Substance:	*Exposure limit*
Ethylene dichloride.	5-ppm TWA; 15-ppm ceiling (15-minute).
Hydrogen fluoride.	2.5 mg F/cu m TWA; 5.0 mg/cu m ceiling (15-minute, fluoride ion).
Isopropyl alcohol.	400-ppm TWA; 800-ppm ceiling (15-minute).
Kepone	1 μg/cu m ceiling (15-minute).
Malathion	1 μg/cu m ceiling
Mercury, inorganic.	15 mg/cu m TWA. 0.05 mg/cu m TWA.
Methyl alcohol	200-ppm TWA; 500-ppm ceiling (15-minute).
Methyl parathion	0.2 mg/cu m TWA.
Methylene chloride.	75-ppm TWA; 500-ppm ceiling (15-minute); TWA to be lowered in presence of carbon monoxide.
Nitric acid	2-ppm TWA.
Nitrogen oxides	NO_2: 1-ppm ceiling; NO: 25-ppm TWA.
Parathion	0.05 mg/cu m TWA.
Phenol	20 mg/cu m TWA; 60 mg/cu m ceiling (15-minute).
Phosgene	0.1-ppm TWA; 0.2-ppm ceiling (15-minute).
Sodium hydroxide.	2 mg/cu m ceiling (15-minute).
Sulfur dioxide	2-ppm TWA.
Sulfuric acid	1 mg/cu m TWA.
Tetrachloroethylene.	50-ppm TWA; 100-ppm ceiling (15-minute).
Toluene	100-ppm TWA; 200-ppm ceiling (10-minute).
Toluene diisocyanate.	0.005-ppm TWA; 0.02 ceiling (20-minute).
1,1,-trichloroethane.	350-ppm ceiling (15-minute).
Trichloroethylene.	100-ppm TWA; 150-ppm ceiling (10-minute).
Ultraviolet radiation.	1.0 mW/cm for over 1,000 sec.; 100 mW sec/cm for periods under 1,000 sec.
Vinyl chloride	Minimum detectable level; 1-ppm ceiling (15-minute).
Xylene	100-ppm TWA; 200-ppm ceiling (10-minute).
Zinc oxide	5 mg/cu m TWA; 15 mg/cu m ceiling (15-minute).

ppm=parts per million (parts of air). ceiling means no person shall be exposed to concentrations greater than that limit for the amount of time listed. When no time limit is listed, exposure greater than the ceiling limit shall never be permitted.
μg=microgram=0.001 milligram.
mg=milligram.
cu m=cubic meter (of air).
cc=cubic centimeter.

NOTE.—NIOSH time-weighted average (TWA) recommendations based on up to a 10-hour exposure unless otherwise noted.

(b) Except for those substances listed in Table 2 of paragraph (a) of this section, the operator of an underground coal mine shall not permit any person to be exposed to airborne contaminants (other than respirable coal dust and respirable dust containing free silica) in excess of the threshold limit values (TLVs) and Short Term Exposure Limits (STELs) adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in "Threshold Limit Values for Chemical Substances and Physical Agents in the Workroom Environment with Intended Changes for 1976" which is hereby incorporated by reference and made a part hereof. This document is available for examination at the Mining Enforcement and Safety Administration, Department of the Interior, Ballston Towers No. 3, 4015 Wilson Boulevard, Arlington, Va.; at every Coal Mine Health and Safety District and Subdistrict Office; and at the National Institute for Occupational Safety and Health, 5600 Fishers Lane, Rockville, MD. Copies of the document may be purchased from the Secretary-Treasurer, American Conference of Governmental Industrial Hygienists, P.O. Box 1937, Cincinnati, OH 45201.

(c) (1) Table 2 shall take precedence in those instances where the ACGIH document contains differing standards for exposure limits.

(2) Table 2 shall take precedence in those instances where the ACGIH document contains differing ceiling limits.

(d) All persons shall be withdrawn from any active workings of a coal mine in which it is determined that the concentration of any airborne contaminant exceeds the applicable ceiling limit in Table 2 or in the ACGIH document.

(e) The mine operator shall identify by trade name and prepare a list of each compound or material used at the mine. This list shall be maintained in the mine office and shall be available for inspection by representatives of the Secretary and by authorized representatives of the miners at the mine.

(f) The mine operator shall post and maintain on the mine bulletin board a legible list of trade names or common names of all known toxic compounds used at the mine and the safety precautions to be taken by miners when using these compounds.

(g) Contaminants shall be removed by exhaust ventilation and shall be vented into the return air course without contaminating any miner's environment.

(h) Where painting operations are performed, a suitable respirator jointly approved by MESA and NIOSH shall be provided to the miner(s) and sufficient dilution ventilation shall be provided to control exposures to mists and vapors so as not to exceed the relevant exposure limits.

PART 71—MANDATORY HEALTH STANDARDS—SURFACE WORK AREAS OF UNDERGROUND COAL MINES AND SURFACE COAL MINES

3. Section 71.2 will be amended by adding a new paragraph (n) to read as follows:

§ 71.2 Definitions.

* * * * *

(n) "Respirable dust" means dust collected with an MRE instrument or any other sampling device approved in accordance with Part 74 of this title.

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

4. Paragraph (k) of § 75.2 will be revised to read as follows:

§ 75.2 Definitions.

* * * * *

(k) "Respirable dust" means collected with an MRE instrument or any other sampling device approved in accordance with Part 74 of this title.

* * * * *

5. Section 75.301–2 will be revised by deleting the first sentence and will read as follows:

§ 75.301–2 **Harmful quantities of gases; determination of concentrations.**

Detectors or laboratory analysis of mine air samples shall be used to determine the concentrations of harmful, noxious or poisonous gases.

PART 90—PROCEDURES FOR TRANSFER OF MINERS WITH EVIDENCE OF PNEUMOCONIOSIS

6. Paragraph (g) of § 90.2 will be revised to read as follows:

§ 90.2 *Definitions.*

* * * * *

(g) "Respirable dust" means dust collected with an MRE instrument or any other sampling device approved in accordance with Part 74 of this title.

* * * * *

[FR Doc.11–33138 Filed 11–15–77;8:45 am]

[4310–68]

[30 CFR Part 75]

UNDERGROUND COAL MINES

Use of Filter Type and Self-Contained (Oxygen Generating) Self-Rescuers

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

ACTION: Notice of proposed rulemaking.

SUMMARY: Comments, suggestions, data, objections and requests for hearing are solicited by the Secretary of the Interior on proposed revisions to the regulations relating to the availability, use and location of self-rescue devices in underground coal mines.

The proposed revisions will require that a self-rescue device be made available to each person who goes underground and that such person be instructed and trained in the use and location of the self-rescue device or devices which are used at the mine.

The revised standards will permit the use of self-contained (oxygen generating) self-rescuers and for the phasing out of the filter type self-rescue device in two years, and in addition will provide

several alternatives for the use and location of a self-contained self-rescuer or combination of self-rescuers.

DATES: Comments, suggestions, objections and requests for hearing must be submitted no later than January 3, 1978.

ADDRESSES: The Administrator, Mining Enforcement and Safety Administration, Department of the Interior, room 618, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203.

FOR FURTHER INFORMATION CONTACT:

Mr. Herschel H. Potter, Chief, Division of Safety, Coal Mine Health and Safety, MESA, Room 803, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, (703) 235-1284.

SUPPLEMENTARY INFORMATION:

FILTER TYPE SELF-RESCUER LIMITATIONS

The limited capability of the filter type self-rescuer presently in use in underground coal mines has long been recognized. The main limitations of such self-rescuers are:

Limited protection in oxygen-deficient air. Filter type devices have the capability only of converting carbon monoxide (CO) in contaminated atmospheres resulting from a mine fire or explosion into carbon dioxide (CO_2). The user of the device must rely upon the oxygen which is in the air. Should the mine air contain less than 15 percent oxygen (O_2), dizziness, shortness of breath, quickened pulse, and deeper and more rapid respiration occur even when a miner is at rest. During heavy exertion, which can be expected to occur in emergency escape, a 15 percent (or less) oxygen level may lead to loss of consciousness. Thus, even though the self-rescuer may protect the wearer against carbon monoxide (CO), the lack of oxygen reduces a miner's chance of survival.

Limited protection against carbon dioxide (CO_2). Inhalation of CO_2 occurs in three ways: if present in the mine air the CO_2 passes through the rescuer and is inhaled by the wearer; when the catalyst converts CO to CO_2 any CO in the mine air is also inhaled as CO_2; and rebreathing of exhaled air takes place when there is trapped gas in the self-rescuer. Levels of CO_2 as low as 6 percent can cause severe problems in emergency escape situations, and the combination of low oxygen (O_2) and high CO_2 can be fatal even while using the filter type self-rescuer.

High inhalation temperatures. The catalytic oxidation of CO to CO_2 produces a large amount of heat. The higher the CO content in the air, the higher the air temperature will be. Data derived from British studies show that at the CO levels which may be present after a fire or explosion, the inhaled air could be hot enough to burn the mouth and throat. If the unit is removed because of the high heat temperatures, only a few breaths of the contaminated air are necessary to reduce the miner's chance of survival. Unconsciousness could occur within 1 minute and death shortly thereafter (perhaps 2-3 minutes).

Protection against other toxic gases. The filter type self-rescuer is specifically designed to prevent only CO from being inhaled. It is not designed, as some miners believe, as protection against other toxic gases from being inhaled.

SELF-CONTAINED (OXYGEN GENERATING) SELF-RESCUERS

There are two main ways to obtain oxygen (O_2) in a self-contained breathing apparatus: by storing O_2, or by producing O_2 chemically.

To meet the weight and size requirements called for in underground mining, the Bureau of Mines sponsored the development of a closed-loop breathing apparatus using the chemical potassium superoxide to produce O_2. The closed-loop system keeps all inhaled and exhaled air within the system, thus conserving the available oxygen for re-use.

A closed-loop system requires that the CO_2 produced by the body be absorbed or else it will quickly affect respiration. This is why potassium superoxide (KO_2) is extremely useful—it not only produces O_2, but also reacts with, and thus eliminates, CO_2. Moisture from the wearer's breath reacts with KO_2 to produce potassium hydroxide (KOH) and oxygen (O_2). The KOH then reacts with the user's exhaled CO_2 to produce potassium carbonate (K_2CO_3) and water or potassium bicarbonate ($KHCO_3$). Thus, O_2 is generated and CO_2 is absorbed in this same chemical bed.

Of special significance is that KO_2 is demand responsive. That is, when a wearer needs more oxygen as a result of running or other emergency exertion, the KO_2 will supply it. This occurs because the wearer will breathe more often with increased exertion and thus produce more moisture which in turn reacts with the KO_2 to produce O_2. When the wearer is walking or inactive his breathing rate slows down, less moisture reaches the KO_2, and less O_2 is produced. Therefore, while the amount of time a wearer can use the self-rescuer depends upon his work rate, the O_2 is not wasted when it is not needed.

DESCRIPTION OF APPROVED OXYGEN-GENERATING DEVICES

Three types of KO_2 self-rescuers have been developed which have received approval for use underground. These are: (1) Long duration KO_2 units which are approved for 60-minutes; (2) a short duration (10-minute) complete unit; and (3) a short duration (10-minute) complete unit which can be coupled with a special long duration (60-minute) KO_2 canister. The 60-minute KO_2 canister cannot be used without the 10-minute unit.

All of the approved KO_2 devices operate on the same principle. A miner exhales air into the breathing tube, then through the chemical bed where it removes CO_2 and adds O_2, and finally into the breathing bags. On inhalation, the wearer breathes the clean air either directly from the breathing bags or after it has passed through the KO_2 bed again. Check valves direct the flow and separate the inhaled and exhaled gases. The inhaled air temperature is controlled by conduction cooling through the breathing bags, or by heat exchangers in the apparatus. A pressure relief valve is provided on all units because the units slightly overproduce O_2. These valves are one-way valves designed to prevent toxic gases from entering the bag.

Since KO_2 does not provide oxygen instantly, oxygen is supplied immediately by a chlorate ($NaClO_3$) candle in all the units. The candle is triggered automatically.

The 10-minute and 60-minute service lives are defined for hard work situations. In those cases where a miner must sit quietly while awaiting transportation, the KO_2 units will last about four to five times the rated service life. In other words a 60-minute unit will last approximately four hours, and a 10-minute unit will last about 40 minutes minimum. The combined 10/60 system will thus last at least four hours and 40 minutes for a miner who is sitting quietly.

MESA approval requirements provide that a unit provide inhaled breathing air not hotter than 135° F., and therefore the 10-minute unit has four heat exchanger springs inside the breathing tube and other design features to reduce heat.

In consideration of the foregoing and pursuant to authority under section 101 of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 811) it is proposed to amend and revise §§ 75.1714 through 75.1714-2 of Part 75, Title 30, Code of Federal Regulations, as set forth below.

DRAFTING INFORMATION

The principal persons responsible for preparation of these proposed amendments and revisions are: Joseph O. Cook, Assistant Administrator, Coal Mine Health and Safety, MESA; Herschel H. Potter, Chief, Division of Safety, Coal Mine Health and Safety, MESA; and Robert H. McPhillamey, Assistant Solicitor, Coal Mine Health and Safety, Office of the Solicitor.

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

Dated: November 9, 1977.

JOAN M. DAVENPORT,
Assistant Secretary of the Interior.

Sections 75.1714 through 75.1714-2 of Part 75, 30 CFR, will be amended and revised as follows:

§ 75.1714 Availability of approved self-rescue devices; instruction in use and location.

(a) Each operator shall make available to each person who goes underground a self-rescue device or devices approved by the Secretary and which shall be adequate to protect such person for one hour or longer.

(b) Before any person goes underground the operator shall instruct and train such person in the use and location of the self-rescue device or devices made available at the mine.

§ 75.1714–1 Approved self-rescue devices.

(a) The requirements of § 75.1714 shall be met by making available to each person who goes underground a self-rescue device or devices as follows:

(1) Until [two years from effective date] a self-rescue device or devices which have been approved under:

(i) Bureau of Mines Schedule 14F, Gas Masks, April 23, 1955, as amended, (Part 13, 30 CFR, 1972 ed); or

(ii) Subpart I of Part 11 of this chapter; or

(iii) Subpart H of Part 11 of this chapter as follows:

(A) A one hour self-contained self-rescue device; or

(B) A ten minute self-contained self-rescue device and a one honr self-contained self-rescue device; or

(C) Any other self-contained breathing apparatus approved under Subpart H which provides protection for a period of one hour or longer and which is approved for use by MESA for the purpose of a self-rescue device or devices when used and maintained as prescribed by MESA.

(2) After [two years from effective date] a self-rescue device or devices which have been approved under Subpart H of Part 11 of this chapter as follows:

(i) A one hour self-contained self-rescue device; or

(ii) A ten minute self-contained self-rescue device and a one hour self-contained self-rescue device; or

(iii) Any other self-contained breathing apparatus approved under Subpart H which provides protection for a period of one hour or longer and which is approved for use by MESA for the purpose of a self-rescue device or devices when used and maintained as prescribed by MESA.

§ 75.1714–2 Self-rescue devices; use and location requirements.

(a) Self-rescue devices shall be used and located as prescribed in paragraphs (b) through (e) of this section.

(b) Except as provided in paragraphs (c), (d), or (e) of this section, self-rescue devices shall be worn or carried at all times by each person when underground.

(c) Where the wearing or carrying of the self-rescue device is hazardous to the person, the self-rescue device shall be located at a distance no greater than 25 feet from such person.

(d) Where a person works on or around equipment, the self-rescue device may be placed in a readily accessible location on such equipment.

(e) Where ten minute and one hour self-contained self-rescue devices are made available in accordance with § 75.1714–1(a)(1)(iii)(B) or § 75.17174–1(a)(2)(ii) such devices shall be used and located as follows:

(1) Except as provided in paragraphs (c) and (d) of this section, the ten minute self-contained self-rescue device shall be worn or carried at all times by each person when underground, and

(2) The one hour self-contained self-rescue device shall be available at all times to each person when underground in accordance with a plan submitted by the operator of the mine and which has been approved by the District Manager. When the one hour self-rescue device is placed in a cache or caches a sign with the word "SELF-RESCUERS" shall be conspicuously posted at each cache and direction signs shall be posed leading to each cache.

(f) Eye protection, approved by MESA, shall be worn or carried at all times by each person when underground.

§ 75.1714–3 Self-rescue devices; inspection, test, maintenance and repair.

(a) Each operator shall provide for the proper inspection, testing, maintenance, and repair of self-rescue devices by a person trained to perform such functions.

(b) After each time a self-rescue device is worn or carried by a person, such device shall be inspected for damage and for the integrity of its seal by a person trained to perform such function. Self-rescue devices with broken seals or which are damaged so that the device will not functior properly shall be removed from service.

(c) All self-rescue devices, except devices utilizing vacuum containers as the sole method of sealing, approved under Bureau of Mines Schedule 14F or under Subpart I of Part 11 of this chapter shall be tested at intervals not exceeding 90 days by weighing each device on a scale or balance which shall be accurate to within ±1 gram. A device which weighs more than 10 grams over its original weight shall be removed from service.

(d) All self-contained self-rescue devices approved under Subpart H of Part 11 of this chapter shall be tested in accordance with instructions approved by MESA. Any device which does not meet the specified test requirements shall be removed from service.

(e) Results of the tests required by paragraphs (c) and (d) of this section shall be recorded for each self-rescue device in a book which shall be made available to an authorized representative of the Secretary.

(f) Self-rescue devices removed from service shall be repaired for return to servi e only by a person trained to perform such work and only in accordance with the manufacturer's instructions.

[FR Doc. 77–33146 Filed 11–15–77;8:45 a.m.]

[1410–03]

LIBRARY OF CONGRESS

Copyright Office

[37 CFR Part 202]

[Docket RM 77–11]

DEPOSIT REQUIREMENTS

Proposed Rulemaking

AGENCY: Library of Congress, Copyright Office.

ACTION: Proposed Rules.

SUMMARY: This notice of proposed rulemaking is issued to inform the public that the Copyright Office of the Library of Congress is considering adoption of new regulations implementing the deposit requirements of sections 407 and 408 of the Act for General Revision of the Copyright Law. These requirements involve the mandatory deposit of copies or phonorecords of published works for the collections of the Library of Congress, and the deposit of material to accompany applications for copyright registration of both unpublished and published works. The effect of the proposed regulations is: (a) To exempt certain categories of published works from mandatory deposit for the Library of Congress under section 407; (b) to establish requirements governing the nature of the mandatory deposit to be made in all other cases under section 407; and (c) to establish the nature of the deposit to be made as part of copyright registration.

DATES: All comments should be received on or before December 12, 1977.

ADDRESSES: Interested persons should submit five copies of their written comments, if by mail to:

Office of the General Counsel, Copyright Office, Library of Congress, Caller No. 2999, Arlington, Va. 22202.

or if by hand to:

Office of the General Counsel, Copyright Office, Library of Congress, room 519, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va. 22202.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Under section 407 of the first section of Pub. L. 94–553 (90 Stat. 2541), the owner of copyright, or of the exclusive right of publication, in a work published with notice of copyright in the United States is required to deposit two copies (or, in the case of sound recordings, two phonorecords) of the work in the Copyright Office for the use or disposition of the Library of Congress. The deposit is to be made within three months after such publication. Failure to make the required

deposit does not affect copyright in the work, but may subject the copyright owner to fines and other monetary liability if the failure is continued after a demand for deposit is made by the Register of Copyrights. Qualifying these general provisions, section 407 also provides that the Register of Copyrights "may by regulation exempt any categories of material from the deposit requirements of this section, or require deposit of only one copy or phonorecord with respect to any categories."

Under section 408 of the Act deposit of material is also required in connection with applications for copyright registration of both unpublished and published works. After establishing general rules governing the nature of the required deposit, this section also authorizes the Register of Copyrights to prescribe qualifying regulations governing "the nature of the copies or phonorecords to be deposited" and to "require or permit * * * the deposit of identifying material instead of copies or phonorecords (or) the deposit of only one copy or phonorecord where two would normally be required * * *"

The deposit requirements of sections 407 and 408 are theoretically independent of each other. For example, mandatory deposit of a non-exempt work under section 407 may be required for the collections of the Library of Congress even if the copyright owner does not seek registration for the work under section 408. Under certain conditions, however, copies or phonorecords used to satisfy the madatory deposit provisions of section 407 may simultaneously be used to serve as the deposit accompanying an application for registration under section 408.

We propose to implement sections 407 and 408 by the addition of three new sections to the regulations of the Copyright Office. Proposed § 202.19 would exempt certain works which the Library of Congress neither needs nor wants from the mandatory deposit requirements of section 407, and would also establish requirements governing the nature of the deposit to be made in non-exempt cases. Proposed § 202.20 would establish requirements governing the nature of the deposit to be made in all cases for the purpose of copyright registration under section 408. Proposed § 202.21 would set forth special requirements governing the nature of photographs or similar identifying material required or permitted to be deposited in lieu of actual copies in certain cases.[1]

The proposed regulations are generally self-explanatory but a few provisions deserve special comment:

1. *"Best Edition".* The Act generally requires that deposits of published works under both sections 407 and 408 represent the "best edition" of the work. The "best edition" is defined in section 101 of the statute as "the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes." It is important to recognize that this represents a change from the current law under which the deposit for a published work is to represent the best edition as first published. Under the new definition of "best edition", the appropriate deposit for a published work may represent a choice from among a larger number of varying "editions" of a work all published before the date of deposit.

In order to assist the public in complying with the "best edition" requirements of the new law, the Library of Congress has adopted a policy statement entitled "Best Edition of Published Copyrighted Works for the Collections of the Library of Congress". This statement, which will become effective on January 1, 1978, establishes specific criteria for selecting the "best edition" from among two or more published editions of the same version of the same work. Although the Library's determination of these criteria is not a part of this proceeding, a copy of the statement is reproduced as an appendix to this notice in order to give a complete picture of the proposed deposit requirements.

In an effort to avoid any confusion concerning the word "edition", the proposed regulations (§ 202.19(b)(1)(iii)) specify that "where differences between two or more 'editions' of a work represent variations in copyrightable content, each edition is considered a separate version, and hence a different work * * * and criteria of 'best edition' based on such differences do not apply."

2. *Motion Picture Deposits.* Because of special problems related to cost, number of available copies, and security from unauthorized performance, under current law applicants for registration of motion pictures have had the option of entering into a special written agreement with the Library of Congress. Under this so-called "Motion Picture Agreement", most deposits are returned to the applicant for registration, subject to recall by the Library during a specified term. After further consideration of its motion picture acquisition practices, and experience with the agreement, the Library of Congress has concluded that it will be able to make definitive selections for its collections within thirty days from deposit, that copies not selected can be returned promptly, and that it will be unnecessary to require that returned copies be held for a period of possible recall. These conclusions are reflected in proposed §§ 202.19(d)(2)(ii) and 202.20(c)(2)(ii). The proposed regulations will not affect previously registered motion pictures still covered by existing Motion Picture Agreements.

As an additional change from current requirements, the proposed regulations do not require that deposits of videotape copies be accompanied by photographic reproductions.

3. *Certain Pictorial and Graphic Works:* Section 407(c) of the Act provides:

> [Copyright Office] regulations shall provide either for complete exemption from the deposit requirements of this section, or for alternative forms of deposit aimed at providing a satisfactory archival record of a work without imposing practical or financial hardships on the depositor, where the individual author is the owner of copyright in a pictorial, graphic, or sculptural work and (i) less than five copies of the work have been published, or (ii) the work has been published in a limited edition consisting of numbered copies, the monetary value of which would make the mandatory deposit of two copies of the best edition of the work burdensome, unfair, or unreasonable.

Sculptural works are completely exempt from the mandatory deposit requirements of section 407 under proposed § 202.19(c)(6) (and are subject to the deposit of photographs or like reproductions instead of actual copies for copyright registration under proposed § 202.20(c)(2)(ix)). A problem arose, however, in establishing special deposit provisions for pictorial and graphic works where, as specified in the statute, "the work has been published in a limited edition consisting of numbered copies, the monetary value of which would make the mandatory deposit of two copies * * * burdensome, unfair, or unreasonable." After careful consideration, we concluded that it would not be practical or reasonable to establish specific "monetary values" as a condition for special treatment. Instead, proposed § 202.19(d)(2)(iv) provides for the deposit of only one copy or, alternatively, photographs or like reproductions in lieu of an actual copy, in any case where an individual author is the owner of copyright in a pictorial or graphic work and the work is published and sold or offered for sale in a limited edition consisting of no more than one hundred numbered copies. In order not to discourage the artist-copyright owner from seeking the benefits of copyright registration for works of this sort, a similar provision is made in proposed § 202.20(c)(2)(iv), although not required by the Act. In individual or particular cases not falling within this one-hundred copy category, paragraph IV. C. 2 of the Library of Congress Best Edition Statement (permitting deposit of one copy outside of a numbered series) or, in appropriate cases, special relief under proposed §§ 202.19(e) and 202.20(d) may also lessen the burden of deposit.

4. *Secure Tests.* In developing the proposed regulations we have considered the special problems of confidentiality faced by creators and administrators of so-called "secure tests", that is, testing materials which are not marketed and which are administered, returned, and retained

[1] Concurrent with the proposed addition of § 202.21 we propose to revoke § 202.16 of the current Copyright Office regulations, which deals with the same subject. Revocation of portions of other current regulations to be replaced by proposed § 202.19 and § 202.20 will be made in a later proceeding.

under secure conditions.[2] This category encompasses numerous tests used in connection with admission to educational institutions, high school equivalency, placement in or credit for undergraduate and graduate course work, awarding of scholarships, and professional certification. The Library of Congress does not require such works for its collections and, together with other tests, they are exempt from mandatory deposit by proposed § 202.19(c)(8).

We have also concluded that, although secure tests should be deposited in the Copyright Office for examination incident to registration under section 408, their retention by the Office and availability for public inspection could severely prejudice the future utility, quality, and integrity of the materials. Accordingly, proposed § 202.20(c)(2)(vi) provides that only one copy of any test need be deposited for registration, and that "[i]n the case of any secure test the Copyright Office will return the deposit to the applicant promptly after examination, provided that sufficient portions, description, or the like are retained so as to constitute a sufficient archival record of the deposit". Additionally, as a matter of practice, special arrangements can be made for the examination of such materials under strict conditions of security and in the presence of a representative of the copyright owner.

5. *Special Relief.* In developing the proposed regulations it became apparent that it would not be possible to establish categorical rules, exemptions, or alternatives to cover all cases where the general deposit provisions of the statute might cause unnecessary hardship. In individual cases the specific acquisition policies of the Library of Congress, or the examining and archival requirements of the Copyright Office, may not be such as to require deposit of a non-exempt work, or to demand strict compliance with the general "two copy", "complete" and "best edition" standards of the statute, where to do so would impose an undue burden or cost on a copyright owner. As a clear example, a photocopy or "lesser" edition of a work may be sufficient where the "best edition" is no longer available.

In order to allow proper disposition of these cases without undermining the copyright owner's obligation to comply with section 407 or 408, proposed §§ 202.19(e) and 202.20(d) permit specified requests to be made for "special relief." These provisions are intended primarily to benefit the public. They are in keeping with legislative direction that the deposit provisions be kept flexible "so that there will be no obligation to make deposit where it serves no purpose, so that only one copy or phonorecord may be deposited where two are not needed, and so that reasonable adjustments can be made to meet practical needs in special cases." H.R. Rep. 94-1476, 94th Cong., 2d Sess., Sept. 3, 1976 at 151; S. Rept. No. 94-473, 94th Cong., 1st Sess., Nov. 20, 1975 at 134.

6. *Phonorecords as Deposits of Recorded Literary, Dramatic, or Musical Works.* Under the new Act, where a musical, dramatic, or literary work has been fixed by means of the sounds embodied in an audio disk or audio tape, the disk or tape is a "phonorecord", rather than a "copy", of the recorded musical, dramatic, or literary work. (It is also a "phonorecord" of the separate sound recording resulting from the fixation.) Additionally, the public distribution of phonorecords, in the United States or abroad,[3] is a publication of the recorded work (and of the sound recording).

This terminology has particular significance under section 407 of the Act. Under that section, the mandatory deposit requirements extend only to "copies" of all types of works except sound recordings, and to "phonorecords" of sound recordings; they do not apply to "phonorecords' of literary, dramatic, or musical works. Accordingly, where a musical, dramatic, or literary work is published in the United States only as embodied in phonorecords, it is not subject to mandatory deposit. Although this exclusion results from operation of the statute rather than from discretionary or regulatory action, it is included as an "exemption" in proposed § 202.19(c)(4) for the purposes of clarity and completeness. The proposed section also makes clear that there is no "exemption" from the mandatory deposit requirements for the owner of copyright in the sound recording as a separate work. For example, the composer or publisher of a musical composition published only in the form of phonorecords is not subject to mandatory deposit for the work under section 407, but the record company claiming copyright in the sound recording also embodied in the phonorecord is required to make a deposit.

In the case of copyright registration under section 408, we considered whether to exercise our authority to regulate the "nature of the deposit" by requiring visually-perceptible copies to be deposited in all cases. We have decided not to do so.

In recent years, and with increasing frequency, certain musical, dramatic, and narrative works are initially fixed in the form of phonorecords. For example, tape studio music (electronic, "concrete", and tape-music), synthesizer music, and computer-produced music, all creations of the past two decades, are created directly or indirectly on tape. A large number of "pop" artists and jazz musicians compose by performing the work and simultaneously recording it. Dramatic works and literary works, including lectures and other instructional materials, are often initially preserved on tape. The phonorecord is frequently the initial, and sometimes the only, fixation. While these works theoretically can be transcribed into some kind of visually perceptible copy for the purpose of deposit, the transcription is extremely difficult and unsatisfactory in some cases and impractical in others. For some songwriters and small audio-visual producers, for example, it is a substantial financial burden to require a work to be notated or transcribed.

Accordingly, the deposit required for copyright registration of recorded literary, dramatic, or musical works is left by proposed § 202.20 to follow the general requirements of the statute pertaining to the deposit of "copies or phonorecords". Specifically:

(a) If the work is unpublished and has been fixed in phonorecords, but has not been transcribed or notated in the form of copies, the deposit of a phonorecord will be accepted (§ 202.20(c)(1)(i)).

(b) If the work is unpublished and has been fixed in both copies and phonorecords, the deposit of either a phonorecord or a copy will be accepted (§ 202.20(c)(1)(i)). In such cases applicants will be encouraged to deposit whatever form best represents the work of authorship for which copyright is being claimed.

(c) If the work was first published outside of the United States, the deposit should represent the form (copy or phonorecord) in which the work was first published (§ 202.20(c)(1)(iv)).

(d) If the work was first published in the United States and, at the time of deposit, has been published in this country only in the form of phonorecords, the deposit of the "best edition" of the phonorecord will be accepted (§ 202.20(c)(1)(iii)).[4]

(e) If the work was first published in the United States and, at the time of deposit, has been published in this country in the form of both copies and phonorecords, the appropriate deposit depends upon which is the "best edition" (§ 202.20(c)(1)(iii). In such cases, the Library of Congress Best Edition Statement (paragraph VIII.B.) requires deposit of the copy as the "best edition".

[2] Our consideration of this matter was prompted by correspondence from Educational Testing Service. Their position has been supported by the American College Testing Program, The College Entrance Examination Board, The American Council on Education, and nineteen other examining boards and councils including, for example, the Law School Admission Council, the National Board of Medical Examiners, the Federation of State Medical Boards, and the National Conference of Bar Examiners.

[3] For the purpose of deposit (and registration), the public distribution of phonorecords is a publication of the recorded work even if the work is created by a national of a foreign country belonging to the Universal Copyright Convention ["UCC"] or if the distribution occurs in such a country. A contrary definition of "publication" in Article VI of the Convention applies only to that term "as used in this Convention". The rule that public distribution of phonorecords is a publication of the recorded work for the purpose of determining the nature of the deposit (and for registration generally) is not inconsistent with any use of "publication" under the Convention, or any Convention obligation to treat published or unpublished works in a specified manner.

[4] Criteria for selection of the "best edition" from among varying phonorecord configurations are set forth in paragraph V of the Library of Congress Best Edition Statement.

7. *Deposit, for Copyright Registration, of Works First Published Before January 1, 1978.* As noted earlier, the deposit provisions of the current copyright law generally require the deposit of the work as first published. This results from the principle that copyright is currently secured upon first publication in compliance with certain formalities. Under the new Act, however, "first publication" is not relevant to securing copyright (which attaches upon creation) and failure to comply with formalities can later be cured. Accordingly, except in the case of works first published abroad, the new Act generally requires deposits for copyright registration to represent the "best edition" published at any time before the date of application and deposit.

This general requirement is, however, qualified by Transitional and Supplementary Sec. 103 of Pub L. 94–553: "This Act does not provide copyright protection for any work that goes into the public domain before January 1, 1978." Under section 410(b) of the Act, the Copyright Office is charged to refuse applications for registration of public domain works. Accordingly, in order to give the Office an adequate opportunity t examine applications for registration of works published before January 1, 1978 to determine if they have entered the public domain (for example, by reason of publication without notice), proposed § 202.-20(c)(1)(ii)) requires that the deposit in such cases represent the work as first published.

8. *Mandatory Deposit and Acquisition of Unpublished Transmission Programs.* Although the mandatory deposit provisions of section 407 of the Act are generally limited to published works, section 407(e) does permit the Register of Copyrights to establish regulations governing the acquisition of copies or phonorecords of unpublished transmission (broadcast) programs for the Library of Congress. These regulations will be the subject of a separate proceeding.

APPENDIX.—"BEST EDITION" OF PUBLISHED COPYRIGHTED WORKS FOR THE COLLECTIONS OF THE LIBRARY OF CONGRESS

The Copyright Law (Title 17, United States Code) requires that copies of phonorecords deposited in the Copyright Office be of the "best edition" of the work. The law states that "The 'best edition' of work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes."

When two or more editions of the same version of a work have been published, the one of the highest quality is generally considered to be the best edition. In judging quality, the Library of Congress will adhere to the criteria set forth below in all but exceptional circumstances.

Where differences between editions represent variations in copyrightable content, each edition is a separate version and "best edition" standards based on such differences do not apply. Each such version is a separate work for the purposes of the Copyright Law.

Appearing below are lists of criteria to be applied in determining the best edition of each of several types of material. The criteria are listed in descending order of importance. In deciding between two editions, a criterion-by-criterion comparison should be made. The edition which first fails to satisfy a criterion is to be considered of inferior quality and will not be an acceptable deposit. For example, if a comparison is made between two hardbound editions of a book, one a trade edition printed on acid-free paper and the other a specially bound edition printed on average paper, the former will be the best edition because the type of paper is a more important criterion than the binding.

Under regulations of the Copyright Office, potential despositors may request authorization to deposit copies or phonorecords of other than the best edition of a specific work (e.g., a microform rather than a printed edition of a serial).

I. PRINTED TEXTUAL MATTER

A. *Paper, Binding, and Packaging:*

1. Archival-quality rather than less-permanent paper.
2. Hard cover rather than soft cover.
3. Library binding rather than commercial binding.
4. Trade edition rather than book club edition.
5. Sewn rather than glue-only binding.
6. Sewn or glued rather than stapled or spiral-bound.
7. Stapled rather than spiral-bound or plastic-bound.
8. Bound rather than looseleaf, except when future looseleaf insertions are to be issued.
9. Slipcased rather than nonslipcased.
10. With protective folders rather than without (for broadsides).
11. Rolled rather than folded (for broadsides).
12. With protective coatings rather than without (except broadsides, which should not be coated).

B. *Rarity:*

1. Special limited edition having the greatest number of special features.
2. Other limited edition rather than trade edition.
3. Special binding rather than trade binding.

C. *Illustrations:*

1. Illustrated rather than unillustrated.
2. Illustrations in color rather than black and white.

D. *Special Features:*

1. With thumb notches or index tabs rather than without.
2. With aids to use such as overlays and magnifiers rather than without.

E. *Size:*

1. Larger rather than smaller sizes. (Except that large-type editions for the partially-sighted are not required in place of editions employing type of more conventional size.)

II. PHOTOGRAPHS

A. Size and finish, in descending order of preference:

1. The most widely distributed edition.
2. 8 x 10-inch glossy print.
3. Other size or finish.

B. Unmounted rather than mounted.

C. Archival-quality rather than less permanent paper stock or printing process.

III. MOTION PICTURES

A. Film rather than another medium. Film editions are listed below in descending order of preference.

1. Preprint material, by special arrangement.
2. Film gauge in which most widely distributed.
3. 35 mm rather than 16 mm.
4. 16 mm rather than 8 mm.
5. Special formats (e.g., 65 mm) only in exceptional cases.
6. Open reel rather than cartridge or cassette.

B. Videotape rather than videodisc. Videotape editions are listed below in descending order of preference.

1. Tape gauge in which most widely distributed.
2. Two-inch tape.
3. One-inch tape.
4. Three-quarter-inch tape cassette.
5. One-half-inch tape cassette.

IV. OTHER GRAPHIC MATTER

A. *Paper and Printing:*

1. Archival quality rather than less-permanent paper.
2. Color rather than black and white.

B. *Size and Content:*

1. Larger rather than smaller size.
2. In the case of cartographic works, editions with the greatest amount of information rather than those with less detail.

C. *Rarity:*

1. The most widely distributed edition rather than one of limited distribution.
2. In the case of a work published only in a limited, numbered edition, one copy outside the numbered series but otherwise identical.
3. A photographic reproduction of the original, by special arrangement only.

D. *Text and Other Materials:* 1. Works with annotations, accompanying tabular or textual matter, or other interpretative aids rather than those without them.

E. *Binding and Packaging:*

1. Bound rather than unbound.
2. If editions have different binding, apply the criteria in I.A.2–I.A.7, above.
4. Rolled rather than folded.
5. With protective coatings rather than without.

V. PHONORECORDS

A. Disc rather than tape.
B. With special enclosures rather than without.
C. Open-reel rather than cartridge.
D. Cartridge rather than cassette.
E. Quadraphonic rather than stereophonic.
F. True stereophonic rather than monaural.
G. Monaural rather than electronically rechanneled stereo.

VI. MUSICAL COMPOSITIONS

A. *Fullness of Score:* 1. *Vocal music:* a. With orchestral accompaniment—

i. Full score and parts, if any, rather than conductor's score and parts, if any.

ii. Conductor's score and parts, if any, rather than condensed score and parts, if any.

b. Unaccompanied: Open score (each part on separate staff) rather than closed score (all parts condensed to two staves).

2. *Instrumental music:*

a. Full score and parts, if any, rather than conductor's score and parts, if any.

b. Conductor's score and parts, if any, rather than condensed score and parts, if any.

B. *Printing and Paper:* 1. Archival-quality rather than less-permanent paper.

C. *Binding and Packaging:*

1. Special limited editions rather than trade editions.
2. Bound rather than unbound.
3. If editions have different binding, apply the criteria in I.A.2–I.A.12, above.
4. With protective folders rather than without.

VII. MICROFORMS

A. *Related Materials:* 1. With indexes, study guides, or other printed matter rather than without.

B. *Permanence and Appearance:*

1. Silver halide rather than any other emulsion.
2. Positive rather than negative.
3. Color rather than black and white.

C. *Format (newspapers and newspaper-formatted serials):* 1. Reel microfilm rather than any other microform.

D. *Format (all other materials):*

1. Microfiche rather than reel microfilm.
2. Reel microfilm rather than microform cassettes.
3. Microfilm cassettes rather than micro-opaque prints.

E. *Size:* 1. 35 mm rather than 16 mm.

VIII. WORKS EXISTING IN MORE THAN ONE MEDIUM

Editions are listed below in descending order of preference.

A. Newspapers, dissertations and theses, newspaper-formatted serials:

1. Microform.
2. Printed matter.

B. All other materials:

1. Printed matter.
2. Microform.
3. Phonorecord.

(Effective: January 1, 1978.)

PROPOSED REGULATIONS

We propose to amend Part 202 of 37 CFR, Chapter II as follows:

§ 202.16 [Revoked]

1. By revoking § 202.16; and

2. By adding new §§ 202.19, 202.20, and 202.21, to read as follows:

§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.

(a) *General.* This section prescribes rules pertaining to the deposit of copies and phonorecords of published works for the Library of Congress under section 407 of title 17 of the United States Code, as amended by Pub. L. 94–553. The provisions of this section are not applicable to the deposit of copies and phonorecords for purposes of copyright registration under section 408 of title 17, except as expressly adopted in § 202.20 of these regulations.

(b) *Definitions.* For the purposes of this section:

(1) (i) The "best edition" of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.

(ii) Criteria for selection of the "best edition" from among two or more published editions of the same version of the same work are set forth in the statement entitled "Best Edition of Published Copyrighted Works for the Collections of the Library of Congress" (hereafter referred to as the "Best Edition Statement") in effect at the time of deposit. Copies of the Best Edition Statement are available upon request made to the Acquisitions and Processing Division of the Copyright Office.

(iii) Where no specific criteria for the selection of the "best edition" are established in the Best Edition Statement, that edition which, in the judgment of the Library of Congress, represents the highest quality for its purposes shall be considered the "best edition". In such cases: (A) When the Copyright Office is aware that two or more editions of a work have been published it will consult with other appropriate officials of the Library of Congress to obtain instructions as to the "best edition" and (except in cases for which special relief is granted) will require deposit of that edition; and (B) when a potential depositor is uncertain which of two or more published editions comprises the "best edition", inquiry should be made to the Acquisitions and Processing Division of the Copyright Office.

(iv) Where differences between two or more "editions" of a work represent variations in copyrightable content, each edition is considered a separate version, and hence a different work, for the purpose of this section, and criteria of "best edition" based on such differences do not apply.

(2) A "complete" copy includes all elements comprising the unit of publication of the best edition of the work, including elements that, if considered separately, would not be copyrightable subject matter or would otherwise be exempt from mandatory deposit requirements under paragraph (c) of this section. In the case of sound recordings, a "complete" phonorecord includes the phonorecord, together with any printed or other visually perceptible material published with such phonocord (such as textual or pictorial matter appearing on record sleeves or album covers, or embodied in leaflets or booklets included in a sleeve, album, or other container).

(3) The terms "copies", "collective work", "device", fixed", "literary work", "machine", "motion picture", "phonorecord", "publication", "sound recording", and "useful article", and their variant forms, have the meanings given to them in section 101 of title 17.

(4) "Title 17" means title 17 of the United States Code, as amended by Pub. L. 94–553.

(c) *Exemptions from deposit requirements.* The following categories of material are exempt from the deposit requirements of section 407(a) of title 17:

(1) Diagrams and models illustrating scientific or technical works or formulating scientific or technical information in linear or three-dimensional form, such as an architectural or engineering blueprint, plan, or design, a mechanical drawing, or an anatomical model.

(2) Greeting cards, picture postcards, and stationery.

(3) Lectures, sermons, speeches, and addresses when published individually and not as a collection of the works of one or more authors.

(4) Literary, dramatic, and musical works published only as embodied in phonorecords. This category does not exempt the owner of copyright, or of the exclusive right of publication, in a sound recording resulting from the fixation of such works in a phonorecord from the applicable deposit requirements for the sound recording.

(5) Literary works, including computer programs and automated data bases, published only in the form of machine-readable copies (such as magnetic tape or disks, punched cards, or the like) from which the work cannot ordinarily be visually perceived except with the aid of a machine or device. Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films and works published in any variety of microfilm), and works published in visually perceivable form but used in connection with optical scanning devices, are not within this category and are subject to the applicable deposit requirements.

(6) Three-dimensional sculptural works, and any works published only as reproduced in or on jewelry, dolls, toys, games, plaques, floor coverings, wallpaper and similar commercial wall coverings, textile and other fabrics, packaging material, or any useful article. Globes, relief models, and similar cartographic representations of area are not within this category and are subject to the applicable deposit requirements.

(7) Prints, labels, and other advertising matter published in connection with the sale or advertisement of articles of merchandise or services.

(8) Tests, and answer material for tests, when published separately from other literary works.

(9) Works first published as individual contributions to collective works. This category does not exempt the owner of copyright, or of the exclusive right of publication, in the collective work as a whole from the applicable deposit requirements for the collective work.

(d) *Nature of required deposit.* (1) Subject to the provisions of paragraph (d)(2) of this section, the deposit required to satisfy the provisions of section 407(a) of title 17 shall consist of (i) in the case of published works other than sound recordings, two complete copies of the best edition; and (ii) in the case of published sound recordings, two complete phonorecords of the best edition.

(2) In the case of certain published works not exempt from deposit requirements under paragraph (c) of this section, the following special provisions shall apply:

(i) In the case of published three-dimensional cartographic representations of area, such as globes and relief models, the deposit of one complete copy of the best edition of the work will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(ii) In the case of published motion picture, the deposit of one complete copy of the best edition of the work will suffice in lieu of the two copies required by paragraph (d)(1) of this section. Any deposit for a published motion picture must be accompanied by a separate description of its contents, such as a continuity, pressbook, or synopsis. Unless selected by the Library of Congress for addition to its collections within thirty

days from the date the deposit is received in the Copyright Office, all copies of motion pictures deposited under this section will be returned to the depositor by the Copyright Office, without right of recall.

(iii) In the case of any published work deposited in the form of a hologram, the deposit shall be accompanied by: (A) Two sets of precise instructions for displaying the image fixed in the hologram; and (B) two sets of identifying material in compliance with § 202.21 of these regulations and clearly showing the displayed image.

(iv) In any case where an individual author is the owner of copyright in a published pictorial or graphic work and (A) less than five copies of the work have been published, or (B) the work has ben published and sold or offered for sale in a limited edition consisting of no more than one hundred numbered copies, the deposit of one complete copy of the best edition of the work or, alternatively, the deposit of photographs or other identifying material in compliance with § 202.21 of these regulations, will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(e) *Special relief.* (1) In the case of any published work not exempt from deposit under paragraph (c) of this section, the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation: (i) Grant an exemption from the deposit requirements of section 407(a) of title 17 on an individual basis for single works or series or groups of works; or (ii) permit the deposit of one copy or phonorecord, or alternative identifying material, in lieu of the two copies or phonorecords required by paragraph (d)(1) of this section; or (iii) permit the deposit of incomplete copies or phonorecords, or copies or phonorecords other than those normally comprising the best edition.

(2) Any decision as to whether to grant such special relief, and the conditions under which special relief is to be granted, shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress, and shall be based upon the acquisition policies of the Library of Congress then in force.

(3) Requests for special relief under this paragraph shall be made in writing to the Chief, Acquisitions and Processing Division of the Copyright Office, shall be signed by or on behalf of the owner of copyright or of the exclusive right of publication in the work, and shall set forth specific reasons why the request should be granted.

(f) *Submission and receipt of copies and phonorecords.* (1) All copies and phonorecords deposited in the Copyright Office will be considered to be deposited only in compliance with section 407 of title 17 unless they are accompanied by: (i) An application for registration of claim to copyright, or (ii) a clear written request that they be held for connection with a separately forwarded application. Copies or phonorecords deposited without such an accompanying application or written request will not be connected with or held for receipt of separate applications, and will not satisfy the deposit provisions of section 408 of title 17 or § 202.20 of these regulations. Any written request that copies or phonorecords be held for connection with a separately forwarded application must appear in a letter or similar document accompanying the deposit; a request or instruction appearing on the packaging, wrapping or container for the deposit will not be effective for this purpose.

(2) All copies and phonorecords deposited in the Copyright Office under section 407 of title 17, unless accompanied by written instructions to the contrary, will be considered to be deposited by the person or persons named in the copyright notice on the work.

(3) Upon request by the depositor made at the time of the deposit, the Copyright Office will issue a Certificate of Receipt for the deposit of copies or phonorecords of a work under this section. Certificates of Receipt will be issued in response to requests made after the date of deposit only if the requesting party is identified in the records of the Copyright Office as having made the deposit. In either case, requests for a Certificate of Receipt must be in writing and accompanied by a fee of $2. A Certificate of Receipt will include identification of the depositor, the work deposited, and the nature and format of the copy or phonorecord deposited, together with the date of receipt.

§ 220.20 Deposit of copies and phonorecords for copyright registration.

(a) *General.* This section prescribes rules pertaining to the deposit of copies and phonorecords of published and unpublished works for the purpose of copyright registration under section 408 of title 17 of the United States Code, as amended by Pub. L. 94–553. The provisions of this section are not applicable to the deposit of copies and phonorecords for the Library of Congress under section 407 of title 17, except as expressly adopted in § 202.19 of these regulations.

(b) *Definitions.* For the purposes of this section:

(1) The "best edition" of a work has the meaning set forth in § 202.19(b)(1) of these regulations.

(2) A "complete" copy or phonorecord of an unpublished work is a copy or phonorecord representing the entire copyrightable content of the work for which registration is sought. A "complete" copy or phonorecord of a published work includes all elements comprising the applicable unit of publication of the work. In the case of a contribution to a collective work, a "complete" copy or phonorecord is the entire collective work including the contribution or, in the case of a newspaper, the entire section including the contribution. In the case of published sound recordings, a "complete" phonorecord has the meaning set forth in § 202.19(b)(2) of these regulations.

(3) The terms "copy", "collective work", "device", "fixed", "literary work", "machine", motion picture", "phonorecord", "publication", "sound recording", and "useful article", and their variant forms, have the meanings given to them in section 101 of title 17.

(4) A "secure test" is a non-marketed test regularly administered under supervision at specified centers on specific dates, all copies of which are accounted for and either destroyed or returned to restricted locked storage following each administration. For these purposes a test is not marketed if copies are not sold but is distributed and used in such a manner that ownership and control of copies remain with the test sponsor or publisher.

(5) "Title 17" means title 17 of the United States Code, as amended by Pub. L. 94–553.

(c) *Nature of required deposit.* (1) Subject to the provisions of paragraph (c)(2) of this section, the deposit required to accompany an application for registration of claim to copyright under section 408 of title 17 shall consist of:

(i) In the case of unpublished works, one complete copy or phonorecord.

(ii) In the case of works first published in the United States before January 1, 1978, two complete copies or phonorecords of the work as first published.

(iii) In the case of works first published in the United States on or after January 1, 1978, two complete copies or phonorecords of the best edition.

(iv) In the case of works first published outside of the United States, whenever published, one complete copy or phonorecord of the work as first published. For the purposes of this section, any works simultaneously first published within and outside of the United States shall be considered to be first published in the United States.

(2) In the case of certain works, the special provisions set forth in this clause shall apply. In any case where this clause specifies that one copy or phonorecord may be submitted, that copy or phonorecord shall represent the best edition, or the work as first published, as set forth in paragraph (c)(1) of this section.

(i) *General.* In the following cases the deposit of one complete copy or phonorecord will suffice in lieu of two copies or phonorecords: (A) Published three-dimensional cartographic representations of area, such as globes and relief models; (B) published diagrams illustrating scientific or technical works or formulating scientific or technical information in linear or other two-dimensional form, such as an architectural or engineering blueprint, or a mechanical drawing; (C) published greeting cards, picture postcards and stationery; (D) lectures, sermons, speeches, and addresses published individually and not as a collection of the works of one or

more authors; and (E) published contributions to a collective work.

(ii) *Motion pictures.* In the case of published motion pictures, the deposit of one complete copy will suffice in lieu of two copies. The deposit for any published or unpublished motion picture must be accompanied by a separate description of its contents, such as a continuity, pressbook, or synopsis. Unless selected by the Library of Congress for addition to its collections within thirty days from the effective date of registration, all copies of motion pictures deposited under this section will be returned to the applicant by the Copyright Office, without right of recall.

(iii) *Holograms.* In the case of any work deposited in the form of a hologram, the copy or copies shall be accompanied by: (A) Precise instructions for displaying the image fixed in the hologram; and (B) photographs or other identifying material complying with § 202.21 of these regulations and clearly showing the displayed image. The number of sets of instructions and identifying material shall be the same as the number of copies required.

(iv) *Certain pictorial and graphic works.* In any case where an individual author is the owner of copyright in a pictorial or graphic work and (A) the work is unpublished, or (8) less than five copies of the work have been published, or (C) the work has been published and sold or offered for sale in a limited edition consisting of no more than one hundred numbered copies, the deposit of identifying material in compliance with § 202.21 of these regulations may be made and will suffice in lieu of actual copies. As an alternative to the deposit of such identifying material, in any such case the deposit of one complete copy will suffice in lieu of two copies.

(v) *Commercial prints and labels.* In the case of prints, labels, and other advertising matter published in connection with the sale or advertisement of articles of merchandise or services, the deposit of one complete copy will suffice in lieu of two copies. Where the print or label is published in a larger work, such as a newspaper or other periodical, one copy of the entire page or pages upon which it appears may be submitted in lieu of the entire larger work. In the case of prints or labels physically inseparable from a three-dimensional object, identifying material complying with § 202.21 of these regulations must be submitted rather than an actual copy or copies.

(vi) *Tests.* In the case of tests, and answer material for tests, published separately from other literary works, the deposit of one complete copy will suffice in lieu of two copies. In the case of any secure test the Copyright Office will return the deposit to the applicant promptly after examination: *Provided,* That sufficient portions, description, or the like are retained so as to constitute a sufficient archival record of the deposit.

(vii) *Machine-readable works.* In cases where an unpublished literary work is fixed, or a published literary work is published, only in the form of machine-readable copies (such as magnetic tape or disks, punched cards, or the like) from which the work cannot ordinarily be perceived except with the aid of a machine or device,[5] the deposit shall consist of:

(A) For published or unpublished computer programs, one copy of identifying portions of the program, reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. For these purposes, "identifying portions" shall mean either the first and last twenty-five pages or equivalent units of the program if reproduced on paper, or at least the first and last twenty-five pages or equivalent units of the program if reproduced in microform, together with the page or equivalent unit containing the copyright notice, if any.

(B) For published and unpublished automated data bases, compilations, statistical compendia, and other literary works so fixed or published, one copy of identifying portions of the work, reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. For these purposes, "identifying portions" shall mean either the first and last twenty-five pages or equivalent units of the work if reproduced on paper, or at least the first and last twenty-five pages or equivalent units of work if reproduced on microform, or, in the case of automated data bases comprising separate and distinct data files, representative portions of each seperate data file consisting of either 50 complete data records from each file or the entire file, which ever is less. (In the case of revised versions of such data bases, the portions deposited must contain representative data records which have been added or modified.) In any case where the deposit comprises representative portions of each seperate file of an automated data base as indicated above, it shall be accompanied by a typed or printed descriptive statement containing: The title of the data base; the name and address of the copyright claimant; the name and content of each separate file within the data base, including the subject matter involved, the origin(s) of the data, and the approximate number of individual records within the file; and a description of the exact contents of any machine-readable copyright notice employed in or with the work and the manner and frequency with which it is displayed (e.g., at user's terminal only at sign-on, or continuously on terminal display, or on printouts, etc.). If a visually-perceptible copyright notice is placed on any copies of the work (such as magnetic tape reels) or their container, a sample of such notice must also accompany the statement.

(viii) *Works reproduced in or on sheet-like materials.* In the case of any unpublished work that is fixed, or any published work that is published, only in the form of a two-dimensional reproduction on sheet-like materials such as textile and other fabrics, wallpaper and similar commercial wall coverings, carpeting, floor tile, and similar commercial floor coverings, and wrapping paper and similar packaging material, the deposit shall consist of one copy in the form of an actual swatch or piece of such material sufficient to show all elements of the work in which copyright is claimed and the copyright notice appearing on the work, if any. If the work consists of a repeated pictorial or graphic design, the complete design and at least one repetition must be shown. If the sheet-like material in or on which a published work has been reproduced has been embodied in or attached to a three-dimensional object, such as wearing apparel, furniture, or any other three-dimensional manufactured article, and the work has been published only in that form, the deposit must consist of identifying material complying with § 202.21 of these regulations instead of a copy.

(ix) *Works reproduced in or on three-dimensional objects.* In the following cases where the deposit of an actual copy of the work would not lend itself to shelving or flat storage, the deposit must consist of identifying material complying with § 202.21 of these regulations instead of a copy or copies: (A) Any three-dimensional sculptural work, including any illustration or formulation of artistic expression or information in three-dimensional form, including statues, carvings, ceramics, moldings, constructions, models, and maquettes (but not including works reproduced by intaglio or relief printing methods on two-dimensional materials such as paper or fabrics); and (B) any two-dimensional or three-dimensional work that, if unpublished, has been fixed or, if published, has been published only in or on jewelry, dolls, toys, games, or any three-dimensional useful article. However, where the work has been fixed or published in or on a useful article that comprises one of the elements of the unit of publication of an educational or instructional kit which also includes a literary or audio-visual work, a sound recording, or any combination of such works, the requirement of this paragraph for the deposit of identifying material shall not apply.

(x) *Oversize deposits.* In any case where the deposit otherwise required by this section exceeds ninety-six inches in any dimension, identifying material complying with 202.21 of these regulations must be submitted instead of an actual copy or copies.

(d) *Special relief.* (1) In any case the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation: (i) Per-

[5] Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films, and works published in any variety of microform), and works published in visually perceptible form but used in connection with optical scanning devices, are not within this category.

mit the deposit of one copy or phonorecord, or alternative identifying material, in lieu of the one or two copies or phonorecords otherwise required by paragraph (c)(1) of this section; or (ii) permit the deposit of incomplete copies or phonorecords, or copies or phonorecords other than those normally comprising the best edition.

(2) Any decision as to whether to grant such special relief, and the conditions under which special relief is to be granted, shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress, and shall be based upon the acquisition policies of the Library of Congress then in force and the archival and examining requirements of the Copyright Office.

(3) Requests for special relief under this paragraph may be combined with requests for special relief under § 202.19 (e) of these regulations. Whether so combined or made solely under this paragraph, such requests shall be made in writing to the Chief, Examining Division of the Copyright Office, shall be signed by or on behalf of the person signing the application for registration, and shall set forth specific reasons why the request should be granted.

(e) *Use of copies and phonorecords deposit for the Library of Congress.* Copies and phonorecords deposited for the Library of Congress under section 407 of title 17 and § 202.19 of these regulations may be used to satisfy the deposit provisions of this section if they are accompanied by an application for registration of claim to copyright in the work represented by the deposit, or connected with such an application under the conditions set forth in § 202.19(f)(1) of these regulations.

§ 202.21 Deposit of identifying material instead of copies.

(a) *General.* In any case where the deposit of identifying material is permitted or required under § 202.19 or § 202.20 of these regulations, the material shall consist of photographic prints, transparencies, photostats, drawings, or similar two-dimensional reproductions or renderings of the work, in a form visually perceivable without the aid of a machine or device. In the case of pictorial or graphic works, such material shall reproduce the actual colors employed in the work. In all other cases, such material may be in black and white or may consist of a reproduction of the actual colors.

(b) *Completeness; number of sets.* As many pieces of identifying material as are necessary to show clearly the entire copyrightable content of the work for which deposit is being made, or for which registration is being sought, shall be submitted. Except in cases falling under the provisions of § 202.19 (d)(2)(iii) or § 202.20 (c)(2)(iii) with respect to holograms, only one set of such complete identifying material is required.

(c) *Size.* All pieces of identifying material must be of uniform size. Photographic transparencies must be 35 mm. in size, and must be fixed in cardboard, plastic, or similar mounts to facilitate identification, handling, and storage. All other types of identifying material must be not less than 5 x 7 inches and not more than 9 x 12 inches, but preferably 8 x 10 inches. Except in the case of transparencies, the image of the work must be either lifesize or larger, or if less than lifesize must be at least four inches in its greatest dimension.

(d) *Title and dimensions.* At least one piece of identifying material must, on its front, back, or mount, indicate the title of the work and an exact measurement of one or more dimensions of the work.

(e) *Copyright notice.* In the case of works published with notice of copyright, the notice and its position on the work must be clearly shown on at least one piece of identifying material. Where necessary because of the size or position of the notice, a separate drawing or the like showing the exact appearance and content of the notice, its dimensions, and its specific position on the work shall be submitted.

(17 U.S.C. 207, and under the following sections of Title 17 of the United States Code as amended by Pub. L. 94-553: §§ 407, 408, 702.)

Dated: November 9, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.

[FR Doc.77-33157 Filed 11-15-77;8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 816-8]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revisions to Rules of the Following Air Pollution Control Districts in State of California; Sacramento County, San Diego County, and Lake County

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The purpose of this notice is to advise the public of receipt of proposed revisions to the California State Implementation Plan and to request public comments concerning the revisions. The revisions provide procedures to review new or modified sources of air contaminants prior to construction.

DATES: Public comments will be received on or before December 16, 1977.

ADDRESSES: Copies of the proposed SIP revisions are available for public inspection during regular business hours at the following locations:

Environmental Protection Agency, Region IX, Enforcement Division, 215 Fremont Street, San Francisco, Calif. 94105.

State of California, Air Resources Board, 1709 Eleventh Street, Sacramento, Calif. 95814.

Sacramento County Air Pollution Control District, 3701 Branch Center Road, Sacramento, Calif. 95827.

San Diego Air Pollution Control District, 9150 Chesapeake Drive, San Diego, Calif. 92123.

Lake County Air Pollution Control District, 883 Lakeport Boulevard, Lakeport, Calif. 95453.

Public Information Reference Unit, room 2922, U.S. Environmental Protection Agency, 401 "M" Street SW., Washington, D.C. 20460.

Interested persons may participate in the rulemaking process by submitting comment to: Regional Administrator, ATTN: Enforcement Division (E-4-3), EPA Region IX (address above).

Comments received will be available for public inspection during regular business hours at:

EPA Region IX (address above).

EPA Public Information Reference Unit (address above).

FOR FURTHER INFORMATION CONTACT:

Gerald Katz, Enforcement Division, Permits Branch, telephone: 415-556-8005.

SUPPLEMENTARY INFORMATION: Since EPA's approval of portions of the California State Implementation Plan (SIP) in 1972, the State of California has submitted, periodically, proposed revisions to the SIP. These proposed revisions have been submitted as local air pollution control districts (APCD) have adopted new or amended existing regulations. Included in the submissions have been the regulations of three APCDs. These are the Sacramento County APCD, the San Diego County APCD, and the Lake County APCD. In several cases, the submissions for the three above-mentioned districts have included regulations relating to permits for new sources of air pollution. The table below summarizes the dates upon which such permit regulations were submitted for these districts.

APCD	*Submission dates*
Sacramento	July 25, 1973.
	November 10, 1976.
San Diego	July 25, 1973.
	July 19, 1974.
	July 22, 1975.
	June 27, 1977.
Lake	June 27, 1977.

As revised Sacramento County APCD Regulation V—Permits—Rules 50 thru 58, San Diego County APCD Regulation II—Permits, Rules 10 thru 20.3 and 21 thru 25 and Regulation III—Fees, Rules 40, 41 and 42, and Lake County APCD Regulations, Chapter IV—Permits, Articles I thru VII, Sections 600-607, 620, 630, 640, 650, 660, 661, 670-676 and 680-682 provide a procedure by which persons who wish to construct, erect, modify, replace, operate or use any equipment

which may cause, potentially cause, reduce, control or eliminate the emission of air contaminants may be granted a permit to do so. A permit shall be granted only after the district control officer determines that the new or modified stationary source of air contaminants will not prevent the attainment, interfere with the maintenance, or cause a violation of any state or national ambient air quality standard.

The State of California has certified, by letter of August 26, 1976, that the revisions to its SIP for all California air pollution control districts submitted prior to January 1, 1976 were adopted after public hearings were held after notice conforming to 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of Implementation Plans was given. The State of California also certified by letters of November 10, 1976 and June 27, 1977, that the revisions to its SIP for these air pollution control districts submitted on November 10, 1976 and June 27, 1977, were adopted after public hearings were held after notice conforming to 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of Implementation Plans was given.

The decision of the Administrator to approve or disapprove the proposed revisions to the SIP discussed above will be based on whether or not they meet the requirements of Clean Air Act Section 110(a)(2)(A)–(K), 129, 171, 172, 173, the requirements of 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of Implementation Plans (particularly 40 CFR 51.18) and the Interpretative Ruling (41 FR 55524, December 21, 1976).

This notice is issued under the authority of section 110 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601(a)).

Dated: November 7, 1977.

PAUL DE FALCO,
Regional Administrator.

[FR Doc.77-33160 Filed 11-15-77;8:45 am]

[6560-01]

[40 CFR Part 52]

[FRL 816-7]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS—MASSACHUSETTS

Proposed Rulemaking; Changes in Massachusetts Air Pollution Emergency Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This revision, which EPA proposes to approve, amends the Massachusetts Implementation Plan to conform to EPA guidelines for prevention of air pollution emergency episodes. The Significant Harm level proposed for photochemical oxidants is 1200 ug/m³ (0.6 ppm), 1-hour average and the Emergency level is 1000 ug/m³ (0.5 ppm), 1-hour average. The Alert level is changed to 400 ug/m³ (0.2 ppm), 1-hour average to be consistent with the neighboring states of Connecticut and Rhode Island.

DATES: Comments must be received on or before December 16, 1977.

ADDRESSES: Copies of the Massachusetts submittal are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, room 2113, JFK Federal Building, Boston, Mass. 02203; Pblic Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460; and Massachusetts Department of Environmental Quality Engineering, Division of Air and Hazardous Materials, room 320, 600 Washington Street, Boston, Mass. 02111.

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

FOR FURTHER INFORMATION CONTACT:

Deborah Ikehara, Air Branch, Environmental Protection Agency, Region I, room 2113, JFK Federal Building, Boston, Mass. 02203, 617–223–5609.

SUPPLEMENTARY INFORMATION: On May 31, 1972 (37 FR 10872), pursuant to Section 110 of the Clean Air Act and 40 CFR Part 51, the Administrator approved, with exceptions, the Massachusetts Implementation Plan for the attainment of National Ambient Air Quality Standards (NAAQS).

On September 15, 1976, the Commissioner of the Massachusetts Department of Environmental Quality Engineering (the Massachusetts Department) submitted a revision to the State Implementation Plan (SIP) to amend the "Regulations for the Prevention and/or Abatement of Air Pollution Episode and Air Pollution Incident Emergencies" in all six Air Pollution Control Districts. The regulations define Significant Harm levels for air contaminants, and specify actions to be taken when pollutant concentrations reach Alert, Warning, and Emergency levels. Amendments to the regulations are described below.

The Significant Harm level for photochemical oxidants was previously defined by 1-hour, 2-hour and 4-hour average concentrations. The 2-hour and 4-hour levels have been eliminated, and the 1-hour average concentration is change from 1400μg/m³ (0.7 ppm) to 1200 μg/m³ (0.6 ppm). Consequently, the Emergency level was lowered from 1200 μg/m³ (0.6 ppm) to 1000 μg/m³ (0.5 ppm), 1-hour concentration. These changes are consistent with EPA's revisions to 40 CFR Part 51.16, as promulgated in the August 20, 1975 FEDERAL REGISTER (40 FR 36330). EPA revised the Significant Harm and Emergency levels on the basis of medical and scientific studies which are summarized in the March 13, 1974 FEDERAL REGISTER (39 FR 9672).

The Massachusetts Department also changed the Alert Level for photochemical oxidants from 200 μg/m³ (0.1 ppm) to 400 μg/m³ (0.2 ppm), 1-hour average concentration. This change is consistent with the levels established by the SIP regulations of the neighboring states of Connecticut and Rhode Island. Although the Alert level previously in effect is the level given as an example Alert level in Appendix L of 40 CFR Part 51, EPA concurs that the public health remains adequately protected with the establishment of the higher Alert level. The Pollutant Standards Index (PSI) reporting system, developed by EPA and adopted by the Massachusetts Department in May, 1977, provides for public announcement of "unhealthful" air quality when oxidant concentrations of 160–400 μg/m³ (0.08–0.2 ppm) are monitored, so that susceptible people are aware that they may experience minor health effects at levels which are not severe enough to warrant an "alert" announcement.

In addition, action strategies specified for the Alert, Warning, and Emergency levels have been modified so as to be pollutant specific, consistent with accepted air pollution control practice.

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of sections 110(a)(2)(A)–(H) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51. This revision is being proposed pursuant to Sections 110(a) and 301 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601).

Dated: November 8, 1977.

WILLIAM R. ADAMS, Jr.,
Regional Administrator.

[FR Doc.77-33159 Filed 11-15-77;8:45 am]

[4910-06]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[49 CFR Part 218]

[Docket No. RSOR-3, Notice 14]

RAILROAD OPERATING RULES

Blue Signal Protection of Workmen; Notice of Extension of Comment Period

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice of Extension of Comment Period.

SUMMARY: On September 28, 1977 the Federal Railroad Administration (FRA) issued a notice of proposed rulemaking (NPRM) proposing to amend the rules governing blue signal protection of railroad workmen (42 FR 49813). The NPRM proposed to amend section 218.25 (49 CFR 218.25) by deleting the present paragraph (a) and inserting new para-