, in whole or in part, by rule or by order after notice and opportunity for hearing, any issuer or class of issuers from the registration requirements of section 12(g) of the Act as well as from the reporting and the proxy solicitation provisions. In so acting, the Commission may permit exemptions, upon such items and conditions and for such period as it deems necessary, or appropriate, if it finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such an exemption "is not inconsistent with the public interest or the protection of investors." In addition, section 13(c) of the Exchange Act authorizes the Commission to permit a class or classes of issuers to file, in lieu of section 13(a) reports, "reports of comparable character." Thus, the Commission has broad authority to classify issuers by appropriate criteria for the purpose of reducing the burden upon small issuers of the periodic reporting and proxy solicitation or information statement requirements.

II. Scope of Inquiry

The Commission is interested in obtaining the written views of interested members of the public on the issues set forth below. Commentators and/or witnesses should note that the issues listed below are not exclusive. Issues which are relevant to the general framework outlined herein may also provide a basis for written statements and may be considered at the hearings.

In addition, commentators and/or witnesses may respond to any or all of the issues listed and general comment and/or testimony relating to the impact of the Federal securities laws on small businesses is also solicited.

The general areas of inquiry to be addressed are:

The Definition of a Small Business Issuer (questions 1 to 3).

Possible Revision of Disclosure Obligations (questions 4 to 20).

Role of Underwriters, Accountants, Attorneys and Other Professionals in a Small Business Securities Offering (questions 21 to 33).

Intrastate Offerings and Rule 147 (questions 34 to 40).

Regulation A (questions 41 to 51).

Rule 240 (questions 52 to 60).

Private Placements and Rule 146 (questions 61 to 68).

General (questions 69 to 75).

As a separate project the staff is reviewing the desirability and feasibility of revising the volume limitation and rate of sale provisions set forth in Rule 144(e).[37] In this connection, the Directorate of Economic and Policy Research has a study underway which is designed to assess the market impact of these provisions. This should provide the data conducive to a thorough review of the necessity for such revisions. In addition, the staff has met on numerous occasions with various groups interested in bringing about changes in these provisions of the Rule and has received, directly or indirectly, numerous written proposals for their modification. Accordingly, in view of the considerable body of data and views which the staff has already received with respect to the Rule as well as the data to be developed by the Directorate's study, it appears that the consideration of these issues in a public hearing covering a wide-ranging variety of concerns would not materially advance their resolution.

In responding to specific issues, interested persons should frame their comments and proposals in response thereto to cover the following:

(1) What are the principal cost and benefit items of the present rules and any proposals suggested for their modification. Can these items be quantified. If not, why?

(2) Are the proposed changes within the Commission's existing grant of authority or will additional legislation have to be enacted?

(3) What will be the effect on private rights of action under the liability provisions of the federal securities laws as a result of any proposed changes? Will those liability provisions have to be modified in order to make any proposed change effective?

(4) With reference to the exemptive rules discussed in questions 34 through 68, what is the use of each of the rules among small issuers? Do the rules do what they were supposed to do? What else do the rules do or

[36] The only general exception concerns the financial information and auditing requirements for development stage companies filing form 10-K. See Form 10-K, Instructions to Financial Statements, Instruction 8.

[37] In brief, Rule 144 provides that any affiliate or other person who sells restricted securities (as defined in Rule 144(a)(3)) of an issuer for his own account, or any person who sells restricted or any other securities for the account of an affiliate of the issuer, is not deemed to be engaged in a distribution of the securities, and therefore is not an underwriter as defined in section 2(11) of the Securities Act, if the securities are sold in accordance with all the terms and conditions of the Rule.

should they do? Identify any positive or negative side effects resulting from the availability of the rules.

A. THE DEFINITION OF A SMALL BUSINESS ISSUER

As indicated in Part I.B. of the release, the concepts of classification and differentiation of issuers, for both registration and reporting purposes, are already recognized in the federal securities laws. Because the Commission has never undertaken the broad classification or differentiation of issuers on the basis of their size there is little empirical evidence available upon which to estimate what impact such a step might have or, indeed, what factors the Commission should utilize in assessing the impact upon the public interest and the protection of investors.[38] Accordingly, this initial question the Commission must consider is whether, and, if so, to what extent, establishment of a category of "small business" should be undertaken to reduce the compliance burden of the federal securities laws on that resulting group and to facilitate their ability to raise capital.

In light of the foregoing, the Commission invites comments from interested persons on the following matters:

1. Should the Commission attempt to define a category or categories of "small business" issuers for the purposes of either registered or exempt offerings under the Securities Act or for the purposes of reporting obligations under the Exchange Act? In this connection, would such a classification be inconsistent with the protection of investors or the public interest?

2. What criteria should be utilized in formulating such a category or categories?[39] Are different criteria needed for one or more of these purposes?

3. Should the same definitional standard be adopted with regard to both the Securities Act and the Exchange Act for the purposes of revised disclosure requirements?

B. POSSIBLE REVISION OF DISCLOSURE OBLIGATIONS

As discussed in Part I of the release, it has been suggested that a reduction in the disclosure obligations imposed under the Securities Act and the Exchange Act on small businesses would redound to their benefit[40] and may not be inconsistent with the public interest and the protection of investors.

With respect to the Exchange Act, the empirical case study of the Advisory Committee, as previously noted, found that the periodic reports and proxy statements filed by or with respect to small issuers were infrequently consulted by security analysts, who normally have the greatest need for the detailed information contained therein. The Report of the Financial Analysts Federation ("FAF") to the Advisory Committee, however, stated that security analysts would not favor a significant reduction or differentiation of these requirements by size of issuer.[41] Among the FAF's reasons for believing that analysts will pay increasing attention to the smaller as well as the larger capitalization companies is their belief that the present period of stock investing should be viewed as a cyclical, rather than a secular, trend.[42] Thus, they believe that it will be a self-correcting cycle that is perhaps already in the early stages of turning.[43]

Nevertheless, the Advisory Committee was of the preliminary opinion that the relatively greater burden of such reports, when weighed against the benefits derived therefrom, raised questions as to the justification for their continuance in their present form with respect to smaller issuers. Thus, the Advisory Committee recommended that the Commission consider the possibility of revising its periodic reporting requirements so that the burden of compliance might be reduced for smaller issuers.

In light of the foregoing, the Commission invites comments on the following matters:

4. How should the basic conflict between lessening disclosure standards for small businesses and the protection of investors be reconciled?

5. Is disclosure of the sort required for an S-1 offering by a small business adequate and appropriate for the protection of investors? If not, what additional items of disclosure or revisions of disclosure items are necessary to provide investors with the information necessary to make an informed investment decision in these circumstances? Responses to these questions should assume both a seasoned and an unseasoned small business.

6. Are the investors or the nature of the investment in small businesses sufficiently different from public investors or the nature of the investment in larger firms that a different kind of protection is required? Does this mean more or less disclosure and why? What are the likely costs and benefits associated with different kinds or amounts of disclosure? Responses to these questions should assume both a seasoned and an unseasoned small business.

7. To what extent, if any, would investor interest in small businesses change due to reductions in the quality or quantity of disclosure? For example, would reduction in disclosure (however defined) lead to decreases in investor and/or underwriter and/or analyst interest and how might this affect the costs of disclosure required of an issuer? How might this affect the cost of raising capital or attracting public investors, including institutional investors?

8. To what extent, if any, would underwriter, accountant or attorney involvement in such small business offerings be reduced due to any decrease in the amount of required disclosure?

9. To what extent would private causes of action under either the Securities Act or the Exchange Act be af-

[38] In recent years, the development of the efficient market hypothesis has led some observers to suggest that, because the market readily absorbs investment information or perhaps even anticipates such information, little if any impact would result if registrants were not required to publicly file financial and other information with the Commission. Because of limitations in obtaining the required data, however, most empirical studies have been confined to securities listed and traded on exchanges, which comprise a very small portion of the companies registered with and reporting to the Commission. Thus, it seems likely that if the efficient market hypothesis is valid at all, it is valid only with respect to those largest companies attracting widespread interest of institutional investors. In order to attract institutional interest, these issuers apparently must have revenues of about $100 million or, at a minimum, $50 million. In the aggregate there are only about 800 to 1,000 companies in either of these categories. However, there appear to be well over 4,000 companies having revenues of under $25 million and another 1,000 companies between $25 and $50 million. See Nelson's Directory of Securities Research Information (1977).

[39] Although the following factors are not exclusive, a possible revision of disclosure requirements might be considered for those companies having between 500 and 1,000 shareholders and assets and sales, respectively, of between $1-20 million. Moreover, the criteria in Section 12(h) of the Exchange Act might also serve as a useful starting point in defining sub-categories of "small companies" for the purpose of stratifying disclosure requirements.

[40] Insofar as reporting obligations under the Exchange Act are concerned, a broad classification of issuers for that purpose, while reducing burdens upon the various classes, might lead to increasing segmentation or "tiering" of issuers. Despite the fact that all issuers would be free to file or otherwise disclose the full spectrum of information currently required, such broad classification is likely to result in a somewhat lesser amount of information being disclosed. In this event, it is conceivable that institutional investors, and the security analysts who service them, will be even less interested in smaller companies because of the reduced information. Under these circumstances, small companies might view reducing reporting obligations as a mixed blessing.

[41] See Report of the Financial Analysts Federation to the Advisory Committee on Corporate Disclosure, at A-53.

[42] Id. at A-52.

[43] Id.

fected by a reduction in the amount of required disclosure? [44]

10. To what extent would a broker's or dealer's obligations pursuant to Rule 15c2-11 be affected by virtue of a reduction in the amount of information required to be filed with the Commission by small businesses?

11. To what extent would a broker's obligation to ascertain that a proposed investment be "suitable" for a customer be affected by virtue of a reduction in the amount of information required to be filed with the Commission by small businesses?

12. To what degree, if any, do the reporting requirements of the Exchange Act, particularly as they arise under Section 15(d), influence the decision to make a registered offering? If the reporting requirements for small companies subject to Section 15(d) were reduced, for example, by limiting their reporting obligation to the filing of their annual report to shareholders, including audited financials, would this facilitate their use of registered offerings?

13. To what extent, if any, should the contents or availability of Forms S-1, S-2, S-7, S-16 and proposed Form S-18 be modified in order to reduce their burden on both primary and secondary offerings of securities of small business issuers?

14. To what extent, if any, should small business offerings, either exempt or registered, be relieved of existing financial statement requirements? In particular, to what extent should such issuers be subject to the requirements of Regulation S-X? To what extent should such small businesses be subject to the requirements of Regulation S-X with regard to Exchange Act reporting obligations? What is the cost difference to a small issuer between preparing financial statements to satisfy generally accepted accounting principles and Regulation S-X?

15. To what extent, if any, should the greater use of unaudited financial statements be permitted under any of the requirements of either the Securities Act or the Exchange Act with regard to small businesses?

16. Under what circumstances, if any, should the disclosures required under the Securities Act and the Exchange Act differ for small businesses?

17. To what extent, if any, should the contents of Forms 10-K, 10-Q, 8-K, the annual report to shareholders required by Rule 14a-3 [17 CFR 240.14a-3] or proxy or information statements required by Regulation 14A [17 CFR 240.14a-1 et seg.] or 14 [CFR 240.14c-1 et seg.] be modified in order to reduce their burden on small issuers consistent with the public interest?

18. To what extent, if any, should quarterly or annual reports to small business shareholders, but not formally filed with the Commission, be permitted to suffice for any existing disclosure requirements under either the Securities Act or the Exchange Act?

19. Should the amount of disclosure required in a registered offering by a small business vary according to the nature of the distribution, i.e., self-underwriting by the issuer, best efforts underwriting or firm commitment underwriting?

20. Inasmush as the financial statement requirements for Forms S-1 and S-2 are the same,[45] are there remaining benefits to small businesses who wish to use Form S-2 which would be lost if it were rescinded?

C. ROLE OF UNDERWRITERS, ACCOUNTANTS AND ATTORNEYS IN A SMALL BUSINESS SECURITIES OFFERING

In recent years there has been substantial discussion concerning those aspects of investor protection afforded by the involvement of underwriters, accountants and attorneys in the securities offering process. The benefits of such involvement must, however, be balanced against, among other things, the cost to the issuer of the services provided by these persons. This expense becomes especially significant for a small business issuer who may pay for such services out of the proceeds of its securities offering. If the offering is for a relatively small amount of money, the portion of the proceeds utilized for third party services may be quire large.

The increased focus on the role of underwriters, attorneys and accountants in recent years has also brought about an increased awareness of the resulting liabilities which necessarily attach to such a participation. Mindful of these liabilities, such parties may be deterred from participating in an offering by a small issuer which, typically, has had little, if any, association with the public securities markets.

In light of the above factors, the Commission invites comments from interested persons on the following matters:

(a) *Role of Underwriters.* 21. To what extent should the level of independent investigation by underwriters of the accuracy of information furnished to investors differ for exempt offerings as opposed to registered offerings? Should such investigation differ for registered offerings on different Commission forms or for exempt offerings relying on various exemptions.

22. Would the reduction of the disclosure requirements imposed on small businesses result in a reduced level of independent investigation by underwriters. If so, what cost savings would this bring about?

23. Should the quality of independent investigation of underwriters differ with the size of either the offering or the issuer?

24. Should the degree of liability to which an underwriter may be subject to a registered offering vary according to the nature of the distribution—i.e., best efforts under-underwriting or firm commitment underwriting?

25. Under what circumstances, if any, would reduced liability for underwriters under the Securities Act be consistent with the protection of persons investing in small businesses and the public interest?

26. As a general matter, is the reluctance of underwriters to participate in offerings of securities by small businesses attributable to the lack of demand for such securities or the lack of an adequate economic incentive for such participation?

27. What factors would encourage underwriters to become involved with small business offerings?

(b) *Role of Accountants.* 28. To what extent does the potential personal liability to which an accountant may be subject under the federal securities laws, as a result of his involvement in an offering of securities by a small business, deter his participation in such offerings? What other factors, if any, deter such participation?

29. To what extent do the precautionary measures taken by an accountant to avoid personal liability and/or his evaluation of the risk of such liability increase the total cost of the accounting services rendered in a small business offering? What other factors increase the relative cost of such services over that incurred by larger issuers.

30. What steps might be taken consistent with the protection of investors, to reduce the liability of accoun-

[44] It should be noted that Rule 408 (17 CFR 230.408) under the Securities Act and Rule 12b-20 (17 CFR 240.12b-20) under the Exchange Act require that in addition to information expressly required in a registration or report there shall be included such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

[45] Form S-2 was designed for use by companies in the development stage and originally provided for special type financial statements that had been specified in old "Rules 5A-02, 5A-03, 5A-04, 5A-05 and 5A-06" of Regulation S-X. Essentially, those rules provided for statements of cash receipts and disbursements, and separate statements of assets, liabilities and capital shares rather than statements of income and a balance sheet. The Financial Accounting Standards Board issued Statement No. 7 in June 1975, which defined generally accepted accounting principles ("GAAP") for development stage enterprises. Shortly thereafter, the Commission issued a release amending Article 5A of Regulation S-X and Forms S-2 and 10-K to require development stage companies to file GAAP financial statements.

tants in this context and thus the costs to small businesses arising therefrom?

(c) Role of Attorneys. 31. To what extent does any potential personal liability to which an attorney may be subject under the Federal securities laws, as a result of his involvement in an offering of securities by small business, deter his participation in such offerings? What other factors, if any, deter such participation?

32. To what extent do the precautionary measures taken by an attorney to avoid any such personal liability and/or his evaluation of the risk of such liability increase the total cost of the legal services rendered in a small business offering? What other factors increase the relative cost of such services over that incurred by larger issuers?

33. What steps might be taken, consistent with the protection of investors, to reduce the liability of attorneys in this context and thus the cost to small businesses arising therefrom?

D. INTRASTATE OFFERINGS AND RULE 147

The view has been expressed that despite the goals of Rule 147, as described in Part I B of the release, it has either unduly narrowed the availability of the intrastate offering exemption or done little to improve the degree of certainty associated with its use.[46] Accordingly, the Commission is interested in the views of interested persons on the following matters:

34. Should any liberalization of Rule 147 be accompanied by the addition of minimum disclosure requirements? If so, what should those requirements include?

35. Should Rule 147 be revised, rescinded, or retained in its present form? If revision is thought to be necessary, how can the Rule be amended consistent with the purpose of section 3(a)(11), viz., local financing of companies primarily intrastate in character?

36. Is the 80 percent test in Rule 147(c)(2) for use of proceeds, location of assets and generation of gross revenues too restrictive for the purpose of determining whether the issuer is doing business within a state or territory?

37. Should Rule 147(d) be amended by limiting compliance therewith to good faith investigation? Alternatively, should the issuer be permitted to make offers, but not sales, to persons which the issuer has reasonable grounds to believe and actually believes are residents within the state or territory of which the issuer is a resident?

38. Should a de minimis exemption be added to Rule 147 which would protect the issuer acting in good faith against loss of the exemption due to offers or sales to nonresidents? Should such an exemption be defined in an absolute dollar amount or as a percentage of the offering?

39. Should Rule 147(e) be amended by limiting compliance to good faith substantial compliance? What else could be done to reduce the risk that resales to nonresidents, through no fault of the issuer, will destroy the availability of the exemption?

40. Should the nine month interstate resale restriction be amended to allow interstate resales in less than nine months?

E. REGULATION A

In recent years, the use of Regulation A for small public offerings of securities has declined significantly.[47] There has been much criticism that the regulation is no longer a viable financing vehicle for small issuers. Some critics have suggested that the present $500,000 ceiling on offerings pursuant to Regulation A is no longer adequate and should be raised.[48] Others have contended that various factors, including the fact that Regulation A does not provide for any post-offer periodic reporting, have resulted in Regulation A's becoming less desirable as a means of raising capital. Thus, many issuers encounter difficulty in raising capital under Regulation A and in finding underwriters for offerings pursuant to Regulation A, even on a "best efforts" basis. Underwriters have pointed out that so long as Regulation A does not permit the use of a "red herring" offering circular, it is unlikely that there will be any significant use of the regulation for "firm commitment" underwritings. In view of the foregoing, the Commission invites comments from interested persons on the following areas of inquiry:

41. What are the key factors influencing a small business in determining whether it should sell its securities pursuant to Regulation A or under a registration statement on Form S-1?

42. Is the present $500,000 ceiling on offerings under Regulation A too small to make it a viable financing vehicle for small issuers?

43. Should the Commission take steps to facilitate increased underwriter participation in offerings pursuant to Regulation A, and, if so, what steps would be appropriate?

44. If the $500,000 ceiling in section 3(b) is raised, how should this authority be exercised?

(a) Should offerings thereunder be subject to requirements which are categorized according to the type and amount of the offering and the characteristics of the issuer?

(b) Should requirements more stringent than those under Regulation A be imposed with respect to offerings of more than $500,000 in the event that rules are adopted implementing the higher ceiling? If so, should such requirements be relaxed for issuers meeting certain earnings, assets and other criteria? What criteria would be appropriate for this purpose?

(c) What should be the appropriate disclosure requirements for offerings categorized under Regulation A.

(d) Should the Regulation A ceiling be raised by an amount corresponding to the increase in the section 3(b) ceiling? If so, should the ceiling for offerings pursuant to Rule 257 of Regulation A (currently $50,000) be raised? What would be an appropriate increase for this purpose?

45. Assuming distinct offerings, should the amount of securities which are sold pursuant to Rule 240 continue to reduce correspondingly the amount of securities which can be sold under Regulation A?

46. Should the Commission impose post-offering periodic reporting requirements similar to those imposed under section 15(d) of the Exchange Act on issuers that conduct public offerings pursuant to Regulation A? In what respects should such requirements differ from those imposed under section 15(d)?

47. Should the use of a "red herring" offering circular be permitted under Regulation A? If so, should its use be restricted to "firm commitment" underwriting situations?

48. Should Rule 257 be amended to permit "seasoned" issuers meeting certain earnings, assets and other tests to conduct offerings up to the full ceiling limitation of Regulation A without the use of an offering circular, pursuant to Rule 257? What tests would be appropriate? Should such persons be required to circulate even a short-form offering sheet to prospective investors? What kinds of information should such an offering sheet contain? Should such an offering sheet be required of all persons making use of Rule 257?

49. In view of the Commission's adoption of Rule 240 under the Securities Act, is there any continuing need for Rule 257? Would there be any such need if Rule 240 were made available

[46] See, Cummings, "The Intrastate Exemption and the Shallow Harbor of Rule 147, 69 Nw. U.L. Rev. 167 (1974); Gardner, "Intrastate Offering Exemption: Rule 147—Progress or Stalemate?" 35 Ohio St. L.J. 340 (1974); Kant, "SEC Rule 147—"A Further Narrowing of the Intrastate Offering Exemption," 30 Bus. Law. 73 (1974); Kessler, "Private Placement Rules 146 and 240—Safe Harbor?" 44 Ford. L. Rev. 37 (1975); and Sowards, "The Twilight of the Intrastate Exemption," 23 Mercer L. Rev. 437 (1974).

[47] In the period from 1972 to 1976 the amount of capital raised under Regulation A fell from $256 million to $47 million. 37 Statistical Bulletin No. 1 (January 1978), at 31.

[48] *See, e.g.*, "Report of the SBA Task Force on Venture and Equity Capital for Small Business" (U.S. Small Business Administration 1977), at 15.

to affiliates or other persons for resales of the issuer's securities?

50. What practical problems have small issers encountered in the use of Regulation A?

51. Assuming the ceiling limitation for Regulation A is not raised, what should be the appropriate disclosure requirements?

F. RULE 240

While Rule 240 has been applauded as representing a welcome balancing of the needs of small business to raise capital with the protection of investors, it has been argued that its purpose would be better served with the addition of certain revisions.[49] The revision most commonly urged is an increase in the offering ceiling from the current $100,000.[50]

Because Rule 240 requires neither provision of information nor any assurance that offerees and buyers will be able to obtain information in some other way, it has also been criticized as creating a void in the federal design which is not adequately filled by state regulation.[51]

In light of the foregoing the Commission invites public comment on the following areas of inquiry:

52. Should the definition of "securities of the issuer" in Rule 240(a)(1) be amended to exclude those securities of affiliates which may not be treated as part of a single plan of financing?

53. In identifying persons whose transactions are excludable from the calculation of the aggregate sales price of securities sold under the Rule, the definition of the term "promoter" in Rule 240(a)(4) does not include, as does Rule 251 for purposes of Regulation A, persons receiving a specified percentage of any class of securities of the issuer. Should the definition be revised to reach that situation?

54. Should the limitation on the aggregate sales price in Rule 240(e) be increased? What would be an appropriate figure?

55. Should Rule 240(e)(2)(i) be amended to exclude from the aggregate sales price purchases of convertible or equity securities by institutional investors?

56. Should Rule 240(e)(2)(i) be amended to exclude from the aggregate sales price purchases by institutional investors for the accounts of others who do not qualify as institutional investors?

57. Is the limitation of 100 beneficial owners in Rule 240(f) too restrictive? If so, what is an appropriate limit?

58. To what extent do the restrictions on the resale of securities acquired under Rule 240 affect the terms of financings, in particular, and tha ability to raise capital, in general, by small businesses under the Rule? Should a separate rule be promulgated governing the resale of securities acquired under Rule 240? If so, what would be the appropriate provisions?

59. Should liberalization of Rule 240 be accompanied by amendments designed to facilitate enforcement of its provisions and prevent abuses thereof such as: (a) Making the rule unavailable for certain types of offerings and to certain types of issuers; (b) requiring the filings of Form 240 in all instances; (c) requiring a report of sales under the rule providing disclosure of, for example, the name and address of all purchasers; (d) provision in the rule for some type of suspension procedures to deal with abuses; (e) adding nature of offeree standards to the rule similar to those in Rule 146?

60. Should minimum disclosure requirements be added to Rule 240? if so, what shoud those requirements include? In this connection would it be more appropriate to raise the offering ceiling in Rule 257 to $100,000, rescinding Rule 240, and requiring that the Rule 257 statement be furnished to purchasers and offerees along with a current balance sheet and income statement?

G. RULE 146

The view is frequently expressed that the exemption from registration provided by Rule 146 is drawn too narrowly to be of appreciable benefit to small businesses seeking to raise capital.[52] It is argued that compliance with the rule is unnecessarily complex and costly and entails an unacceptable level of risk that the exemption may be lost inadvertently. While there is sentiment for abolishing the rule, the consensus appears to favor its revision, particularly in the areas of the nature of the offerees and the information requirement.

In light of the foregoing, the Commission invites comments on the following areas of inquiry:

61. Should Rule 146 be amended or a separate rule promulgated for offerings by small issuers?

62. Are offeree representatives, in an effort to avoid liability, more likely to make an unduly conservative and negative recommendation in a small-business offering than they would in other offerings?

If so, then what, if anything, should be done to alleviate this situation?

63. For offerings by small businesses, should the provisions of Rule 146(d) be directed exclusively to the nature of purchasers?

64. How can the information requirements of Rule 146(e) be revised to add certainty and reduce the cost of nonpublic offerings by small businesses consistent with the protection of investors?

65. For a small-business offering, should any of the requirements of Rule 146 be relaxed as to those offerees who are institutional investors or sophisticated venture capitalists? If so, then how should this special class of offerees be defined and what criteria should be considered in formulating provisions for such offerees?

66. Should special provisions be formulated to facilitate equity offerings to its existing shareholders by small-business issuers?

67. To what extent do the restrictions on the resales of securities acquired under Rule 146 affect the terms of financings, in particular, and the ability to raise capital, in general, by small businesses under the Rule?

68. What other specific revisions of Rule 146 might assist small businesses in raising capital?

H. GENERAL

69. How significant are the federal securities laws in determining whether capital can be efficiently raised?

70. What are the primary factors which influence small businesses in deciding whether they will raise capital in a registered as opposed to an unregistered offering?

71. When a small business seeks to raise capital in the following dollar ranges, how does it select a legal vehicle for the sale of securities in that amount:

$100,000 to $250,000?
$250,000 to $500,000?
$500,000 to $750,000?
over $1,000,000?

How significant is the amount of capital to be raised in determining whether the offering will be registered or conducted pursuant to an exemption from registration?

72. To what extent do the various state securities statutes, commonly known as blue sky laws, affect the Commission's ability to provide a relief to small businesses seeking to raise capital, particularly insofar as existing or any proposed rules exempting the issuer from the registration requirements of the Securities Act are concerned? What steps might be appropriately taken to alleviate this problem?

[49] Carney, "Exemptions from Securities Registration for Small Issuers: Shifting from Full Disclosure—Part III: the Small Offering Exemption and Rule 240," 11 Land and Water L. Rev. 483 (1976).

[50] Kessler, Private Placement Rules 146 and 240—Safe Harbor? 44 Ford. L. Rev. 37 (1975) at 78.

[51] Note, Federal Deregulation of Small Issuers of Securities: Rule 240, 27 Maine L. Rev. 347 (1975).

[52] See, e.g., Carney, Exemptions from Securities Registration For Small Issuers: Shifting from Full Disclosure—Part I: The Private Offering Exemption, Rule 146 and an End to Access for Small Issuers, 10 Land and Water L. Rev. 508, 514 (1975).

73. Recognizing that companies with 500 shareholders and $1 million in assets are subject to the requirements of the Exchange Act by virtue of section 12(g), is the asset test too low to assure that the compliance burden placed on companies meeting the shareholder test is commensurate with the protection of investors and the public interest?

74. What provisions of the Commission's rules and regulations, other than Rule 144, have a significant effect on the creation of a secondary trading market for small business offerings?

75. To what extent does Rule 144 influence the choice of legal vehicles under which securities of a small business are sold?

III. Procedures

A. Written Submissions

Interested persons are invited to submit their views on the foregoing questions in writing at any time. Written submissions should be made in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 and refer to File No. S7-734.

B. Oral Presentations

Any interested person desiring to make an oral presentation of his/her views at the hearings is requested to write or call Paul A. Belvin, 202-755-1750, or John A. Granda, 202-376-8090, Office of Disclosure Policy and Proceedings, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. It has been tentatively determined to limit oral statements to 20 minutes each plus such further time as may be necessary to answer questions. Depending upon the number of persons requesting to be heard, appearances may be more limited. Additional time may be granted at the discretion of the hearing officer upon written request timely submitted with copies of the witness's prepared statement. All witnesses shall be required to submit 25 copies of their prepared statements to the location at which they will testify, either Washington, D.C., or the appropriate regional office specified earlier in this release, 5 business days in advance of their scheduled date of appearance.

It is requested that persons making oral statements should be prepared to respond to specific inquiries from the Commission staff. Any person may submit in writing to the hearing officer questions that he wishes to have directed to a particular witness or group of witnesses, but the hearing officer will determine in his sole discretion whether, or to what extent, to direct those questions to any witness.

The Commission has designated Richard H. Rowe, Mary E. T. Beach, Alfred E. Osborne, Jr., Ruth D. Appleton, Gerald E. Boltz, Robert H. Davenport, Jule B. Greene, William D. Goldsberry, and Michael J. Stewart as hearing officers of the Commission. The Commission will issue orders designating additional hearing officers as necessary. The hearings will be conducted for the Commission by the Division of Corporation Finance.

(Secs. 4(1), 4(2), 7, 10, 19, 21, 48 Stat. 77, 78, 81, 85, 86; secs. 13(a), 21(a), 22, 23(a), 48 Stat. 894, 899, 901; secs. 203, 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; Sec. 8, 49 Stat. 1379; sec. 8, 68 Stat. 685; secs. 4, 10, 12, 78 Stat. 569, 580; sec. 18, 89 Stat. 155; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77d(1), 77d(2), 77g, 77j, 77s, 77u, 78m(a), 78u(a), 78v, 78w(a))

Statutory Authority

This public rulemaking proceeding has been ordered by the Commission pursuant to sections 4(1) and (2), 7, 10, 19(a) and (b) and 21(a) of the Securities Act, sections 13(a), 21(a), 22 and 23(a) of the Exchange Act and rule 4(b) of the Commission's Rules of Practice.

By the Commission.

George A. Fitzsimmons,
Secretary.

March 6, 1978.

Order Directing Public Proceeding Pursuant to Sections 4(1) and (2), 7, 10(a), (b), (c) and (d), 19(a) and (b) and 21(a) of the Securities Act of 1933, Sections 13(a), 21(a), 22, and 23(a) of the Securities Exchange Act of 1934 and Rule 4(b) of the Rules of Practice of the Commission

In the matter of examination of the effects of rules and regulations on the ability of small businesses to raise capital and the impact on small businesses of disclosure requirements under the Securities Acts.

I

It appears to the Commission that it is appropriate at this time to study on a broad basis issues relating to the effects of the Commissions rules and regulations on the ability of small business to raise capital and the effects on small business of the disclosure requirements under the Securities Acts. Recently, there has been considerable public attention given to the problems concerning the formation and growth of small businesses. In addition, "The Report of the Advisory Committee on Corporate Disclosure," submitted to the Commission on November 3, 1977, recommended that the Commission initiate a public inquiry to determine whether, and if so, to what extent, the Commission's continuous disclosure requirements should be revised to lessen their impact on small business.

II

Accordingly, it is ordered, pursuant to sections 3(a)(11), 3(b), 4(1) and (2), 7, 10(a), (b), (c) and (d), 19(a) and (b), and 21(a) of the Securities Act of 1933, sections 13(a), 21(a), 22 and 23(a) of the Securities Exchange Act of 1934, as amended, and Rule 4(b) of the Commission's Rules of Practice, that a public investigatory proceeding be held to give the Commission the benefit of views of interested members of the public on the above mentioned topics. At the conclusion of such proceeding, the Commission will determine whether it is necessary or appropriate in the public interest or for the protection of investors to propose amendments to its rules and regulations or to recommend legislation to Congress.

III

In general, the subjects to be considered at such proceeding shall include the following:

1. The definition of a small business issuer.
2. The possible revisions of disclosure obligations for small issuers.
3. The role of underwriters, accountants, attorneys, and other professionals in a small business securities offering.
4. Private placements and Rule 146.
5. Intrastate offerings and Rule 147.
6. Regulation A.
7. Rule 240.

A more comprehensive and detailed statement of matters to be considered at the hearing is contained in the release accompanying this order and is hereby incorporated by reference.

It has been tentatively determined to limit oral statements to 20 minutes each plus such further time as may be necessary to answer questions. Depending upon the number of persons requesting to be heard, appearances may be more limited. Additional time may be granted in the discretion of the hearing officer upon written request timely submitted with copies of the witness's prepared statement. All witnesses shall submit 25 copies of their prepared statements five business days in advance of their scheduled date of appearance.

Persons making oral statements should be prepared to respond to specific inquiries from the Commission staff. Any person may, in writing, submit to the hearing officer questions that he wishes to have directed to a particular witness or groups of witnesses; but the hearing officer will determine in his sole discretion whether or to what extent to direct those questions to any witnesses.

The Commission hereby designates Richard H. Rowe, Mary E. T. Beach, Alfred E. Osborne, Jr., Ruth D. Appleton, Gerald E. Boltz, Robert H. Davenport, Jule B. Greene, William D. Goldsberry, and Michael J. Stewart as hearing officers of the Commission. The Commission will issue additional orders designating additional hearing officers as necessary.

By the Commission.

George A. Fitzsimmons,
Secretary.

March 6, 1978.

[FR Doc. 78-6637 Filed 3-14-78; 8:45 am]

federal register

WEDNESDAY, MARCH 15, 1978
PART V

SECURITIES AND EXCHANGE COMMISSION

■

SIMPLIFIED REGISTRATION AND REPORTING REQUIREMENTS FOR SMALL ISSUERS

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 231, 239 and 249]

[Release No. 33-5915; 34-14530; File No. S7-734]

SIMPLIFIED REGISTRATION AND REPORTING REQUIREMENTS FOR SMALL ISSUERS

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to forms, schedules and guides.

SUMMARY: The Commission proposes as an experiment a simplified form, available to domestic or Canadian corporate issuers, provided such issuers are not subject to the Commission's continuous reporting requirements, for the registration of securities not exceeding an aggregate cash offering price of $3 million. The proposed form calls for narrative disclosure somewhat less extensive than that presently required by Form S-1 and audited financial statements substantially similar to those required by Regulation A. In addition, the Commission proposes that issuers utilizing the form be allowed to include audited financial statements substantially similar to those required by Regulation A in their initial annual report filed with the Commission.

DATE: Comments must be received on or before June 1, 1978.

ADDRESS: Comments should refer to File No. S7-734 and should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT:

Paul A. Belvin 202-755-1750 or John A. Granda 202-376-8090, Office of Disclosure Policy and Proceedings, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission announces the proposal of Form S-18 and an amendment to Guide 23, Current Financial Statements and Related Data, of the Guides For Preparation and Filing of Registration Statements, under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq. as amended by Pub. L. No. 94—29 (June 4, 1975)] and the proposal of an amendment to Instructions As To Financial Statements of Form 10-K [17 CFR 249.310] under the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)]. Form 10-K is used for annual reports to the Commission pursuant to section 13 or 15(d) of the Exchange Act where no other form is prescribed.

If adopted these proposals generally would allow issuers utilizing Form S-18 to file, as part of the registration statement, audited financial statements for two fiscal years prepared in accordance with generally accepted accounting principles and practices ("GAAP"). In addition, the proposed amendment to Form 10-K also would allow certain issuers who have had a public offering registered on Form S-18 to furnish audited financial statements substantially in accordance with those permitted by Regulation A [17 CFR 230.251 to 230.263], in lieu of those financial statements otherwise required, in their Form 10-K for the fiscal year in which the registration statement on Form S-18 was declared effective.

The simplified registration and reporting proposals contained herein are proposed in the nature of an experiment. If Form S-18 is adopted, the Commission will monitor closely its use for one year, or more, to determine whether the form has functioned as an effective means for small issuers to raise limited amounts of capital through a registered public offering consistent with the protection of investors. After such period the Commission will decide whether the form should be retained and, if so, whether the conditions for its availability should be revised.

The Commission also published today in a companion release [1] a list of issues which are to be considered at its upcoming hearings regarding the effects of Commission rules and regulations on the ability of small business to raise capital and the impact of disclosure requirements under the Securities Acts on small business. Although proposed separately herein, it is intended that Form S-18 and the corresponding amendments will serve as a topic for discussion at the hearings as a means by which the registration process may be simplified for small businesses.

BACKGROUND AND DISCUSSION

Section 3(b) of the Securities Act provides that the Commission shall have the authority to adopt rules and regulations to exempt securities from the registration requirements of that act, if it finds that registration is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering. This authority currently is subject to a ceiling which is $500,000 for each offering.

Pursuant to section 3(b), the Commission adopted Regulation A in December 1940. As initially adopted, the ceiling under section 3(b) and the regulation was $100,000. In May 1945, the Commission amended Regulation A, pursuant to statutory authorization, to increase the maximum amount of the offering to $300,000. The ceiling price of the exemption was again raised, pursuant to amended statutory authorization, in January 1971 to $500,000.

The Regulation A exemption reflects the intent of Congress, as represented by section 3(b), by exempting from registration those small issues of securities which are offered to the public in such a manner as to meet the statutory criteria specified above. One of the Commission's primary purposes in adopting Regulation A was to provide, consistent with the protection of investors, a simple and less expensive procedure by which small businesses could raise limited amounts of capital in order to become a productive enterprise or to expand an existing business. As currently written, Regulation A does not require audited financials for most issuers [2] and fees for services for independent accountants may, therefore, be limited. Also, attorneys fees are normally lower for the preparation of a Regulation A filing than a registration statement under the Securities Act. In addition, many smaller, local issuers have found that since a Regulation A offering is reviewed by the Commission's regional offices, the reviewing process is more convenient than if the filing were made in Washington, D.C.

Despite the apparent benefits of Regulation A as a method of raising capital, it is evident that the number of issuers utilizing the exemption has declined drastically from 1,087 in 1972, to 817 in 1973, 483 in 1974, 265 in 1975, 240 in 1976, and 213 in 1977. Several factors have been suggested as the reasons for this decline. First, the primary disadvantage to the use of the Regulation appears to be the inability of business to raise sufficient amounts of capital. In view of the inflationary trend that has existed for the past several years and its effect on the prices of capital equipment and structures, the $500,000 amount available through a Regulation A offering may

[1] Securities Act Release No. 5914 (March 6, 1978)(43 FR10876).

[2] Regulation A does not require certified financial statements unless the issuer is otherwise required to file or has filed with the Commission certified financial statements for the applicable periods. However, various state laws may require audited financial statements in order to qualify an issue for sale in such states.

be inadequate.[3] In addition, because of the increased costs of distribution in connection with the offering, the Regulation A issuer likely receives a lower percentage of the net proceeds as compared to earlier periods.[4]

It has also been the Commission's experience that underwriters are being used in an increasingly smaller percentage of Regulation A offerings.[5] To the extent underwriters are utilized, the compensation required for their services necessarily increases the costs of the offering and decreases the net proceeds remaining for the issuer. Since issuers are unable to recoup such costs by increasing the size of the offering above the $500,000 statutory ceiling, and since underwriters may be necessary to complete certain Regulation A offerings successfully, it would appear that these factors also may represent a major reason for the decline in the use of Regulation A.

Although Regulation A remains a viable mechanism for many companies or for the offering of securities by selling share-holders, it appears that it currently may not be helpful to those smaller businesses it was originally designed to assist. Those small nonreporting companies which seek to raise in excess of $500,000 through the public offering of securities must then comply with the requirements of the Securities Act through registration on Form S-1, the Commission's most extensive registration form.[6] In addition, a registrant on Form S-1 would, at least for the remainder of the fiscal year in which the registration statement was made effective, incur the full range of disclosure requirements imposed under the Exchange Act.

In order to provide an alternate means by which small issuers may more easily enter the capital markets, the Commission is proposing the adoption of registration Form S-18 and a corresponding amendment to Form 10-K. Under these proposals, a corporation, other than an investment company or a mining company for which Form S-3 (17 CFR 239.13) is available, not required to file reports with the Commission, might make a registered public offering on form S-18 of up to $3 million utilizing two year audited Regulation A type financial statements in lieu of those which would otherwise be required by Form S-1. Since section 15(d) under the Exchange Act otherwise would require an annual report containing audited financial statements for two fiscal years as required by Form 10-K as of the end of the fiscal year during which the Securities Act registration statement became effective, the proposals also would provide limited relief from such requirements for that initial annual report. Thereafter, if the issuer remains subject to section 15(d), or becomes subject to section 12, it would be required to file periodic reports under the Exchange Act subject to the general requirements applicable to all reporting companies.

The rationale behind this approach is that an issuer not subject to the reporting requirements of the Commission at the time the registration statement is filed under the Securities Act, may, consistent with the protection of investors, raise a limited amount of capital without immediately incurring the full range of disclosure and reporting requirements imposed upon other issuers. These procedures are intended to facilitate the process by which an issuer, over a period of time, might raise a limited amount of capital publicly, come into full compliance with the periodic reporting requirements now imposed upon other issuers, and thereby gain broader access to the capital markets without being impeded by the immediate burdens confronting many small, non-reporting issuers.

It should be noted, however, that issuers completing an offering on Form S-18 for the maximum $3 million likely would become subject to the requirements of section 12(g) under the Exchange Act. Section 12(g) requires an issuer with total assets exceeding $1 million and with a class of equity securities held of record by 500 or more persons to register that class with the Commission within 120 days after the close of its fiscal year in which these criteria were met. Nothing in the proposals set forth herein would relieve such issuers of the existing reporting requirements arising under the registration and reporting provisions of sections 12(g) and 13.

Based on its finding that the burden of periodic reporting under the Exchange Act is relatively greater for small companies than large companies, the Advisory Committee on Corporate Disclosure recommended that the Commission hold public hearings to determine: (1) Whether and to what extent, the Commission should attempt to define a category of small companies for purposes of requiring less burdensome reporting; (2) how such classification, if desirable and possible, should be defined; and (3) what reductions of reporting requirements are possible, consistent with the purposes of the Federal securities laws. The Commission's public hearings, scheduled to begin April 11, 1978, will include consideration of these issues.

PLACE OF FILING REGISTRATION STATEMENTS ON FORM S-18

One of the principal purposes of Form S-18 is to provide a means by which issuers may offer securities to the public in a offering somewhat equivalent to one made under Regulation A. Since materials filed under Regulation A are processed and reviewed in the Commission's regional offices, the Commission is considering the feasibility and desirability of giving registrants the option of filing registration statements on Form S-18 either at the Commission's principal office in Washington, D.C., or at the regional office for the region in which the issuer's principal business operations are conducted or proposed to be conducted in the United States.

If this procedure were adopted, the Commission initially would specify only certain regional offices at which such filings might be made in order that the filing and acceleration procedure might be tested, and to determine the nature and extent of any staff training which may be appropriate.

It is contemplated that this prodecure, if adopted, would involve an amendment to Rule 455 (17 CFR 230.455) under the Securities Act indicating that the regional offices at which the filing might be made would be the same one in which the registrant would make a filing under Regulation A, pursuant to Rule 255 (17 CFR 230.255).

In view of the above, the Commission specifically invites comments on whether this procedure might be beneficial to issuers and on the extent to which commentators presently believe they would elect to file with the regional office rather than with the Washington, D.C. office.

SYNOPSIS OF PROPOSALS

Following is a brief synopsis of the proposed amendments to assist in a better understanding of their purpose and effect. Attention is directed, however, to the attached text.

PROPOSED FORM S-18

A. Availability

In view of the experimental nature of proposed Form S-18, the Commission has determined to restrict the ini-

[3] The Commission is not aware of any empirical data which might suggest the accuracy of this supposition; however, for each of the past three fiscal years, approximately half of all notifications filed under Regulation A have involved offerings of $400,000 to $500,000. See Annual Report of the SEC for June 30, 1975, at 203.

[4] Rule 240 [17 CFR 230.240] also may have been a factor in the declining use of the Regulation A exemption. Rule 240 provides an exemption from section 5 of the Securities Act for certain sales of securities up to $100,000 by closely held issuers.

[5] See Annual Report of the SEC for June 30, 1975, at 203.

[6] Registration Form S-2 (17 CFR 239.12) would also be available, however, its availability is limited to companies which have not had any substantial gross returns from the sale of products or services, or any substantial net income from any source, for any fiscal year ended during the past five years.

tial availability of the form. Accordingly, Form S-18 is available to any domestic or Canadian corporation,[7] provided such corporation is not subject to the reporting requirements of the Exchange Act,[8] other than a company offering limited partnership interests in an oil and gas program or fractional undivided interests in oil and gas properties,[9] an investment company, or a mining company for which Form S-3 is available, for the registration of securities which are to be sold to the public for cash not to exceed an aggregate cash price of $3 million. The Commission believes at this time that an offering limit of $3 million will meet the needs of a substantial majority of those companies who find the dollar limit on Regulation A insufficient. However, the Commission specifically requests comment as to the appropriate offering limit for purposes of form S-18.

Form S-18, as proposed, is available for the sale of securities by the issuer only, and could not be used for secondary offerings by insiders and affiliates. The Commission specifically requests comment as to whether, in view of the primary purpose of Form S-18 to facilitate the formation of capital by small businesses, such secondary offerings should be permitted on the form. Based on the comment received, the form may be made available for certain secondary offerings.

In order to prevent a circumvention of the $3 million ceiling for an offering on Form S-18, the Rule as to the Use of the Form also provides that the aggregate offering price of certain other securities of the issuer shall be included in computing the ceiling. These include any securities of the issuer which were sold within one year prior to the commencement of the proposed Form S-18 offering when such sales were: (1) In violation of section 5(a) thereof; or (2) pursuant to a registration statement previously filed on Form S-18. In a manner similar to Rule 254 (17 CFR 230.254) under Regulation A, the proposed Rule as to Use of Form S-18 also defines the term "securities of the issuer" as including securities issued by any predecessor of the issuer or by any affiliate of the issuer which was organized or became such an affiliate within the past two years.

In certain instances, an issuer might not desire to utilize Form S-18 to raise the maximum $3 million allowed by the form. In order to make available the benefits of the form to those issuers, the Rule as to Use of Form S-18 contains a provision that registrants who have had a prior offering on Form S-18 may use the form during the same fiscal year in which the prior offering was made to raise the remaining balance of the offering limit.[10] The issuer, of course, must meet the remaining criteria of the Rule as to Use at the time of the subsequent registration.

Any issuer which was not subject to the provisions of section 15(d) on the first day of the fiscal year succeeding a fiscal year in which it had an offering on Form S-18 may also use Form S-18 subject to the offering ceiling limitations in paragraph A(b) of the Rule as to Use.

B. Narrative Disclosure

The narrative disclosure called for by Form S-18 contains fewer disclosure items than are required by Form S-1. The items that are included in the form, however, are generally consistent in content with their corresponding items in Form S-1.[11] The Commission believes that the disclosure items included in Form S-18 will provide adequate firm-oriented information to investors. Comment is requested as to whether any additional information should be included or whether any existing items should be deleted or modified.[12]

C. Financial Statements

Form S-18 requires audited financial statement disclosure substantially in accordance with that required by Regulation A. Specifically, Form S-18 requires: (1) a consolidated balance sheet as of a date within 90 days prior to the date the registration statement is declared effective; and (2) consolidated statements of income, source and application of funds, and other stockholders' equity for the 2 fiscal years prior to the date of filing prepared in accordance with generally accepted accounting principles and practices.[13]

A registrant, therefore, may include substantially less financial statement disclosure in Form S-18 than would otherwise be required in Form S-1. The Commission believes that the elimination of expenses through the reduction of the quantity of financial statements and schedules disclosure will result in costs savings to registrants and, at the same time, provide adequate information to investors with respect to offerings of $3 million or less. The Commission specifically requests comments on whether this proposed financial disclosure is adequate, and whether it will facilitate the raising of capital in a manner consistent with the protection of investors.

PROPOSED AMENDMENT TO GUIDE 23

Guide 23 of the Guides For the Preparation and Filing of Registration Statements Under the Securities Act of 1933 represents policies and practices developed by the Division of Corporation Finance with respect to the need for updating financial statements and related data in registration statements. The proposed amendment to Guide 23 provides that in the event that there is a delay between the date of filing the registration statement on Form S-18 and its effectiveness registrants with an established record of earnings and in a sound financial condition may be required to furnish later sales and net income information on a quarterly basis compared with a similar period of the preceding year, if the amendment when effective would otherwise include data over four and one-half months old. This information would follow the Statement of Income in the prospectus.

Registrants with no established record of earnings and registrants currently showing losses or a weak financial condition would be required to furnish the above data and also may be required to bring the financial statements up to the latest practicable date not more than 90 days prior to filing the amendment upon which it is expected the filing will become effective. In addition, if delay carries the effective date beyond the close of the fiscal year and by applying due dili-

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[7] The Rule as to Use of Form S-18 limits the availability of the form to corporations; consequently, offerings made by partnerships or by unincorporated business associations would be denied the use of proposed Form S-18.

[8] Insurance companies which are exempt from the provisions of Section 12(g) pursuant to Section 12(g)(2)(G) would not be eligible to use Form S-18 since they remain technically subject to the Exchange Act.

[9] In view of certain unique disclosure problems which arise in connection with such oil and gas offerings, the Commission has determined to exclude these companies from utilizing Form S-18 at this time.

[10] For example, assuming the issuer has had no other sales of securities in the preceding 12 months, as computed in paragraph A(b) of the Rule as to Use, a calendar year issuer who had an offering constituting 50 percent of the offering ceiling in March could use Form S-18 to raise the remaining 50 percent of the ceiling up until December 31 of the same year.

[11] In view of the small size of the registrants expected to utilize Form S-18, Item 9 of the form calls for disclosure with respect to each director and the 3 highest paid officers whose aggregate remuneration exceeds $20,000 rather than the $40,000 floor in Form S-1.

[12] The Commission has proposed amendments to certain registration and reporting forms relating to the disclosure of management background information and pending legal proceedings (Securities Act Release No. 5826). These proposals are reflected in proposed Form S-18, however, it is anticipated that the form would be revised if such proposals are not adopted, or adopted in revised fashion.

[13] Regulation A financial statements are required to be prepared in accordance with GAAP.

gence the registrant and its independent accountant can have an audit completed prior to the planned effective date, audited statements for that fiscal year should be substituted for interim statements whether or not the interim financial statements have been audited.

The proposed amendment also provides that when numerous or involved financial transactions have been effected since the date of the financial statements furnished or it is recognized that unusual conditions affect the determination of earnings, the Commission has indicated that later interim financial statements may be requested on an audited basis as a condition to acceleration under section 8(a) of the Act.

PROPOSED AMENDMENT TO FORM 10-K

In order to further reduce the expenses resulting from registration under the Securities Act, the Commission proposes to allow registrants filing on Form S-18 and thereby becoming subject to the reporting provisions of section 15(d) of the Exchange Act to include audited Regulation A type financial statements for two fiscal years in their initial annual report to the Commission on Form 10-K. The proposed amendment to Instructions as to Financial Statements of Form 10-K provides that the issuer may include, in lieu of those financial statements otherwise required, the following information: (1) a consolidated balance sheet as of the end of the last fiscal year and (2) statements of income, source and application of funds and other stockholders' equity for each of the last two fiscal years prepared in accordance with GAAP. Registrants would then be able to include in their initial annual report on Form 10-K financial statements prepared on the same basis as those provided in their registration on Form S-18.

OPERATION OF PROPOSALS

The Commission is mindful of the cost to registrants and others of its proposals and recognizes its responsibilities to weigh with care the costs and benefits which result from its rules. Accordingly, the Commission specifically invites comments on the costs to registrants and others of the adoption of the proposals published herein.

Pursuant to section 23(a)(2) of the Exchange Act, the Commission has considered the impact that these proposals would have on competition and is not aware, at this time, of any burden that such rules, if adopted, would impose on competition not necessary or appropriate in furtherance of the purposes of the Act. However, the Commission specifically invites comments as to the competitive impact of these proposals, if adopted.

PROPOSED AMENDMENTS

It is proposed to amend 17 CFR Chapter II as follows:

I. By adopting § 239.28 to read as follows:

§ 239.28 Form S-18, optional form for the registration of securities to be sold to the public by the issuer for an aggregate cash price not to exceed $3,000,000.

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-18—REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

(Exact name of registrant as specified in charter)

(Address of principal executive offices)

(Name and address of agent for services)

(state or other jurisdiction of incorporation)	(Industrial classification code number)	(IRS employer I.D. number)

Approximate date of commencement of proposed sale to the public

Calculation of registration fee

Title of shares being registered	Amount being registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee
Rule 406	Rule 405(b)	Rule 457		Rule 457.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said section 8(a), may determine.[1]

Facing Sheet.

General Instructions.

A. Rule as to Use of Form S-18.
B. Application of General Rules and Regulations.
C. Documents Comprising Registration Statement.
D. Form and Content of Prospectus.
E. Preparation of Part II.

PART I. INFORMATION REQUIRED IN PROSPECTUS.

Item

1. Distribution Spread.
2. Plan of Distribution.
3. Use of Proceeds to Registrant.
4. Organization Within 5 Years.
5. Description of Business.
6. Description of Property.
7. Pending Legal Proceedings.
8. Directors and Officers.
9. Remuneration of Directors and Officers.
10. Options to Purchase Securities.
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12. Interest of Management and Others in Certain Transactions.
13. Securities Being Registered.
14. Financial Statements.

PART II. INFORMATION NOT REQUIRED IN PROSPECTUS

15. Marketing Arrangements.
16. Other Expenses of Registration and Distribution.
17. Relationship with Registrant of Experts Named in Registration Statement.
18. Recent Sales of Unregistered Securities.
19. Financial Statements and Exhibits Filed.

Undertakings.

Signatures.

Instructions as to Exhibits.

GENERAL INSTRUCTION

A. Rule as to Use of Form S-18

(a) This form is to be used for the registration of securities of any corporation not to exceed an aggregate cash price of $3 million which are to be sold by the issuer to the public for cash, provided such corporation:

(1) Is incorporated under the laws of the United States or Canada or any State or Province thereof, and has or proposes to have its principal business operations in the United States, if a domestic corporation, or Canada or the United States if a Canadian corporation;

(2) Is not subject to the reporting provisions of the Securities Exchange Act of 1934 pursuant to section 12 or 15(d) of that Act; and

(3) Is not a company offering limited partnership interests in an oil or gas program or fractional undivided interests in oil or gas properties; and investment company; or a mining company entitled to use Form S-3.

(b) For purposes of computing the $3 million ceiling specified above, there shall be included in the aggregate price of the securities registered herein, the aggregate offering price of all securities of the issuer sold within one year prior to the commencement of the proposed offering: (i) in violation of section 5(a) of the Act; or (ii) pursuant to a registration statement filed on Form S-18. For purposes of this rule, the term "securities of the issuer" shall include securities issued by any predecessor of the issuer or by any affiliate of the issuer which was organized or became such an affiliate within the past two years.

(c) Notwithstanding the provisions of paragraph (a)(1), a registrant which has had a prior offering on Form S-18 may, during

[1] Inclusion of this paragraph is optional. See Rule 473.

the remainder of the fiscal year in which the prior registration was made effective, use the form to register additional securities until the offering limit as computed in paragraph (b) has been met.

B. Application of General Rules and Regulations

(a) Attention is directed to the General Rules and Regulations under the Act, particularly those comprising Regulation C. That regulation contains general requirements regarding the preparation and filing of the registration statement. The definitions contained in Rule 405 should be especially noted.

(b) Specific attention is directed to Form SR which is required to be filed by first-time registrants under the Securities Act showing sales of registered securities and the use of proceeds therefrom.

(c) Attention is directed to Securities Act Release No. 4968 (April 24, 1969) regarding the Commission's policy with respect to the prior delivery of preliminary prospectuses by registrants not subject to the reporting requirements of the Exchange Act.

C. Documents Comprising Registration Statement

The registration statement shall consist of the facing sheet of the form, the prospectus containing the information specified in Part I, the information called for by Part II, the undertaking to file reports, the required signatures, consents of experts, and exhibits, and any other information or doucments which are required or which the registrant may file as part of the registration statement.

D. Form and Content of Prospectus

(a) The prospectus shall contain the information called for by all of the items of Part I of the form, except that no reference need be made to inapplicable items, and negative answers to any item may be omitted. Unless clearly indicated otherwise, information set forth in any part of the prospectus need not be repeated elsewhere in the prospectus. Where it is deemed necessary or desirable to call attention to information contained elsewhere in the prospectus, this may be done by an appropriate cross reference.

(b) Where appropriate to a clear understanding by investors of the speculative or promotional nature of the enterprise, an introductory statement shall be made in the prospectus summarizing the factors which make the offering a speculation and setting forth such matters as a comparison, in percentages, of the securities being offered to the public for cash and those issued or to be issued to promoters, directors, officers, controlling persons and underwriters for cash, property and services.

(c) Attention is directed to the Division of Corporation Finance's Guides for Preparation and Filing of Registration Statements Under the Securities Act of 1933. The Guides represent Division practices with respect to the disclosures to be provided in registration statements.

E. Preparation of Part II

Part II of the registration statement shall contain the numbers and captions of the items in Part II of the form, but the text of the items may be omitted provided the answers are so prepared as to indicate to the reader the coverage of the items without the necessity of referring to the text of the items or the instructions thereto. If the information required by any item of Part II is completely disclosed in the prospectus, reference may be made to the specific page or caption of the prospectus which contains such information.

PART I. INFORMATION REQUIRED IN PROSPECTUS

Item 1. Distribution Spread.

The information called for by the following table shall be given, in substantially the tabular form indicated, on the outside front cover page of the prospectus as to all securities being registered (estimate, if necessary).

	Price to public	Underwriting discounts and commissions	Proceeds to registrant or other person
Per unit			
Total			

Instructions. 1. The term "commissions" has the meaning given in paragraphs (17) of Schedule A of the Act. Only commissions paid by the registrant in cash are to be included in the table. Commissions paid by other persons, and other considerations to the underwriters, shall be set forth following the table with a reference thereto in the second column of the table. Any finder's fees or similar payments shall be appropriately disclosed.

2. If it is impracticable to state the price to the public, the method by which it is to be determined shall be explained. In addition, if the securities are to be offered at the market, or if the offering price is to be determined by a formula related to market prices, indicate the market involved and the market price as of the latest practicable date.

Item 2. Plan of Distribution.

(a) If the securities being registered are to be offered through underwriters, give the names of the principal underwriters, and state the respective amounts underwritten. Identify each such underwriter having a material relationship to the registrant and state the nature of the relationship. State briefly The nature of the underwriters' obligation to take the securities.

Instruction. All that is requires as to the nature of the underwriters' obligation is whether the underwriters are or will be committed to take and to pay for all of the securities if any are taken, or whether it is merely an agency or "best efforts" arrangement under which the underwriters are required to take and pay for only such securities as they may sell to the public. Conditions precedent to the underwriters' taking the securities, including "market outs", need not be described except in the case of an agency or "best efforts" arrangement.

(b) State briefly the discounts and commissions to be allowed or paid to dealers, including all cash, securities, contracts or other consideration to be received by any dealer in connection with the sale of the securities.

Instruction. If any dealers are to act in the capacity of subunderwriters and are to be allowed or paid any additional discounts or commissions for acting in such capacity, a general statement to that effect will suffice without giving the additional amounts to be so paid.

(c) Outline briefly the plan of distribution of any securities being registered which are to be offered otherwise than through underwriters.

(d) Identify any principal underwriter that intends to confirm sales to any accounts over which it exercises discretionary authority and include an estimate of the amount of securities to intended to be confirmed.

Instruction. The response to this item shall be contained in a pre-effective amendment which will be circulated if the information is not available when the registration statement is filed.

Item 3. Use of Proceeds to Registrant

State the principal purposes for which the net proceeds to the registrant from the securities to be offered are intended to be used, and the approximate amount intended to be used for each such purpose.

Instructions. 1. Details of proposed expenditures are not to be given; for example, there need be furnished only a brief outline of any program of construction or addition of equipment. If any substantial portion of the proceeds has not been allocated for particular purposes, a statement to that effect shall be made together with a statement of the amount of proceeds not so allocated.

2. Include a statement as to the use of the actual proceeds if they are not sufficient to accomplish the purposes set forth and the order of priority in which they will be applied. However, such statement need not be made if the underwriting arrangements are such that, if any securities are sold to the public, it can be reasonably expected that the actual proceeds of the issue will not be substantially less than the estimated aggregate proceeds to the registrant as shown under Item 1.

3. If any material amounts of other funds are to be used in conjunction with the proceeds, state the amounts and sources of such other funds. If any material part of the proceeds is to be used to discharge a loan, the item is to be answered as to the use of the proceeds of the loan if the loan was made within one year; otherwise, it will suffice to state that the proceeds are to be used to discharge the indebtedness created by the loan.

4. If any material amount of the proceeds is to be used to acquire assets, otherwise than in the ordinary course of business, briefly describe the assets and give the names of the persons from whom they are to be acquired. State the cost of the assets to the registrant and the principle followed in determining such cost.

Item 4. Organization Within 5 Years

If the registrant was organized within the past 5 years, furnish the following instructions:

(a) State the names of the promoters, the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter directly or indirectly from the registrant, and the nature and amount of any assets, services or other consideration therefor received or to be received by the registrant. The term "promoter" is defined in Rule 405 under the Act.

(b) As to any assets acquired or to be acquired by the registrant from a promoter, state the amount at which acquired or to be acquired and the principle followed or to be followed in determining the amount. Identify the persons making the determination and state their relationship, if any, with the registrant or any promoter. If the assets

were acquired by the promoter within two years prior to their transfer to the registrant, state the cost thereof to the promoter.

(c) List all parents of the registrant showing the basis of control and as to each parent, the percentage of voting securities owned or other basis of control by its immediate parent, if any.

Instruction. Include the registrant and show the percentage of its voting securities owned or other basis of control by its immediate parent. In case any parent is a resident of, or a corporation or other organization formed under the laws of, any foreign country, give the name of such country for each such foreign parent, and, if it is a corporation or other organization, state briefly the nature of the organization.

Item 5. Description of Business

(a) Describe the business done and intended to be done by the registrant and its subsidiaries and the general development of such business during the past five years, or such shorter period as the registrant may have been engaged in business. The description shall include information as to matters such as the following:

1. Competitive conditions in the industry or industries involved and the competitive position of the registrant, if known or reasonably available to the registrant. If several products or services are involved, separate consideration shall be given to the principal products or services or classes of products or services.

2. If a material part of the business is dependent upon a single customer or a few customers, the loss of any one or more of whom would have a materially adverse effect on the business of the registrant, the name of the customer or customers, their relationship, if any, to the registrant and material facts regarding their importance to the business of the registrant.

3. The principal products produced and services rendered by the registrant, the principal markets for, and methods of distribution of, such products and services, including any significant changes in the kinds of products produced or services rendered, or in the markets or methods of distribution, during the past three fiscal years.

4. To the extent that information concerning backlog is material to an understanding of the business of the registrant, the dollar amount of backlog orders believed to be firm, as of a recent date and as of a comparable date in the preceding fiscal year, together with an indication of the portion thereof not reasonably expected to be filled within the current fiscal year, and seasonal or other material aspects of the backlog.

5. The sources and availability of raw materials essential to the business.

6. The importance to the business and the duration and effect of, all materials patents, trademarks, licenses, franchises and concessions held.

7. (a) The estimated dollar amount spent during each of the last two fiscal years on material research activities relating to the development of new products or services or the improvement of existing products or services, indicating those activities which were company-sponsored and/or those which were customer-sponsored.

(b) In addition to the description of the business done and intended to be done required by paragraph 5(a) and without limiting that requirement, if there has been a public announcement of, or if information otherwise has become public about, the registrant's intent to introduce a new product or enter a new industry segment requiring the investment of a material amount of total assets, a description of the status of such product or segment (e.g., whether in the planning stage, whether prototypes exist, the degree to which product design has progressed or whether further engineering is necessary).

(c) Where material, state the approximate number of employees engaged fulltime in each of the activities described in (a) above during each fiscal year and in (b) above.

NOTE.—Item 9(a)(7)(b) requires a description of the status of product development in addition to the description of the business done and intended to be done required by paragraph 9(a). Item 9(a)(7)(b) is not intended to require disclosure of otherwise nonpublic corporate information the disclosure of which would adversely affect the registrant's competitive position. Subparagraph (a) requires disclosure of financial information relating to research and development activities. Subparagraph (b) is intended to elicit addtional specific information only where there has been a public announcement or where information has otherwise become public concerning a new product or industry segment requiring the investment of a material amount of total assets.

8. The number of persons employed by the registrant.

9. The extent to which the business of the registrant or a material portion thereof is or may be seasonal.

Instructions. 1. If the registrant proposes to introduce or has recently introduced a new product or proposes to do business or has recently begun to do business in a new industry segment requiring the investment of a material amount of its total assets, provide as supplemental information at the time of filing of the document, but not as part thereof, a copy of any studies conducted or performed by or for the registrant relating to such business or product and a statement as to the actual or proposed use of such study. If any such study is not available at the time of filing, it should be provided as soon thereafter as practicable. Where material, disclosure of the absence of such study is required.

2. The principal methods of competition (e.g., price, service, warranty or product performance) should be identified and positive and negative factors pertaining to the competitive position of the registrant, to the extent that they exist, should be explained if known or reasonably available to the registrant. An estimate of the number of competitors should be included, and, where material, the particular markets in which the registrant competes should be identified. Where one or a small number of competitors are dominant, they should be identified.

3. Where material to understanding the registrant's business, the registrant's and industry practices and conditions as they relate to working capital items should be explained (e.g. where the registrant's business is highly seasonal; where the registrant is required to carry significant amounts of inventory to meet rapid delivery requirements of customers or to assure itself of a continuous allotment of goods from suppliers; or where the registrant has provided extended payment terms to customers).

4. The description shall not relate to the powers and objects specified in the charter, but to the actual business done and intended to be done. Include the business of subsidiaries and affiliates of the registrant insofar as is necessary to understand the charter and development of the business conducted by the total enterprise.

5. Appropriate disclosure shall also be made as to the material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries. Registrant shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and its succeeding fiscal year; and such further periods as the registrant may deem material.

6. In describing developments, information shall be given as to matters such as the following: the nature and results of any bankruptcy, receivership or similar proceedings with respect to the registrant or any of its significant subsidiaries; the nature and results of any other material reorganization, readjustment or succession of the registrant or any of its significant subsidiaries; the acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business; and any material changes in the mode of conducting the business.

7. The business of a predecessor or predecessors shall be deemed to be the business of the registrant for the purpose of this item.

8. Appropriate disclosure shall be made with respect to any material portion of the business which may be subject to renegotiation of profits or termination of contracts or subcontracts at the election of the Government.

9. Describe, if formulated, the registrant's plan of operation for the remainder of the fiscal year, if the registration statement is filed prior to the end of the registrant's second fiscal quarter. Describe, if formulated, the registrant's plan of operation for the remainder of the fiscal year and for the first six months of the next fiscal year, if the registration statement is filed subsequent to the end of the second quarter. If such information is not available, the reasons for its not being available should be stated. Disclosure relating to any plan should include such matters as:

(a) A statement in narrative form indicating the registrant's opinion as to the period of time that the proceeds from the offering will satisfy cash requirements and whether in the next six months it will be necessary to raise additional funds to meet the expenditures required for operating the business of the registrant. The basis for such opinion shall be set forth with specificity and categories of expenditures and sources of cash resources shall be identified. Amounts of expenditures and cash resources need not be provided. In addition, if the narrative statement is based on a cash budget, such budget should be furnished to the Commission as supplemental information, but not as a part of the registration statement.

(b) An explanation of material product research and development to be performed during the period covered by the plan, including where there has been a public announcement of or such information has otherwise become public the registrant's intent

to introduce a new product or enter a new industry segment requiring the investment of a material amount of total assets, a description of the status of such product or segment (e.g., whether in the planning stage, whether prototypes exist, the degree to which product design has progressed or whether futher engineering is necessary).

(c) Any anticipated material acquisition of plant and equipment and the capacity thereof.

(d) Any anticipated material changes in number of employees in the various departments such as research and development, production, sales or administration.

(e) Other material areas which may be peculiar to the registrant's business.

(b) If the registrant is required to include segment information in its financial statements, such information shall be disclosed in the description of business; if the segment information is located on a page that is not clearly a part of the description of business, the information shall be incorporated by reference.

Item 6. Description of Property

State briefly the location and general character of the principal plants, mines and other materially important physical properties of the registrant and its subsidiaries. If any such property is not held in fee or is held subject to any major encumbrance, so state and briefly describe how held.

Instructions. 1. What is required is information essential to an investor's appraisal of the securities being registered. Such information should be furnished as will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and should not be given.

2. In the case of an extractive enterprise, material information should be given as to production, reserves, locations, developments and the nature of the registrant's interest. Where individual properties are of major significance to the enterprise (i) more detailed information concerning these matters should be furnished, including the results of development in the area and significant geological structures and formations, where appropriate and (ii) appropriate maps should be used to disclose location data of significant properties except where numerous maps would be required. Where the report of an engineer or other expert is referred to in the prospectus, a copy of the full report normally should be furnished as supplemental information but not as a part of the registration statement.

Item 7. Legal Proceedings.

Briefly describe any material legal proceedings other than ordinary routine litigation incidental to the business to which the registrant or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought. Include similar information as to any such proceedings known to be contemplated by government authorities.

Instructions. 1. If the business ordinarily results in actions for negligence or other claims, no such action or claim need be described unless it departs from the normal kind of such actions.

2. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Notwithstanding Instructions 1 and 2, any material bankruptcy, receivership, or similar proceeding with respect to the registrant or any of its significant subsidiaries shall be described. Any material proceeding to which any director, officer or affiliate of the registrant, any owner of record or beneficially of more than 10 percent of any class of voting securities of the registrant, or any assoicate of any such director, officer or security holder is a party adverse to the registrant or any of its subsidiaries or has a material interest adverse to the registrant or any of its subsidiaries also shall be described.

4. Notwithstanding the foregoing, administrative or judicial proceedings arising under any Federal, state or local provisions which have been enacted or adopted regulating the discharge or materials into the environment or otherwise relating to the protection of the environment shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if such proceedings is material to the business or financial condition of the registrant or if it involves primarily a claim for damages and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. Any such proceedings by governmental authorities shall be deemed material and shall be described whether or not the amount of any claim for damages involved exceeds 10 percent of current assets on a consoldiated basis and whether or not such proceedings are considered "ordinary routine litigation incidental to the business"; provided, however, that such proceedings which are similar in nature may be grouped and described generically, stating: the number of such proceedings; the issues generally involved; and, if such proceedings in the aggregate are material to the business or financial condition of the registrant, the effect of such proceedings on the business or financial condition of the registrant.

Item 8. Directors and Executive Officers

(a) List the names and ages of all directors of the registrant and all persons chosen to become directors: indicate all positions and offices with the registrant held by such person, if such person is a member of any committee(s) of the registant's Board of Directors, indicate such membership(s); state his term of office as director and the period during which he has served as such; indicate any directorship held by each such person in any company with a class of securities registered pursuant to Section 12 of the Exchange Act or subject to the requirements of Section 15(d) of that Act or any company registered as an investment company under the Investment Company Act of 1940; briefly describe any arrangement or understanding between him and any other person pursuant to which he was selected as a director.

Instructions. 1. Do not include arrangements or understandings with directors or officers of the registrant acting solely in their capacities as such.

2. If any person chosen to become a director has not consented to act as such, so state.

(b) List the names and ages of all executive officers of the registrant and all persons chosen to become executive officers; indicate all positions and offices with the registrant held by each such person; state his term of office as officer and the period during which he has served as such and briefly describe any arrangement or understanding between him and any other person pursuant to which he was selected as an officer.

Instructions. 1. Do not include arrangements or understandings with directors or officers of the registrant acting solely in their capacities as such.

2. If any person chosen to become a director has not consented to act as such, so state.

3. The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, admnistration or finance) and any other person who performs similar policy making functions for the registrant.

(c) Where the registrant employs persons such as production managers, sales managers, or research scientists, who are not executive officers, but who make or are expected to make significant contributions to the business of the registrant, such persons should be identified and their background disclosed to the same extent as in the case of executive officers.

(d) State the nature of any family relationship between any director or executive officer or person named in answer to paragraph (c) and any other director or executive officer or person named in answer to paragraph (c).

Instruction. The term "family relationship" means any relationship by blood, marriage or adoption, not more remote than first cousin.

(e) Give a brief account of the business experience during the past five years of each director and each executive officer and each person named in answer to paragraph (c), including his principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. Where an executive officer or person named in response to paragraph (c) has been employed by the registrant or a subsidiary of the registrant for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. What is required is information relating to the level of this professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

(f) Describe any of the following events which occurred during the past five years and which are material to an evaluation of the ability and integrity of any director or executive officer of the registrant:

(1) A petition under the Bankruptcy Act or any state insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the

business or property of, such person, or a partnership in which he was a general partner at or within two years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding (excluding traffic violations and other minor offenses) or is the subject of a criminal proceeding which is presently pending;

(3) Such person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction permanently or temporarily enjoining him from, or otherwise limiting the following activities:

(i) acting as an investment adviser, underwriter, broker or dealer in secutities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(ii) engaging in any type of business practice; or

(iii) engaging in any activity in connection with the purchase or sale of any security or in any violation of Federal or state securities laws.

(4) Such person was the subject of any order, judgement or decree, not subsequently reversed, suspended or vacated, of any Federal or state authority barring, suspending or otherwise limiting for more than 60 days the right of such person to engage in any activity described in subparagraph (3), above, or to be associated with persons engaged in any such activity.

(5) Such person was found by a court of competent jurisdiction in a civil action to have violated any Federal or state securities law, and the judgment in such civil action has not been subsequently reversed.

Instruction. If any event specified in this subparagraph (f) has occurred but information in regard thereto is omitted on the ground that it is not material, the registrant shall furnish the Commission, as supplemental information and not as part of this registration statement, a description of the event and a statement of the reasons for the omission of information in regard thereto.

Item 9. Remuneration of Directors and Officers

(a) Furnish the following information in substantially the tabular form indicated below as to all direct remuneration paid by the registrant and its affiliates during the registrant's last fiscal year to the following persons for services in all capacities.

(1) Each director, and each of the three highest paid officers of the registrant whose aggregate direct remuneration exceeded $20,000, naming each such person.

(2) All directors and officers of the registrant as a group, without naming them.

(A)	(B)	(C)
Name of individual or identity of group	Capacities in which remuneration was received	Aggregate direct remuneration

Instructions. 1. This item applies to any person who was a director or officer of the registrant at any time during the period specified. However, information need not be given for any portion of the period during which such person was not a director or officer of the registrant.

2. The information is to be given on an accrual basis if practicable. The tables required by this paragraph and paragraph (b) may be combined if the registrant so desires.

3. Do not include remuneration paid to a partnership in which any director or officer was a partner, but see Item 11.

4. If the registrant has not completed a full fiscal year since its organization or if it acquired or is to acquire the majority of its assets from a predecessor within the current fiscal year, the information shall be given for the current fiscal year, estimating future payments, if necessary. To the extent that such remuneration is to be computed upon the basis of a percentage of profits, it will suffice to state such percentage without estimating the amount of such profits to be paid.

5. If any part of the remuneration shown in response to this item was paid pursuant to a material bonus or profit-sharing plan, briefly describe the plan and the basis upon which directors or officers participate therein. See Instruction 1 to paragraph (b) for the meaning of the term "plan."

(b) Furnish the following information, in substantially the tabular form indicated below, as to all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the registrant or any of its subsidiaries to each director of officer named in answer to paragraph (a)(1) above:

(A)	(B)	(C)
Name of individual	Amounts set aside or accrued during registrant's last fiscal year	Estimated annual benefits upon retirement

Instructions. 1. The term "plan" in this item includes all plans, contracts, authorizations or arrangements, whether or not set forth in any formal document.

2. Column (B) need not be answered with respect to amounts computed on an actuarial basis under any plan which provides for fixed benefits in the event of retirement at a specified age or after a specified number of years of service.

3. The information called for by Column (C) may be given in a table showing the annual benefits payable upon retirement to persons in specified salary classifications.

4. In the case of any plan (other than those specified in Instruction 2) where the amount set aside each year depends upon the amount of earnings of the registrant or its subsidiaries for such year or a prior year, or where it is otherwise impracticable to state the estimated annual benefits upon retirement, there shall be set forth, in lieu of the information called for by Column (C), the aggregate amount set aside or accrued to date, unless it is impracticable to do so, in which case there shall be stated the method of computing such benefits.

(c) Describe briefly all remuneration payments (other than payments reported under paragraph (a) or (b) if this item) proposed to be made in the future, directly or indirectly, by the registrant or any of its subsidiaries pursuant to any existing plan or arrangement to (i) each director or officer named in answer to paragraph (a)(1), naming each such person, and (ii) all directors and officers of the registrant as a group, without naming them.

Instruction. Information need not be included as to payments to be made for, or benefits to be received from, group life or accident insurance, group hospitalization or similar group payments or benefits. If it is impracticable to state the amount of remeneration payments proposed to be made, the aggregate amount set aside or accrued to date in respect of such payments should be stated, together with an explanation of the basis for future payments.

Item 10. Options to Purchase Securities of the Registrant

Give the name of each person who holds or is to hold any options, warrants or rights to purchase securities of the registrant from the registrant. State the amount of securities of each class called for by each option, warrant or right and the consideration for the granting of the options, warrants or rights. Outline briefly the prices, expiration dates and other material conditions on which each option, warrant or right may be exercised.

Item 11. Security Ownership of Certain Beneficial Owners and Management

(a) Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, with respect to any person (including any "group" as that term is used in Section 13(d)(3) of the Securities Exchange Act of 1934 who is known to the registrant to be the beneficial owner of more than five percent of any class of the registrant's voting securities. Show in Column (3) the total number of shares beneficially owned and in Column (4) the percent of class so owned. Of the number of shares shown in Column (3), indicate by footnote or otherwise the amount known to be shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership, as specified in Rule 13d-3(d)(1) under the Exchange Act (17 CFR 240.13d-3(d)(1)).

(1) Title of class	(2) Name and address of beneficial owner	(3) Amount beneficially owned	(4) Percent of class

(b) Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the registrant or any of its parents or subsidiaries, other than directors' qualifying shares, beneficially owned by all directors and officers of the registrant as a group, without naming them. Show in Column (2) the total number of shares beneficially owned and in Column (3) the percent of class so owned. Of the number of shares shown in Column (2), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in Rule 13e-3(d)(1) under the Exchange Act.

(1) Title of class	(2) Amount beneficially owned	(3) Percent of class

(c) Describe any arrangements, known to the registrant, including any pledge by any person of securities of the registrant or any of its parents, the operation of which may at a subsequent date result in a change in control of the registrant.

Instructions. 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the registrant or its subsidiaries; however, such calculations may be made on the basis of outstanding securities plus securities deemed outstanding pursuant to Rule 13e-3(d)(1) under the Exchange Act provided appropriate disclosure is made as to the method of calculating.

2. For the purposes of this item, beneficial ownership shall be determined in accordance with Rule 13e—3 (17 CFR 240.13d-3) under the Exchange Act.

3. For purposes of furnishing information pursuant to paragraph (a), the registrant may indicate the source and date of such information.

4. Where more than one beneficial owner is known to be listed for the same securities, appropriate disclosure should be made to avoid confusion.

5. Paragraph (c) does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the registrant.

6. If, to the knowledge of the registrant or any principal underwriter of the securities being registered, more than five percent of any class of voting securities of the registrant are to be held subject to any voting trust or similar arrangement, state the title of such securities, the amount held or to be held and the duration of the agreement. Give the names and addresses of the voting trustees and outline briefly their voting rights and other powers under the agreement.

Item 12. Interest of Management and Others in Certain Transactions

Describe briefly any transaction since the beginning of the issuer's last fiscal year or any presently proposed transactions, to which the issuer or any of its subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the issuer, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the issuer;

(2) Any security holder named in answer to Item 5(d); or

(3) Any associate of the foregoing persons.

Instructions. 1. See Instruction 1 to Item 9(a). No information need be given in response to this Item as to any renumeration or other transaction reported in response to Item 9 or with respect to which information may be omitted pursuant to Instruction 2 to Item 9(b) or the Instruction to Item 9(c).

2. No information need be given in answer to this Item as to any transaction where:

(a) the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

(b) the transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(c) The amount involved in the transaction or a series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed $20,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the issuer and the specified person receives no extra or special benefit not shared on a pro rata basis by all holders of securities of the class.

3. It should be noted that this item calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with the issuer or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this Item where:

(a) The interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) through (4) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership.

(b) The interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (4) above had an interest of less than 10 percent; or

(c) The interest of such persons arises solely from the holding of an equity interest (including a limited partnership interest but excluding a general partnership interest) or a creditor interest in another person which is a party to the transaction with the issuer or any of its subsidiaries and the transaction is not material to such other person.

4. The amount of the interest of any specified person shall be computed to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be disclosed.

5. Information should be included as to any material underwriting discounts and commissions upon the sale of securities by the registrant where any of the specified persons was or is to be a principal underwriter or is a controlling person, or member, of a firm which was or is to be a principal underwriter. Information need not be given concerning ordinary management fees paid by underwriters to a managing underwriter pursuant to an agreement among underwriters the parties to which do not include the registrant or its subsidiaries.

6. As to any transaction involving the purchase or sale of assets by or to the registrant or any subsidiary, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and if acquired by the seller within two years prior to the transaction, the cost of thereof to the seller.

7. The foregoing instructions specify certain transactions and interests as to which information may be omitted in answering this item. There may be situations where, although the foregoing instructions do not expressly authorize nondisclosure, the interest of a specified person in the particular transaction or series of transaction is not a material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this item.

Item 13. Securities Being Registered.

(a) If capital stock is being registered, state the title of the class and furnish the following information:

(1) Outline briefly (i) dividend rights; (ii) voting rights; (iii) liquidation rights; (iv) pre-emptive rights; (v) conversion rights; (vi) redemption provisions; (vii) sinking fund provisions; and (viii) liability to further calls or to assessment by the registrant.

(2) If the rights of holders of such stock may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(3) Outline briefly any restriction on the repurchase or redemption of shares by the registrant while there is any arrearage in the payment of dividends or sinking funds installments. If there is not such restriction, so state.

Instructions. 1. This item requires only a brief summary of the provisions which are pertinent from an investment standpoint. A complete legal description of the provisions referred to is not required and should not be given. Do not set forth the provisions of the governing instruments verbatim; only a succinct resume is required.

2. If the rights evidenced by the securities being registered are materially limited or qualified by the rights of any other class of securities, include such information regarding such other securities as will enable investors to understand the rights evidenced by the securities being registered.

(b) If long-term debt is being registered, outline briefly such of the following as are relevant:

(1) Provisions with respect to interest, conversion, maturity, redemption, amortization, sinking fund or retirement.

(2) Provisions with respect to the kind and priority of any lien securing the issue, together with a brief identification of the principal properties subject to such lien.

(3) Provisions restricting the declaration of dividends or requiring the maintenance of any ratio of assets, the creation or maintenance of reserves or the maintenance of properties.

(4) Provisions permitting or restricting the issuance of additional securities, the withdrawal of cash deposited against such issuance, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security, and similar provisions.

Instructions. 1. In the case of secured debt, there should be stated (i) the approximate amount of unbonded bondable property available for use against the issuance of bonds, as of the most recent practicable date, and (ii) whether the securities being registered are to be issued against such property, against the deposit of cash, or otherwise.

2. Provisions permitting the release of assets upon the deposit of equivalent funds or the pledge of equivalent property, or the release of property no longer required in the business, obsolete property or property taken by eminent domain, the application of insurance moneys, and similar provisions, need not be described.

(5) The name of the trustee and the nature of any material relationship with the registrant or any of its affiliates; the percentage of securities of the class necessary to require the trustee to take action, and what indemnification the trustee may require before proceeding to enforce the lien.

(6) The general type of event which constitutes a default and whether or not any periodic evidence is required to be furnished as to the absence of default or as to compliance with the terms of the indenture.

Instruction. Instructions 1 and 2 under paragraph (a) above shall also apply to this item. Section 305(a)(2) of the Trust Indenture Act of 1939 shall not be deemed to require the inclusion in the registration statement or in the prospectus of any information not required by this form.

(c) If securities other than capital stock or long-term debt are being registered, outline briefly the rights evidenced thereby. If subscription warrants or rights are being registered, state the title and amount of securities called for, the period during which and the price at which the warrants or rights are exercisable.

Item 14. Financial Statements and Instructions

The following financial statements, prepared in accordance with generally accepted accounting principles and practices, shall be filed as a part of the registration statement. Regulation S-X, Form and Content of Financial Statements, shall not apply to the preparation of such financial statements.

(a) Balance Sheets of the Registrant.

(1) The registrant shall file a consolidated balance sheet as of a date within 90 days prior to the date of filing the registration statement. This balance sheet need not be audited if it is not as of the latest fiscal year.

(2) If the balance sheet required by paragraph (a) is not audited, there shall be filed in addition an audited balance sheet as of a date within one year unless the fiscal year of the registrant has ended within 90 days prior to the date of filing, in which case the audited balance sheet may be as of the end of the preceding fiscal year.

(b) Statements of Income and Source and Application of Funds of the Registrant.

The registrant shall file consolidated statements of income and source and application of funds for each of the two fiscal years preceding the date of the most recent balance sheet being filed and for the interim period, if any, between the end of the most recent of such fiscal years and the date of the most recent balance sheet being filed. These statements shall be audited to the date of the most recent audited balance sheet being filed.

If an income statement is filed for an interim period, an unaudited income statement for a comparable period of the prior year shall also be filed. In connection with any unaudited income statements for an interim period, a statement shall be made that all adjustments necessary for a fair statement of the results for such period have been included. If all such adjustments are of a normal revising nature, a statement to that effect shall be made; otherwise these shall be furnished as supplementary information but not as a part of the registration statement and letter describing in detail the nature and amount of any adjustments other than normal revising adjustments, entering into the determination of the results shown.

PART II.—INFORMATION NOT REQUIRED IN PROSPECTUS

Item 15. Marketing Arrangements

Briefly describe any arrangement known to the registrant or to any person named in answer to Item 2 or 10(a) made for any of the following purposes:

(a) To limit or restrict the sale of other securities of the same class as those to be offered for the period of distribution.

(b) To stabilize the market for any of the securities to be offered.

(c) For withholding commissions, or otherwise to hold each underwriter or dealer responsible for the distribution of his participation.

Instruction. If the answer to this item is contained in an exhibit, the item may be answered by cross-reference to the relevant paragraphs of the exhibit.

Item 16. Other Expenses of Issuance and Distribution

Furnish a reasonably itemized statement of all expenses in connection with the issuance and distribution of the securities being registered, other than underwriting discounts and commissions.

Instruction. Insofar as practicable, registration fees, Federal taxes, State taxes and fees, trustees' and transer agents' fees, cost of printing and engraving, and legal, accounting and engineering fees shall be separately itemized. The information may be given as subject to future contingencies. If the amounts of any items are not known, estimates designated as such shall be given.

Item 17. Relationship With Registrant of Experts Named in Registration Statement

If any expert named in the registration statement as having prepared or certified any part thereof was employed for such purpose on a contingent basis or, at the time of such preparation or certification or at any time thereafter, had a substantial interest in the registrant or any of its parents or subsidiaries or was connected with the registrant or any of its subsidiaries as a promoter, underwriter, voting trustee, director, officer or employee, furnish a brief statement of the nature of such contingent basis, interest or connection.

Instruction. In the case of an accountant, any direct financial interest or any material indirect financial interest held during the period covered by the financial statements prepared or certified shall be deemed a "substantial interest" for the purpose of this item.

Item 18. Recent Sales of Unregistered Securities

Furnish the following information as to all securities of the registrant sold by the registrant within the past three years which were not registered under the Securities Act of 1933. Include sales of reacquired securities as well as new issues, securities issued in exchange for property, services, or other securities, and new securities resulting from the modification of outstanding securities.

(a) Give the date of sale and the title and amount of securities sold.

(b) Give the names of the principal underwriters, if any. As to any securities sold not publicly offered, name the persons or identify the class of persons to whom the securities were sold.

(c) As to securities sold for cash, state the aggregate offering price and the aggregate underwriting discounts or commissions. As to any securities sold otherwise than for cash, state the nature of the transaction and the nature and aggregate amount of consideration received by the registrant.

(d) Indicate the section of the Act or the Rule of the Commission under which exemption from registration was claimed and state briefly the facts relied upon to make the exemption available.

Instructions. 1. Information need not be set forth as notes, drafts, bills of exchange or bankers' acceptances which mature not later than one year from the date of issuance.

2. If the sales were made in a series of transactions, the information may be given by such totals and periods as will reasonably convey the information required.

Item 19. Exhibits

List all exhibits filed as a part of the registration statement: (a) Exhibits, (b) statement of eligibility and qualification of each person designated to act as trustee under an indenture to be qualified under the Trust Indenture Act of 1939.

UNDERTAKINGS

A. The following undertaking should be included in the registration statement if equity securities are to be offered and the registrant has not previously sold securities registered under the Act:

"The undersigned registrant hereby undertakes to provide to the underwriter at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser."

NOTE.—Any request for acceleration should be accompanied by a representation from the underwriter that the registrant has been requested to provide sufficient certificates in such denominations as to permit prompt delivery.

B. The following undertaking, with appropriate modifications to suit the particular case, shall be included in the registration statement if the securities being registered are to be offered to existing security holders pursuant to warrants or rights and any securities not taken by security holders are to be reoffered to the public.

"The undersigned registrant hereby undertakes to supplement the prospectus, after the expiration of the subscription period, to set forth the results of the subscription offer, the transactions by the underwriters during the subscription period, the amount of unsubscribed securities to be purchased by the underwriters and the terms of any subsequent reoffering thereof. If any public offering by the underwriters is to be made on terms differing from those set forth on the cover page of the prospectus, a post-effective amendment will be filed to set forth the terms of such offering."

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of ————, and State of ————, on the — day of ——, 19—.

(Registrant) ————————————

By: (Signature and title) ————————————

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

(Signature) ————————————

(Title) ————————————

(Date) ————————————

Instructions. 1. The registration statement shall be signed by the registrant, its principal executive officer of officers, its principal financial officer, its controller or principal accounting officer and by at least the majority of the board of directors or persons performing similar functions. If the registrant is a Canadian person, the registration statement shall also be signed by its authorized representative in the United States.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement.

INSTRUCTIONS AS TO EXHIBITS

Subject to the rules regarding incorporation by reference, the following exhibits shall be filed as a part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in the previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits called for by Item 18.

1. Copies of each underwriting contract with a principal underwriter, each syndicate agreement and each purchase, sub-underwriting or selling group agreement or letter pursuant to which the securities being registered are to be distributed or, if the terms of such documents are not determined, the proposed forms thereof.

2. Copies of the charter and by-laws as presently in effect.

3. (a) Specimens or copies of all securities being registered hereunder and copies of all constituent instruments defining the rights of holders of long-term debt of the registrant and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(b) There need not be filed, however, (1) any instrument with respect to long-term debt not being registered hereunder if the total amount of securities authorized thereunder does not exceed 5 percent of the total assets of the registrant and its subsidiaries on a consolidated basis and if there is filed an agreement to furnish a copy of such instrument to the Commission upon request, (2) any instrument with respect to any class of securities if appropirate steps to assure the redemption or retirement of such class will be taken prior to or upon delivery by the registrant of the securities being registered, or (3) copies of instruments evidencing script certificates for fractions of shares.

(c) If any of the securities being registered are, or are to be, issued under an indenture to be qualified under the Trust Indenture Act of 1939, the copy of such indenture which is filed as an exhibit shall include or be accompanied by (1) a reasonably itemized and informative table of contents, and (2) a cross-reference sheet showing the location in the indenture of the provisions inserted pursuant to section 310 thorugh 319(a) inclusive of the Trust Indenture Act of 1939.

4. Copies of any plan setting forth the terms and conditions upon which outstanding options, warrants or rights to purchase securities of the registrant or its subsidiaries from the registrant or any of its affiliates have been issued, together with specimen copies of such options, warrants, or rights; or, if not issued pursuant to such a plan, copies of each such option, warrant or right.

5. An opinion of counsel, as to the legality of the securities being registered, indicating whether they will when sold be legally issued, fully paid and non-assessable, and, if debt securities, whether they will be binding obligations of the registrant.

6. Copies of each material foreign patent for an invention not covered by a United States patent. If a substantial part of the securities to be offered or of the proceeds therefrom has been or is to be used for the particular purpose of acquiring, developing or exploiting one or more material patents or patent rights, furnish a list showing the number and a brief identification of each such patent or patent right.

7. If any discount on capital shares is shown as a deduction from capital shares on the most recent balance sheet being filed for the registrant, there shall be filed a statement of the circumstances under which such discount arose and an opinion of counsel as to the legality of the issuance of the shares to which such discount relates. The opinion shall set forth any applicable constitutional and statutory provisions and shall cite any decisions which in the opinion of counsel are controlling.

8. If the registrant has any shares, the preference of which upon involuntary liquidation exceeds the par or stated value thereof, there shall be filed an opinion of counsel as to whether there are any restrictions upon surplus by reason of such excess and also as to any remedies available to security holders before or after payment of any dividend that would reduce surplus to an amount less than the amount of such excess. The opinion shall set forth any applicable constitutional and statutory provisions and shall cite any decisions which, in the opinion of counsel, are controlling.

9. Copies of any voting trust agreement referred to in answer to Item 10.

10. Copies of all pension, retirement or other deferred Compensation plans, contracts or arrangements. If any such plan, contract or arrangement is not set forth in a formal document, furnish a reasonably detailed description thereof. Copies of any available booklet or other written description of any such plan, contract or arrangement shall also be filed.

11. (a) Copies of every material contract not made in the ordinary course of business which is to be performed in whole or in part at or after the filing of the registration statement or which as made not more than two years before filing, except contracts called for, or the omission of which is expressly authorized by the foregoing instructions. Only contracts need be filed as to which the registrant or a subsidiary of the registrant is a party or has succeeded to a party by assumption or assignment, or in which the registrant or such subsidiary has a beneficial interest.

(b) If the contract is such as ordinarily accompanies the kind of business conducted by the registrant and its subsidiaries, it is made in the ordinary course of business and need not be filed, unless it falls within one or more of the following categories, in which case it should be filed except where immaterial in amount or significance:

(1) Directors, officers, promoters, voting trustees, security holders named in answer to Item 10(a) or underwriters are parties thereto except where the contract merely involves purchase or sale of current assets having a determinable market price, at such price.

(2) It is of such materiality as to call for specific reference to it in the prospectus.

(3) The registrant's business is substantially dependent upon it, as in the case of continuing contracts to sell the major part of registrant's production in the case of a manufacturing enterprise or to purchase the major part of registrant's requirements of goods in the case of a distributing enterprise, or licenses to use a patent or formula upon which registrant's business depends to a material extent.

(4) It calls for the acquisition or sale of fixed assets for a consideration exceeding 15% of all fixed assets of the registrant and its subsidiaries.

(5) It is a lease under which a significant part of the property described under Item 6 is held by the registrant.

(6) The amount of the contract, or its importance to business of the registrant and its subsidiaries, are material, and its terms and conditions are of a nature of which investors reasonably should be informed.

(c) Any management contract or bonus or profit-sharing plan, contract or arrangement (or if not set forth in any formal document, a written description thereof) except the following, shall be deemed material and shall be filed:

(1) Ordinary purchase and sales agency agreements.

(2) Agreements with managers of stores in a chain organization or similar organization.

(3) Contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such.

II. By amending the instructions as to financial statements of Form 10-K, § 249.310, as follows:

§ 249.310 Form 10-K, annual report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

INSTRUCTIONS AS TO FINANCIAL STATEMENTS

(1)-(8) * * *

(9) Issuers filing on Form S-18.

(a) Notwithstanding the requirements of the foregoing instructions, if the issuer is subject to the reporting provisions of Sec-

tion 15(d) and such obligation results solely from the issuer having filed a registration statement on Form S-18 which has become effective under the Securities Act of 1933 during the last fiscal year, the issuer may file the following audited financial statements prepared in accordance with generally accepted accounting principles and practices. The provisions of Regulation S-X, Form and Content of Financial Statements, shall not apply to financial statements prepared pursuant to this instruction.

(1) A balance sheet shall be furnished as of the end of the fiscal year.

(2) Consolidated statements of income, statements of source and application of funds, and statements of other stockholders' equity shall be furnished for each of the last two full fiscal years.

(10) Filing of other financial statements in certain cases. (This instruction is identical to instruction (9) of instruction as to financial statements of Form S-1.

III. By amending Part 231, interpretive releases relating to the Securities Act of 1933 and general rules and regulations thereunder, by revising paragraph (a)(5) of Guide 23, current financial statements and related data, of guides for preparation and filing of registration statements under the Securities Act of 1933.

23. (a)(1)-(4) [No change.]

(5) In the event that there is a delay between the date of filing the registration statement and its effectiveness, registrants with an established record of earnings and in a sound financial condition should be prepared to furnish, in a paragraph following the Statement of Income, income information on a quarterly basis compared with a similar period of the preceding year, if the amendment when effective would otherwise include financial statements over four and one-half months old.

Registrants with no established record or earnings and registrants currently showing losses or a weak financial condition should not only furnish the above sales and net income information but be prepared to bring the financial statements up to the latest practicable date not more than 90 days prior to the filing the amendment upon which it is expected the filing will become effective. If delay carries the date beyond the close of the fiscal year and by applying due diligence the registrant and its independent accountant can have an audit completed prior to the planned effective date, audited statements for the fiscal year should be substituted for interim statements whether or not the interim financial statements have been audited.

When later interim financial statements are to be furnished to supplement either fiscal year or interim statements which have been audited, the later statements would in the usual case be unaudited. However, when numerous or involved financial transactions have been effected since the date of the finanical statements furnished or it is recognized that unusual conditions affect the determination of earnings, the Commission has indicated that later financial statements may be requested on an audited basis as a condition to acceleration under Section 8(a) of the Act.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 12, 15(d), 23(a), 48 Stat. 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; secs. 4, 6, 10, 78 Stat. 569, 570-574, 580; sec. 2, 82 Stat. 454; secs. 1, 2, 84 Stat. 1497; secs. 10, 18, 89 Stat. 119, 155; secs. 308(b), 90 Stat. 57; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78m, 78o(d), 78w(a).)

STATUTORY AUTHORITY

Form S-18 and the amendments to Guide 23 are proposed pursuant to section 6, 7, 8, 10, and 19(a) of the Securities Act. The amendment to Form 10-K is proposed pursuant to sections 13, 15(d), and 23(a) of the Exchange Act.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

MARCH 6, 1978.

[FR Doc 78-6638 Filed 3-14-78; 8:45 am]

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(Revised as of July 1, 1977)

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[*A Cumulative checklist of CFR issuances for 1977 appears in the first issue of the Federal Register each month under Title 1. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected)*]

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