Title 3—The President

PROCLAMATION 4540

Anniversary of the Adoption of the Articles of Confederation

By the President of the United States of America

A Proclamation

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

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

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

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

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

JIMMY CARTER
Subpart C—Transfer of Highway Safety Funds

Sec. 160.301 Purpose.

160.303 General.

160.305 Transfers Among Trust Fund Apportionments.

160.307 Transfers Between General Fund Apportionments.

SUBPART C—TRANSFER OF HIGHWAY SAFETY FUNDS

§160.301 Purpose.

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

§160.303 General.

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

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

(c) The transfer provisions involve the following funds:

1. Transfers financed from the Highway Trust Fund:
   (1) Special Bridge Replacement,
   (2) High Hazard Location,
   (3) Elimination of Roadside Obstacles,
   (4) High Hazard Locations/Elimination of Roadside Obstacles, and
   (5) Rail-Highway Crossings, Off-System.

2. Transfers financed from the General Fund:
   (a) Rail-Highway Crossings, Off-System.
   (b) Safer Off-System Roads.
   (c) Funds transferred to any apportionment are to be expended under the provisions of law governing expenditure of the apportionment to which the transfer is made.
   (d) Funds under obligation are not eligible for transfer.
   (e) Transfers may be approved only between funds apportioned for the same fiscal year.

§160.305 Transfers Among Trust Fund Apportionments.

(a) Not more than 40 percent of the funds apportioned in any fiscal year to each State may be transferred from one apportionment (§160.303(e)(1)) to any other apportionment if the transfer is requested by the State highway department and is approved by the Federal Highway Administration (FHWA) as being in the public interest.

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

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

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

§160.307 Transfers Between General Fund Apportionments.

(a) All or any part of the funds authorized for the rail-highway crossing program off-system (Section 203(c) of the Highway Safety Act of 1973, as amended) may be transferred to the safer off-system roads apportionment (23 U.S.C. 213) if the State highway department requests the transfer and provides satisfactory assurances that the purposes of §213 have been met.

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

Issued on: November 7, 1977.

WILLIAM M. COX,
Federal Highway Administrator.

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

For further information contact:

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

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

Effective Date: November 16, 1977.
RESPONSIBILITIES AND CONDUCT AND THIS
ADDITION ESTABLISHES THE PROCEDURE FOR THE
FILING, APPROVAL AND PROPOSED PAYMENT OF
CLAIMS FOR PERSONAL INJURY OR DEATH, DAMAGE OR
LOSS OF PROPERTY CAUSED BY THE WRONGFUL
ACT OF AN AGENCY EMPLOYEE WHILE IN THE
PERFORMANCE OF HIS OFFICIAL DUTIES.
EFFECTIVE DATE: November 16, 1977.
FOR FURTHER INFORMATION CON-
ACT: George A. Leet, Esquire, Associate
Executive Secretary, National Labor
Relations Board, 1717 Pennsylvania
Avenue NW., Washington, D.C. 20570.
The National Labor Relations Board
hereby promulgates an addition to
§ 100.735, Subpart A, Chapter I, Title 29
of the Code of Federal Regulations by
adding the following section:
§ 100.735-6 Claims under the Federal
Tort Claims Act for loss of or damage
property or for personal injury or
death.
(a) Filing of claims. Pursuant to 28
U.S.C. 2672, any claim under the Federal
Tort Claims Act for money damages for
loss of property or for personal injury or
death, caused by the negligent or wrong-
ful act or omission of any employee of
the National Labor Relations Board while
acting within the scope of his or her
employment, may make and distribute,
under circumstances where the United
States, if a private person, would be liable
to the claimant for such loss, injury or
death in accordance with the law of the
place where the act or omission occurred,
may be presented to the Director of Ad-
ministration, 1717 Pennsylvania Avenue
NW., Washington, D.C. 20570, or to any
regional office of the National Labor Re-
lations Board, at any time within 2 years
after such claim has accrued. Such a
claim may be presented by a person
specified in 28 CFR 14.2, 14.3, and
shall be accompanied by as much of the
appropriate information specified in 28
CFR 14.4 as may reasonably be obtained.
(b) Action on claims. The Director,
Division of Administration, shall have
the power to consider, ascertain, adjust,
determine, compromise, and settle any
claim referred to in, and presented in
accordance with paragraph (a) of this
section. The Chief, Security and Safety,
can process and adjust claims under §108
in accordance with delegated authority
from the Director. Legal review is re-
quired by the General Counsel or design-
ate for all claims, and shall be completed,
within 6 months from the date of
receipt. The Director may adjust, dis-
miss, settle, or compromise any claim,
requesting consideration of a claim or
compromise, or settlement in an amount in
excess of $2,500 made pursuant to this
section will be obtained in accordance with
28 CFR 14.10.
RULES AND REGULATIONS
Dated at Washington, D.C., Novem-
By direction of the Board.
GEORGE A. LEET,
Associate Executive Secretary,
National Labor Relations Board.
[FR Doc. 77-32929 Filed 11-16-77; 8:45 am]

1140-03] Title 37—Patents, Trademarks, and
Copyrights
CHAPTER II—COPYRIGHT OFFICE,
LIBRARY OF CONGRESS
[Docket RM 77-8]
PART 201—GENERAL PROVISIONS
Warning of Copyright for Use by Libraries
and Archives
AGENCY: Library of Congress, Copy-
right Office.
ACTION: Final Regulation.
SUMMARY: This notice is issued to in-
form the public that the Copyright Office
of the Library of Congress is adopting
a new regulation pertaining to the use by
libraries and archives of certain works.
The regulation is adopted to implement
sections 108(d) (2) and 108(e) (2) of the
Copyright Law. The effect of the regula-
tion is to prescribe the content, form, and
manner of use of the warnings of copy-
right identified in those sections.
EFFECTIVE DATE: January 1, 1978.
 FOR FURTHER INFORMATION CON-
ACT: Jon Baumgarten, General Counsel,
Copyright Office, Library of Congress,
SUPPLEMENTARY INFORMATION:
Sections 108(d) and 108(e) of the First
section of Pub. L. 94—553 (90 Stat. 2541)
set forth conditions under which spec-
ified libraries and archives, or their em-
ployees acting within the scope of their
employment, may make and distribute,
single copies and phonorecords of certain
copyrighted works, or parts of works,
without the consent of the copyright
owner. Among other conditions specified
in the Act, the library or archive must
"display prominently, at the place where
orders (for copies or phonorecords) are
accepted, and include on its order form,
a warning of copyright in accordance
with requirements that the Register of
Copyrights shall prescribe by regulation." On
March 30, 1977, we published in the Federal
Register (42 FR 16838) an Advance Notice
titled Notice of Proposed Rulemaking,
inviting public comment to assist the Of-
fice in considering alternative forms of
warning. After careful considera-
tion, we have decided to promulgate pro-
posed § 201.14 with few substantive
changes. A discussion of the major com-
ments follows:
1. The short form of warning. In the
proposed rulemaking, we noted that the
primary purpose of the warning is to cau-
sion a user who has acquired a copy
from a library or archives under section
108 as to that users' responsibilities un-
der the copyright law. We specifically
invited comment upon our proposal for a
short warning, rather than an extensive
one incorporating the numerous con-
ditions governing the library's and ar-
chive's own obligations under paragraphs
(a), (d), (e), and (g) of section 108. Al-
though the comments regarding the warn-
ing in significant detail, we have de-
termined that the "warning" should be
short and simple, without extending the
sentence alerting the user that the making
of a reproduction by a library or archi-
ve, and the subsequent use of the
reproduction, are subject to the copy-
right provisions of the Copyright Law.
2. Conditions under which copies
or other reproductions can be furnished;
use of reproductions. A number of
comments raised questions concerning the
second paragraph in the text of the pro-
posed warning, which read:
Photocopies or other reproductions can
be furnished only under certain conditions, if
they will be used solely for private study,
research, or scholarship. Use of the reproduc-
tion for other purposes may make the user liable
for copyright infringement.
Several questions centered around un-
certainty as to whether the phrase "cer-
tain conditions" in the first sentence
referred to "for private study, research,
or other educational purposes," or to the
additional statutory conditions not specified
in the warning itself (namely, those in para-
graphs (a), (d), (e), and (g) of section
108, referred to earlier). This latter
interpretation is correct and the final
regulation has been revised to make this
clear.
A number of comments also questioned the
Comment to include a reference either
generally to "fair use" or to certain illus-
trative uses set out in section 107 of
the copyright law (criticism, comment,
news reporting, and teaching). Since the
proposed warning already referred to
sections 107 and 108 (f) (2), both for request for,
and later uses of, reproductions made under sec-
tion 108(d) it activity which exceeds the
limits of "fair use" under section 107, and
not solely use for purposes other than
private study, scholarship, or research,
we have also revised the second sentence of
the above-quoted paragraph.
3. Other issues. Several comments objected to the proposed specification of type face size. In this design, the modifications to these specifications are helpful in providing certainty to the task of designing and printing the warnings and offering appropriate assurances that the warning will be displayed prominently. These changes are reflected in the appropriate sections to title 17 of the United States Code to be included in the warning.

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

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

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

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

(2) An "Order Warning of Copyright" is a notice under paragraphs (d) (2) and (e) (9) of section 108 of Title 17 of the United States Code as amended by Pub. L. 94-553. As required by those sections the "Order Warning of Copyright" to be included on printed forms supplied by certain libraries and archives and used by their patrons for ordering copies or phonorecords.

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

NOTICE
WARNING CONCERNING COPYRIGHT RESTRICTIONS

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

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction.

One of these specifications is that the reproduction or copyright is not to be "used for any purpose other than research, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes other than "fair use," that user may be liable for copyright infringement.

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

(c) Form and Manner of Use. (1) A Display Warning of Copyright shall be printed on heavy paper or other durable material in type at least 18 points in size, and shall be displayed prominently, in such manner and location as to be clearly visible, legible, and comprehensible to a casual observer within the immediate vicinity of the place where orders for copies are accepted.

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

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


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

Approved:
DANIEL J. BOORSTIN,
Librarian of Congress.

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

[6730-01]

Title 46—Shipping

CHAPTER IV—FEDERAL MARITIME COMMISSION

SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS AND REGULATED ACTIVITIES

[Docket No. 72-16; General Order No. 13]

PART 525—PUBLISHING AND FILING TARIFFS BY COMMON CARRIERS IN THE FOREIGN COMMERCE OF THE UNITED STATES

AGENCY: Federal Maritime Commission.

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

SUMMARY: Petitions seeking reconsideration of General Order No. 13 as it was revised on October 10, 1975 (40 FR 47770) are denied, but several amendments to the regulations are being made on the Commission's own initiative, based upon Petitioners comments. These modifications relax some requirements complained of as overly stringent and make numerous editorial changes which do not alter the substantive effect of the rules. The principal modification is the renumbering of most sections to conform the format of the foreign commerce tariff filing rules to the Commission's recently enacted, domestic commerce regulations (General Order 38, 42 FR 54810). Further rulemaking on intermodal tariff requirements and other matters is anticipated shortly.

EFFECTIVE DATE: January 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Francis C. Hurney, Secretary, 1100 L Street N.W., Washington, D.C. 20573; 202-532-5725.

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

The new features of the 1975 Rules fall into two general categories: (1) Changes designated to regulate post-1970 developments in intermodal transportation; and (2) changes designated to clarify and update technical tariff format and filing requirements. Both types of changes were intended to aid shippers and the Commission's staff in applying ocean carrier tariffs. Petitioners seek reconsideration of 17 of 18 individual provisions, including five existing regulations which were not substantively altered by the 1975 revisions. The challenged sections of the 1975 Rules are:

1. 536.1(e). Definition of Local Rates.

These regulations, with changes, are renumbered with a carrier's port-to-port rate; the 1975 definition could be construed as excluding port-to-port rates. ANAFC and South Atlantic Group.

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

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

4. 536.1(p). Definition of Port. "Limiting the term 'port' to the place where actual transpor-tation by water commences or terminates as to any particular movement of cargo favors LASH large operators at the expense of other intermodal carriers; the definition should be consistent with all modes of transportation; a port should be a place having water transportation facilities at which transportation by water does commercial business equal; each place where such service is performed should be a distinct port.

5. 536.15(d)(1). Intermodal tariffs must contain a precise breakout of port-to-port rates commencing and terminating at each interchange. Intermodal arrangements between water and land carriers are commercially unreasonable, potentially disastrous practice in light of current intermodal arrangements between water and land carriers involving volume discounts, and subject to container volume discounts, and calculated on a per container basis, while the through routes are calculated on a per container basis, while the through routes are

The effective date of the revised regulations (1975 Rules) was staying pending disposition of the instant petitions. Foreign carrier consultants continue to operate under the previous General Order 13 regulations (Existing Rules).

Petitions were received from Sea-Land Service, Inc. (Sea-Land); the Association of North Atlantic Freight Conferences (ANACF); Waterman Steamship Corp. (Waterman); five Trans-Pacific Freight Conferences (Trans-Pacific) and two U.S. West Coast (ANAFC); and three Mid-Atlantic (ANAFC). Replies were tendered for filing by ANACF and by a group of six U.S./Europe conferences (Trans-Pacific Group).

Former §536.5261 of the Commission's Rules shall be waived to permit the filing of these replies.

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

6. 536.4(a)(12). Tariff subscription price must include any bill of lading or rules tariff published with each individual commodity. § 536.4(b) does not require carriers to distribute bill of lading tariffs to all their tariffs subscribers; many carriers do not need all the commodi-

ities of a carrier's tariff. It is sufficient that supplementary subscriptions be offered at a reasonable cost."- Trans-Pacific.

7. Section 18(b) identifies a specific listing of ports served shall include a specific listing of ports not served. "Section 18(b) does not require a carrier to identify this point as evidenced by the Commission's long standing practice of accepting only a statement of the range of ports. It should at least permit carriers to serve designated ports in a range of ports with the proviso that undesignated ports may be referred on an 'inducement subject to agreement' basis; the phrase 'any restriction applying at a port' should be modified to read 'any contract rates may not be increased less than 90 days after a previous rate change has taken effect and before 90 days' notice has been given to contract shippers. "This rule deleting the preceeding Docket No. 75-13."

ANAFC, Sea-Land, and South Atlantic Group.

8. 536.5(a)(2). Amendments to dual rate contracts (including project rates) shall be listed under the appropriate commodity heading for each commodity affected. Many carriers publish hundreds of con-

modities and the materials shipped are often not described by the carrier in the same manner as in the tariffs. The definitions of the word 'definition' is not enough to say that large projects may be granted special permission not to list each commodity; such a procedure would be burdensome and time consuming for carriers and the present standard of 'im-

possibility' is unfair; it would be better to place the burden on the Commission by having the staff reject any unreasonably small or non-bona fide project filings; a new section should be inserted to read 'Project rates and special provisions (if any) being proposed in a tariff providing the Table of Contents or Commodity Index contain a specific reference on Project Rates'.- Pacific Coast and Waterman.

9. 536.6(a)(2). Amendments to dual rate contracts as to projects may be granted special permission whenever the rate has been in effect for at least 90 days after a previous rate change has taken effect and before 90 days' notice has been given to contract shippers. "This rule deleting the preceeding Docket No. 75-13."

ANAFC, Sea-Land, and South Atlantic Group.

10. 536.13. Freighter. Forwarder compensations must be included in carrier tariffs. The rule should be revised to state that tariffs include freighter forwarder compensations. It is desirable to have a uniform method of charging a single subscription price, regardless of its usefulness to particular shippers. It is expected, however, that carriers will provide subscription information which can be readily understood by shippers and which clearly identifies the various tariff components available and the charge assessed for each.

Section 536.9(a)(2) has been modified to coincide with the Commission's final decision in Docket No. 75-13, 1/ SRR 305 (1977). I.e., contract rates may be increased after 90 days' notice to contract shippers without regard to the length of time the rate has been in effect.

VII. The definitions of "through rate", "through route", "transshipment", "in-

terchange", "substitute service", "ab-

sorption", "equalization", "port", "feeder

service", "water carrier" and "intermodal

transportation" in § 536.12 have been modified to coincide with Part 531; 536.12 has been combined in a single section captioned "Exemptions and exclusions."

II. The definitions of "through rate", "through route", "transshipment", "in-

terchange", "substitute service", "ab-

sorption", "equalization", "port", "feeder

service", "water carrier" and "intermodal

transportation" have been temporarily withdrawn from § 536.1 to avoid possible conflict with recent court cases concerning intermodal transportation and the Commission's General Order 38. The definition of "carrier" was conformed to the definition in the Existing Rules, except that an express reference to nonvessel operating carriers was added to avoid any claim that the Commission has al-

tered its long standing recognition of nonvessel operating carriers as section 1 carriers.

III. Section 536.14 governing through intermodal transportation tariffs has been withdrawn and existing § 536.16 adopted in its place, thereby completely removing the requirement that tariffs contain a precise breakout of the port-to-port rates for each commodity carried. Existing § 536.16 contains its own definition or "carrier" was conformed to the definition in the Existing Rules, except that an express reference to nonvessel operating carriers was added to avoid any claim that the Commission has al-

tered its long standing recognition of nonvessel operating carriers as section 1 carriers.

The reference to "through intermodal transportation" in § 536.1(u) was also deleted in light of the withdrawal of § 536.14 and 536.12.

IV. A reference to the Commission's statutory responsibilities to police and prevent unduly discriminatory and prejudicial practices pursuant to Shipping Act sections 15, 16, and 17 has been added to § 536.9. Tariff regulations which rely upon statutory authority in addition to that of sections 18(b) and 14(b) is consistent with past Commission action and the purposes of the Shipping Act. "Filing of Tariff Rates- Through Route," 35 CFR 6394, 6397 (1970): "Report in Docket No. 875" (General Order 15), 30 FR 12682 (1965).

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

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

Section 536.9(a)(2) has been modified to coincide with the Commission's final decision in Docket No. 75-13, 1/ SRR 305 (1977). I.e., contract rates may be increased after 90 days' notice to contract shippers without regard to the length of time the rate has been in effect.
misconstrues the purpose of the regulation; and
said amendments shall take effect on January 1, 1978. New or reissued tariffs tendered for filing on or after January 1, 1978 shall be subject to the new regulations. Tariff amendments submitted on or after the effective date will, however, continue to be accepted in the same format as those filed for the last time for filing on or before January 1, 1979. On or after the latter date, all tariff material provided by common carriers by water in the foreign commerce of the United States annually to the Commission shall fully conform to the requirements of revised Part 536. Tariffs on file January 1, 1979 which do not meet the requirements of revised Part 536 shall be cancelled; and
it is further ordered, That any existing grants of special permission excusing compliance with foreign commerce carrier tariff filing requirements beyond the foreshadowed effective date of revised Part 536 shall continue according to their original terms until further action of the Commission.

By the Commission.
FRANCIS C. HURNEY, Secretary.

§ 536.1 Exemptions and exclusions.
(a) The following services are exempt from the provisions of this Part 536 of the Act and the rules of this part:
(1) Transportation by vessels operated by the State of Alaska between Prince Rupert, Canada, and ports in southeastern Alaska: Provided, That all the following conditions are met: (i) Carriage of property is limited to vehicles; (ii) tolls levied for vessels are based solely on space and weight or contents of the vehicles and are the same whether the vehicle is loaded or empty; (iii) the vessel operates on a schedule; and (iv) the carrier does not participate in any joint rates established in the territory of the State of Alaska and are not services transported for the purpose of sale.
(b) The following services are subject to continuing special permission authority to deviate from the 30 day notice requirement of Section 18(b) of the Act and the form and content requirements of this part:
(1) Transportation of U.S. Department of Defense cargo by American-flag carriers under terms and conditions negotiated and approved by the Military Sea-Lift Command. The following conditions are met: (i) The contracts of all carrier quotations or tenders (tenders) accepted by the Military Sea-Lift Command (MSC) are filed with the Commission as soon as possible after they are approved by MSC, but on no less than one day’s filing notice prior to the effective date thereof; (ii) all tenders are filed in triplicate, one copy of which is signed and retained at the Commission’s Washington Office for public inspection; (iii) a letter of transmittal accompanies the filing stating that the documents are submitted in accordance with the requirements of Shipping Act section 18(b) and this section; (iv) tenders submitted for filing are numbered by their respective carriers as part of a distinct tariff series, with each carrier’s series to begin with the number “1” and run consecutively thereafter; (v) tenders which supersede a prior tender specifically cancel the prior tender by its number.

§ 536.2 Definitions.
(a) The following terms defined in Section 18(b) of the Shipping Act, 1916, and otherwise in this section are used in this Part 536:
sudden changes in market conditions; and
it is further ordered, That the aforesaid amendments shall take effect on January 1, 1978. New or reissued tariffs tendered for filing on or after January 1, 1978 shall be subject to the new regulations. Tariff amendments submitted on or after the effective date will, however, continue to be accepted in the same format as those filed for the last time for filing on or before January 1, 1979. On or after the latter date, all tariff material provided by common carriers by water in the foreign commerce of the United States annually to the Commission shall fully conform to the requirements of revised Part 536. Tariffs on file January 1, 1979 which do not meet the requirements of revised Part 536 shall be cancelled; and
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(1) Transportation by vessels operated by the State of Alaska between Prince Rupert, Canada, and ports in southeastern Alaska: Provided, That all the following conditions are met: (i) Carriage of property is limited to vehicles; (ii) tolls levied for vessels are based solely on space and weight or contents of the vehicles and are the same whether the vehicle is loaded or empty; (iii) the vessel operates on a schedule; and (iv) the carrier does not participate in any joint rates established in the territory of the State of Alaska and are not services transported for the purpose of sale.
(b) The following services are subject to continuing special permission authority to deviate from the 30 day notice requirement of Section 18(b) of the Act and the form and content requirements of this part:
(1) Transportation of U.S. Department of Defense cargo by American-flag carriers under terms and conditions negotiated and approved by the Military Sea-Lift Command. The following conditions are met: (i) The contracts of all carrier quotations or tenders (tenders) accepted by the Military Sea-Lift Command (MSC) are filed with the Commission as soon as possible after they are approved by MSC, but on no less than one day’s filing notice prior to the effective date thereof; (ii) all tenders are filed in triplicate, one copy of which is signed and retained at the Commission’s Washington Office for public inspection; (iii) a letter of transmittal accompanies the filing stating that the documents are submitted in accordance with the requirements of Shipping Act section 18(b) and this section; (iv) tenders submitted for filing are numbered by their respective carriers as part of a distinct tariff series, with each carrier’s series to begin with the number “1” and run consecutively thereafter; (v) tenders which supersede a prior tender specifically cancel the prior tender by its number.

§ 536.2 Definitions.
(a) The following terms defined in Section 18(b) of the Shipping Act, 1916, and otherwise in this section are used in this Part 536:
in a conference tariff), the application of which is permitted to offer a lower rate to a signatory to such contracts. Therefore, any carrier, joint stock associations, trustees, receivers, agents, assigns and personal representatives, is permitted to offer a lower rate to a signatory to such contracts. The purpose of this part, the term "practice" refers to the filing of tariffs with the Commission. That supplements to tenders are also approved by the Commission under section 15 of the Act, which are conditioned upon a prior or subsequent movement.

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

(a) Act. The Shipping Act, 1916, as amended.
(b) Agent. A common carrier by water in the foreign commerce of the United States; that, if the carrier has an approved agreement, by filing its own tariff or any tariff filed with the Commission pursuant to § 536.10(c)(1) shall be filed in triplicate: Provided, however, That temporary filings by mail pursuant to § 536.10(c)(1), shall be filed in triplicate: Provided, however, That temporary filings by mail pursuant to § 536.10(c)(1) need not be submitted in triplicate.
(c) Class rates. Rates applicable to all articles which have been grouped or "classified" together in a classification tariff or a classification section of a rate tariff.
(d) Commodity rates. Rates applying on a commodity or commodities specifically named or described in the tariff in which the rate or rates are published.
(e) Conference. An association of carriers permitted, pursuant to an agreement approved by the Commission under section 15 of the Act to discuss, establish and file rates and practices on behalf of its member lines.
(f) Dual rates. That system of rating established pursuant to section 14(b) of the Act, in which a carrier or conference is permitted to publish and file a higher rate for a particular port-to-port movement, the application of which is not contingent upon a prior or subsequent movement.
(g) Joint rates. Rates or charges established by two or more carriers by transportation over the combined routes of such carriers between a port and a port, a port and a point, or any combination thereof.
(h) Local rates. Rates or charges for transportation over the route of a single carrier (or any one carrier participating in a conference tariff), the application of which is not contingent upon a prior or subsequent movement.
(i) Open rate. When a conference rebeliously resists its rate-making authority, in whole or in part, over a specified commodity or commodities, thereby permitting each individual carrier member of the conference to fix its own rates on such commodity or commodities.
(j) Open for public inspection. The maintenance of a complete and current set of the tariffs used by a carrier, or to which it is a party, in each of its offices and that of its agent in any city where it transacts business involving such tariffs.
(k) Person. Includes individuals, firms, partnerships, associations, companies, joint stock associations, trustees, receivers, agents, assigns and personal representatives.
(l) Proportional rates. Rates or charges assessed by a carrier for transportation over the route of a single carrier and file rates and classifications, regulations, and practices of a carrier or conference of carriers for transportation by water. For the purposes of this part, the term "practice" refers to the publication of tariffs, or any particular tariff.
(m) Tariff. A publication containing the actual rates, charges, classifications, regulations, and practices of a carrier or conference of carriers for transportation by water. For the purposes of this part, the term "practice" refers to the publication of tariffs, or any particular tariff.
(n) Tariff filing. Any tariff, or modification thereto, which is received by the Commission as filed pursuant to these rules.

§ 536.3 Filing of tariffs; general

(a) As used in this part, the words "filing" or "filed," when used with respect to the filing of tariffs with the Commission, shall mean actual receipt thereof. Provided, however, That temporary filings by mail pursuant to § 536.10(c)(1) shall be filed in triplicate: Provided, however, That temporary filings by mail pursuant to § 536.10(c)(1) need not be submitted in triplicate.
(b) Effective tariffs are not relieved from the necessity of complying with the Commission's regulations and the requirements of section 18(b) of the Act with respect to keeping tariffs open for public inspection.
(c) A carrier's obligation to file tariffs pursuant to section 18(b) of the Act and this part must be carried out as follows: (1) When the carrier is a party to an approved agreement, by filing its own tariff or tariffs, and (2) when the carrier is a party to an approved agreement, by participating in a single tariff filed by the conference. No common carrier may be shown as a participant in a tariff by another carrier or conference where such participation has not been approved by the Commission. That temporary tariffs, or any particular tariff.
(d) Whenever there is a delegation of tariff issuing authority to a person, not an official of such carrier or conference, the person, whether filed by such carrier or conference, shall act for such carrier or conference by a specific written delegation of authority.
(e) Provided, however, That temporary tariffs, or any particular tariff.
(f) A carrier's obligation to file tariffs pursuant to section 18(b) of the Act and this part must be carried out as follows: (1) When the carrier is a party to an approved agreement, by filing its own tariff or tariffs, and (2) when the carrier is a party to an approved agreement, by participating in a single tariff filed by the conference. No common carrier may be shown as a participant in a tariff by another carrier or conference where such participation has not been approved by the Commission. That temporary tariffs, or any particular tariff.

§ 536.4 Tariff file: filing and amending

(a) Tariffs shall be published and filed by an officer or employee of the carrier, or if a conference tariff, by an officer or employee of the conference. In the alternative, publication and filing may be accomplished through an agent authorized by the basic conference agreement.
(b) Tariffs shall be published and filed by an officer or employee of the carrier, or if a conference tariff, by an officer or employee of the conference. In the alternative, publication and filing may be accomplished through an agent authorized by the basic conference agreement.
(c) A carrier or conference may delegate authority to a person, not an official of such carrier or conference, for the purpose of issuing all its tariffs, or any particular tariff.
(d) A carrier or conference may delegate authority to a person, not an official of such carrier or conference, for the purpose of issuing all its tariffs, or any particular tariff.
(e) A carrier or conference may delegate authority to a person, not an official of such carrier or conference, for the purpose of issuing all its tariffs, or any particular tariff.
(f) A carrier or conference may delegate authority to a person, not an official of such carrier or conference, for the purpose of issuing all its tariffs, or any particular tariff.
(g) A carrier or conference may delegate authority to a person, not an official of such carrier or conference, for the purpose of issuing all its tariffs, or any particular tariff.
(h) A carrier or conference may delegate authority to a person, not an official of such carrier or conference, for the purpose of issuing all its tariffs, or any particular tariff.
been granted by the Commission pursuant to § 536.15.

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

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

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

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

§ 536.4 Tariff format.

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

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

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

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

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

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

Title Page, Check List, Table of Contents, Participating Carrier Page, Price Change and/or Arbitrary/Differential/Outport Differential (or other Identifying Term) Section, Rules and Regulations Section, Index of Commodities and Classifications, Commodity Rate Section, Classification and Class Rate Section, Routing Section, Open Rate Section.

§ 536.5 Tariff contents.

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

(1) The name of the carrier, appropriately identified as a Nonvessel Operating Common Carrier (NV0CC) or a Vessel Operating Common Carrier (V0CC), or the name of the conference. Tariffs filed pursuant to an agreement approved under section 15 of the Act shall be further identified with the agreement number.

(2) A statement identifying the carrier or conference.

(b) Beneath the PMC tariff number shall be numbered beginning with “Original Page 1.” “Original Page 2,” etc. Each page as thereafter revised shall be a consecutively numbered revision of the same page in the form required by § 536.10(b).

For example:

Smith Line Tariff FMC-12

(1) The name of the carrier, appropriately identified as a Nonvessel Operating Common Carrier (NV0CC), or Vessel Operating Common Carrier (V0CC), and the address of its principal office. Where a joint carrier or conference is involved, the name, title, and address of the joint service offered under each such trade name, if not shown on the title page.

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

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

(4) A statement showing the type of rates contained in the tariff. For example:

Local, proportional, class, commodity, etc., for each port, joint, through, intermodal, etc.

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

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

“All provisions other­wise herein provided (or except as provided in Item No. _____) or (except as provided on page ).” How much or what?

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

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

The title page in a tariff as originally filed would be titled “Original Page 1.” The first revision of this page would be titled “First Revised Page 7,” cancels original page 7.”

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

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

(2) The full legal name of each participating carrier, appropriately identified as a Nonvessel Operating Common Carrier (NV0CC) or Vessel Operating Common Carrier (V0CC), and the address of its principal office. Where a joint service participates, the FMC number of the agreement authorizing the joint service shall also be shown.

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

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

(5) A statement indicating the extent of any limitation or restriction, if the application of any of the rates, charges, rules, or regulations stated in the tariff
are restricted to any particular port, place, etc., or otherwise limited.

(6) A specimen bill(s) of lading, specimen of any bill of lading, contract of carriage, or other document evidencing the transportation agreement applicable to the contract offered, unless a separate bill of lading tariff is on file permitted by § 536.13(a). Such documents shall not contain provisions inconsistent or in conflict with the rules and regulations published in any applicable tariff.

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

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

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

(11) Minimum set forth. A rule in the case of rates naming two or more rates for different quantities of commodities covered by the same description, shall also state:

When two or more freight rates are named for carriage of goods of the same description over the same route and under similar conditions and the application is dependent upon the quantity of the goods shipped, the total freight charges assessed against the shipment shall not exceed the total charges computed for a larger quantity:

Provided, that the qualification specifying a required minimum quantity, either weight or measurement per container or otherwise applicable to the contents of the container shall:

Provided, The minimum set forth is met or exceeded. At the shipper's option, a quantity less than the minimum level may be freighted at the lower rate: Provided, The weight or measurement declared for rating purposes is increased to the minimum level.

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

(13) Transshipment service. Tariffs containing through rate for transshipment service offered under either nonexclusive agreements filed in compliance with Part 534 of the Commission's rules or agreements approved by the Commission under section 15 of the Act, shall also contain a Routing Section as illustrated by Exhibit No. 8 which includes:

A clear statement of all the services provided to the shipper and included in the transportation rates set forth therein.

(4) Heavy lift.

(5) Extra length.

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

(7) Payment of freight charges. A clear statement of all requirements for the payment of freight charges. Currency restrictions, if any, must be specified and the basis for determining the rate where a payment is required to be shown. If credit is extended to shippers, the rule must include the credit terms available and the conditions upon which credit is extended. When credit application is extended, specific terms of such applications or agreements must be published as part of this rule.

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

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

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

(16) Explosives or other dangerous goods. A clear and complete explanation of the rules, regulations, and other documents governing the transportation of explosives, inflammable or corrosive material, or other dangerous articles, or a reference to a separate publication which contains such regulations.

(17) Green salted hides. A rule in accordance with Part 534 of the Commission's rules which requires that:

(i) The shipping weight for purposes of assessing transportation charges be either a scale weight or a scale weight minus a deduction whose amount and method of computation are specified in said rule; and

(ii) the shipper furnishes the carrier a certificate of origin from an inland carrier for each shipment of green salted hides at or before the time the shipment is tendered for ocean shipment.

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

(i) The return of shipments be accomplished within a specific period not to exceed 180 days.

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

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

(19) Shippers requests and complaints. Clear and complete instructions in accordance with §§ 536.6 of the Commission's rules stating that shippers may file their requests and complaints, together with a sample of the request form if one is used, or, in lieu thereof, a description of the information necessary for processing the request or complaint.

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

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

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

(i) The rate block section of a tariff may indicate rates applicable to all commodities or to all commodities of a class, on which specific commodity rates are not stated in the tariff, to be called "chemicals, n.o.s." (not otherwise specified), "general chemicals" or any similar term. The rates shall be made subject thereto in the tariff by this part, the publication of a statement clearly indicating which of the two rates shall prevail, and states in its tariffs two rates alternative with rates published therein, is prohibited: Provided, however, That when a carrier or conference publishes both commodity and class rates, a statement shall be made clearly indicating which of the two rates shall apply on the commodity or commodities on which both class rates and commodity rates are published; or where alternate with rates published therein, is prohibited: Provided, however, That the Table of Contents or Commodity Index contains a specific reference to "side-by-side" rates. See Exhibit No. 5.

(p) All rate pages shall be filed in the form and manner shown in Exhibit Nos. 1 through 7. Where space permits, contract and noncontract rates, properly identified, may be published in a column form or side-by-side rather than the manner shown in Exhibit No. 3. See Exhibit No. 5.

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

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

(p) All rate pages shall be filed in the form and manner shown in Exhibit Nos. 1 through 7. Where space permits, contract and noncontract rates, properly identified, may be published in a column form (side-by-side) rather than the manner shown in Exhibit No. 3. See Exhibit No. 5.

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

§ 536.7 [Reserved]

§ 536.8 Tariffs containing through rates and through routes.

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

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

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

(3) Joint rate. A through rate in which two or more carriers participate by
agreement for the offering of through transportation service over a through route.

§ 536.10 Amendments to tariffs.

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

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

(3) Amendments which provide for changes in rates, charges, rules, regulations, or other provisions accomplished by an amendment shall be published and filed to become effective not earlier than 30 days after giving notice to any other § 536.10(b) symbol applicable to the effect of the deletion upon the carrier’s rates or charges.

(4) Every tariff amendment effective upon publication and filing.

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

(b) Permanent tariff amendments. (1) Looseleaf tariffs shall be amended by reprinting the entire page upon which any modification is made. An amended tariff page shall be designated in the upper right-hand corner, state the effective date of the changes made on that page. Such effective date shall be subject to the requirements of section 18(b) of the Act and of this section. Revised pages may also state the issue date.

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

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

(4) Every tariff amendment effective upon less than statutory notice pursuant to special permission granted by the Commission, shall show in connection with such change the notation required by § 536.16 (f).

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

(6) Whenever a tariff contains charges for terminal services, canal tolls, or additional charges not under the control of the carrier or conference which are granted or allowed to shippers, including charges for terminal services, canal tolls, or additional charges not under the control of the carrier or conference which are granted or allowed to shippers, it shall be indicated by the symbol (T) or (C).

(7) An amendment containing a rate on a specific commodity or on a specific commodity rate which would otherwise be applicable to the specific commodity, or (ii) the specific commodity rate is equal to or lower than the previously applicable general cargo rate.

(b) Terminal rules, charges and allowances; free time allowed at New York.

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

(2) Wherever a tariff includes charges for terminal services, canal tolls, or additional charges not under the control of the carrier or conference which are granted or allowed to shippers, it shall be indicated by the symbol (T) or (C).

(3) Every tariff naming rates on import traffic shipped through the port of New York, or to a range of ports which includes New York, shall contain a rule in the compliance with Part 536 of the Commission’s rules (General Order 8).

(b) Filing requirements. Every carrier or conference shall file tariffs stating all through routes, charges, rules, and regulations governing the through transportation of freight between ports or points in the United States and ports or points in a foreign country in which such carrier or conference participates. Such tariffs shall include the names of all participating common carriers, the established through route, a description of the service to be performed by each participating common carrier, and clearly indicate the division, rate or charge to be collected by the water carrier subject to the Act for its port-to-port portion of the through service, which division, rate or charge shall be treated as a proportional rate subject to the provisions of the Act. Such tariffs will be filed and maintained in the manner provided in section 18(b) of the Act, and the rules of Part 536. Every amendment of every agreement to which a carrier subject to the Act, or conference of such carriers, is or becomes a party, for transportation between a port or point in the United States and a port or point in a foreign country, establishing any joint rate which is offered in connection with any common carrier, shall be filed concurrently with the filing of the through rate tariff.

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

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

(b) Any carrier or conference filing requirements.

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

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

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

(4) Every tariff amendment effective upon less than statutory notice pursuant to special permission granted by the Commission, shall show in connection with such change the notation required by § 536.16 (f).

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

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

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

(9) When a revised page deletes rates, rules or other provisions previously published on the page which it cancels, and such rates, rules, or provisions are published on a different page, the revised page shall make a specific reference to the page on which the rates, rules, or
provisions will be found, and the page to which reference is made shall contain the following notation in connection with such rules or other provisions:

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

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

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

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

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

(c) Temporary tariff amendment.

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

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

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

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

(iii) A statement identifying the commodities upon which rates are being changed;

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

(v) The new rate being implemented;

(vi) The effective date of the rate change;

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

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

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

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

(5) All temporary filings shall be followed by the filing of a permanent revised page covering the same tariff changes which fully complies with §536.10(b). Such permanent filing shall state the method by which the temporary filing (audit, file review, telegraph, advice, etc.) and the date it was submitted. Such permanent amendments must be filed within twenty (20) days after receipt of the temporary filing for carriers or conferences making such filing from within the continental United States, and within thirty (30) days after receipt of the temporary filing when the carrier or conference is located outside the continental United States.

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

(7) In the event a carrier or conference filing a temporary amendment does not file a permanent tariff amendment within the time period and in the manner prescribed in §536.10(c) (9), a warning letter or collection telegram shall be sent by the Commission to the carrier or conference. Immediate steps shall be taken by the carrier or conference to correct the deficiency. If a carrier or conference fails to submit the proper permanent filing after one warning, or, after having once received a written warning, should subsequently fail a second time to file a permanent tariff modification within the prescribed time period, the Commission, acting through a designated carrier or conference that it no longer has the privilege of making rate changes by temporary filing. Thereafter, said carrier or conference shall not be permitted to file a temporary filing only by filing permanent amendments until further notice of the Commission.

(d) Rejection of tariff amendments or other tariff publications. (1) Any amendment (or other tariff publication) submitted for filing which fails in any respect to conform with sections 18(b) and 14b of the Act, or with the provisions of this part, is subject to rejection.

(2) When a tariff matter is rejected, the Commission, acting through a designated official, will inform the person tendering the material for filing of the rejection by telegram, cablegram, or letter.

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

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

Issued in lieu of 

Page No. 

(Correction No. 

be rejected by the Federal Maritime Commission.

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

(1) Upon receiving notice of a partial rejection, the filing party shall immediately notify all subscribers to affected tariffs of the partial rejection and file a revised filing with the Commission. For the purposes of this section, the term "partial rejection" shall mean the filing of a temporary amendment (or other tariff publication) deleting the partially rejected matter or otherwise conforming such matter to the applicable provisions of the Act or this part.

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

§536.11 Supplements to tariffs.

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

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

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

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

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

(b) Supplements filed pursuant to §§536.11(a) (2) and 536.11(a) (3) which do not change the rates applicable to all commodities stated therein except those noted on page 

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

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

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

Supplement No. 1 to FMC Tariff No. 

§536.12 [Reserved]

§536.13 Governing tariffs.

(a) If it is undesirable or impractical to include tariff rules or bills of lading/contracts of affreightment in a rate tariff as provided by §536.4 (d) and §536.5 (d) (8), such materials may be separately published and filed as a "rules tariff" and/or "bill of lading tariff." Classification of freight, routing guides, and simulation of the rate matter shall be filed as separate "governing tariffs." Rate tariffs affected by such governing publications shall be made expressly sub-
§ 536.14 Transfer of operations, transfer of control, changes in carrier name, and changes in conference membership.

(a) Whenever a carrier with an individual tariff on file changes its name, or transfers operating control transferred to another person, the person which will thereafter operate the common carrier service shall make appropriate tariff filings to indicate the change in name. Subsequent amendments to such tariffs shall be in the name of the new carrier.

(b) Whenever the name of a carrier which participates in a conference is changed, the conference shall file an appropriate amendment to its tariff indicating the participating carrier's new name.

§ 536.15 Applications for special permission.

(a) Section 18(b) of the Act authorizes the Commission, in its discretion and for good cause shown, to permit increases in rates or the issuance of new or initial rates on less than statutory notice. The Commission may also in its discretion and for good cause shown, permit departures from the regulations of this part. The Commission will grant such permission only in cases where real merit is demonstrated.

(1) Typographical and/or clerical errors constitute good cause for the exercise of special permission authority, but every application based thereon must plainly specify the error and present clear evidence of its existence, together with a full statement of the attending circumstances, and shall be filed with reasonable promptness after issuance of the defective tariff publication.

(b) Application for special permission to establish rate increases on less than statutory notice, or for waiver of the provisions of this part, shall be made by the carrier, conference, or agent that holds authorization to file the tariff publication.

(c) Application for special permission shall be made only by cable, telegram or carrier in whose name the special permission is requested.

(d) If the authority granted by special permission is used, it must be used in its entirety and in the manner set forth by the Commission. If it is not desired to use the exact authority granted, and less, more or different authority is desired, a new application complying with the requirements of this part in all respects and referring to the previous special permission must be filed.

(e) Applications for special permission shall contain the following information:

(1) The name of the conference or the carrier, if the conference is dissolved.

(2) The FMC number and description of the specific tariff involved.

§ 536.16 Filing of applications for special permission.

(a) Applications for special permission shall be filed with the Commission in quadruplicate, and a copy shall be simultaneously furnished to the party relative hereto by the inclusion of a reference in substantially the following form:

Except as otherwise provided, this tariff is governed by, (insert type of tariff), PMC No. .......

(b) No rate tariff shall refer to or be governed by another rate tariff.

(c) Tariffs naming rates for the transportation of explosives, inflammable or corrosive materials, or other dangerous articles, shall contain, as required by § 536.5(d)(16), the rules and regulations issued by the carrier or conference governing the transportation of such articles, or reference to a separate publication where such regulations are available to the general public.

§ 536.17 Transfer of operations, transfer of control, changes in carrier name, and changes in conference membership.

(a) Whenever a carrier with an individual tariff on file changes its name, or transfers operating control transferred to another person, the person which will thereafter operate the common carrier service shall make appropriate tariff filings to indicate the change in name. Subsequent amendments to such tariffs shall be in the name of the new carrier.

(b) Whenever the name of a carrier which participates in a conference is changed, the conference shall file an appropriate amendment to its tariff indicating the participating carrier's new name.

§ 536.18 Applications for special permission.

(a) Section 18(b) of the Act authorizes the Commission, in its discretion and for good cause shown, to permit increases in rates or the issuance of new or initial rates on less than statutory notice. The Commission may also in its discretion and for good cause shown, permit departures from the regulations of this part. The Commission will grant such permission only in cases where real merit is demonstrated.

(1) Typographical and/or clerical errors constitute good cause for the exercise of special permission authority, but every application based thereon must plainly specify the error and present clear evidence of its existence, together with a full statement of the attending circumstances, and shall be filed with reasonable promptness after issuance of the defective tariff publication.

(b) Application for special permission to establish rate increases on less than statutory notice, or for waiver of the provisions of this part, shall be made by the carrier, conference, or agent that holds authorization to file the tariff publication.

(c) Application for special permission shall be made only by cable, telegram or carrier in whose name the special permission is requested.

(d) If the authority granted by special permission is used, it must be used in its entirety and in the manner set forth by the Commission. If it is not desired to use the exact authority granted, and less, more or different authority is desired, a new application complying with the requirements of this part in all respects and referring to the previous special permission must be filed.

(f) Every tariff filed pursuant to a special permission granted by the Commission shall contain the following notation:

Issued under authority of Federal Maritime Commission Special Permission No. F-.......

*The filing carrier(s) shall fill in the blank with the special permission number assigned by the Commission.

§ 536.19 Filing of applications for special permission.

(a) Applications for special permission shall be filed with the Commission in quadruplicate, and a copy shall be simultaneously furnished to the party relative hereto by the inclusion of a reference in substantially the following form:

Except as otherwise provided, this tariff is governed by, (insert type of tariff), PMC No. .......

(b) No rate tariff shall refer to or be governed by another rate tariff.

(c) Tariffs naming rates for the transportation of explosives, inflammable or corrosive materials, or other dangerous articles, shall contain, as required by § 536.5(d)(16), the rules and regulations issued by the carrier or conference governing the transportation of such articles, or reference to a separate publication where such regulations are available to the general public.

§ 536.20 Transfer of operations, transfer of control, changes in carrier name, and changes in conference membership.

(a) Whenever a carrier with an individual tariff on file changes its name, or transfers operating control transferred to another person, the person which will thereafter operate the common carrier service shall make appropriate tariff filings to indicate the change in name. Subsequent amendments to such tariffs shall be in the name of the new carrier.

(b) Whenever the name of a carrier which participates in a conference is changed, the conference shall file an appropriate amendment to its tariff indicating the participating carrier's new name.

§ 536.21 Applications for special permission.

(a) Section 18(b) of the Act authorizes the Commission, in its discretion and for good cause shown, to permit increases in rates or the issuance of new or initial rates on less than statutory notice. The Commission may also in its discretion and for good cause shown, permit departures from the regulations of this part. The Commission will grant such permission only in cases where real merit is demonstrated.

(1) Typographical and/or clerical errors constitute good cause for the exercise of special permission authority, but every application based thereon must plainly specify the error and present clear evidence of its existence, together with a full statement of the attending circumstances, and shall be filed with reasonable promptness after issuance of the defective tariff publication.

(b) Application for special permission to establish rate increases on less than statutory notice, or for waiver of the provisions of this part, shall be made by the carrier, conference, or agent that holds authorization to file the tariff publication.

(c) Application for special permission shall be made only by cable, telegram or carrier in whose name the special permission is requested.

(d) If the authority granted by special permission is used, it must be used in its entirety and in the manner set forth by the Commission. If it is not desired to use the exact authority granted, and less, more or different authority is desired, a new application complying with the requirements of this part in all respects and referring to the previous special permission must be filed.

(f) Every tariff filed pursuant to a special permission granted by the Commission shall contain the following notation:

Issued under authority of Federal Maritime Commission Special Permission No. F-.......

*The filing carrier(s) shall fill in the blank with the special permission number assigned by the Commission.

§ 536.22 Filing of applications for special permission.

(a) Applications for special permission shall be filed with the Commission in quadruplicate, and a copy shall be simultaneously furnished to the party relative hereto by the inclusion of a reference in substantially the following form:

Except as otherwise provided, this tariff is governed by, (insert type of tariff), PMC No. .......

(b) No rate tariff shall refer to or be governed by another rate tariff.

(c) Tariffs naming rates for the transportation of explosives, inflammable or corrosive materials, or other dangerous articles, shall contain, as required by § 536.5(d)(16), the rules and regulations issued by the carrier or conference governing the transportation of such articles, or reference to a separate publication where such regulations are available to the general public.

§ 536.23 Transfer of operations, transfer of control, changes in carrier name, and changes in conference membership.

(a) Whenever a carrier with an individual tariff on file changes its name, or transfers operating control transferred to another person, the person which will thereafter operate the common carrier service shall make appropriate tariff filings to indicate the change in name. Subsequent amendments to such tariffs shall be in the name of the new carrier.

(b) Whenever the name of a carrier which participates in a conference is changed, the conference shall file an appropriate amendment to its tariff indicating the participating carrier's new name.

§ 536.24 Applications for special permission.

(a) Section 18(b) of the Act authorizes the Commission, in its discretion and for good cause shown, to permit increases in rates or the issuance of new or initial rates on less than statutory notice. The Commission may also in its discretion and for good cause shown, permit departures from the regulations of this part. The Commission will grant such permission only in cases where real merit is demonstrated.

(1) Typographical and/or clerical errors constitute good cause for the exercise of special permission authority, but every application based thereon must plainly specify the error and present clear evidence of its existence, together with a full statement of the attending circumstances, and shall be filed with reasonable promptness after issuance of the defective tariff publication.

(b) Application for special permission to establish rate increases on less than statutory notice, or for waiver of the provisions of this part, shall be made by the carrier, conference, or agent that holds authorization to file the tariff publication.

(c) Application for special permission shall be made only by cable, telegram or carrier in whose name the special permission is requested.

(d) If the authority granted by special permission is used, it must be used in its entirety and in the manner set forth by the Commission. If it is not desired to use the exact authority granted, and less, more or different authority is desired, a new application complying with the requirements of this part in all respects and referring to the previous special permission must be filed.

(f) Every tariff filed pursuant to a special permission granted by the Commission shall contain the following notation:

Issued under authority of Federal Maritime Commission Special Permission No. F-.......

*The filing carrier(s) shall fill in the blank with the special permission number assigned by the Commission.

§ 536.25 Filing of applications for special permission.

(a) Applications for special permission shall be filed with the Commission in quadruplicate, and a copy shall be simultaneously furnished to the party relative hereto by the inclusion of a reference in substantially the following form:

Except as otherwise provided, this tariff is governed by, (insert type of tariff), PMC No. .......

(b) No rate tariff shall refer to or be governed by another rate tariff.

(c) Tariffs naming rates for the transportation of explosives, inflammable or corrosive materials, or other dangerous articles, shall contain, as required by § 536.5(d)(16), the rules and regulations issued by the carrier or conference governing the transportation of such articles, or reference to a separate publication where such regulations are available to the general public.
**Exhibit No. 8**

<table>
<thead>
<tr>
<th>Name of carrier or conference and tariff number</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>From: (Range or ports)</td>
<td>To: (Range or ports)</td>
</tr>
<tr>
<td>Effective date</td>
<td></td>
</tr>
<tr>
<td>Correction</td>
<td></td>
</tr>
</tbody>
</table>

Exempt as otherwise provided herein, rules apply per ton of (2,240 lb) or (40 ft³) whichever produces the greater revenue.

<table>
<thead>
<tr>
<th>Commodity Code</th>
<th>Commodity description and packaging</th>
<th>Type</th>
<th>Base</th>
<th>Rate</th>
<th>(Ports or range)</th>
<th>(Ports or range)</th>
<th>Item 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcohols (effective May 10, 1977)</td>
<td>C. 100%</td>
<td>8.90</td>
<td>8.35</td>
<td>4.17</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Canned Goods:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fish</td>
<td>C. 100%</td>
<td>1.15</td>
<td>2.95</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vegetable:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>40% or less</td>
<td>C. 100%</td>
<td>1.15</td>
<td>2.95</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>40% or less</td>
<td>C. Case</td>
<td>1.15</td>
<td>2.95</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* As applicable.

Explanation of this Exhibit: Conference or Carrier; Dual rate system; two ranges of destination ports; rates per ton or per 100 lb.

---

**Exhibit No. 4**

<table>
<thead>
<tr>
<th>Name of carrier or conference and tariff number</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>From: (Range or ports)</td>
<td>To: (Range or ports)</td>
</tr>
<tr>
<td>Effective date</td>
<td></td>
</tr>
<tr>
<td>Correction</td>
<td></td>
</tr>
</tbody>
</table>

Exempt as otherwise provided herein, rules apply per ton of (2,240 lb) or (40 ft³) whichever produces the greater revenue.

<table>
<thead>
<tr>
<th>Commodity Code</th>
<th>Commodity description and packaging</th>
<th>Type</th>
<th>Base</th>
<th>Rate</th>
<th>Item 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fans, electric</td>
<td>C. W/M</td>
<td>63.75</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Glasses, sun</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>U. M</td>
<td>70.75</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lime, hydrated, packs</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>U. W</td>
<td>70.75</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liquors,</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liquors, medicinal: Transferred to medicinal</td>
<td>C. W</td>
<td>20.50</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>C. W</td>
<td>20.50</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scotch, in barrels: Transferred to Liquors</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>A. Open</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Change symbols must be shown in the commodity description column either to the left or right of the commodity.

Explanation of this Exhibit: Conference or Carrier; Dual rate system; One range or ports; deletion of rates showing reduction and increase due to deletion.
### Exhibit No. 3

<table>
<thead>
<tr>
<th>Commodity Code</th>
<th>Commodity description and packaging</th>
<th>Type</th>
<th>Rate basis</th>
<th>(Ports or range)</th>
<th>(Ports or range)</th>
<th>Item 1</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Iron and steel:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Turnpikes</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Emergency rate effective temporary</td>
<td></td>
<td>C</td>
<td>34.60</td>
<td>37.50</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Culked or pitted</td>
<td></td>
<td>M</td>
<td>37.25</td>
<td>45.00</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Medications, patent preparations</td>
<td></td>
<td>C</td>
<td>67.75</td>
<td>80.50</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Value exceeding 300 but not exceed-</td>
<td></td>
<td>C</td>
<td>74.25</td>
<td>81.50</td>
<td></td>
</tr>
<tr>
<td></td>
<td>ing $500 per 40 l.t.</td>
<td></td>
<td>M</td>
<td>74.25</td>
<td>81.50</td>
<td></td>
</tr>
</tbody>
</table>

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

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

### Exhibit No. 4

<table>
<thead>
<tr>
<th>Commodity Code</th>
<th>Commodity Code</th>
<th>Class or Item No.</th>
<th>Commodity Code</th>
<th>Commodity Code</th>
<th>Class or Item No.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Where tariff publishes both class and commodity rates, as above, the commodity item numbers should be used with the rate counting unit example—House rates are in twelve classes then the commodity rates should not be numbered lower than 100.

**Explanation of the use of this exhibit:** Conference or Carrier: Dual rate system; Valuation rates and emergency, temporary or special rates.
### RULES AND REGULATIONS

**Exhibit No. 7**

<table>
<thead>
<tr>
<th>Name of carrier or conference and tariff number</th>
<th>Orig./Rev.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>From: (Range or ports)</th>
<th>To: (Range or ports)</th>
<th>Effective date</th>
<th>Correction</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Class rates**

Except as otherwise provided, rates apply per ton of 2,240 lbs or 40 ft³ whichever produces the greater revenue.

<table>
<thead>
<tr>
<th>Ports to which rates apply</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ports A, B, C</td>
<td>90.00</td>
<td>95.00</td>
<td>90.00</td>
<td>62.00</td>
<td>59.00</td>
<td>37.00</td>
</tr>
<tr>
<td>Contract........</td>
<td>100.00</td>
<td>97.75</td>
<td>90.00</td>
<td>72.00</td>
<td>57.60</td>
<td>45.25</td>
</tr>
<tr>
<td>Ports D, E, F</td>
<td>60.00</td>
<td>52.50</td>
<td>55.00</td>
<td>51.50</td>
<td>54.00</td>
<td>36.75</td>
</tr>
</tbody>
</table>

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

Explanations of terms used include: Conference or carrier; single level or dual-rate system; class rate tariff or class rate section of class and commodity rate.

---

**Routing Section**

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

**Agreement No.**

**Carriers:**

- Originating: ABC S.S. Co.
- Delivering: XYZ Line, Inc.

**From:** Japanese Ports

**To:** Manila

**Agreement No.**

**Carriers:**

- Originating: ABC S.S. Co.
- Intermediate: XYZ Line, Inc.
- Delivering: DEF Maritime Co.

**From:** Naha, Okinawa

**To:** Kobe/Yokohama

**U.S. Pacific Coast Ports**

**U.S. North Atlantic Ports**

**Agreement No.**

**Carriers:**

- Originating: XYZ Line, Inc.
- Delivering: ABC S.S. Co.

**Transshipment service restricted to shipments of frozen fish.**

**From:** Atchorage

**To:** Seattle

**Singapore**

**Brunei**

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[FR Doc.77-33118 Filed 11-15-77;8:45 am]
CHAPTER X—INTERSTATE COMMERCE COMMISSION

PART 1033—CAR SERVICE

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

AGENCY: Interstate Commerce Commission.

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

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


FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION:
The order is printed in full below.

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

The Chicago and North Western Transportation Co.'s (CNW) and the Chicago, Milwaukee, St. Paul, and Pacific Railroad Co.'s (MILW) parallel lines intersect a major highway at Schofield, Wis. To improve public safety and reduce congestion, the State of Wisconsin (State) is completing a highway underpass under the line of MILW. To avoid the necessity of constructing a similar structure for the passage of CNW trains over this highway, the State has requested and the railroads have agreed to joint use of the MILW's tracks at this point. Rerouting of CNW trains over these tracks of the MILW will eliminate the hazards inherent in the operation of CNW trains over its present intersection with this highway without loss or reduction of railroad service to any shipper. It is the opinion of the Commission that operation by the CNW over these tracks of the MILW is necessary in the interest of public safety and will reduce or eliminate the hazards inherent in the operation of the CNW seeking permanent authority to operate over these tracks of the MILW; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1255 Chicago and North Western Transportation Company authorized to operate over tracks of Chicago, Milwaukee, St. Paul and Pacific Railroad Company.
(a) The Chicago and North Western Transportation Co. (CNW) is authorized to operate over tracks of the Chicago, Milwaukee, St. Paul, and Pacific Railroad Co. (MILW) between MILW milepost 88.88 at Schofield, Wis., and milepost 88.03 at Rothschild, Wis.
(b) Application. The provisions of this order shall apply to intrastate, interstate, and foreign traffic.
(c) Rates applicable. Inasmuch as this operation by the CNW over tracks of the MILW is deemed to be due to carrier's disability, the rates applicable to traffic moved by the CNW over the tracks of the MILW shall be the rates which were applicable on the shipments at the time of shipment as originally routed.
(d) Nothing herein shall be considered as a pre-judgment of the application of the CNW for permanent authority to operate over tracks of the MILW.
(e) Effective date. This order shall become effective at 11:59 p.m., November 14, 1977.
(f) Expiration date. The provisions of this order shall expire at 11:59 p.m., May 31, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

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

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

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

H. G. Homme, Jr., Acting Secretary

[FR Doc. 77-33143 Filed 11-15-77; 8:45 am]
or made of native vegetation are permissible.
8. Hunters will not be permitted to hunt closer than 100 yards apart.
9. The use of dogs as retrievers is permissible and encouraged, but dogs must be under firm control at all times.
10. Each hunter under age 18 must be under the close supervision of an adult. For safety reasons the ratio should be one adult to one juvenile, but in no case should one adult have more than two juveniles under his/her supervision.

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

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


RAY R. VAUGHN,
Deputy Regional Director.

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

PART 32—HUNTING
Opening of Swanquarter National Wildlife Refuge, N.C.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

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

EFFECTIVE DATE: December 6, 1977.

FOR FURTHER INFORMATION CONTACT:

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

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

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

Dated: November 9, 1977.
LYNN A. GREENWALT,
Director, United States Fish and Wildlife Service.

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

PART 33—SPORT FISHING
Opening of Kirwin National Wildlife Refuge, Kans., to Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special Regulation.

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

DATES: January 1 through December 31, 1978.
FOR FURTHER INFORMATION CONTACT:

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

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

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

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

KEITH S. HANSEN,
Refuge Manager.

[PR Doc.77-33055 Filed 11-15-77;8:45 am]
proposed rules

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

[ 8010–01 ]
SECURITIES AND EXCHANGE COMMISSION
[ 17 CFR Part 240 ]
[Release No. 34–14157; Filed No. ST–728]
SHORT TENDERING RULE
Proposed Amendment of Rule 10b–4
Under Securities Exchange Act of 1934
AGENCY: Securities and Exchange Commission.
ACTION: Proposed rulemaking.
SUMMARY: The Commission proposes to amend its rule regulating the practice of “short tendering” during tender and exchange offers. If adopted, the proposed amendment would provide definitions, and substantive antifraud provisions for the purpose of protecting investors, with respect to practices during tender offers for any securities.
DATES: Comments should be submitted on or before January 13, 1978.
ADDRESSES: Persons wishing to submit written views, data and arguments should file six copies of their comments with George A. Fittsimmons, Secretary, Securities and Exchange Commission, room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to File No. S7–728 and will be available for public inspection at the Commission’s Public Reference Room, room 6101, 1100 L Street NW, Washington, D.C.
SUPPLEMENTARY INFORMATION:
The Securities and Exchange Commission announced today that it has published for comment a proposal to amend Rule 10b–4 (17 CFR 240.10b–4) under the Securities Exchange Act of 1934 (the “Act”) (15 U.S.C. 78a et seq., as amended by Pub. L. 94–29, 89 Stat. 97 (June 4, 1975)). The Commission is also soliciting comment on certain policy questions relating to the tender process in connection with tender offers and exchange offers. Rule 10b–4 was adopted by the Commission on May 28, 1968, for the purpose of prohibiting “short tendering,” i.e., tendering more shares than a person owns in order to avoid or reduce the risk of pro rata acceptance in tender and exchange offers for less than the outstanding securities of a class (“partial offers”). The proposed amendment to Rule 10b–4 (the “Proposed Amendment”), if adopted, would be promulgated pursuant to Sections 10(a), 10(b), 14(e) and 23(a) of the Act (15 U.S.C. 78j(a), (j)(1), (e) and (w)(a)).

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

In 1968, tender offers and the conduct of the participants in such offers were largely unregulated. As the number of tender offers increased, it became apparent that the tender process was susceptible to a number of abuses tending to disrupt the fairness and orderliness of the trading markets for the securities of both the person making a tender offer (the “offeror”) and the person whose securities are the target of the tender offer (the “target shareholder”). Congressional awareness of these abuses and the increasing popularity of the tender offer as a technique for acquiring control of public companies resulted in the introduction of federal legislation intended to provide comprehensive and evenhanded protection to all participants in the tender offer process.

Congressional awareness of these abuses was facilitated by the willingness of offerors to accept guarantees of delivery by banks and members of national securities exchanges in lieu of actual delivery of certificates representing securities tendered. The Commission indicated that while the guarantee procedure was a “simple and reasonable provision commonly included in tender offer agreements,” it failed to provide a “adequate power to deal with the abuse of short tendering but concluded that the Commission had adequate power to deal with the abuse of short tendering under the antifraud provisions of the Securities Exchange Act.”

Thereafter, pursuant to Section 10(b) of the Act, the Commission published proposed Rule 10b–4 for comment and, after reviewing the comments received, adopted Rule 10b–4 on May 29, 1968, for

In 1970, Section 14(e) was amended to give the Commission rulemaking authority to define and prohibit such acts and practices.

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

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

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

The original tender offer legislative proposal was introduced by Senator Harrison A. Williams in 1965. Subsequently, the bill was substantially revised and S. 510, the legislative proposal which formed the basis for the bill which was eventually enacted, was introduced in the Senate in 1966.


4 This practice was facilitated by the willingness of offerors to accept guarantees of delivery by banks and members of national securities exchanges in lieu of actual delivery of certificates representing securities tendered. The Commission indicated that while the guarantee procedure was a “simple and reasonable provision commonly included in tender offer agreements,” it failed to provide a guarantee process. Hearings at 198–199.


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

FEDERAL REGISTER, VOL. 42, NO. 221—WEDNESDAY, NOVEMBER 16, 1977
specific purpose of prohibiting short tendering. Rule 10b-4 makes it a "manipulative or deceptive device or contrivance" as used in Section 10(b) of the Act, for any person, in response to a tender offer or for a request or invitation for tenders of, any security" to tender securities which he does not own. The Rule applies to all cash tender and exchange offers whether made by a third party or by the seller of the subject securities.

Paragraph (a) of Rule 10b-4 requires that, if a person tenders a security (or causes it to be tendered on his behalf, directly or indirectly, by means of a guarantee) he must own that security, as ownership is defined in paragraph (b) of the Rule.

THE NEED FOR AMENDMENT

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

As more fully discussed below, the Commission is concerned that these practices in connection with partial tender offers can have much the same effect as short tendering, adversely affecting the fairness of the markets during and immediately after such offers and thwarting the goal of assuring equal treatment for all participants in tender offers.1

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

SUMMARY OF PROPOSED AMENDMENTS

Paragraph (b)(1) of the Proposed Amendments would require persons who tender (as defined in paragraph (a)(6)) subject securities (or equivalent securities) to deliver the subject securities tendered or an equivalent security (as defined in paragraph (a)(3)) from the time of tender through the earlier of (i) the last date on which tenders may be made pursuant to the terms of the offer or (ii) the date on which the tenderer is rejected or withdrawn. Paragraph (b)(1) would also require tendering persons to deliver the subject securities tendered (or equivalent securities) to the tender offeror within the period specified by the offer.2

Paragraph (b)(2) would prohibit a person (or a bank or other financial institution) from making, in the context of a subject security during a tender offer unless he delivered the subject security to the purchaser (or his agent) by the last date on which tenders may be made pursuant of the offer.

Paragraph (b)(3) makes it a manipulative or deceptive device or contrivance and a fraudulent, deceptive or manipulative act or practice for a person to effect a loan of subject securities or equivalent securities with the intent or purpose of evading the provisions of the Rule.

Paragraph (a)(1) would alter the concept of "ownership" of the subject securities as defined in Rule 10b-4. The new approach would abandon the concept of title and of ownership based upon purchase and contracts to purchase presently embodied in Rule 10b-4(a)(1). The "ownership" for purposes of the Rule contemplates that a person must (1) have acquired the security for his own account, (2) otherwise than by borrowing the security, (ii) have the right to dispose of the security (or to direct its disposition), and (iii) have the security owned and in his possession or "under his control," as that latter term would be defined in paragraph (a)(2) of the Proposed Amendments. Subject securities would be considered under a person's control only when those securities are in that person's custody or in the custody of his agent (e.g., a broker) or a sub-agent (e.g., a clearing corporation) free and clear of any lien, or are in the possession of a creditor of such person (e.g., a bank or broker) or are in the possession of a creditor (e.g., a lender to the broker), as collateral for such person's or his creditor's indebtedness under circumstances where delivery of the securities can be controlled pursuant to a pledge, hypothecation or substitution of collateral. The term "equivalent security" would be defined in paragraph (a)(3) as any security (including any option, warrant or other right to purchase) issued by the person whose securities are the subject of the offer which is convertible into or exchangeable for or exercisable for a subject security and would be included in any other option or right entitled to the security upon exercise of the option or right (i) owned and will continue to own the subject security from the time of any tender in reliance upon such option or right through the date on which such tender is ac...
cected, rejected, or withdrawn and, (ii) upon exercise of such option or right, when the subject securities are tendered, the issuer, a period consistent with normal delivery times in the securities business. Options not issued by the issuer of the subject securities, e.g., options traded on national securities exchanges, would be excluded from the definition of equivalent securities by paragraph (a) (3) (i) of the Proposed Amendments. Paragraphs (a) (4) and (a) (5) of the Proposed Amendments would define the terms "guarantee" and "subject securities," respectively. Addition­ally, the term "tender" would be defined for purposes of the Rule in paragraph (a) (6) of the Proposed Amendments to encompass all methods by which a person can affirmatively respond to a request or invitation for tenders. Finally, a "tendering person" would be defined in paragraph (a) (7) of the Proposed Amendments as the person making a tender or on whose behalf a tender is made.

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

The commissioners of the New York Stock Exchange, in their report on short selling, stated that they had "no objection to the introduction of a provision which will tend to prevent persons from tendering securities they do not own." The proposed Amendments would substitute a "reasonable basis" test to ensure appropriate inquiry by guarantors.

Loans of subject securities where the lender knows he is facilitating a tender offer will be considered a loan by the borrower for the borrower’s own account would be expressly proscribed by paragraph (b) (4) in order to prevent lenders from aiding short tendering schemes. This latter provision is specifically requested to address the impact this proposal, if adopted, would have on the prac­tices currently in effect regarding loans of securities by broker-dealers, institu­tional investors, and others, during the duration of a tender offer.

Guarantors would be required by par­agraph (b) (3) of the Proposed Amend­ments to (i) maintain a long position in the subject securities for those on whose behalf guarantees are given equal to the intended to assure that purchasers of subject securities from short sellers during a tender offer will be in a position to take advantage of the offer by qualifying as "tendering persons" of the subject securities within the meaning of the Rule.

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Guarantors would be required by par­agraph (b) (3) of the Proposed Amend­ments to (i) maintain a long position in the subject securities for those on whose behalf guarantees are given equal to the amount of subject securities guaranteed, and (ii) have in their possession or under their control sufficient subject securities to cover the aggregate amount of such securities as to which they have given guarantees. These obligations with respect to each guarantee would con­tinue through the period during which tenders may be made (or until the tender made by means of a guarantee which has been rejected or withdrawn, whichever first occurs). In tandem with the operation of paragraph (b) (2), this limitation on a guarantor’s ability to give a guarantee is intended to serve as an additional deterrent to guarantors which the guarantor has no reasonable basis for believing that the person for whom the guarantee is given owns the securities tendered or that delivery can be made as and when required otherwise than by acquiring securities in the market after the offer closes. In addi­tion, this provision is intended to re­strict the amount of securities available for loans to short sellers where the activ­i­ties of short sellers can generate long positions which may give rise to tenders of the same securities more than once.

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

Paragraph (b) (5) would impose withdrawal obligations on persons who tender on behalf of others and who later learn that a person on whose behalf a tender was made did not own, or no longer owns, the subject security. This provision is intended to serve as an additional deterrent to facilitators of the "tendering securityholders’ ownership of the subject securities by withdrawing, to the extent necessary, their guarantees.

In most instances, except during the last few days of a tender offer, this require­ment would not impose greater delivery obligations on short sellers than those to which they are presently subject. During the last days of a tender offer, however, paragraph (b) (6) subjects short sellers to new delivery constraints. This limitation on short selling during an offer would help to assure that tendering securityholders who acquired subject securities from short sellers have possession of the subject securities.
PROPOSED RULES

EQUIVALENT SECURITIES

The provisions of the Proposed Amendments governing equivalent securities would be identical to existing practices and interpretations with respect to tenderers based upon rights to acquire subject securities and, in the case of standardized options, impose additional limitations upon their tendering of such securities. It should be noted that, for purposes of the Rule, standardized call options would not be deemed to be equivalent securities since the holder of such an option cannot know that the Options Clearing Corporation ("OCC") (the entity responsible for fulfilling the option contract by delivering the underlying security or closing the event of exercise) "owns" the underlying security within the meaning of the Rule.21 Because an unlimited number of options can be written on an uncovered basis, the Commission has added to subparagraph (c) of the Proposed Amendments that, if the Proposed Amendments are adopted, exemptive relief would be granted sparingly, and then only upon written request in those instances where, for example, factual representations make the need for and appropriateness of such relief apparent.

ALTERNATIVE REGULATORY APPROACHES

In addition to publishing the Proposed Amendments for comment, the Commission wishes to solicit comment on certain aspects of their application to tendering practices and market transactions during tender offers. In particular, the Commission is soliciting comment on the desirability of pursuing such alternative approaches: (i) prohibiting short selling during the tender offer period; (ii) prohibiting all tenders by means of guarantees or barring "self-guarantees" of delivery; or (iii) permitting short tendering in limited circumstances.

1. PROHIBITING ALL SHORT SELLING DURING THE TENDER OFFER PERIOD

It seems apparent that the extent to which offersor find it necessary to promote acceptance of securities tendered in response to partial offers is affected by the amount of short selling activity in those securities during the tender offer period (because many of the securities purchased from short sellers are tendered in response to the offer). Under the proposed paragraph (b) of the Present Rule, an unlimited number of potential tendering securityholders can be created by short sale activity during an offer since every person who has purchased a short seller's option establishes unconditional binding contract to purchase the subject securities and is deemed to own the securities for purposes of the Rule.

Under the Proposed Amendments, the Commission would impose limited restrictions on short sellers during the offering period (primarily upon their delivery obligations within last few days of an offer) and, in addition, would rely on the possession and control concepts contained in subparagraph (a)(2) of the Proposed Amendments to preclude double tendering (and possibly short tendering) generated by short sales. Commentators are invited to submit views as to whether this objective could be achieved more simply and appropriately by prohibiting all short sales of subject securities in a partial offering during the offer period.24 Persons submitting arguments in support of this view should address the potential impact on the market for, and price of, the subject security if this alternative approach were implemented. The Commission is particularly interested in receiving comment regarding the benefits, if any, which accrue to investors and the trading market as a result of short sale activity during tender and exchange offers.

2. GUARANTEES OF TENDER

The practice of permitting tenders to be effected by means of guarantees (i.e., without physical delivery of securities to the offeror) was intended to accommodate the security holders who may be out of town or otherwise unable to deposit the securities at the time of tender.25 However, it appears that the guarantee process is utilized primarily by market professionals to effect tenders for their own accounts rather than facilitating tenders by investors who are unable, during an offer, to make physical delivery of their securities within the time required by the offer.26 As a result of this matter, the Commission believes that existing clearing and settlement practices, and the fact that certificates may be required to permit tenders by means of guarantees. Nevertheless, the Commission wishes to receive comment on whether it is appropriate to continue to permit tenders by means of guarantees and the feasibility of limiting use of the guarantee device to guarantees on behalf of persons other than the guarantor or persons other than brokers or dealers.

If tendering by means of a guarantee were to be prohibited, such a prohibition would substantially alter the dynamics of the trading market for securities subject to a tender or exchange offer since person entering into guarantees on behalf of securities in order to participate in an offer would have to be certain that they would receive the securities purchased in time to be able to effect physical delivery to the offeror. As a practical matter, the Commission believes that existing clearing and settlement practices, and the fact that certificates may be required to permit tenders by means of guarantees. Nevertheless, the Commission wishes to receive comment on whether it is appropriate to continue to permit tenders by means of guarantees and the feasibility of limiting use of the guarantee device to guarantees on behalf of persons other than the guarantor or persons other than brokers or dealers.

3. PERMITTING SHORT TENDERING IN LIMITED CIRCUMSTANCES

Rule 10b-4 is intended, among other things, to ensure equality of opportunity for tendering securityholders in partial offers where subject securities are accepted on a pro rata basis. At the time the Rule was published for comment, however, some commentators suggested that prohibiting short tendering would be harmful to public securityholders. They argued that, so long as market professionals engaging in arbitrage during tender offers were able to short tender to hedge their risks, they would make market purchases of subject securities at higher prices than would otherwise be the case, and that such purchases benefit holders of subject securities who did not wish to accept the price tendered.
risk of proration in tender offers or the risk that such offers will not be successful. It was also argued that the risk of "double tendering" rather than short tendering was responsible for the potentially disparate and inequitable treatment of individuals during tender offers and, therefore, that regulation should be designed only to prevent "double tendering." 

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

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

The Commission has not solicited public comment on the mechanical aspects of tender and exchange offers since the Williams Act was adopted in 1968. For that reason, in addition to the specific proposals and questions raised herein, commentators are specifically invited to submit their views on the general practice of short tendering, problems which have arisen (either directly or indirectly) as a result of guarantees of tender (particularly self-guarantees), short selling practices during tender offers, and other aspects of the tender and exchange offer process which would assist the Commission in its consideration of the Proposed Amendments.

**Municipal Securities**

Rule 10b-4 is applicable to an offer for, or a request or invitation for tenders of, any security, including municipal securities. Although Rule 10b-4 has, by its terms, applied to municipal securities since its adoption in 1968, the Commission has not until recently become aware that transactions contemplated by Rule 10b-4 may occur during tender offers for municipal securities. It has recently been suggested to the Commission that, since the directors of municipalities, often tender more securities than they actually own in the expectation that, in view of the supply of securities on the market, the range of prices at which tenders will be accepted, such short tenders will yield a satisfactory profit. Since invitations for tenders of their securities may be used to manipulate the price of such securities, the Commission believes that tenders will be accepted at the lowest price first until the desired amount has been purchased, a certain amount of the securities tendered in response to such invitation often is returned. (In a manner roughly analogous to returns of excess securities in tender offers where acceptance is pro rated by the offeror.) And it was argued that the Municipal Securities Rulemaking Board ("MSRB") urged that Rule 10b-4 not be applied to municipal securities, and thus tends to lower the price or prices to be paid by such issuers.

The Commission specifically solicits comments on whether issuance of the proposed amendments to Rule 10b-4 is necessary or appropriate in furtherance of the purposes of the Act; however, amendments on competition in light of the purposes of the Act are specifically requested.

**REQUEST FOR COMMENT**

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

§ 240.10b-4 Short tendering of securities.

(a) For the purposes of this section:

(1) A person shall be deemed to own a subject security or an equivalent security only if: (i) He has acquired the security for his own account, otherwise than by borrowing the security, has the right to dispose of it or direct its disposition, and has such security in his possession or under his control, or (ii) in the case of a security that has been converted, exchanged or exercised into an equivalent security owned (within the meaning of subparagraph (1)(i) of this paragraph) by such person; or (iii) the person is in the possession of a creditor of such person.

(2) A person shall be deemed to have a security under his control only if such security: (i) Is in his custody or in the custody of his agent (or a sub-agent of such agent), is held for such person's account, free of any charge, lien or claim of the person in whose name the security is registered, and delivery of such security to such person can be required without the payment of money or value, or (ii) is in the possession of a creditor of such person (or in the possession of a creditor or agent of either of them) as collateral for such person's or his creditor's indebtedness pursuant to an arrangement entitling such person to use the stock or the proceeds of the sale of such security upon the payment of the indebtedness or substitution of other collateral; and
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(2) The term "equivalent security" shall mean: (i) Any security (including any option, warrant or other right to purchase, issued by the person whose securities are the subject of the offer which is immediately convertible into or exchangeable or exercisable for a subject security, or (ii) any other option or right, entitling the holder thereof to acquire a subject security, but only if the holder thereof reasonably believes that the person obliged to deliver the subject security upon exercise of such option or right, will deliver the subject security within a period consistent with normal delivery times in the securities business; (4) The term "offer" shall mean any tender for or request or invitation for, tenders of any security; (5) The term "subject security" shall mean any security which is the subject of any offer; (6) The term "tender" shall mean delivery of a subject security pursuant to an offer, causing such delivery to be made by the person whose securities are the subject of such tender pursuant to an offer, causing a guarantee of such delivery to be given by another person, or any other method by which acceptance of an offer by a tendering person may be made; (7) The term "tendering person" shall mean the person making a tender or on whose behalf a tender is made; and (8) The term "facilitating person" shall mean any person giving a guarantee that subject securities will be delivered to the person making an offer.

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

(1) To tender any subject security for his own account unless, from the time of such tender through either the last date on which tenders may be made pursuant to the offer or rejection or withdrawal of such tender (whichever shall first occur), he owns and will continue to own (i) the subject security and will deliver or cause to be delivered such security for the purpose of tender, to the person making the offer, (a) no later than the close of business on the last date on which tenders may be made pursuant to the offer; or (b) To effect a short sale of a subject security unless delivery of the subject security sold is made to the purchaser (or his agent) no later than the close of business on the last date on which tenders may be made pursuant to the offer: (c) This rule shall not prohibit any transaction or transactions if the Commission, upon written request or upon its own motion, exempts such transaction or transactions, either unconditionally or on specified terms and conditions, as not constituting a manipulative or deceptive device or contrivance or a fraudulent, deceptive or manipulative act or practice comprehended within the purpose of this rule.

(3) To guarantee delivery of any subject security for the purpose of facilitating a tender by or on behalf of any person, unless the guaranteeing person's own account unless the guaranteeing person, from the time of such guarantee to the last date on which tenders may be made pursuant to the offer or rejection or withdrawal of the tendering person's tender (whichever shall first occur), (a) carries and continues to carry for such tendering person, a net long position in the subject securities or equivalent securities, or (b) guarantees delivery of any subject security or equivalent securities, at least equal to the amount of subject securities with respect to which such guaranteeing person has guaranteed delivery;

(4) To lend any subject security to any person unless the person lending such subject security reasonably believes that such loan is not for the purpose of facilitating a tender by the person borrowing such subject security; (5) Having tendered any subject security on behalf of another person, to fail to withdraw such tender in the event such person knows or should know, during the period withdrawal of such tender is permitted by the terms of the offer, that the person on whose behalf the tender was made is not in compliance with subparagraph (1) of this paragraph; (6) To effect a short sale of a subject security unless delivery of the subject security sold is made to the purchaser (or his agent) no later than the close of business on the last date on which tenders may be made pursuant to the offer; (7) To effect, directly or indirectly, any transaction in subject securities or equivalent securities with the intent or purpose of evading the provisions of this rule.

(Seac. 10(a), 10(b), 14(e), 23(a), 48 Stat. 891, 901; sec. 8, 49 Stat. 1379; sec. 3, 62 Stat. 466; sec. 6, 64 Stat. 1467; Sec. 18, 69 Stat. 156; 15 U.S.C. 78j(a), 78j(b), 78n(e), 78w (a) - )
of the terms "employer" and "plan," and the difference between them.

Under section 4001(b) of the Act, all trades or businesses (whether or not incorporated) under common control, within the meaning of Part 2612 of this chapter, are considered to be a single employer for purposes of Title IV of the Act. This definition of the term "employer" is contained in proposed § 2617.2. It should be noted that the term "employer", when used in certain sections of other Titles of the Act, does not necessarily have this meaning. For example, the term "employer", as used in the definition of plan sponsor in section 3(16), under some circumstances, the occurrence of these events, PBGC whenever certain events occur. Notice of these events will be made in the plan (proposed § 2617.3(a) (2)). This use of the PBGC's authority to waive the 30-day notice requirement, to the extent specified in this proposal, will reduce the plan administrator's reporting obligations and enable the PBGC to direct its primary attention only to those events that need to be reviewed on a priority basis. Because, for example, the PBGC should receive notification from the IRS and/or the DOL of the following events, it is proposed that a plan administrator will not be required to notify the PBGC within 30 days after he knows or has reason to know about the occurrence of these events.
whether the adoption of the plan amendment has resulted in a reportable event under proposed § 2617.5(a). For purposes of this event include a reduction in accrued benefits, a reduction in retirement benefits that would accrue in the future, or an increase in age or service requirements for vesting. A change in the actuarial factors used to compute optional forms of payment of retirement benefits is not a reportable event under proposed § 2617.5(a).

The adoption of an amendment that reduces normal retirement benefits by a certain percent of a plan's value is not a reportable event. It is considered to be only a reportable event when it is tied directly to declines in covered employment since such declines may indicate employer economic problems. Thus, in single employer plans, the event is tied directly to declines in employment due to factors other than temporary or seasonal layoffs. An active participant in such a plan is defined in proposed § 2617.6(a) as an employee participating in the plan who is either receiving compensation for work performed, or who is on an authorized absence, i.e., a paid or unpaid temporary absence, which is due to non-economic reasons, such as military service, vacation, jury duty, illness, or union functions. However, if an employee is not performing work for the employer for economic reasons, including layoff, strike, and voluntary or involuntary termination of employment, that employee is still considered to be an active participant if his absence from work has not lasted or is expected to last less than 30 days or is due to annually or periodically recurring reductions in employment (e.g., retooling or seasonal declines in demand for a product or supply of materials).

In a plan to which more than one employer contributes, the use of the concept of active employment as described above could result in excessive administrative burdens. Consequently, an active participant in such a plan is defined in proposed § 2617.2 as a participant who currently is accruing benefits or earning or retaining credited service for purposes of vesting under the plan. If, however, no break in service for vesting purposes has occurred for a period of one year or the period specified in the plan, whichever is longer.

A 30-day notice is required to be filed, in the event of a reduction in the number of active participants as described above, pursuant to proposed § 2617.6(b), for plans open to more than one employer or to more participants as of the beginning of the current or previous plan year. However, proposed § 2617.6(b) also contains a special rule whereby a single employer-plan need not file a 30-day notice if the plan maintains more than one covered plan and there is not more than a 20 percent reduction since the beginning of the current plan year (or a 25 percent reduction since the beginning of the previous plan year) in the total number of active participants in all of the employer's covered plans. This rule eliminates detailed reporting of small reductions in total employment that would not appear to indicate employer economic problems.
The occurrence of this event authorizes the PBGC to initiate involuntary termination proceedings under section 4042(a) of the Act. However, a 30-day notice need only be filed when there has been a distribution or distributions with a value of $10,000 or more, to a substantial owner within a 12-month period, all or a portion of which is attributable to a benefit which is in excess of the maximum guaranteeable benefit for substantial owners under Part 2609 of the Act.

Proposed §2617.11(a) provides, in part, that a reportable event occurs when a plan merges, consolidates or transfers its assets or liabilities under §4043(b)(8) of the Code. Even though section 4043(b)(8) of the Code does not include the phrase "or liabilities", Congress clearly intended such phrase to be included in the description of this event. See H.R. Rep. No. 1290, 93d Cong., 2d Sess. 374 (1974). Since the provisions of section 208 of the Act and section 414(1) of the Code are substantially identical, the PBGC believes that it is an appropriate interpretation of section 4043(b)(8) to include events under section 414(1) of the Code as well as section 208 of the Act. In addition, even if the PBGC interpreted section 4043(b)(8) (not to include events under section 414(1) of the Code, the PBGC still could receive notification of such events simply by prescribing a reportable event under section 4043(b)(9) to cover Code section 414(1) events. Whether such a reportable event has occurred is dependent upon the DOL and the IRS delineation of the types of events. Section 414(1) of the Code, no doubt within the meaning of section 208 of the Act and section 414(1) of the Code. A spinoff governed by Code section 414(1) will occur when an employer makes contributions to a single employer plan, if the plan segregates the assets attributable to a withdrawing employer and limits the original plan's liability for the benefits of that employer to that segregated portion of the fund. See definition of "plan" discussion, supra. A change in the funding agent or funding medium of the plan is not considered a reportable event under proposed §2617.11(a).

In general, a 30-day notice is only required, pursuant to proposed §2617.11(b), when one or more multiemployer plans (within the meaning of section 414(1) of the Code) merge or consolidate with or transfer (or receive) assets or liabilities to (or from any other plan, or when a single employer plan with 100 or more participants consolidates with or transfers assets or liabilities to a plan maintained by a different employer (i.e., an employer who is not a member of the same controlled group), the plan maintained under common control within the meaning of Part 2612 of this chapter).

Proposed §2617.11(b) contains a special rule under which a 30-day notice need not be filed if there is a transfer of assets or liabilities pursuant to a reciprocal or portability agreement, until the total of such asset or liability transfers during the plan year exceeds 3 percent of the value of the plan assets at any point during the plan year. When the 30-day notice is required to be filed in such a situation, the notice need only be submitted by the plan administrator of the plan transferring assets or assuming liabilities in excess of the 3 percent limit.

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

Proposed §2617.11(a) also provides that a reportable event occurs when an alternative method of compliance with the reporting requirements, under Part I of Title I of the Act, is prescribed by the Secretary of Labor under section 110 of the Act. Since the DOL is required to advise the PBGC when such an alternative method of compliance is prescribed by the DOL, the PBGC will receive pertinent information concerning this event from the DOL. Proposed §2617.11(b) does not require the filing of a 30-day notice of this event.

As noted above, proposed §§2617.12, 2617.13 and 2617.14 contain reportable events prescribed by the PBGC pursuant to section 4043(b)(2) of the Act. Under proposed §2617.13, a reportable event occurs when, with respect to a single employer plan, the employer maintaining the plan (assuming it is not a member of a group of trades or businesses under common control within the meaning of Part 2612 of this chapter) or, in the case of a single employer plan maintained by one or more members of such a group (whether or not contributing to the plan), is in the process of being completely liquidated or dissolved. A reportable event under proposed §2617.13(a) occurs when dissolution proceedings are instituted or there is a petition (or an alternative method of implementation to implement the complete liquidation, whichever occurs first). Proposed §§2617.13(b) and (c) contain special rules exempting from the reportable event requirements specified in section 4062(d) of the Act and bankruptcy, insolvency or similar settlements under proposed §2617.12(a). A 30-day notice is required for a reportable event under proposed §2617.13(a).

Proposed §2617.14 provides, generally, that a reportable event occurs when, with respect to a single employer plan with 100 or more participants and with nonforfeitable benefits which are not funded, there is a transaction involving the assets of or an ownership interest in the plan sponsor and as a result the plan sponsor will no longer maintain, or be a member of, the same commonly controlled group, or, there will be or is a change of plan sponsor. A reportable event under proposed §2617.14(a) occurs, for example, when a corporation retaining a single employer plan for 100 of its employees at a facility, with nonforfeitable benefits which are not funded, executes an agreement to sell the assets of that facility to an unaffiliated...
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corporation that agrees to assume the plan. Note that in the preceding example, if there was no preliminary sale agreement, the reportable event would have occurred upon the consummation of the sale. Other “transactions” subject to proposed § 2617.14(a) include legally binding contracts, agreements, or understandings that are not written but which represent an intention to become a member of a common controlled group as defined in proposed § 2617.2. Thus, proposed § 2617.14 does not apply if the plan sponsor after the transaction, is a member of the same group of trades or businesses under common control as the plan sponsor before the transaction. Proposed § 2617.14 contains a special rule under which no reportable event under proposed § 2617.14 occurs, for example, upon a sale where the seller’s plan is to be merged or consolidated with a plan of the buyer, or, where assets or liabilities are transferred from the seller’s plan to a plan of the buyer.

REPORT FORM AND DOCUMENTATION REQUIRED

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

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

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


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

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

“Distribution” means direct or indirect benefit payments made in any form from a plan to a participant including, but not limited to, specified or regular payments, a lump-sum payment or a direct distribution of a plan asset other than cash. The receipt of an irrevocable commitment to pay benefits or their equivalent, made by an insurer pursuant to an insurance contract purchased with funds contributed to or under a plan, shall be considered to be a distribution on the effective date of the insurer’s irrevocable commitment: Provided, however, That any cash payments made by an insurer pursuant to an irrevocable commitment shall not be considered a “distribution”. A cash distribution shall be considered to be a distribution on the date it is received by the participant. The date of all other distributions shall be when the plan reimburses the IRS for any premium for a covered plan under the laws of a State or the District of Columbia.

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

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

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

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

“IRS” means the Internal Revenue Service.

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"Money purchase plan" means an individual account plan, as defined in section 3(17) of the Code, in which the employer’s contributions are fixed, often as a percentage of compensation.

"Multiemployer plan" means a multiemployer plan, as defined in section 414(m) of the Code.

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

"Nonforfeitable benefits which are not funded" means when the value of nonforfeitable benefits as defined in § 2605.6 of this chapter exceeds the value of plan assets (valued at the lowest actuarial present value of the plan with reasonable actuarial assumptions and valuing plan assets in accordance with the valuation standards contained in Part 2611 of this chapter). For this purpose, reasonable actuarial assumptions are the actuarial assumptions used by the PBGC, the actuarial assumptions used by the plan for purposes of § 502 of the Act, or any other actuarial assumptions, other than a warranty benefit plan or a multiemployer plan.

"Normal retirement benefit" means a benefit payable upon normal retirement, and shall include any payment of an irrevocable commitment.

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

"Participant" means:

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

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

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

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

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

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

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

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

"Post-funding rider" means a provision in an insurance contract that authorizes the insurer to pay full benefits to a retired participant while the participant’s irrevocable annuity from the insurer is being purchased.

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

"Single employer plan" means a plan to which one employer makes contributions.

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

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

(b) In the case of a partnership, is or was a partner who owns or owned, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation. For this purpose, the constructive ownership rules of section 2631(c) of the Code shall apply (determined without regard to section 1563(e)(3)(C)).

"Title IV" means Title IV of the Act.

"Title IV plan" means a plan or a multiemployer plan.

"Public plan" means a plan or a multiemployer plan.

"Plan administrator" means the plan administrator in connection with the notice, that information required to be submitted under this section shall be filed on the form prescribed by this part, in accordance with the instructions therein, and shall contain the information listed in this paragraph, and, when applicable, the information specified in paragraph (d) of this section. All numbered items shall be identified by item number. If any requested information is included in an IRS form or submission attached to the notice, that information need not be repeated on the notice. Instead, the information may be incorporated by reference to the number, date, and page or pages of the IRS form or submission where it appears.

Each document required to be filed with the PBGC shall contain, if available, an adoption and effective date and an executed signature page. Each such document that does not contain an adoption or effective date shall be accompanied by a statement containing the missing information. Any required documentation previously filed with the PBGC need not be resubmitted, but may be incorporated by reference to the previous submission. Each notice shall contain:

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

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

(3) A copy of the document or documents establishing any trust agreement providing for management of the assets of the plan, its administration, or the payment of benefits under the plan;

(4) A copy (or copies) of any trust agreement providing for the management of the assets of the plan and/or the payment of benefits under the plan;

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

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

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

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

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

(d) Contents of notice—additional information. Each notice filed with respect to the establishment of the plan, any recent subsequent requalification, and paragraph (c) of this section, the information listed below:

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

(2) A § 2617.6(a) event. For all plans, as of the beginning of the immediately
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preceding plan year and as of the date of the event, the total number of participants currently accruing benefits or retaining recognition as credentialed vested employees. For purposes of vesting under the plan, such participants with fully vested rights, such participants with partially vested rights, such participants without vested rights, retired participants receiving benefits, former employees with vested rights, and deceased participants whose beneficiaries are receiving or entitled to receive benefits. For single employer plans, as of the beginning of the current and immediately preceding plan years and the date of the event, the number of active participants.

(3) A § 2617.8(h) event. A statement of the current funding standard account, or its alternative, showing the balance at the beginning of the plan year as of the date of the event. Information to be included is the amount of accrued benefits which has vested, if any, the amount of the benefits due, the amount of the benefits payable, the amount of the benefits to be paid, and the amount and date of the last payment, and the value of any cash surrender value or the accumulated value of any annuity reserved. The statement shall also show any interim payment or distribution made to the participant since the last payments or distribution. The statement shall further show the plan year and as of the date of the event, the total number of plan participants as of the date the amendment is adopted.

(4) A § 2617.9(a) event. The plan administrator shall within 30 days after the event date file a notice pursuant to paragraph (a) of this section. The notice shall contain the reason for filing. The PBGC may, in such case, waive the requirement imposed by § 2617.3(a) of this section that a notice be filed with respect to the occurrence of any event described in §§ 2617.1-2617.14 and also may waive the filing of any information required to be submitted by this section.

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

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

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

(2) In the case of an event described in §§ 2617.11 or 2617.12, all plan administrators who are required to file a notice pursuant to this section shall file their notices on the same mailing day as the date the amendment is adopted.

§ 2617.10(a) event. The amount and form of the distribution, the total value of nonforfeitable benefits which are not funded (separately stating the total amount of nonforfeitable benefits and of plan assets), and Labor-actuarial assumptions used to value benefits.

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

(f) Waiver of obligation to file. The PBGC may, in such case, waive the requirement imposed by § 2617.3(a) of this section that a notice be filed with respect to the occurrence of any event described in §§ 2617.1-2617.14 and also may waive the filing of any information required to be submitted by this section.

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

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

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

(2) In the case of an event described in §§ 2617.11 or 2617.12, all plan administrators who are required to file a notice pursuant to this section shall file their notices on the same mailing day as the date the amendment is adopted.

§ 2617.14(a) event. If there is a change of plan sponsor, the name, address and telephone number of the new plan sponsor, and the name, address, telephone number, and employer identification number (EIN) of each of the employer's contributions to the former plan, and of the new plan sponsor.

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

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

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

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

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

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

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

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

(2) When a decrease in the amount of the normal retirement benefit provided by employer contributions with respect to any participant includes the elimination of any type of retirement benefit, a decrease or potential decrease in the amount of any accrued retirement benefit or the retirement benefit that would accrue in the future and an increase in the age, service or other requirements for benefit entitlement.
other appropriate assumptions of the covered plan.

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

§ 2617.6 Active participant reduction.

(a) Reportable event. A reportable event will occur when the number of active participants in all such plans as of the date of the event is less than 75 percent of the number of such participants in each such plan determined as of the beginning of each plan's previous plan year.

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

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

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

§ 2617.7 Termination or partial termination.

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

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

§ 2617.8 Failure to meet minimum funding standards.

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

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

§ 2617.9 Inability to pay benefits when due.

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

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

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

(2) An insurer from which the plan has purchased a group insurance contract that does not contain a post-funding rider is unable to issue an irrevocable commitment to support such payments;

(3) An insurer from which the plan has purchased a group insurance contract that contains a post-funding rider does not pay the full monthly or periodic benefit for which a participant is entitled under the plan because the amounts held under the contract are not adequate to cover the cost of the commitment; or

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

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

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

§ 2617.10 Distribution to a substantial owner.

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

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

(2) Such distribution is not made by the plan because the amounts held under the contract are not adequate to support such payments.

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

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

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

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

(2) A distribution or a series of distributions by the plan, or the purchase price of the irrevocable commitment, equals the sum of the cash amounts actually received by the participant and the fair market value determined in accordance with Subpart B of Part 2611 of this chapter as of the distribution date, of any assets distributed in a form other than cash.

(e) Exception. For purposes of paragraph (c) of this section, under the plan to a participant who is a substantial owner if:

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

(2) Such distribution is not made by the plan because the amounts held under the contract are not adequate to support such payments.

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

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

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

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

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

(1) The notice requirement contained in § 2617.3(a) is not waived if the plan merger, consolidation or transfer of assets or liabilities under section 208 of the Act or section 414(1) of the Code, or when an alternative method of compliance is prescribed by the Secretary of Labor under section 110 of the Act.

(2) A distribution or a series of distributions by the plan, or the purchase price of the irrevocable commitment, equals the sum of the cash amounts actually received by the participant and the fair market value determined in accordance with Subpart B of Part 2611 of this chapter as of the distribution date, of any assets distributed in a form other than cash.

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

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

(5) A distribution or a series of distributions with a total value of $10,000 or more.

§ 2617.12 Reportable events: portions withdrawn by participant.

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

(b) Waiver. The 30-day notice requirement contained in § 2617.3(a) is not waived for the event described in this section.
bilities to a single employer plan maintained by a different employer.

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

§ 2617.12 Bankruptcy, insolvency or similar settlements.

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

1. Commences a case under the Bankruptcy Code, 11 U.S.C. § 101 et seq., or has a case commenced against it;

2. Commences or has commenced against it, any other type of insolvency proceeding (including, but not limited to, the appointment of a receiver);

3. Commences, or has commenced against it, a proceeding to effect a composition, extension or settlement with creditors;

4. Executes a general assignment for the benefit of creditors;

5. Undertakes to effect any other nonjudicial composition, extension or settlement with creditors.

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

§ 2617.13 Liquidation or dissolution.

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

1. Is involved in any transaction to implement its complete liquidation; or

2. Institutes or has instituted against it a proceeding to be dissolved, or is dissolved, whichever occurs first.

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

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

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

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

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

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

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

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

§ 2617.15 Obligation of employer.

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

§ 2617.16 Form.

The form prescribed by this part is PBGC-2.

§ 2617.17 Date of filing.

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

§ 2617.18 Computation of time.

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

§ 2617.19 Mailing address.

A notice or supplemental information required to be filed with the PBGC under the provisions of this Part may be submitted by mail or by hand to the Office of Program Operations, Pension Benefit Guaranty Corp., Suite 8200, 2020 K Street NW., Washington, D.C. 20006.

APPENDIX A—EXAMPLES

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

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

<table>
<thead>
<tr>
<th>Plan</th>
<th>Total employees covered on Jan. 1, 1975</th>
<th>Separated from employment Jan. 1, 1975 to Feb. 28, 1975</th>
<th>New plan participants and covered employees</th>
<th>As a percent of totalJan. 1, 1975</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>500</td>
<td>150</td>
<td>6</td>
<td>300</td>
</tr>
<tr>
<td>B</td>
<td>500</td>
<td>150</td>
<td>100</td>
<td>450</td>
</tr>
<tr>
<td>C</td>
<td>500</td>
<td>150</td>
<td>130</td>
<td>630</td>
</tr>
</tbody>
</table>

A reportable event under § 2617.6(a) would have occurred with respect to Plan A on February 28, 1975, since the number of active employees under the plan was 70 percent of the number at the beginning of the plan year (300/420). Plans B and C did not incur a reportable event under § 2617.6(a) because although more than 20 percent of the employees on January 1, 1975 were separated from employment, the number of February 28, 1975 exceeded 80 percent of the number at the beginning of the plan year because of recalls and new entrants.

(B) Employer A has two covered plans, an hourly plan and a salaried plan, both of which are calendar year plans. The following table shows the number of employees covered by each of the plans on January 1, 1975, and changes in employment as of February 28, 1976:

<table>
<thead>
<tr>
<th>Plan</th>
<th>Total employees covered on Jan. 1, 1975</th>
<th>Separated from employment Jan. 1, 1975 to Feb. 28, 1975</th>
<th>New plan participants and covered employees</th>
<th>As a percent of totalJan. 1, 1975</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hourly</td>
<td>1,000</td>
<td>100</td>
<td>140</td>
<td>960</td>
</tr>
<tr>
<td>Salaried</td>
<td>200</td>
<td>40</td>
<td>60</td>
<td>60</td>
</tr>
<tr>
<td>Total</td>
<td>1,200</td>
<td>240</td>
<td>200</td>
<td>1,160</td>
</tr>
</tbody>
</table>

Although there has been more than 30 percent reduction in employment under the salaried plan, a 30-day notice described in § 2617.3(a) would not be required because the number of employees covered by the employer's covered plans is more than 80 percent of the number at the beginning of each plan's plan year (960/1,100). However, a reportable event described in § 2617.6(a) would have occurred with respect to the salaried plan, and so the plan administrator must include that event in the plan's annual report.
The proposed amendments would reduce the standards for respirable dust when free silica is present in the work environment. The regulations would specify that the standard for respirable coal mine dust is 5 milligrams per cubic meter of air, and that the standard for respirable silica is 0.7 milligrams per cubic meter of air. The proposed regulations also would require coal mine operators to implement a dust sampling program to monitor the concentration of respirable coal mine dust and respirable silica in the work environment.

The proposed changes are intended to provide a safer working environment for coal miners, reduce the risk of respiratory diseases, and ensure that coal mine operators are in compliance with federal regulations.

In issuing the proposed regulations, the Department of the Interior, acting on behalf of MSHA, is seeking public comments and feedback on the proposed changes. The public has until December 31, 2023, to submit comments on the proposed regulations.