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[*A Cumulative checklist of CFR issuances for 1972 appears in the first issue of the Federal Register each month under Title 1*]

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Chapter I—Civil Service Commission

PART 532—PAY UNDER PREVAILING RATE SYSTEMS

Subpart K—Pay Adjustments Under Economic Stabilization Program

Part 532 is amended by adding a new Subpart K to provide the bases for adjusting schedules to conform to pay guidelines established by the Pay Board in accordance with Executive Order 11639.

Effective January 11, 1972, a new Subpart K is added to Part 532 as set out below.

Subpart K—Pay Adjustments Under Economic Stabilization Program

Sec.
532.1101 Purpose.
532.1102 Applicability.
532.1103 Definitions.
532.1104 Responsibility of surveying agency.
532.1105 Application of the guidelines.
532.1106 Determination process.

AUTHORITY: The provisions of this Subpart K issued under Executive Order 11639, 36 F.R. 521.

§ 532.1101 Purpose.

The purpose of this subpart is to provide the regulations necessary for administering each pay schedule adjustment for employees whose rates of basic pay are fixed by administrative action under subchapter IV of chapter 53 of title 5 of the United States Code, and for carrying out the intent of the Congress and the President in providing for the stabilization of the economy, provided for under the Economic Stabilization Program and Executive Order 11639, dated January 11, 1972, as administered by the Pay Board established under Executive Order 11627 of October 15, 1971.

§ 532.1102 Applicability.

(a) *Agency.* This subpart applies to each executive agency of military department authorized to fix by administrative action the rate of basic pay for a position or employee under subchapter IV of chapter 53 of title 5 of the United States Code.

(b) *Employee.* This subpart applies to an employee who is excepted from chapter 51 of title 5, United States Code by sections 5102(c)(7) and 5102(c)(8) of that title.

(c) *Wage schedules.* This subpart applies to all wage rate schedules which are issued by responsible agency authority on or after January 11, 1972, irrespective of the effective date of the schedules.

§ 532.1103 Definitions.

(a) "Tandem relationship" means a well established and consistently maintained practice before August 15, 1971, whereby the timing, amount, and nature of general increase in wages, salaries, and other compensation within a commonly recognized industry are used to establish the wage schedules for wage employees performing similar work.

(b) "Guidelines" means the general wage and salary standard limiting annual aggregate increases to a rate of increase established by the Pay Board for the non-Federal sector.

§ 532.1104 Responsibility of surveying agency.

Each executive agency or military department responsible for establishing rates of basic pay for employees under subchapter IV of chapter 53, title 5 United States Code and to whom this subpart applies is responsible for establishing those wage rates in accordance with the requirements prescribed herein, notwithstanding any other Commission or agency regulations or instruction concerning the fixing and adjusting of pay for wage employees issued prior to the effective date of this subpart.

§ 532.1105 Application of the guidelines.

In determining the amount of the annual aggregate increase permitted under the guidelines, the annual period shall be computed from the normal effective date. For the purpose of this section "normal effective date" means the date the wage schedule would have been effective from the normal application of an agency's fiscal year 1972 wage survey schedule as developed before the limitations imposed by Executive Order 11615.

§ 532.1106 Determination process.

In determining the applicability of section 5341(c) of title 5, United States Code, no pay schedule adjustment may exceed the guidelines except when the Civil Service Commission finds that: (a) A tandem relationship exists between a Federal pay schedule for an employee unit and pay increases granted in an activity in the private sector, (b) the Pay Board has permitted a pay increase for the activity in the private sector which is in excess of the guidelines and (c) a comparable increase is essential to the continued operation of the Government service concerned.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.72-1031 Filed 1-21-72;8:50 am]

Title 7—AGRICULTURE

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Navel Orange Reg. 250, Amdt. 1]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907, 35 F.R. 16359), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restrictions on the handling of Navel oranges grown in Arizona and designated part of California.

(b) *Order, as amended.* The provisions in paragraph (b)(1) (i) and (ii) of § 907.550 (Navel Orange Regulation 250; 37 F.R. 523) during the period January 14, 1972, through January 20, 1972, are hereby fixed as follows:

§ 907.550 Navel Orange Regulation 250.

* * * * *

(b) *Order.* (1) * * *

(i) District 1: 924,000 cartons;

(ii) District 2: 176,000 cartons.

* * * * *

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: January 19, 1972.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.72-976 Filed 1-21-72;8:46 am]

[Lemon Reg. 517]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.817 Lemon Regulation 517.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910; 36 F.R. 9061), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on January 18, 1972.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period January 23, through January 29, 1972, is hereby fixed at 185,000 cartons.

(2) As used in this section, "handled" and "carton(s)" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: January 20, 1972.

ARTHUR E. BROWNE,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.72-1054 Filed 1-21-72;8:50 am]

Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

Bank Acquisitions by Holding Companies

The Board of Governors has expanded the authority of the Federal Reserve Banks to approve applications by bank holding companies to acquire control of a bank.

In August 1971 the Board delegated to the Reserve Banks substantial authority to approve the formation of one-bank holding companies and dispensed with the publication of an order and statement in cases approved by a Reserve Bank.

The Board's evaluation of the manner in which such delegated authority has been exercised and the Board's experience in considering applications by holding companies for bank acquisitions have led the Board to expand the Reserve Banks' authority. Under the expanded authority the appropriate Reserve Bank may approve the acquisition by a registered bank holding company of a controlling interest in the shares of a newly formed bank, within specified limitations.

The Board has also delegated to the Reserve Banks authority to approve acquisition by a holding company of additional shares in a subsidiary bank to the extent the shares are acquired through the exercise of rights received as a bank shareholder.

The Board has clarified that the Reserve Banks' authority to approve the formation of a one-bank holding company includes the authority to approve merger and/or membership applications that are incidental to such formation.

To accompish these delegations, § 265.2(f)(22) of the Board's rules regarding delegation of authority is amended, and § 265.2(f) (23) and (24) are added, to read as follows:

§ 265.2 Specific functions delegated to Board employees and Federal Reserve Banks.

* * * * *

(f) Each Federal Reserve Bank is authorized, as to member banks or other indicated organizations headquartered in its district:

* * * * *

(22) Under the provisions of section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842), to approve the acquisition by a company of a controlling interest in the voting shares of one bank, if (i) no objection to the proposed acquisition has been made by the bank's supervisory authority, (ii) no significant policy issue is raised by the proposal as to which the Board has not expressed its views, and (iii) neither the holding company nor any of its subsidiaries or affiliates is engaged in any activities other than those specifically permissible for bank holding companies by either the Act or Part 225 of this chapter (Regulation Y).[2]

(23) Under the provisions of section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842), to approve the acquisition by a bank holding company of additional shares in a subsidiary bank that are to be acquired through exercise of rights received, on a pro rata basis, by the bank's shareholders.

(24) Under the provisions of section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842), to approve the acquisition of a controlling interest in the shares of a newly formed bank, if (i) no objection to the proposed acquisition has been made by the bank's supervisory authority, (ii) no significant policy issue is raised by the proposal as to which the Board has not expressed its views, and (iii) the Reserve Bank determines that:

(*a*) The general condition of the holding company and its bank subsidiaries is satisfactory;

(*b*) The holding company has either (*1*) a proven record of furnishing to its subsidiary banks, when needed, special services, management, capital funds, or general guidance, or (*2*) in the case of a relatively new holding company, the Reserve Bank is satisfied that the company has the potential to provide such services;

(*c*) (*1*) Bank subsidiaries of the holding company do not hold in the aggregate more than 20 percent of the commercial bank deposits in the relevant market area and (*2*) the holding company is not one of the dominant banking organizations in the State.

Effective date. These amendments are effective with respect to applications received by the Reserve Banks after January 21, 1972.

---

[2] This delegation includes authority to approve (a) a merger transaction under the provisions of section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) and (b) an application, under section 9 of the Federal Reserve Act (12 U.S.C. 321), for membership in the Federal Reserve System that are incidental to an application to become a one-bank holding company.

By order of the Board of Governors, January 4, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-998 Filed 1-21-72;8:50 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 11670; Amdt. 792]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

This amendment to Part 97 of the Federal Aviation Regulations incorporates by reference therein changes and additions to the Standard Instrument Approach Procedures (SIAPs) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAPs for the changes and additions covered by this amendment are described in FAA Forms 3139, 8260-3, 8260-4, or 8260-5 and made a part of the public rule making dockets for the FAA in accordance with the procedures set forth in Amendment No. 97-696 (35 F.R. 5609).

SIAPs are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Copies of SIAPs adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAPs may be purchased from the FAA Public Document Inspection Facility, HQ-405, 800 Independence Avenue SW., Washington, DC 20591, or from the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $125 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Since a situation exists that requires immediate adoption of this amendment, I find that further notice and public procedure hereon is impracticable and good cause exists for making it effective in less than 30 days.

In consideration of the foregoing, Part 97 of the Federal Aviation Regulations is amended as follows, effective on the dates specified:

1. Section 97.23 is amended by establishing, revising, or canceling the following VOR-VOR/DME SIAPs, effective February 17, 1972.

Bridgeport, N.J.—Bridgeport Airport; VOR Runway 34, Amdt. 4; Revised.
Oakland, Calif.—Metropolitan Oakland International Airport; VOR-A, Amdt. 7; Revised.
Oakland, Calif.—Metropolitan Oakland International Airport; VOR Runway 9R, Amdt. 2; Revised.
Prospectville, Pa.—Turner Field; VOR Runway 14, Original; Established.
Oakland, Calif.—Metropolitan Oakland International Airport; VOR/DME Runway 27L, Amdt. 5; Revised.

2. Section 97.25 is amended by establishing, revising, or canceling the following SDF-LOC-LDA SIAPs effective February 17, 1972.

Oakland, Calif.—Metropolitan Oakland International Airport; LOC (BC) Runway 11, Amdt. 2; Revised.

3. Section 97.27 is amended by establishing, revising, or canceling the following NDB/ADF SIAPs, effective February 17, 1972.

Latrobe, Pa.—Latrobe Airport; NDB Runway 23, Amdt. 4; Revised.
Oakland, Calif.—Metropolitan Oakland International Airport; NDB Runway 29, Amdt. 8; Revised.
Washington, N.C.—Warren Field; NDB Runway 35, Original; Established.

4. Section 97.29 is amended by establishing, revising, or canceling the following ILS SIAPs, effective February 17, 1972.

Latrobe, Pa.—Latrobe Airport; ILS Runway 23, Amdt. 4; Revised.
Miami, Fla.—Miami International Airport; ILS Runway 9L, Amdt. 11; Revised.
Miami, Fla.—Miami International Airport; ILS Runway 27L, Amdt. 11; Revised.
Oakland, Calif.—Metropolitan Oakland International Airport; ILS Runway 27R, Amdt. 24; Revised.
Oakland, Calif.—Metropolitan Oakland International Airport; ILS Runway 29, Amdt. 13; Revised.

5. Section 97.33 is amended by establishing, revising, or canceling the following RNAV SIAPs, effective February 17, 1972.

Atlanta, Ga.—De Kalb-Peachtree Airport; RNAV Runway 20L, Amdt. 2; Revised.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1958; 49 U.S.C. 1438, 1354, 1421, 1510, sec. 6(c) Department of Transportation Act, 49 U.S.C. 1655(c) and 5 U.S.C. 552(a) (1))

Issued in Washington, D.C., on January 14, 1972.

R. S. SLIFF,
Acting Director,
Flight Standards Service.

NOTE: Incorporation by reference provisions in §§ 97.10 and 97.20 (35 F.R. 5610) approved by the Director of the Federal Register on May 12, 1969.

[FR Doc.72-917 Filed 1-21-72;8:45 am]

Chapter II—Civil Aeronautics Board

SUBCHAPTER B—PROCEDURAL REGULATIONS

[Reg. PR-125, Amdt. 9]

PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

Time for Filing Answers to Petitions in Mail Rate Proceedings

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 18th day of January 1972.

Rule 303 of the Board's rules of practice (Part 302, § 302.303) provides, inter alia, that proceedings for the determination of rates of compensation for the transportation of mail may be commenced by the filing of a petition by an air carrier whose rate is to be fixed, or by the Postmaster General, or upon the issuance of an order by the Board. In the absence of a special provision for the time to answer petitions in such proceedings, the general provisions of Rule 6(c) of the rules of practice (Part 302, § 302.6(c)) apply. The general provision is that an answer to a document shall be filed within 7 days after service of the document to which the response is directed.[1]

By a petition dated October 13, 1971,[2] the Postal Service requests that Part 302 be amended so as to allow 20 days, rather than seven, for the filing of answers to service mail rate petitions. In support of its petition, the Postal Service states that answers to petitions filed pursuant to Rule 303 involve complex costing issues, and that a meaningful answer—particularly in response to a carrier's petition—requires detailed and time-consuming analysis of Form 41 reports, which are not so compiled as to permit a ready identification of unit mail costs. Moreover, the Postal Service says that an extension of the time for filing such answers in recent proceedings would not have significantly delayed the final decision in these cases.

No answer to the petition has been filed.

Upon consideration, we are of the view that the request of the Postal Service is reasonable, and we have determined to grant the petition.

Since this rule is wholly procedural in nature, the Board finds that notice and public procedure hereon are unnecessary and the amendment may be made effective immediately.

Accordingly, the Civil Aeronautics Board hereby amends § 302.303 of its procedural regulations (14 CFR Part 302), effective January 18, 1972, by adding a new paragraph (d) as follows:

§ 302.303 Institution of proceedings.

* * * * *

[1] Rule 303 requires service upon the Postmaster General.
[2] Docket 23990.

(d) Answers to petitions shall be filed within 20 days after service of the petition.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324)

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK, *Secretary.*

[FR Doc.72-1002 Filed 1-21-72;8:50 am]

Title 24—HOUSING AND URBAN DEVELOPMENT

Chapter X—Federal Insurance Administration, Department of Housing and Urban Development

[Docket No. R-71-116]

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

Pursuant to section 1305(b) of the National Flood Insurance Act of 1968 (42 U.S.C. section 4012(b), 82 Stat. 574) and section 2 of Public Law 92-213 (85 Stat. 775), the following amendments are made to the regulations of the National Flood Insurance Program.

In accordance with section 1305(a) of the Act, a priority has been previously given to making flood insurance available in eligible communities on dwelling properties designed for the occupancy of from one to four families and on properties owned or leased and operated by small business concerns. The amendments to § 1909.1 and to Part 1911 are intended to expand the existing program by permitting flood insurance coverage to be written on certain types of properties previously ineligible for this insurance. The program as expanded by these amended regulations now includes all properties used for residential, business, religious, and agricultural purposes, properties occupied by nonprofit organizations, and properties owned by State or local governments or agencies thereof.

These amendments are also intended to implement the provisions of section 2 of Public Law 92-213. Section 1909.3 is revised to reflect the statutory extension of the emergency program. Section 1913.1 is amended to reflect the statutory delay in the effective date of subsection 1314 (a)(2) of the National Flood Insurance Act.

Although it is the general policy of the Federal Insurance Administration to propose its regulatory changes for public comment whenever practical and in the public interest, it has been determined that since (1) manuals and forms, reflecting the new regulations, must be printed and distributed to affected companies and producers well in advance of the effective date of the expanded program; and (2) these amendments do not change the nature or structure of the program but merely make additional properties eligible for insurance under the same terms and conditions as have existed in the past, it is in the public interest to make these amendments effective on March 1, 1972, without formal publication for comment.

Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended as follows:

PART 1909—GENERAL PROVISIONS

§ 1909.1 [Amended]

1. Section 1909.1 is amended by revoking the definitions of "Dwelling" or "dwelling property," "Small Business," and "Small Business Property" and by adding the following definition of "Structure," in the proper alphabetical sequence:

"Structure" means a building which is used for residential, business, agricultural, or religious purposes, or which is occupied by a private nonprofit organization, or which is owned by a State or local government or an agency thereof. The term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

2. Section 1909.3 is amended to read as follows:

§ 1909.3 Emergency program.

The 1968 Act required a ratemaking study to be undertaken for each community before it could become eligible for the sale of flood insurance. Since this requirement resulted in a delay in providing insurance, the Congress, in section 408 of the Housing and Urban Development Act of 1969 (Public Law 91-152, Dec. 24, 1969), established an Emergency Flood Insurance Program as a new section 1336 of the National Flood Insurance Act (42 U.S.C. 4056) to permit the early sale of insurance in flood-prone communities. The emergency program (which was extended for the period ending December 31, 1973) does not affect the requirement that a community must adopt adequate land use and control measures but permits insurance to be sold before a study is conducted to determine actuarial rates for the community. The amended program still requires the charging of actuarial rates for higher limits of coverage for existing structures and for all new construction in areas having special flood and/or mudslide hazards. After December 31, 1973, under existing law, no properties can be newly insured or have policies renewed except those in communities for which actuarial rates are available.

PART 1911—INSURANCE COVERAGE AND RATES

3. In the table of contents to Part 1911, §§ 1911.1 and 1911.3 are amended to read as follows:

Sec.
1911.1 Special definition.
1911.3 Types of coverage.

4. Section 1911.1 is revised to read as follows:

§ 1911.1 Special definition.

The definitions set forth in § 1909.1 of this subchapter are applicable to this part except that, for the purposes of this part, "Flood" means a general and temporary condition of partial or complete inundation of normally dry land areas from (a) the overflow of inland or tidal waters, (b) the unusual and rapid accumulation or runoff of surface waters from any source, or (c) mudslides which are caused or precipitated by accumulations or water on or under the ground.

5. Section 1911.3 is revised to read as follows:

§ 1911.3 Types of coverage.

Insurance coverage under the program is available for structures and the contents thereof. Coverage for each may be purchased separately.

6. In § 1911.5, paragraphs (d), (f), (g), and (h) are amended to read as follows:

§ 1911.5 Special terms and conditions.

* * * * *

(d) Each loss sustained by the insured is subject to a deductible provision under which the insured bears a portion of the loss before payment is made under the policy. The amount of the deductible for each loss occurrence is (1) for structural losses, $200 or 2 percent of the amount of the loss applicable to the structure, whichever is greater, and (2) for contents losses, $200 or 2 percent of the amount of the loss applicable to the contents, whichever is greater.

* * * * *

(f) The insured may apply up to, but not in excess of, 10 percent of the face amount of the structural coverage on a property used for residential purposes to appurtenant structures and outbuildings (such as carports, garages, and guest houses).

(g) The following are not insurable under the program: Outdoor swimming pools, bulkheads, wharves, piers, bridges, and docks.

(h) The contents coverage for premises used for residential purposes excludes money and securities, birds or animals, most motor vehicles, boats, trailers, business property, and certain other types of property. It provides only limited amounts of protection for certain other items, such as paintings and jewelry.

* * * * *

7. Section 1911.6 is revised to read as follows:

§ 1911.6 Maximum amounts of coverage available.

The maximum limits of coverage of the policy under the regular program are the following, and the maximum limits of coverage under the emergency program are one-half the following—

(a) For structures used for residential purposes and designed for the occupancy of a single family (including townhouses or rowhouses), which are either separated from other structures by standard firewalls or open space, or contiguous to the ground and customarily regarded as separate structures:

(1) $35,000 structural coverage,

(2) $10,000 contents coverage, which may be purchased by either the owner or the tenant;

(b) For all other structures:

(1) $60,000 structural coverage,

(2) $10,000 contents coverage per unit in the case of premises used for residential purposes or $10,000 contents coverage per occupant in the case of premises used for nonresidential purposes, which may be purchased by either the owner or the tenant.

8. Section 1911.8 is revised to read as follows:

§ 1911.8 Applicability of actuarial rates.

Actuarial rates are applicable to all flood insurance made available for—

(a) Any structure, the construction or substantial improvement of which was started after the Administrator has identified the area in which the property is located as an area having special flood or mudslide hazards under Part 1915 of this subchapter; and

(b) Coverage which exceeds the following limits:

(1) For structures used for residential purposes and designed for the occupancy of a single family (including townhouses or rowhouses), which are either separated from other structures by standard firewalls or open space, or contiguous to the ground and customarily regarded as separate structures:

(i) $17,500 structural coverage, and

(ii) $5,000 contents coverage; and

(2) For all other structures:

(i) $30,000 structural coverage, and

(ii) $5,000 contents coverage per unit in the case of premises used for residential purposes or $5,000 contents coverage per occupant in the case of premises used for nonresidential purposes; and

(c) Any structure or the contents thereof for which the chargeable rates prescribed by this part would exceed the actuarial rates.

9. Section 1911.9 is revised to read as follows:

§ 1911.9 Establishment of chargeable rates.

(a) Pursuant to section 1308 of the Act, chargeable rates per year per $100 of flood insurance are established as follows for all areas designated by the Administrator under Part 1914 of this subchapter for the offering of flood insurance—

Type of structure	Value of structure	Rate per year per $100 structural coverage	Rate per year per $100 contents coverage
(1) Single family residential.	$17,500 and under	$0.40	$0.50
	17,501–35,000	.45	.55
	35,001 and over	.50	.60
(2) All other residential.	30,000 and under	.40	.50
	30,001–60,000	.45	.55
	60,001 and over	.50	.60
(3) All nonresidential (including hotels and motels with normal occupancy of less than six months in duration).	30,000 and under	.50	1.00
	30,001–60,000	.60	1.00
	60,001 and over	.70	1.00

(b) The contents rate shall be based upon the use of the individual premises for which contents coverage is purchased.

PART 1913—EXEMPTION FROM DENIAL OF FEDERAL DISASTER BENEFITS

10. Section 1913.1 is amended by adding a new sentence at the end thereof, to read as follows:

§ 1913.1 Purpose of part.

* * *. The provisions of subsection 1314 (a)(2) shall not apply to any loss, destruction, or damage of real or personal property that occurs on or before December 31, 1973.

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

11. Section 1914.1(b) is amended to read as follows:

§ 1914.1 Purpose of part.

* * * * *

(b) Section 1336 of the Act authorizes an emergency implementation of the National Flood Insurance Program whereby, for a period ending on December 31, 1973, the Administrator may make subsidized coverage available to eligible communities prior to the completion of ratemaking studies for such areas. This part also describes procedures under the emergency program and lists communities which become eligible under that program.

Effective date. These amendments shall be effective on March 1, 1972.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

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Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 1—Federal Procurement Regulations

PART 1-1—GENERAL

Contracts With the Small Business Administration

This amendment to the Federal Procurement Regulations establishes new § 1-1.713, Contracts with the Small Business Administration, which prescribes policies and procedures on the award of procurement contracts to the Small Business Administration (SBA) for further award of subcontracts to eligible concerns under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

The table of contents for Part 1-1 is changed to add new entries, as follows:

Sec.
1-1.713 Contracts with the Small Business Administration.
1-1.713-1 Authority.
1-1.713-2 Policy.
1-1.713-3 Procurement of supplies, services, and research and development.
1-1.713-4 Procurement of construction.

Subpart 1-1.7—Small Business Concerns

1. Section 1-1.705-7 is revised to include a cross-reference to new § 1-1.713. As revised, the section reads as follows:

§ 1-1.705-7 Performance of contract by SBA.

In accordance with the Small Business Act (15 U.S.C. 637(a)), in any case in which the Administrator of SBA certifies to the head of the procuring agency concerned that SBA is competent to perform any specific contract, the contracting officer is authorized, in his discretion, to award the contract to SBA upon such terms and conditions, consistent with applicable procurement regulations as may be agreed upon between SBA and the contracting officer. The policies and procedures governing the award of such contracts are set forth in § 1-1.713.

2. Section 1-1.713 is added to prescribe policies and procedures for the award of contracts to the SBA for further award of subcontracts to eligible concerns under section 8(a) of the Small Business Act (15 U.S.C. 637(a)). The new section reads as follows:

§ 1-1.713 Contracts with the Small Business Administration.

§ 1-1.713-1 Authority.

In any case in which the Small Business Administration certifies to a procuring agency that SBA is competent to perform any specific contract, the contracting officer is authorized, in his discretion, to award the contract to SBA pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and this section and upon such terms and conditions consistent therewith as may be agreed upon between the SBA and the procuring agency. This authorization applies to all types of procurement contracts for personal property and nonpersonal services (including construction and research and development).

§ 1-1.713-2 Policy.

(a) It is the policy of the Government to increase the participation of small business concerns in Government procurement by awarding procurement contracts to the Small Business Administration as authorized by section 8(a) of the Small Business Act for award of subcontracts by SBA to eligible concerns.

(b) In requesting a contract from a procuring agency for the purpose of assisting an eligible concern, the SBA will provide detailed purchase descriptions, Federal stock numbers, and other pertinent information to the fullest extent possible. However, authorized representatives of the procuring agency shall cooperate with and assist SBA representatives, as needed, in developing identifying information for the requirements being sought from the procuring agency. When practicable and feasible, the procuring agency representatives shall arrange for such additional assistance as may be required from agency procurement, technical, and supply management officials. The SBA will provide its best estimates of current and future procurement requirements so as to enable

the procuring agency to evaluate its ability to render future assistance. For construction, the SBA will identify the category or categories of work, the extent of work needed, and location restrictions, if any.

(c) In addition to giving consideration to requests for procurement commitments received from the SBA, each procuring agency should also review other proposed procurements estimated to exceed $2,500 for the purpose of identifying other requirements which may be awarded to the SBA. The procuring agency should promptly notify the SBA of any such proposed procurements which are available for award to SBA under section 8(a). In connection with all proposed procurements which may become involved in an award to SBA, the procuring agency should furnish all available information concerning the work including, where applicable but not limited to, quantities, required delivery schedules or time for performance, location, drawings and specifications, if any, and current detailed Government estimates, where readily available, including quantities and unit costs; labor costs, identified where possible with specific items of materials to be placed or operations to be performed; facilities and equipment required, including rental, hours, and rates; workmen's compensation and public liability insurance; overhead, general and administrative, and profit; employment taxes under FICA and FUTA; bonds; and any other readily available information which will help SBA to determine whether it will submit a request to the procuring agency for a procurement commitment.

(d) When requested by the SBA, the contracting officer of the procuring agency and his authorized representatives shall render all possible assistance to the SBA relative to its negotiations with eligible concerns regarding the possible award of section 8(a) subcontracts. At the SBA's request, the contracting officer of the procuring agency or his authorized representatives may conduct the negotiations with eligible concerns, but any agreements which may be reached as the result of such negotiations must be approved by an authorized representative of the SBA.

(e) Generally, section 8(a) contracts between a procuring agency and the SBA will not be considered for specific items or work after such items or work have been synopsized in the Commerce Business Daily or publicized to or solicited from industry.

§ 1-1.713-3 Procurement of supplies, services, and research and development.

(a) *Factors to be considered.* When a procuring agency receives a request from SBA which involves the procurement of supplies, services, or research and development, consideration shall be given to:

(1) Estimated total requirements of the identified items planned for procurement in the current fiscal year and, to the extent possible, future fiscal years;

(2) Required monthly rates of production and delivery or performance;

(3) Items of work of similar complexity and nature if there are no known requirements for the specifically identified items;

(4) Impact if the items or work are urgent or if slippage in performance or delivery occurs; and

(5) Any other information concerning the items or work of the prospective subcontractor which is pertinent to the requested commitments, including the price range in previous or current procurements.

(b) *Cost or pricing data.* When required by § 1-3.807-3, the SBA shall secure from its prospective subcontractor cost or pricing data, together with any necessary supporting certificate.

(c) *Notification.* After completing its review of the SBA's request for a commitment, the procuring agency will notify the SBA of the extent to which a section 8(a) contract will be placed with the SBA and the time frames within which the prime and subcontract actions have to be completed in order to satisfy the procuring agency's program responsibilities. This notification represents a firm commitment by the procuring agency to award a contract to SBA under terms and conditions which are agreeable to both agencies, provided that there is no material change in requirements, availability of funds, or other pertinent factors. In the notification to the SBA, the procuring agency may also fix a time limit (generally not less than 30 workdays after receipt of the notification) within which the SBA must establish contact with the designated procuring activity of the procuring agency and initiate negotiation of the section 8(a) contract. If negotiations are not completed within the time frame established by the procuring agency, the agency may notify SBA that it intends to proceed with the procurement without futher regard for the section 8(a) procedures, unless additional time is requested by SBA and such additional time is granted by the procuring agency after giving due regard to the urgency of the proposed procurement.

(d) *Provisions of contracts with SBA.* After the SBA has completed its negotiations with an eligible concern pursuant to the procurement commitment made by the procuring agency, and after the SBA and the procuring agency have reached an agreement concerning the terms and conditions (including price) to be included in the contract to be awarded by the procuring agency to the SBA and have also mutually agreed upon the terms and conditions (including price) to be included in the subcontract to be awarded by the SBA to a small business concern, the procuring agency shall prepare two sets of contract documents as follows:

(1) Standard Form 26, Award/Contract, and Standard Form 36, Continuation Sheet, shall be prepared for execution by the SBA and the procuring agency. Authority for negotiation of the contract shall be cited as 41 U.S.C. 252 (c)(15) and 15 U.S.C. 637(a). The contract shall be prepared in the same detail as would be required for an award to a private business. It should be recognized, however, that the contract is to be executed by the SBA and the procuring agency. No requirement for the SBA to furnish payment or performance bonds shall be included in the contract. In addition to the terms and conditions which have been mutually agreed upon by the SBA and the procuring agency, Standard Form 32, General Provisions, appropriate procuring agency forms, and other appropriate provisions shall be incorporated in the contract. Unless otherwise agreed upon between the SBA and the procuring agency, the following clause (or a clause similar thereto) also shall be incorporated in the contract:

SPECIAL 8(a) CONTRACT CONDITIONS

The Small Business Administration (SBA) agrees as follows:

(a) To furnish the supplies or services set forth in this contract according to the specifications and the terms and conditions hereof by subcontracting with an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(b) That in the event SBA does not award a subcontract for all or a part of the work hereunder, this contract may be terminated either in whole or in part without cost to either party.

(c) SBA hereby delegates to the (insert name of procuring agency) the responsibility for administering the subcontract to be awarded hereunder with complete authority to take any action on behalf of the Government under the terms and conditions of the subcontract: *Provided, however,* That the (insert name of procuring agency) shall give advance notice to the SBA before it issues a final notice terminating the right of a subcontractor to proceed with further performance, either in whole or in part, under the subcontract for default or for the convenience of the Government.

(d) Payments to be made under any subcontract awarded under this contract will be made directly to the subcontractor by the (insert name of procuring agency).

(e) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the Contracting Officer cognizable under the "Disputes" clause of said subcontract, which clause shall be identical with that set out in Article 12 of Standard Form 32. It is further understood and agreed that the subcontract to be executed between the SBA and SBA's subcontractor shall also include a clause as follows:

For the purpose of this subcontract, the reference to the "Secretary or his duly authorized representative" in the "Disputes" clause of this subcontract (Article 12 of Standard Form 32, General Provisions) shall be deemed to mean, respectively, the (insert Secretary or Administrator) of the (insert name of procuring agency) and the Board of Contract Appeals of the (insert name of procuring agency).

(2) The original and one duplicate original copy of the contract documents shall be executed by an authorized official of the SBA and the contracting officer of the procuring agency. The original executed contract (and such additional authenticated, conformed, or reproduced copies as may be required by the procuring agency) shall be retained by the procuring agency and distribution shall be

made in accordance with its internal regulations and procedures. The duplicate original copy of the contract (and such additional authenticated, conformed, or reproduced copies as may be required by SBA) shall be forwarded by the procuring agency to SBA for distribution in accordance with its internal regulations and procedures.

(e) *Provisions of subcontracts awarded by SBA.* (1) The subcontract which will be executed by SBA and its subcontractor shall be prepared by the procuring agency on Standard Form 33, Solicitation, Offer, and Award, or on Standard Form 26, Award/Contract, as appropriate, and Standard Form 36, Continuation Sheet. It shall be prepared in the same detail as would be required for a normal procurement contract awarded by the procuring agency, recognizing at the same time, however, that the subcontract is to be executed by SBA and its subcontractor. In addition to the terms and conditions, including price, delivery and performance dates, and other pertinent information which have been agreed upon and incorporated in the contract between SBA and the procuring agency, and which, in turn, have been agreed upon during the negotiations between the SBA and its subcontractor, Standard Form 32, General Provisions, and other appropriate procuring agency forms and special provisions shall also be incorporated in the subcontract. Unless otherwise agreed upon between the SBA and the procuring agency, the following clause (or a similar clause) shall also be incorporated in the subcontract:

SPECIAL 8(a) SUBCONTRACT CONDITIONS

(a) The Small Business Administration (SBA) has entered into Contract No. (insert number of contract) with the (insert name of procuring agency) to furnish the supplies or services as described therein. A copy of said contract is attached hereto and made a part hereof. As used in this subcontract, the reference to "the Secretary or his duly authorized representative" in the "Disputes" clause of this subcontract (Article 12 of Standard Form 32, General Provisions) shall be deemed to mean, respectively, the (insert Secretary or Administrator) of the (insert name of procuring agency) and the Board of Contract Appeals of the (insert name of procuring agency).

(b) The (insert name of the subcontractor), hereafter referred to as the subcontractor, agrees and acknowledges as follows:

(1) That he will, for and on behalf of the SBA, fulfill and perform all of the requirements of Contract No. (insert number of contract) for the consideration stated therein and that he has read and is familiar with each and every part of said contract.

(2) That the SBA has delegated responsibility for the administration of this subcontract to the (insert name of procuring agency) with complete authority to take any action on behalf of the Government under the terms and conditions of this subcontract.

(3) That he will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the designated contracting officer of the (insert name of procuring agency).

(c) Payments, including any progress payments, under this subcontract will be made directly to the subcontractor by the (insert name of procuring agency).

(2) The original and two duplicate original copies of the subcontract shall be executed by the subcontractor and an authorized official of the SBA. The original executed subcontract and such additional authenticated, conformed, or reproduced copies as may be required by SBA shall be retained by SBA for internal distribution in accordance with its regulations and procedures. One duplicate original copy of the executed subcontract and such additional authenticated, conformed, or reproduced copies as may be required by the procuring agency shall be furnished to the procuring agency for internal distribution in accordance with its regulations and procedures. The second duplicate original copy of the executed subcontract, together with an attached copy of the contract between SBA and the procuring agency shall be furnished to the subcontractor.

(f) *Special services.* The requirements set forth in §§ 1-1.713-3(d)(1) and 1-1.713-3(e)(1) concerning the terms and conditions to be included in contracts between the SBA and procuring agencies and in subcontracts between the SBA and eligible concerns may be modified as appropriate for contracts and subcontracts involving specialized types of services such as building services, food services, and business concessions.

§ 1-1.713-4 Procurement of construction.

(a) *Information furnished by SBA.* In subcontracts for construction (including maintenance, repair, and alteration), it is the policy of the Small Business Administration to award subcontracts under the section 8(a) program only to those concerns which have been approved by SBA as supporting the policy objectives of § 1-1.713-2. In the execution of this policy, the SBA will furnish to the procuring agency its request for a commitment showing at least the following information:

(1) The various categories of maintenance, repair, alteration, and construction work in such specific work project categories as mechanical, electrical, heating and air conditioning, demolition, building painting, paving, earth work, waterfront work, or general construction work; and

(2) The individual identification of the estimated dollar value in each category.

(b) *Evaluation of SBA requests.* The procuring agency will evaluate the SBA request for a commitment and determine to what extent the agency has proposed work projects for which funding is available in those requested categories. In the evaluation of the SBA request for a commitment, the matters considered shall include the following:

(1) The extent to which work projects of the type requested by SBA are planned for procurement in the current fiscal year and, to the extent known, future fiscal years; and

(2) Work projects of similar complexity and nature if there are no known work projects of the specific type requested.

(c) *Lists of construction projects.* In addition to specific individual requests by the SBA, the procuring agency shall furnish to the SBA, in accordance with a mutually acceptable schedule, lists of construction work projects which it deems to be suitable for subcontracting by SBA under the section 8(a) program.

(d) *Cost or pricing data.* When required by § 1-3.807-3, the SBA shall secure from its prospective subcontractor cost or pricing data, together with any necessary supporting certificate.

(e) *Notification.* After completing its review of the SBA request for a commitment, the procuring agency shall notify the SBA of the extent to which a section 8(a) contract will be placed with the SBA and the time frames within which the contract actions need to be completed in order to satisfy its program responsibilities. This notification represents a firm commitment by the procuring agency to award a contract to SBA under mutually acceptable terms and conditions, provided there is no material change in requirements, availability of funds, or other pertinent factors. The notification should contain the following information with regard to the work projects:

(1) A summary of the proposed work;

(2) Plans and specifications;

(3) Required performance schedules;

(4) Any other pertinent and reasonably available data, wage determination by the Secretary of Labor, if required; and

(5) Available detailed Government cost estimates, including:

(i) Material quantities and unit costs;

(ii) Labor costs (identified with the specific item of material to be placed or operation to be performed);

(iii) Construction equipment (hours and rates);

(iv) Workmen's compensation and public liability insurance;

(v) Overhead and profit;

(vi) Employment taxes under FICA and FUTA; and

(vii) Bonds.

(f) *Time limitations.* In the notification to the SBA, the procuring agency may also fix a time limit (generally not less than 30 days after receipt of the notification) within which the SBA must establish contact with the designated procuring activity and initiate negotiations of the section 8(a) contract. If negotiations are not completed within the time frame established by the procuring agency, the designated procuring activity may notify the SBA that it intends to proceed with the procurement without further regard to the section 8(a) procedures, unless additional time is requested by SBA and granted by the procuring activity after due consideration for the urgency of the proposed procurement.

(g) *Provisions of contracts with SBA.* The procuring agency shall prepare two sets of contract documents as provided by this paragraph (g) after: The SBA has completed negotiations with the eligible concern pursuant to the commitment made by the procuring agency; the SBA and the procuring agency have reached mutual agreement concerning all terms and conditions (including price) to be included in the contract to

be awarded by the procuring agency to SBA; and the SBA and the procuring agency have agreed upon all the terms and conditions (including price) to be included in the subcontract to be awarded by SBA to the eligible concern.

(1) The contract to be executed between the SBA and the procuring agency shall be prepared by the procuring agency on Standard Form 19, Invitation, Bid, and Award (Construction, Alteration, or Repair), or Standard Form 23, Construction Contract, as may be appropriate. Authority for negotiation of the contract shall be cited as 41 U.S.C. 252(c)(15) and 15 U.S.C. 637(a). The contract shall be prepared in the same detail as would be required for a normal procurement contract to be awarded by the procuring agency to a private business, recognizing at the same time, however, that the contract documents are to be executed by the SBA and the procuring agency. No requirement for the SBA to furnish payment and performance bonds shall be included in the contract. In addition to including the terms and conditions (including price) which have been mutually agreed upon between SBA and the procuring agency, there shall also be incorporated in the contract Standard Form 19-A, Labor Standards Provisions Applicable to Contracts in Excess of $2,000, if the contract is in excess of $2,000, and Standard Form 23-A, General Provisions (Construction Contract), or the General Provisions on Standard Form 19, whichever is appropriate, together with such other procuring agency forms and special conditions as may be required. The contract shall also contain a provision that the SBA shall not be entitled to any commission on work performed by its subcontractor or any lower tier subcontractor. Unless otherwise agreed upon between the SBA and the procuring agency, the following additional clause (or a similar clause) shall be incorporated in contracts prepared on Standard Form 19 or Standard Form 23.

SPECIAL 8(a) CONTRACT CONDITIONS

The Small Business Administration (SBA) agrees as follows:

(a) SBA will perform the work set forth in this contract according to the specifications and drawings and the terms and conditions hereof by subcontracting with an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(b) If SBA does not award a subcontract for the work hereunder, this contract may be terminated without cost to either party.

(c) The SBA hereby delegates to the (insert name of procuring agency) the responsibility for administering the subcontract to be awarded hereunder with complete authority to take any action on behalf of the Government under the terms and conditions of the subcontract.

(d) Progress payments to be made under the subcontract awarded under this contract shall be made directly to the subcontractor by the (insert name of procuring agency). However, final payment under the subcontract will be made only upon the written authorization of the SBA and after receipt of an executed release of claims from the subcontractor.

(e) The subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the contracting officer under the "Disputes" clause of the subcontract, which shall be identical to Clause 3 on Standard Form 19 or to Clause 6 on Standard Form 23-A, whichever is applicable. Further, the subcontract to be executed between the SBA and its subcontractor pursuant to this contract shall contain the following clause:

For the purpose of this subcontract, the reference to the "head of the Federal agency" and "his duly authorized representative" in the "Disputes" clause of this subcontract (Article 3 of Standard Form 19 or Article 6 of Standard Form 23-A, whichever is applicable) shall be deemed to mean, respectively, the (insert Secretary or Administrator) of the (insert name of procuring agency) and the Board of Contract Appeals of the (insert name of procuring agency).

(2) The original and one duplicate copy of the contract documents shall be executed by an authorized official of the SBA and the contracting officer of the procuring agency. The original executed contract (and such additional authenticated, conformed, or reproduced copies as may be required by the procuring agency) shall be retained by the procuring agency and distribution shall be made in accordance with its internal regulations and procedures. The duplicate original copy of the contract (and such additional authenticated, conformed, or reproduced copies as may be required by SBA) shall be forwarded by the procuring agency to SBA for distribution in accordance with its internal regulations and procedures.

(h) *Provisions of subcontracts awarded by SBA.* (1) The subcontract which will be executed by SBA and its subcontractor shall be prepared by the procuring agency on Standard Form 19, Invitation, Bid, and Award (Construction, Alteration, or Repair), or Standard Form 23, Construction Contract, as appropriate. It shall be prepared in the same detail as would be required for a normal procurement contract awarded by the procuring agency, recognizing at the same time, however, that the subcontract is to be executed by the SBA and its subcontractor. A provision shall be included in the subcontract which requires the subcontractor to furnish a performance bond on Standard Form 25, Performance Bond, and a payment bond on Standard Form 25A, Payment Bond, as required by the Miller Act (40 U.S.C. 270a-270e). Applicable policies and procedures regarding the use of these bonds appear in §§ 1-10.104-1 and 1-10.105-1. In addition to incorporating the terms and conditions (including price) which have been agreed upon and incorporated in the contract between SBA and the procuring agency, and which, in turn, have been agreed upon during the negotiations between SBA and its subcontractor, the following shall also be incorporated in the subcontract: (i) Standard Form 19-A, if the subcontract is in excess of $2,000, (ii) Standard Form 23-A. General Provisions (Construction Contract), or the General Provisions on Standard Form 19, as appropriate, and (iii) such other procuring agency forms and special conditions as may be required. Unless otherwise agreed to by the SBA and the procuring agency, the following clause (or a similar clause) shall be included in the subcontract:

SPECIAL 8(a) SUBCONTRACT CONDITIONS

(a) The Small Business Administration (SBA) has entered into Contract No. (insert contract number) with the (insert name of procuring agency) to perform the work as described therein. A copy of said contract is attached hereto and made a part hereof.

(b) The Small Business Administration and (insert name of subcontractor), hereinafter called the subcontractor, agree as follows:

(1) The subcontractor shall, for and on behalf of the SBA, fulfill and perform all of the requirements of Contract No. (insert contract number) for the consideration stated therein. The subcontractor acknowledges that it has read and is familiar with each and every part of said contract.

(2) The SBA has delegated responsibility for the administrattion of this subcontract to the (insert name of procuring agency) with complete authority to take any action on behalf of the Government under the terms and conditions of this subcontract.

(3) The term "Contracting Officer" as used in the General Provisions (Standard Form 19 or Standard Form 23-A, whichever applies) means the person designated by the (insert name of procuring agency) as Contracting Officer. The Contracting Officer designated for this subcontract shall be (name), (address), (insert name of procuring activity and the name of the procuring agency) or his duly appointed successor or authorized representative.

(4) The term "Contractor" as used in the General Provisions (Standard Form 19 or Standard Form 23-A, whichever applies) means the "subcontractor" who has entered into this subcontract with SBA for the performance of all of the work under this subcontract.

(5) The reference to the "head of the Federal agency" and to "his duly authorized representative" in the "Disputes" clause of this subcontract (General Provisions, Article 3 of Standard Form 19 or Article 6 of Standard Form 23-A, whichever applies) shall be deemed to mean, respectively, the (insert Secretary or Administrator) of the (insert name of procuring agency) and the Board of Contract Appeals of the (insert name of procuring agency).

(6) The subcontractor will not subcontract the performance of any of the requirements of this subcontract to a lower tier subcontractor without the prior written approval of the SBA and the designated Contracting Officer of the (insert name of procuring agency), or his duly appointed successor or authorized representative.

(7) Nothing contained in this contract shall be construed as creating any contractual relationship between the Government and any second or lower tier subcontractor which may be authorized by the SBA and the Contracting Officer. The divisions or sections of the specifications are not intended to control the subcontractor in dividing the work among any duly authorized second tier subcontractors, or to limit the work of any trade.

(8) The subcontractor shall be responsible to the Government for the acts or omissions of his own employees and of any duly authorized lower tier subcontractors and their employees. He shall also be responsible for the coordination of the work of the trades, any duly authorized lower tier subcontractors, and suppliers.

(9) Any progress payments to be made under this subcontract will be made directly to the subcontractor by the (insert name of procuring agency). However, the final payment under the subcontract will be made only upon the written authorization of the SBA and after receipt of an executed release of claims from the subcontractor.

(2) The original and two duplicate original copies of the subcontract shall be executed by the subcontractor and an authorized official of the SBA. The original executed subcontract (and such additional authenticated, conformed, or reproduced copies as may be required by SBA) shall be retained by SBA for internal distribution in accordance with its regulations and procedures. One duplicate original copy of the executed subcontract (and such additional authenticated, conformed, or reproduced copies as may be required by the procuring agency) shall be furnished to the procuring agency for internal distribution in accordance with its regulations and procedures. The second duplicate original copy of the executed subcontract (together with an attached copy of the contract between the SBA and the procuring agency) shall be furnished to the subcontractor.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Effective date. This amendment is effective March 29, 1972, but may be observed earlier.

Dated: January 14, 1972.

ROBERT L. KUNZIG,
Administrator of General Services.

[FR Doc.72-997 Filed 1-21-72;8:50 am]

Chapter 3—Department of Health, Education, and Welfare

PART 3-75—DELEGATIONS OF AUTHORITY

Issuance of U.S. Government Bills of Lading for Transportation of Household Goods

Chapter 3, Title 41, Code of Federal Regulations, is amended as set forth below. The purpose of this amendment is to authorize members of the Public Health Service Commissioned Corps to issue and sign as "Issuing Officer" Government bills of lading for the shipment of household goods under certain conditions.

It is the policy of the Department of Health, Education, and Welfare to allow time for interested parties to take part in the rule making process. However, this amendment involves only a minor technical matter. Therefore, the public rule making process is deemed unnecessary in this instance.

1. The table of contents of Part 3-75 is amended to add new sections under Subpart 3-75.1 as follows:

Subpart 3-75.1—Procurement Authority

Sec.
3-75.105 Special and limited delegations.
3-75.105-1 Issuance of U.S. Government bills of lading for transportation of household goods.

2. Sections 3-75.105 and 3-75.105-1 are added to read as follows:

§ 3-75.105 Special and limited delegations.

§ 3-75.105-1 Issuance of U.S. Government bills of lading for transportation of household goods.

When a member of the Public Health Service Commissioned Corps is authorized travel at Government expense, including the shipment of household goods, and it is determined by Commissioned Personnel Operations Division, Office of Personnel and Training, that the shipment cannot be arranged by a designated household goods shipping officer, such member is delegated authority to issue and sign as "Issuing Officer," Government bill(s) of lading to accomplish such shipment. The Government bill(s) of lading will be prepared in accordance with instructions provided with personnel orders.

(5 U.S.C. 301; 40 U.S.C. 486(c))

Effective date. This amendment shall be effective 30 days after publication in the FEDERAL REGISTER.

Dated: January 14, 1972.

N. B. HOUSTON,
Deputy Assistant Secretary for Administration.

[FR Doc.72-1001 Filed 1-21-72;8:48 am]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 19074; FCC 72-46]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Stations in Certain States

Report and Order. In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations. (Greenville, Ky.; Burnside, Greensburg, and Jamestown, Ky.; Oak Ridge and Jamestown, Tenn.; Pineville, Barbourville, and Middlesboro, Ky.; and Big Stone Gap, Va.) Docket No. 19074, RM-1390, RM-1427, RM-1436, RM-1581.

1. The Commission here considers the notice of proposed rule making in this docket, adopted October 28, 1970 (FCC 70-1162). This proceeding is an off-shoot of Docket No. 18476, and, indeed, takes up proposals which could not be dealt with in that proceeding without unduly delaying disposition of other proposals; see second report and order in Docket No. 18476, also adopted October 28, 1970 (26 FCC 2d 162). This proceeding deals with: (a) Alternative proposals for Greenville, Greensburg, and Jamestown, Ky.; (b) further consideration of the Burnside, Ky., petition (RM-1390); and (c) the intertwined proposals for Oak Ridge and Jamestown, Tenn., and Pineville, Ky. (RM-1436); Big Stone Gap, Va. (RM-1427); and Middlesboro, Ky. (RM-1581). The comments and reply comments originally were due December 21, 1970, and January 4, 1971, respectively. The Commission on its own motion extended these times to and including February 12 and 26, 1971, respectively, because of the failure to personally serve the notice on certain interested parties whose views were deemed essential; see order extending time, adopted January 13, 1971 (FCC 71-41).[1] All population figures are from the 1970 Census, unless otherwise indicated.

2. Greenville, Ky.: By the second report and order in Docket No. 18476 (26 FCC 2d 162), we deleted the Channel 292A assignment at Greenville to allow assignment of that channel to three other communities, but, in this proceeding, we put out for further consideration the possibility of assigning Channel 288A as a substitute to Greenville as urged by one of the parties to that portion of Docket No. 18476. Shain Broadcasting Co., the applicant for Channel 292A at Greenville (BPH-6671), had opposed the counterproposal stating that Channel 288A was unsuitable because (i) with the transmitter having to be over 7 miles from the city to meet mileage separations, a signal of strength required by the rules could not be placed over the city, (ii) a suitable transmitter site was unavailable because of terrain, and (iii) other objections. Because of the population figure (3,875), the fact that it is the county seat, and the lack of a local AM outlet, we invited comments on whether Channel 288A is usable at Greenville or if there is another alternative.

3. No comments were filed as to this portion of the proceeding. Our own search for a possible other channel reveals that no alternative is available. In the absence of further information and data as to site availability and terrain factors (see 26 FCC 2d at 165), we are unable to decide whether Channel 288A can be assigned to Greenville. In the circumstances, we must decline making an

[1] This incidentally has the effect of making moot the motion of Trevor F. Swoyer & Associates (Swoyer) to strike "reply comments" filed by WATO, Inc. (WATO). The Swoyer motion touched on how silence of a petitioner or a party supporting or opposing a petition, failure to plead to a notice, and the failure to comment but filing reply comments on a point, should be treated. Since the notice of proposed rule making in this docket, we have dealt with this problem by requiring petitioner(s) and any other proponent(s) to file certain minimal data else failure could lead to denial. See, for example, paragraph 6 of the notice of proposed rule making in Docket No. 19315, adopted September 8, 1971 (FCC 71-954). The procedure in rule making calls for comments and reply comments (§ 1.415), and, while we agree that the practice of some to first raise a contention in a reply comment and thus effectively bar another to rebut the issue may be burdensome, this has been permitted except to "cut off" the opportunity in FM rule making to make a counterproposal (see, e.g., paragraph 17 of the notice of proposed rule making in this docket). The "cut off" procedure was first adopted in this docket. In any event, the parties agree that the motion became moot when the time was extended.

assignment to Greenville, Ky. at this time.

4. Greensburg, Burnside, and Jamestown, Ky.: Here, we are considering an alternative proposal for allocating Channel 276A to Greensburg, population 1,990, the county seat and largest community in Green County (population 10,350), to be used 1 mile or more northeast of the city. The original proposal of petitioners Virgil A. Price and E. J. Milby to allocate Channel 261A to Greensburg conflicted with the use of the same channel at Elizabethtown, Ky., an integral part of the FM Table of Assignments changes adopted in the second report and order in Docket No. 18476 to provide a substitute channel for Station WQXE operating at Elizabethtown. Although the petitioners then also were applicants for a daytime only AM station at Greensburg,[2] nonetheless, we felt that because of the lack of any other aural service to the county, an FM assignment should be considered to provide a first full-time aural service to Green County. In order to assign Channel 276A to Greensburg, the channel for Station WJRS-FM at Jamestown, Ky.,[3] about 30 miles away, would have to be changed from 276A to 285A. The notice noted that this proposal would require the denial of RM-1390, based on the petition of Leon Jasper for Channel 285A as the first FM assignment to Burnside, although we indicated our doubt as to the merit of that proposal because of the lack of population (586 persons) and the abundance of aural service from Somerset, the county seat (population 10,436), about 7 miles away—one Class A FM, a daytime AM, and a Class IV AM station. See both the notices in this proceeding and in Docket No. 18476 (paragraph 31; FCC 69-207). In the earlier Notice, we stated our disposition to deny because of the small population, and, in this proceeding, we additionally indicated the conflict with the proposed assignment to Jamestown. See paragraph 6 of the notice. Our notice mentioned the "dubious merit" but we said further comments about Burnside would be entertained, and specifically said that "[m]aterial previously [filed in Docket No. 18476] * * * need not be resubmitted but may be incorporated by reference." (Notice, paragraph 7; compare with the general procedure since adopted described in footnote 1.)

5. The only one filing comments as to this part of the proceeding is Welby Hoover, doing business as Lake Cumberland Broadcasters (Lake Cumberland), the licensee of Station WJRS-FM, Jamestown, Ky. Lake Cumberland's interest is that Station WJRS-FM would have to change channels. In the circumstances, the policy of the Commission is "well settled", that is, as an operating station, it is entitled to reimbursement of actual costs of change from the party or parties benefitting. See paragraph 15 of the notice in this proceeding and paragraph 11 of the second report and order in Docket No. 18476 (26 FCC 2d at 166). In this respect, Lake Cumberland refers to the loss of listeners and goodwill, if compelled to change its frequency, money and time expended for programing and jingles to promote its current frequency. Suffice it to say that these are not "actual costs."

6. Lake Cumberland also commented on the merits of the proposed assignment to Greensburg. Lake Cumberland states that an FM channel assignment at Greensburg is unnecessary because of service to that community from WJRS-FM (the distance between the communities is only 30 miles) especially public service and public affairs programing and the station earns some revenue from Greensburg. Lake Cumberland contends that an allocation at Greensburg is not warranted as a fair, efficient, and equitable distribution of radio service under section 307(b) of the Act. This party also urges that Greensburg has no need for an FM assignment because of the then pending application for a daytime only AM station (BPH-18198) (which has been granted in the interim; see paragraph 4 above and footnote 2). Lake Cumberland also says that the proposed assignment to Greensburg would mean the denial of the Burnside petition, thus in effect creating two harmful results.

7. The latter thesis is a pragmatic approach based on numbers of assignments while ignoring more valid public interest considerations of populations and needs. A more persuasive argument than the one made by WJRS-FM is necessary. In some respects, petitioner's contentions that smaller nearby communities are "part" of Burnside and there is a large yearly tourist population are similar to contentions made and rejected in other recent proceedings; e.g., the reports and orders in Docket No. 18883, 27 FCC 2d 884, 848 (1971); and 28 FCC 2d 641 (1971).[4]

8. While there is no presumption in this respect,[5] we can only construe the failure of the petitioners for Greensburg to file comments as evidencing a present lack of interest in pursuing their proposal to seek an FM channel at Greensburg.[6] In the circumstances, we shall deny their petition at this time.[7]

9. Oak Ridge and Jamestown, Tenn.; Pineville, Barbourville, and Middlesboro, Ky.; and Big Stone Gap, Va.: As elaborated in the notice, this portion of the proceeding involves three petitions. The principal proposal is that of Trevor F. Swoyer & Associates for Channel 262C at Oak Ridge, Tenn., which submitted two alternative proposals and which concomitantly involved changes at Pineville, Ky., and Jamestown, Tenn. Under both alternatives, Channel 280A would be substituted at Jamestown for Channel 261A, which is assigned to Station WDEB-FM and is entitled to "reimbursement" (see paragraph 5, above). While either Channel 228A or 292A were proposed as alternatives for Channel 261A at Pineville, the former involves a co-channel short-spacing with RM-1427—the petition of Gap Broadcasting Co. at Big Stone Gap, Va.—and the latter conflicted with RM-1581—the petition of Walter Powell, Jr. trading as Tri-State Broadcasters—for the same channel at Middlesboro. We noted that Pineville and Middlesboro were both in Bell County; Middlesboro has both an operating FM channel (Station WMIK-FM) and AM Stations WAFI and WMIK; Knox County, where Barbourville is located, has no FM channel assigned; and that Barbourville—Community Broadcasting Co., the daytime AM licensee at Barbourville, had applied for the Pineville channel for use at Barbourville (BPH-6331).[8] Those filing comments and/or reply comments as to this phase of the docket are: Trevor F. Swoyer & Associates; Walter Powell, Jr., trading as Tri-State Broadcasters; Barbourville-Community Broadcasting Co.; WDEB, Inc.; and WATO, Inc. The cities involved, the counties in which located, and the populations are as follows:

City	Population	County	Population
Oak Ridge, Tenn	28,319	Anderson	60,300
		Roane	38,881
Jamestown, Tenn	1,899	Fentress	12,593
Knoxville, Tenn	174,578	Knox	276,293
Pineville, Ky	2,817	Bell	31,087
Barbourville, Ky	3,549	Knox	23,689
Middlesboro, Ky	11,844	Bell	31,087
Big Stone Gap, Va	4,153	Wise	35,947
Norton, Va	4,001		

10. As already noted the core proposal is the assignment of Channel 262C to Oak Ridge. The petitioner urged the historical importance of Oak Ridge as a "unique city" incorporated in 1959, which has since grown to a population of 31,400 (28,319 according to the 1970 Census), has an effective purchasing power of $95 million and retail sales of about $66 million, and is the main population center of Anderson County with numerous churches and schools (including Oak Ridge Associated University, the University of Tennessee Evening School, and the University of Tennessee Resident Graduate School). It was urged that the existing local aural services Stations WATO (full-time regional) and WATO-FM (Class A) demonstrably are insufficient to serve the needs and interests of Oak Ridge either for local programing or

[2] This application was granted on Feb. 19, 1971. Call letters "WGRK" were authorized May 10, 1971.

[3] Population 1,027. Its county—Russell—has 10,542 inhabitants.

[4] As to the latter, reconsideration is pending as to the pertinent part about Whaleyville, Virginia (RM-1481).

[5] But see footnote 1.

[6] The need to reimburse Station WJRS-FM, Jamestown, Ky., in addition to the financial burden of building an AM station and prosecuting an application for an FM station may well have deterred Price and Milby's interest in an FM station at Greensburg.

[7] It should be evident that from the notice we felt that the public interest warrants an FM assignment at Greensburg. However, to make the allocation without assurance that someone would apply in the near future appears somewhat futile; cf. the new "practice" discussed in footnote 1, and see also paragraph 21, below.

[8] The distance between Pineville and Barbourville is 13 miles, but the application was filed prior to amending § 73.203(b) of the rules in 1968 to decrease use of a Class A FM channel to an unlisted community within 10 miles of the city of assignments.

local advertising.[9] Petitioner urged that the addition of Channel 262C would result in a substantial benefit to the area's economic and philosophic growth. Further, at full power and height from a mountain about 12 miles north of Oak Ridge, petitioner envisaged service to a large area (12,874 square miles), including substantial areas without primary FM service (597 square miles) or with only one such service (3,461 square miles).

11. Both WATO, Inc. (WATO), the licensee of Stations WATO and WATO-FM at Oak Ridge, and WDEB, Inc. (WDEB), the licensee of Station WDEB-FM at Jamestown, oppose the assignment of Channel 262C to Oak Ridge. We turn first to WATO's arguments. This party raises the question whether the failure of Swoyer to file comments before we reopened the proceeding (see footnote 1) in fact is not tantamount to a dismissal so that reply comments were unnecessary. This appears to be a further allusion to Swoyer's earlier motion to strike WATO's original comments; aside from this too being mooted by our having extended the time for filing comments and reply comments to serve certain interested parties, it was only after the notice in this case that we adopted a policy to the effect that a petitioner and other parties to FM Table of Assignments rule making have an obligation to file a comment, even if merely a nominal pleading to the effect that one adheres to views expressed in the petition stage. Ibid. WATO urges that mixing Class A and Class C channels is contrary to the public interest. In this respect, the Commission tried to adhere to such a concept to the extent possible, but now that FM allocations are becoming more difficult in some areas, to continue to do so would be a vain effort aimed at equality and parity of service inconsistent with public interest, convenience, and necessity considerations as required by the Communications Act of 1934, as amended; see and compare second report and order in Docket No. 18125, 17 FCC 2d 952, 957 (1969).[10]

12. Both WATO and WDEB attack the proposal as an effort to serve the more lucrative market of Knoxille located about 20 miles east of Oak Ridge. Knoxville, located in Knox County, has three Class C channels (248, 278, and 299), respectively occupied by Stations WBIR-FM, WEZK, and WIVK-FM. WDEB, in this respect, places strong reliance on the fact that both Oak Ridge—at least the Anderson County part of that city (population 26,829)[11] and the proposed "site" are in the Knoxille SMSA which includes Knox, Anderson (60,300), and Blount (63,744) Counties. In the circumstances, WATO refers to the proposed Oak Ridge assignment as a "hollow mockery" with the true effort and indeed requirement under § 73.206(a)(4) to serve Knoxville. This party goes on to say that it is doubtful whether Oak Ridge can economically support a wide area FM station or for that matter an additional FM station, and, thus, a Class C station of necessity would look to Knoxville for economic support with the result a de facto reallocation to Knoxville contrary to the objectives of section 307(b). WATO says that in order to prove unserved (none) and underserved (one other) areas, Swoyer must also consider AM service since FM is only part of a single aural service. Reliance is placed on Cherokee Broadcasting Co., 17 FCC 2d 121 (1969), reversed on other grounds, 18 FCC 2d 488 (1969); compare New Sun Broadcasting Co., 24 FCC 2d 770, 773 (Rev. Bd., 1970). The economic injury to an operating station argument advanced by WATO has long since been disposed of by "FCC v. Sanders Bros. Radio Station," 309 U.S. 470 (1940). On the other hand, WATO's argument that, since AM and FM are parts of a single aural service, the type of showing Swoyer should make about unserved and underserved areas is persuasive; in this respect Swoyer's reply comments adduces engineering data that considering nighttime AM service there would be service to an unserved area of 223 square miles and an underserved area of 2,490 square miles.

13. Swoyer vigorously attacks WDEB's argument that, since Oak Ridge is within Knoxville SMSA, the proposal must be considered as one of Knoxville as inconsistent with the reasons and facts previouly presented. This rationale, Swoyer says, would mean that only one city within an SMSA would be allocated FM channels, even though there are two or more large cities in a particular SMSA and the contention is contrary to the admonition of section 307(b) for fair, efficient, and equitable distribution of radio service. It should be fairly obvious that we do not subscribe to such a theory else we would not have recently assigned channels to Lowell, Ind. (second report and order in Docket No. 18883, 28 FCC 2d 641 (1971)); and Cayce, S.C. (report and order in Docket No. 19144, 30 FCC 2d 180 (1971)).[12] As Swoyer says, the current test for an allocation to a community is that it be separate and distinct with its own needs and interests;[13] further, we agree with Swoyer's position that, if unserved and underserved areas includes AM services, the appropriate test would be nighttime service.[14]

14. WDEB, Inc., also claims that reimbursement should include potential loss of income and indemnification for possible loss of listeners. We need not detail these, for it is now settled law that the right to reimbursement is a circumscribed one. See paragraph 5, above. See also, e.g., Cocoa Beach, 1 FCC 2d 646 (1965); Wenatchee, 2 FCC 2d 828, 830 (1966); Kenton and Bellefontaine, 3 FCC 2d 598, 603-5 (1966); Gretna and Danville, 5 FCC 2d 333, 341 (1966); and Circleville, 8 FCC 2d 159 (1967).

15. We now turn our attention to the Pineville, Barbourville, Middlesboro, and Big Stone Gap portion of this proceeding. As already noted above, a necessary part of the Swoyer petition included a proposal to substitute either 228A or 292A for 261A at Pineville located in Bell County for which Barbourville-Community Broadcasting Co. (Barbourville-Community), the licensee of daytime-only AM Station WYWY there, had filed an application (BPH-6331) for use at Barbourville (see footnote 8).[15] Both alternatives conflicted with other petitions: the 228A proposal at Pineville conflicted with that of Gap Broadcasting Co., licensee of daytime only AM Station WLSD at Big Stone Gap, Va., filed in order to provide that city and surrounding area with a first local nighttime service (RM-1427). The Channel 292A alternative conflicted with the petition of Walter Powell, Jr., trading as Tri-State Broadcasters (Powell), licensee of Station WAFI (daytime only) there, to allocate Channel 292A as a second FM channel to Middlesboro also located in Bell County. Station WMIK-FM operates on the Middlesboro channel (224A); it was first licensed in August 1971 (our notice reported that Cumberland Gap Broadcasting Co., licensee of daytime-only Station WMIK, had been granted a CP after a hearing on a concentration of control issue; 24 FCC 2d 393 (1970)). Our notice noted that Channel 228A proposal was deficient because the distance between the proposed transmitter site for Barbourville-Community and the Big Stone Gap reference point or Gap Broadcasting Co.'s proposed site was 5 miles short under the rules (60 as opposed to the 65-mile cochannel Class A separation required by § 73.207 of the

[9] On Sept. 1, 1971, Radioak, Inc. (BP-18003), was authorized to construct a daytime-only AM station at Oak Ridge.

[10] Two of the seven communities in Tennessee having two or more FM channels have mixed assignments—Chattanooga and Kingsport.

[11] The part of Oak Ridge in Roane County has a population of 1,490.

[12] Nor would we here have gone through the lengthy discussion in the latter docket to deny an FM allocation to Burnettown, S.C.

[13] The Commission recognizes that Channel 262C would fully serve Knoxville from the "site" selected by Swoyer. However, any action on our part to allocate Channel 262C to Oak Ridge does not mean that one may not apply for the use of the channel from another site. As concerns service to Knoxville, it should be noted that on the basis of population criteria, Knoxville is entitle to a greater number of channels. See the further notice of proposed rule making in Docket No. 14185, adopted July 25, 1962 (FCC 62-867), and incorporated by reference in paragraph 25 of the third report, memorandum opinion and order, adopted July 25, 1963 (23 R.R. 1859, 1871). However, our study of the situation shows that no FM channel can be assigned at the Knoxville reference point and an additional channel would have to be located well outside of the city. Assuming that we assign Channel 262C to Oak Ridge, any applicant with the intention of serving Knoxville or Knoxville and Oak Ridge would of necessity have to seek a reassignment to Knoxville or a dual city assignment.

[14] The test heretofore was that set out in the Roanoke Rapids and Goldsboro, N.C. rule making (9 FCC 2d 672 (1967)).

[15] In July 1971, John O. McPherson filed for Channel 261A at Pineville (BPH-7565). Because the times had already lapsed, he filed neither comments nor reply comments.

rules); indeed, because of this, Swoyer proposed the 292A alternative at Pineville. In the petition stage, Powell suggested the feasibility of allocating Channel 228A to both Pineville and Big Stone Gap, while Swoyer pursued the 292A proposal for Barbourville contending that assignment of the latter channel to Middlesboro is inconsistent with Commission population criterion for FM allocations (i.e., the further notice of proposed rule making in Docket No. 14185, adopted July 25, 1962 (FCC 62-867) incorporated by reference in paragraph 25 of the third report, memorandum opinion and order, adopted July 25, 1963 (23 R.R. 1859, 1871)). Swoyer erred as to the latter, for a city the size of Middlesboro may have a second FM assignment. Our notice asked for comments as to assigning either Channels 228A or 292A to Barbourville, or Channel 292A to either Pineville or Middlesboro.

16. The notice pointed out some of the contentions of the parties and relevant considerations. For example, Powell asserted that Middlesboro is entitled to a second channel as the largest city in Bell County; that Middlesboro is the commercial center of the county with more than one-half of the retail business—$168 million of $300 million, and it accounts for two-thirds of the county's retail sales ($24 million). From the technical viewpoint, we noted a 2-mile shortage from Station WNVA-FM, Norton, Va., to the Pineville reference point, but this was not a problem because a transmitter site could easily be found west of Pineville. Our notice also noted the degree of radio service at each of the communities and the status of the community within its county. All of them have one local AM outlet. Barbourville is the seat and largest city of Knox County, which includes a part of Corbin (1,179 of the total 7,317 population; the 6,138 balance is in Whitley County), and aside from service from two AM stations (one daytime, one fulltime) and two Class A FM stations there, the only aural service is Barbourville's daytime AM Station WYWY. Big Stone Gap is the largest community within Wise County which surrounds the independent city of Norton; there are no FM channels assigned to Wise County (in contrast to Norton) and only one AM station—daytime-only WLSD at Big Stone Gap (Norton has AM Station WNVA (daytime only) and FM Station WNVA-FM). Middlesboro and Pineville about 10 miles apart are both in Bell County; the former is the largest city and the latter the seat; there are two daytime AM stations and one Class A FM station at Middlesboro, while Pineville, as already noted, has an FM allocation for which there are two applicants, one for use at Barbourville (Barbourville-Community) and that of John O. McPherson for use at Pineville.

17. Only Barbourville-Community and Powell directly commented on this phase of the proposed rule making. Barbourville-Community indicates that it favors a change of assignment because its application for Channel 261A is short-spaced to the application of Irvine Broadcasting Co., which has applied for use of Winchester Channel 261A at Irvine, Ky. (BPH-5996), and Station WSIP-FM at Paintsville, Ky. Barbourville-Community urges that Channel 292A rather than Channel 228A be assigned to Barbourville. As to the possibility of assigning Channel 228A, it suggests a waiver of spacing, or that Station WLSD (Big Stone Gap) be required to select a new site because the latter acted later than Barbourville-Community. The latter is an extension of this party's view that an important economic factor for it as a small town station is that its FM transmitter site must be at AM Station WYWY's transmitter site. This party also filed reply comments which more or less reiterate the views expressed in the comments.

18. Powell contends that assignment of Channel 292A to Middlesboro offers an advantage over assigning that channel to Barbourville or Pineville because more channel allocations may be made: Specifically, Channel 292A to Middlesboro; Channel 262C to Oak Ridge; Channel 228A to Barbourville; and Channel 228A to Big Stone Gap; as opposed to allocating Channel 292A to Pineville (or Barbourville) which precludes Channel 292A to Middlesboro. Powell submitted a preclusion study; if Channel 292A were assigned to Middlesboro, the sizeable communities affected are two cities in Tennessee—Tazewell (population 1,860) in Claiborne County (population 19,420) and Jefferson City (5,124) in Jefferson County (population 29,940)—and Clinton, Ky. (4,754), located in Hickman County (6,264 population). Each has an operating AM station and Clinton also has an FM station. Powell states that Clinton does not need a second FM and the other two show no particular need for a local FM station. Powell argues that not only would 292A at Middlesboro be more efficient but a second FM channel is needed because of the control of media by commonly owned Stations WMIK, WMIK-FM, and the daily newspaper there.[16] The supporting engineering statement also contends that from a site west of Pineville (to comply with the mileage spacing to WNVA-FM (see paragraph 16 above)) Pineville would not receive proper coverage. On the other hand, allocation of Channel 228A to Barbourville would be particularly efficient because of slight preclusion and a station on Channel 292A at Middlesboro would cover Pineville with a 1 mv/m contour.

CONCLUSIONS—OAK RIDGE, ET AL.

19. It would appear that the conclusions to be reached would be put in proper perspective by a verbatim repetition of paragraph 14 of the notice of proposed rule making, inasmuch as information and data adduced are directed at the points set therein. That paragraph, entitled proposals and alternatives, said:

> It appears clear that the assignment of Channel 262C at Oak Ridge should be proposed herein, along with the concomitant change of the Class A assignment and station at Jamestown, Tenn., in view of the importance of Oak Ridge and the wide-area and needed service which a station on the channel could provide. As to the Big Stone Gap-Pineville-Barbourville-Middlesboro requests, it appears that there are a wide range of alternatives. Of the four, Big Stone Gap appears the most meritorious, since it is the largest of the three communities now without an FM assignment, and there is none (and no fulltime AM service) actually in its county. Barbourville appears meritorious for much the same reasons. It has not had a channel assigned up to now, but there is demand there for use of a channel, as shown by the pending application. As indicated above, cochannel assignment of Channel 228A at these places does not appear to be out of the question, if sites 65 miles apart could be utilized. Pineville has the one present FM channel, and it has fulltime AM service and there is one FM assignment in the same county at Middlesboro. Middlesboro is much the largest of the communities, but it has one FM assignment already. As indicated above, whether a second assignment would be made depends on what is shown about the preclusive effect on needed assignments elsewhere. We do not now decide which of the proposals discussed above should be preferred. One consideration, which the parties should discuss, is assignment flexibility: where the channels involved here, 228A and 292A, could be used if not assigned to one of the places proposed.

20. In paragraphs 10-14, above, we have discussed the contentions of the parties as to assigning Channel 262C to Oak Ridge. Our analysis of the basic question leads us to conclude that the public interest would be served by allocating Channel 262C to Oak Ridge. In reaching this conclusion, we have pointed out the fallacy of the economic injury argument made by WATO, and that the contention that the Commission does not mix different classes of channels is erroneous. To the extent that the Roanoke Rapids-Goldsboro case is applicable, we agree that, since AM and FM are parts of a single aural service, AM service should be considered, and, in this respect, it is AM nighttime service that should be considered. In reaching our result, we also have disposed of the contention that Swoyer intends to serve Knoxville. The argument is unpersuasive in the circumstances, but, assuming otherwise, it should be noted that Knoxville is entitled to another channel under the population criteria for FM assignments; any additional Knoxville channel assignment would have to be located outside the city because of mileage separation requirements, and should someone apply for the Channel 262C assignment made here to Oak Ridge for use at Knoxville, that applicant should concomitantly seek rule making to reassign the channel to Knoxville or a dual assignment, if intending to serve both Knoxville and Oak Ridge.[17] Because of the lengthy discus-

[16] Powell, by letter, later advised that the Daily News had been sold, although it and the WMIK stations exchange news and weather services and the paper does not carry the schedule of Powell's AM Station WAFI.

[17] From an engineering point of view, a station with appropriate height and power from the site "selected" by Swoyer could cover Knoxville with a requisite city-grade signal.

sion of the guiding principles in the notice and the report and order adopted in Docket No. 18476 (26 FCC 2d 162, 166 (1970)), adopted at the same time, our discussion about reimbursement to Station WDEB-FM was brief.

21. As stated in our notice, of the Big Stone Gap-Pineville-Barbourville-Middlesboro proposals, the one for Big Stone Gap appears the most meritorious, since the more populous of the communities without an FM allocation, none in its county (while Norton, with an FM and a daytime-only station, is within the county, it is an independent city under Virginia law). Channel 228A could be assigned to Big Stone Gap, although the petitioner—Gap Broadcasting Co., licensee of WLSD—like Barbourville-Community insisted on the need for the FM station operating from the site of its AM station. Channel 228A could be assigned to both Barbourville and Big Stone Gap if transmitter sites are selected at other than the reference points and the transmitter sites; specifically, if a station at Big Stone Gap is about 2 miles east of the city and a station at Barbourville about 2 miles west. We believe that status of both communities are comparable; as to size, Barbourville has a population of 3,549, and Big Stone Gap is 4,153; neither county has an FM outlet of its own; and both cities have daytime-only AM radio stations. Barbourville-Community's priority of application argument is meaningless. Also, in this respect, should we assign Channel 292A to Barbourville, the transmitter site would have to be about a mile south of the reference point to meet the cochannel mileage spacing to Lancaster, Ky. In the circumstances, that is, if Channel 228A were assigned to both Barbourville and Big Stone Gap, Channel 292A could be assigned to either Pineville or Middlesboro. This would allow the maximum use of the potential channel assignments. As between Middlesboro (population 11,844) and Pineville (population 2,817), there are a number of considerations. From the technical viewpoint, an allocation at either cannot be made at the reference point because of the cochannel mileage separation to Norton's WNVA-FM; the nearest point is 0.7 mile to the west of Middlesboro and 2 miles west of Pineville. From the point of view of service, Middlesboro has two daytime-only AM stations and an FM station which recently became operative. Pineville has a full-time AM station and there are two applicants for Channel 261A presently assigned there—that of Barbourville-Community for use at Barbourville and John O. McPherson's filed in July of this year. Should we assign Channel 228A to Barbourville, it seems clear that Barbourville-Community would amend its application for that channel. If we assign 228A to both Barbourville and Big Stone Gap, the allocation of Channel 292A rests on the needs and interests of Pineville for a first FM channel as opposed to Middlesboro's need for a second one. In the latter respect, Powell proceeds on the basis that as the licensee of daytime Station WAFI at Middlesboro he is entitled to equality with Cumberland Gap Broadcasting Co., licensee of Stations WMIK (daytime-only) and WMIK-FM. We are not persuaded by this reasoning; similarly, the fact that under our population criteria, a second FM assignment to Middlesboro is only a single factor to be considered. Nor are we oblivious to the fact that Pineville would receive FM service from both Middlesboro and Barbourville. On balance, we are disposed to assign Channel 292A to Pineville which perhaps not insignificantly is the city from which Channel 261A is being deleted to allow Channel 262C to be assigned to Oak Ridge.

22. From the foregoing, it is our decision to assign Channel 262C to Oak Ridge, Channel 228A to Barbourville and Big Stone Gap, respectively, and Channel 292A to Pineville. As to Big Stone Gap, there seems to be some uncertainty whether Gap Broadcasting, the petitioner, or anyone else, intends to apply for and build an FM station there. Therefore, if no interest in the channel is evidenced within 1 year of the effective date of the assignment, the Commission will, on formal request, give consideration to the issuance of an order deleting the assignment.

23. Authority for the adoption of the amendments proposed herein is contained in sections 4(i), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended.

24. In accordance with the foregoing: *It is ordered*, That effective February 25, 1972, the FM Table of Assignments (§ 73.202(b) of the rules) is amended, with respect to the cities listed below, as follows:

City	*Channel No.*
Oak Ridge, Tenn	232A, 262C
Jamestown, Tenn	280A
Big Stone Gap, Va	228A
Pineville, Ky	292A
Barbourville, Ky	228A

25. *It is further ordered*, That the proposal to assign Channel 288A to Greenville, Ky., is denied.

26. *It is further ordered*, That the proposals to assign Channel 276A to Greensburg, Ky., Channel 285A to Burnside, Ky., and Channel 285A to Jamestown, Ky., are denied.

27. *It is further ordered*, That the petition of Walter Powell, Jr., trading as Tri-State Broadcasters to assign Channel 292A to Middlesboro, Ky. (RM-1581), is denied.

28. *It is further ordered*, That effective February 25, 1972, the outstanding license held by WDEB, Inc., for Station WDEB-FM, Jamestown, Tenn., is modified to specify operation on Channel 280A in lieu of Channel 261A, subject to the following conditions:

(a) The licensee shall inform the Commission in writing by no later than February 25, 1972, of its acceptance of this modification.

(b) The licensee shall submit to the Commission by March 16, 1972, all necessary information complying with the applicable technical rules for modification of authorization to cover the operation of Station WDEB-FM on Channel 280A at Jamestown, Tenn.

(c) The licensee may continue to operate on Channel 261A under its outstanding authorization until February 25, 1972, or until 45 days after it receives notice from the Commission that a station is authorized to operate on Channel 262 at Oak Ridge, Tenn., whichever is later, or the licensee is ready to operate earlier on the new frequency and submits an application for an FM broadcast station license with proof of performance measurement data to demonstrate compliance with technical performance requirements of the rules. The licensee shall not operate on Channel 280A without prior authorization from the Commission.

29. *It is further ordered*, That this proceeding is terminated.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Adopted: January 12, 1972.

Released: January 17, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[18]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-990 Filed 1-21-72;8:48 am]

[Docket No. 18397]

PART 74—EXPERIMENTAL, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

CATV Systems; Correction

In the matter of amendment of Part 74, Subpart K, of the Commission's rules and regulations relative to community antenna television systems; and inquiry into the development of communications technology and services to formulate regulatory policy and rule making and/or legislative proposals.

In F.R. Doc. 71-18674 in the issue of Wednesday, December 22, 1971, the Order, FCC 71-1234, in the above-entitled matter, released December 20, 1971, footnote 2 is corrected to read "Commissioner Johnson concurring in part and dissenting in part".

Released: January 18, 1972.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-989 Filed 1-21-72;8:47 am]

[18] Commissioners H. Rex Lee and Reid absent.

Title 49—TRANSPORTATION

Chapter X—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. 1074, Amdt. 2]

PART 1033—CAR SERVICE

Union Pacific Railroad Co. Authorized to Operate Over Certain Trackage of Burlington Northern Inc.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 18th day of January 1972.

Upon further consideration of service Order No. 1074 (36 F.R. 12225 and 25424), and good cause appearing therefor:

It is ordered, That: Section 1033.1074 *Service Order No. 1074* (Union Pacific Railroad Co. authorized to operate over certain trackage of Burlington Northern Inc.) be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* This order shall expire at 11:59 p.m., February 29, 1972, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., January 31, 1972.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies secs. 1(10–17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4), and 17(2))

It is further ordered, That copies of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order 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.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.72-1011 Filed 1-21-72;8:49 am]

SUBCHAPTER B—PRACTICE AND PROCEDURE

[Ex Parte No. 274, Sub-No. 1]

PART 1121—ABANDONMENT OF RAILROAD LINES

Special Procedures

Special procedures for proposed railroad abandonment where no public objection is sustained or where the requirements of public convenience and necessity are minimal or nonexistent.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 14th day of January 1972.

These amendments to Part 1121 of the Commission's regulations governing the filing and handling of applications to abandon railroad lines, or the operation thereof, provide special relief, reducing costs and expediting disposition of applications where no public objection is sustained, or where the requirements of public convenience and necessity are minimal or nonexistent.

A large majority of the abandonment cases decided by the Commission in the past 10 years have been unopposed by the general public or specific shippers. The record in such cases generally shows that there is little or no traffic moving over the lines of railroads (hereinafter referred to as "abandonment trackage"); that there are little or no prospects for additional tonnage; that the abandonment trackage is generally in poor physical condition, with operations thereover substantially slowed down for reasons of safety; and that the materials that can be salvaged after the abandonments frequently can be sold or used to public advantage in the operations of the applicant and in the public interest. Based on this experience in abandonment proceedings, it is apparent that the same long-form application and its attendant procedures are not warranted in all instances. It is the purpose of these amendments to provide for the use of more expedient and more economical short-form applications and procedures in situations where the applicant does not anticipate serious public opposition, or where the public's use of the abandonment trackage has been minimal. In such cases, the failure to sustain public opposition, or the negligible or minimal public use of the facilities, would give rise to a finding that the public convenience and necessity permit the proposed abandonment.

As to the proposed abandonments which are actively contested and subjected to oral hearings, the Commission has completed a study of all such proceedings decided during 1969 and 1970. The study is considered to constitute a valid and representative sample of the kind of abandonment applications likely to incur serious public opposition. Its purpose was to derive procedural standards for avoiding the unnecessary protraction of litigation. Based on Commission findings in the study cases, and on applied statistical analysis, it has been determined that, on the average for a 12-month period, 34 carloads of freight traffic per mile of abandonment trackage are necessary to enable a railroad to operate the trackage on a break-even basis.

The Commission recognizes that certain deficit operations are draining carrier resources more urgently needed in the production of essential railroad services elsewhere in the rail system, and that the public convenience and necessity may well permit the summary elimination of various relatively little-used services entailing such deficits. Accordingly, these amendments to Part 1121 will establish a rebuttable presumption that the public convenience and necessity does not require continued maintenance and/or operation (as the case may be) of all or a portion of a line of railroad (abandonment trackage) and permit the abandonment thereof, upon submission of proof by the carrier that, on the average, fewer than 34 carloads of freight per mile were carried on the abandonment trackage during the preceding 12-month period. Unless a party opposing the abandonment application indicates by a proffer of substantial evidence that it would be able to rebut this presumption, a certificate permitting the proposed abandonment shall be issued without further formal proceedings. The effect of this rule is to shift to the protestants the burden of going forward with the evidence, after the applicant has established its prima facie case on the basis of the statistical standard incorporated herein. Protestants are advised of the availability of discovery procedures as provided in the Commission's general rules of practice, 49 CFR 1100.56–1100.67.

These amendments make three application forms available to abandonment applicants, a short form provided by Subpart C for use where applicant carrier does not anticipate serious public opposition, a modified long form provided by Subpart B for use where the facts of the case satisfy the single mathematical criterion for establishing the rebuttable presumption in favor of abandonment; and the ordinary long form provided by Subpart A for use when the factual situation does not warrant either of the other two. The Commission's experience in more than 1,000 abandonment proceedings over a 10-year period indicates that these options will permit a more expedient and economical disposition of the majority of abandonment applications while maintaining the protections of due process.

The Commission finds that the amendments prescribed herein are in the public interest and are necessary and appropriate for the administration of the Interstate Commerce Act. Since the amendments grant relief from existing regulations and/or relate to matters of practice and procedure, and since they are based on the findings of numerous public hearings conducted by this Commission during a span of several years, further notice and public proceedings under 5 U.S.C. 553 are unnecessary, and good cause exists for making the amendments effective upon publication hereof in the FEDERAL REGISTER.

Wherefore, and good cause therefor appearing:

It is ordered, That Part 1121 of Title 49 of the Code of Federal Regulations be, and it is hereby, amended by designating §§ 1121.1 through 1121.5 (the only regulations in this part) issued on March 31, 1971 (36 F.R. 7741), as Subpart A, and by adding Subparts B and C as follows:

Subpart B—Special Rules for Railroads Proposing Abandonments Where the Requirements of Public Convenience and Necessity Are Minimal or Nonexistent

Sec.
1121.20 Scope of special rules.
1121.21 Form of application.
1121.22 Notice, publication, posting, service.
1121.23 Rebuttable presumption.
1121.24 Refiling.

Subpart C—Special Relief for Railroads Proposing Abandonments Where No Public Objection is Sustained

1121.30 Scope of special rules.
1121.31 Applications (short form).
1121.32 Notice, publication, posting, service.
1121.33 Defective or inadequate notice.
1121.34 No public objection, waivers, certification.
1121.35 Public objection, withdrawal, refiling.

AUTHORITY: The provisions of Subparts B and C issued under sec. 1 (18)-(20), 49 Stat. 543, as amended; 49 U.S.C. section 1.

Subpart B—Special Rules for Railroads Proposing Abandonments Where the Requirements of Public Convenience and Necessity are Minimal or Nonexistent

§ 1121.20 Scope of special rules.

These special rules govern the filing and handling of applications under section 1, paragraphs (18) to (20), inclusive, of the Interstate Commerce Act (49 Stat. 543, as amended; 49 U.S.C. 1 (18)-(20)), for certificates of public convenience and necessity authorizing the abandonment of a line of railroad, or the operation thereof, where the requirements of public convenience and necessity are minimal or nonexistent; and certain other procedural matters with respect thereto including the establishment of a rebuttable presumption in support of an abandonment authorization where the line fails to generate at least 34 carloads of traffic per mile of abandonment trackage on the average, during a 12-month period.

§ 1121.21 Form of application.

(a) *Carriers to be assigned an abandonment docket number*. Each carrier by railroad desiring to propose abandonments pursuant to these special rules shall request the Commission to assign to it an abandonment docket number (No. AB- ______). Thereafter, carrier shall date and consecutively subnumber each application at the bottom of each page in substantially the following manner:

No. AB- ______ (Sub-No. ______), ______ (date) ______.

(b) *Form and style*. Applications shall be in the form of a notice with supporting information as specified in paragraph (d) of this section. The front page may be on the letterhead of the applicant. Applications shall be typewritten or printed on paper approximately 8½ x 11 inches with 1½-inch margin at the left side for binding. Reproduction may be by any process which provides clearly legible copies. The words "Notice of Proposed Abandonment" shall be in large boldface type near the top. If printed, nothing less than 12-point type shall be used in the remainder of the notice.

(c) *Content*. The first six paragraphs of the notice must appear in substantially the following form:

Notice is hereby given that the Interstate Commerce Commission is being requested to issue a certificate of public convenience and necessity permitting abandonment of (a) the line of railroad of (applicant) or (b) operations by (applicant) over the line of railroad, extending from railroad milepost ______ near (station name) in a ____________ direction to (end of line or railroad milepost) near (station name), a distance of ______ miles, in ____________ County(ies), (State). This line includes the stations of (list all stations on the line).

The interest of employees will be protected by (specify imposition of "the Burlington conditions") (Chicago, B. & Q.R. Co. Abandonment, 257 I.C.C. 700) or (some other appropriate conditions).

The reasons for this proposed abandonment are (here in a paragraph headed "Reasons for Proposed Abandonment" tell the public, briefly and plainly, why the abandonment is being undertaken).

The name and address of applicant's representative to whom inquiries may be made is ______________________________________

____

The Interstate Commerce Commission will rule on this application without hearings unless protests are received which contain information indicating a need for such hearings.

Any protests referring to this notice (No. AB-________ (Sub-No. ______)) shall be filed with the Interstate Commerce Commission, Washington, D.C. 20423, not later than (here insert a date not earlier than 20 days from the final date of publication of this notice in county newspapers.)

(d) *Information to establish the presumption described in § 1121.23*. Applicant shall submit a list of all freight carloads moved by the applicant over the abandonment trackage during the preceding 12 months, the dates of such shipments, the consignor and/or consignee of each, and the distance each moved over the abandonment trackage. On the basis of these facts, the applicant shall prepare and submit its computations in terms of the statistical criterion, i.e., average number of carloads per mile of abandonment trackage. Thus, for a 10-mile segment, a total carload figure less than 340, or an average carloads-per-mile figure less than 34, would suffice to establish the presumption.

(e) *Other pages, additional statements*. The prescriptions in paragraphs (c) and (d) of this section shall not preclude applicant from furnishing additional statements and explaining its reasons to the Commission or responding to inquiries from the general public. Applicant's statements shall include the amount of traffic (tonnage and carloads) handled on the line (abandonment trackage) in the preceding 2 plus calendar years, and whether continued operation would be at a deficit. If the reasons for the proposed abandonment are stated in condensed form, applicant shall indicate whether and where a more complete statement is available.

(f) *Signature, verification*. The original application shall be signed and verified under oath as provided in § 1121.3.

(g) *Date, filing, copies*. The application shall be dated and filed, with copies as provided in § 1121.4, not later than 30 days before the date specified in the notice of proposed abandonment for the filing of protests with the Commission.

(h) *Filing fee*. Applicant must submit with the application a check or money order made out to the Interstate Commerce Commission for the filing fee for an application (long-form) under Subpart A of this part.

§ 1121.22 Notice, publication, posting, service.

Notice, publication, posting, and service shall be as provided in § 1121.5.

§ 1121.23 Rebuttable presumption.

A presumption that the public convenience and necessity does not require maintenance and/or continued operation, and permits the abandonment, of all or a portion of a line of railroad, or operation thereof, as the case may be, shall be established upon proof that, on the average, fewer than 34 carloads of freight per mile were carried over said line (abandonment trackage) during the 12 months preceding filing of the application. The prima facie case thus established may be rebutted by evidence establishing that the public convenience and necessity requires continued maintenance and/or operation of the said line of railroad. Unless a party opposing the abandonment indicates by a proffer of substantial evidence that it would be able to rebut the presumption, a certificate permitting the proposed abandonment shall be issued without further formal proceedings.

§ 121.24 Refiling.

An application filed pursuant to this Subpart B may not be refiled under these special rules sooner than 1 year from the last publication date as provided in § 1121.5.

Subpart C—Special Relief for Railroads Proposing Abandonments Where No Public Objection Is Sustained

§ 1121.30 Scope of special rules.

These special rules govern the filing and handling of applications (short-form) under section 1, paragraphs (18) to (20), inclusive, of the Interstate Commerce Act (49 Stat. 543, as amended; 49 U.S.C. 1(18)-(20)), for certificates of public convenience and necessity authorizing the abandonment of a line of railroad, or the operation thereof, where no public objection is sustained; and certain other procedural matters with respect thereto.

§ 1121.31 Applications (short-form).

(a) *Carriers to be assigned an abandonment docket number*. Each carrier by railroad desiring to propose abandonments pursuant to these special rules shall request the Commission to assign to it an abandonment docket number (No. AB- ______). Thereafter, carrier shall date and consecutively subnumber

each short-form application at the bottom of each page in substantially the following manner:

(No. AB– _______ (Sub-No _______), _______ (date) ______

(b) *Form and style*. Applications shall be in the form of a notice, the front page of which may be on the letterhead of the applicant. Applications shall be typewritten or printed on paper approximately 8½ x 11 inches with 1½ inch margin at the left side for binding. Reproduction may be by any process which provides clearly legible copies. The words "Notice of Proposed Abandonment" shall be in large bold-face type near the top. If printed, nothing less than 12-point type shall be used in the remainder of the notice.

(c) *Content*. The first six paragraphs of the notice must appear in substantially the following form:

Notice is hereby given that the Interstate Commerce Commission is being requested to issue a certificate of public convenience and necessity permitting abandonment of (a) the line of railroad of (applicant) or (b) operations by (applicant) over the line of railroad, extending from railroad milepost ______ near (station name) in a ______ direction to (end of line or railroad milepost) near (station name), a distance of ______ miles, in (County(ies)), (State). This line includes the stations of (list all stations on the line).

The interest of employees will be protected by (specify imposition of "the Burlington conditions") (Chicago, B. & Q.R. Co. Abandonment, 257 I.C.C. 700) or (some other appropriate conditions).

The reasons for this proposed abandonment are (here, in a paragraph headed "Reasons for Proposed Abandonment," tell the public, briefly and plainly, why the abandonment is being undertaken).

The name and address of applicant's representative to whom inquiries may be made is ____

____

The Interstate Commerce Commission will rule upon this application without hearings unless protests are received which contain information indicating a need for such hearings.

Any protests referring to this notice (No. AB–______ (Sub-No. ______)) shall be filed with the Interstate Commerce Commission, Washington, D.C., 20423, not later than (here insert a date not earlier than 20 days from the final date of publication of this notice in county newspapers).

(d) *Other pages, additional statements*. The prescription in paragraph (c) of this section shall not preclude applicant from furnishing additional statements and explaining its reasons to the Commission or in response to inquiries from the general public. Applicant's statements shall include the amount of traffic (tonnage and carloads) handled on the line (abandonment trackage) in the preceding 2 plus calendar years, and whether continued operation would be at a deficit. If the reasons for the proposed abandonment are stated in condensed form, applicant shall indicate whether and where a more complete statement is available.

(e) *Signature, verification*. The original application shall be signed and verified under oath as provided in § 1121.3.

(f) *Date, filing, copies*. The application shall be dated and filed, with copies as provided in § 1121.4, not later than 30 days before the date specified in the notice of proposed abandonment for the filing of protests with the Commission.

(g) *Filing fee*. Applicant must submit with the application (short-form) a check or money order made out to the Interstate Commerce Commission for 25 percent of the filing fee for an application (long-form) under Subpart A of this part.

§ 1121.32 Notice, publication, posting, service.

(a) *Publication in county newspapers*. The front page of the application (short-form) and attachment (if any) must be published by the applicant in some newspaper of general circulation in each county in which any part of the line of railroad sought to be abandoned is situated. The notice must be published at least once during each of 3 consecutive weeks. The last publication date must be at least 20 days before the date specified therein for the filing of protests with the Commission.

(b) *Posting*. Copy of the front page of the application and attachment (if any) must be posted in a conspicuous place at each agency station on the line sought to be abandoned. If there is no agency station on the line sought to be abandoned, the notice shall be posted at the agency station on the applicant's line through which business for the line sought to be abandoned is handled.

(c) *Mail service*. On or before the date the application is filed with the Commission, the applicant shall serve, by first class mail:

(1) A confirmed copy of the application on the Governor and public service commission of each State in which any part of the line of railroad sought to be abandoned is situated, accompanied by a statement that if they desire to be heard in the matter they shall advise the Commission within the period specified of their interest in the proceeding; and

(2) Copy of the notice on all shippers and consignees which, after diligent inquiry, are found to be located on the line proposed to be abandoned and to have used the services of said line during the 12-month period immediately preceding the date of filing the application and upon all prospective shippers and consignees which may have newly located on the line during the aforesaid 12-month period regardless of whether or not they may have utilized the line during the period.

(d) *Certificate of service*. A certificate of mail service and proof of publication and posting of the notice shall be filed with the Commission at least 10 days before the date specified in the notice for the filing of protests.

§ 1121.33 Defective or inadequate notice.

Where the notice required by § 1121.32 is inadequate or defective, the applicant will be so advised by the Commission with a statement specifying the inadequacies. The applicant may publish, post, and serve a notice with appropriate modification unless public objection to the proposed abandonment has already been sustained.

§ 1121.34 No public objection, waivers, certification.

(a) *Waiver of additional information*. Where no public objection is submitted, maintained in force, and unsatisfied, all or any part of the information requirements in § 1121.1 may be waived.

(b) *Waiver of additional fee*. Where no public objection is sustained, the balance of the filing fee for an application (long-form) under subpart A of this part shall be waived.

(c) *Certification*. Appropriate certificates and orders will be issued to applicants found eligible to abandon lines of railroad, or the operation thereof, pursuant to these special rules.

§ 1121.35 Public objection, withdrawal, refiling.

(a) *Partial withdrawal*. Where public objection is sustained as to only a part of the line being proposed for abandonment, the applicant, with the consent of the protestants, may request that, that part of the application be withdrawn, and that a certificate be issued permitting abandonment of the remainder of the line sought to be abandoned.

(b) *Applicant may file (long-form) application*. A notice to which public objection is sustained, in whole or in part, is without prejudice to applicant's right to file and prosecute an application for the same authority, or any portion thereof, pursuant to the provisions of Subparts A or B of this part. As soon as practicable after public objection is made, the Commission will request applicant to advise whether an application under Subparts A or B will be filed and prosecuted. If such an application is filed not more than 60 days after the last publication date as provided in § 1121.32(a), notice and service of the application (long-form) will be required only as provided in § 1121.5(b). The fee paid under § 1121.31(g) will apply toward the fee for the application (long-form).

(c) *Application may be dismissed*. Where public objection is sustained, and no application under Subparts A or B is filed, the application under these rules will be deemed to have been withdrawn and will be dismissed.

(d) *No refiling within 1 year*. A notice to which public objection is sustained may not be refiled under these special rules sooner than 1 year from the last publication date as provided in § 1121.32 (a).

(Secs. 1 (18)–(20) and 12, 49 Stat. 543, as amended, and 24 Stat. 383, as amended; 49 U.S.C. section 1 (18)–(20), 12)

It is further ordered, That this order shall become effective upon publication in the FEDERAL REGISTER (1–22–72).

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy of this notice

in the Office of the Secretary of the Commission at Washington, D.C., for public inspection and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-1081 Filed 1-21-72;8:50 am]

[Ex Parte 274, Sub 1]

PART 1121—ABANDONMENT OF RAILROAD LINES

Special Procedures

Special procedures for proposed railroad abandonment where no public objection is sustained or where the requirements of public convenience and necessity are minimal or nonexistent.

An order in this matter was served on January 18, 1972, and is published this date in the FEDERAL REGISTER, which promulgates certain regulations of the Commission.

With respect to Subpart B and Subpart C thereof, notice is hereby given that approval of the Office of Management and Budget has been granted, specifically:

(1) As to Subpart B: OPF 250A and OMB 60—R 0397, ex date 12-74.

(2) As to Subpart C: OPF 250B and OMB 60—R 0398, ex date 12-74.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-1082 Filed 1-21-72;8:50 am]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 33—SPORT FISHING

Missisquoi National Wildlife Refuge, Vt.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (1-22-72).

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

VERMONT

MISSISQUOI NATIONAL WILDLIFE REFUGE

Sport fishing is permitted in Lake Champlain and the Missisquoi River from the Missisquoi National Wildlife Refuge, Vt. The refuge is delineated on a map available at refuge headquarters, Swanton, Vt., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Post Office and Courthouse, Boston, Mass. 02109. Sport fishing shall be in accordance with all applicable State regulations, subject to the following special condition:

(1) Taking of fish by use of firearms is prohibited.

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, 1972.

EDWIN H. CHANDLER,
Refuge Manager.

JANUARY 17, 1972.

[FR Doc.72-1000 Filed 1-21-72;8:48 am]

PART 35—WILDERNESS PRESERVATION AND MANAGEMENT

Access to State and Private Lands

Correction

In F.R. Doc. 71-19113 appearing at page 25426 in the issue of Friday, December 31, 1971, the existing last sentence of § 35.13 should read as follows: "Use will be consistent with reasonable purposes for which such land is held. The Director will issue such permits as are necessary for access, designating the means and route of travel for ingress and egress so as to preserve the wilderness character of the area."

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Parts 1061, 1068]

[Dockets Nos. AO-367-A4, AO-178-A27]

MILK IN MINNEAPOLIS-ST. PAUL AND SOUTHEASTERN MINNESOTA-NORTHERN IOWA (DAIRYLAND) MARKETING AREAS

Notice of Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa (Dairyland) marketing areas.

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 10th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The above notice of filing of the decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

PRELIMINARY STATEMENT

The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreements and to the orders as amended, were formulated, was conducted at Bloomington, Minnesota, August 17-18, 1971, pursuant to notice thereof which was issued on August 2, 1971 (36 F.R. 14476).

The material issues on the record of the hearing relate to:

Issues concerning Order 68 (Minneapolis-St. Paul). 1. Charges on overdue accounts.

2. Provisions for pooling supply plants.

3. The need for emergency action on Issue No. 2.

4. Diversion of producer milk.

5. Mileage limitation on classification of transfers to nonpool plants.

6. Location adjustments.

7. Miscellaneous, administrative, and conforming changes.

Issues concerning Order 61 (Southeastern Minnesota-Northern Iowa (Dairyland)). 8. Distributing plant pooling standard.

9. Supply plant pooling standard.

10. Computation of supply plant pooling qualification.

The decision deals with all the issues listed above, except issues No. 2 and 3 for the Minneapolis-St. Paul order. These two issues were considered previously in an emergency final decision issued by the Assistant Secretary on September 10, 1971 (36 F.R. 18474).

FINDINGS AND CONCLUSIONS

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Charges on overdue accounts*. The rate charged on overdue accounts under the Minneapolis-St. Paul order should be raised from four-tenths of 1 percent to three-fourths of 1 percent per month.

A group of cooperatives, representing a majority of the producers, proposed the increase. A witness for the association testified that the current rate of four-tenths of 1 percent per month is unrealistic when compared with present-day commercial rates for borrowing money. Proponent stated that the increase to three-fourths of 1 percent would reflect more closely the current level of rates charged on commercial borrowings in the Minneapolis-St. Paul area for similar transactions. There was no opposition to the proposal either at the hearing or in briefs filed by interested parties.

A charge on overdue accounts was adopted in the order to encourage prompt payment of handler obligations. It is essential that all handler payments to the producer-settlement fund be made promptly in order that the market administrator will be able to make required payments from the producer-settlement fund. The charge applied to overdue accounts is not a substitute, however, for prompt payment as required by the order.

Proponent cited varying interest rates associated with credit transactions in the Minneapolis-St. Paul area, stating that most area department stores charge at the rate of 1½ percent per month (18 percent on an annual basis). Area banks charge their prime customers at the rate of about 6 percent annually. Bank loans at the prime rate are not general. When they are made such loans are secured. Accordingly, the rate charge on overdue accounts under the order that are already past due and are not secured should be somewhat higher than the prime rate.

The current order rate of 4.8 percent on an annual basis is below the prime rate and is not effective in insuring prompt payment. It permits a handler to use monies owed producers at an interest cost lower than the handler would have to pay if he obtained the funds through conventional money channels.

Handlers who pay late are, in effect, borrowing from producers through the producer-settlement fund. While the principal purpose of the interest charge is to discourage late payment, if a handler does obtain operating capital in this way, producers should be compensated in an amount consistent with what the handler would have to pay to borrow through conventional money channels.

Failure of a handler to pay his producer-settlement fund obligation promptly places a possible burden on other handlers who are entitled to draw money from such fund for their producers. Payments from the producer-settlement fund would have to be reduced pro rata until the overdue pool obligation is paid. If such receiving handler must borrow money to pay his producers in order to retain his milk supply, it is evident that he will pay a higher rate to obtain such funds than the delinquent handler currently is charged on the overdue account under the order.

The main thrust of proponent's case for raising the charge was the obvious opportunity for handlers to take advantage of the disparity between the rate charged on overdue accounts under the order and the interest rate charged on money borrowed from conventional sources.

Proponent stated, on the other hand, that late payments by handlers are not a serious problem in the market currently. However, a situation that occurred following the expansion of the marketing area about 2 years ago was cited. A handler who became fully regulated by the order at that time refused to pay his producer-settlement fund obligation. Before final settlement, almost 2 years later, this obligation involved a substantial amount of money and was subject only to the low rate on overdue accounts. During the 2 years there was significant disparity between the rate charged under the order and the rate charged on short term commercial credit transactions. Short term interest rates rose significantly during the 2-year period.

The order should continue to provide a carrying charge on overdue obligations of fully regulated handlers to the producer-settlement fund, including any adjustment resulting from audit by the market administrator of a handler's receipts and utilization. The charge should apply also to overdue obligations of partially regulated handlers, including audit adjustments. There should be no opportunity for financial advantage through delay in payments of obligations to the

market administrator. Increasing the rate on overdue obligations as adopted herein will tend to preclude such situations from occurring.

A charge of three-fourths of 1 percent per month (9 percent on an annual basis) is a reasonable rate to encourage prompt settlement of accounts when due. It is in line with the prevailing rate on short-term commercial borrowings in this area.

This charge would continue to be applied to an obligation on the day following the date on which payment is due. Prompt application of the charge is necessary to discourage delays. In case a handler refuses or fails to file a report from which his obligation to the producer-settlement fund is computed, a charge should be applied to the payment due the market administrator as though the report had been filed when due. Otherwise, some handlers might find it advantageous to be delinquent in filing their reports.

The charge presently is applied to overdue handler obligations payable to individual producers and cooperative associations as well as to payments due the producer-settlement fund. However, the date payment actually is made to producers or cooperatives by handlers may not be available when the pool is computed. This can be particularly complicated if there are other transactions between the two parties involving monies owed one by the other, and the terms and allocation of payments among various debt accounts are not known to the market administrator on a current basis. In fact, this information may not be ascertainable for several months. Moreover, verification of the actual date of payment, and the computation and collection of small increments of carrying charges for individual producers, would unduly burden order administration. Therefore, the application of the carrying charge to these types of obligations should not be continued.

The current order does not provide for a carrying charge on overdue handler obligations for marketing services or order administration. No change was proposed regarding the application of the carrying charge to these types of obligations, and therefore no revision is made at this time.

4. *Diversion of producer milk.* The Minneapolis-St. Paul order should be amended to provide for certain diversions of producer milk directly to nonpool plants without losing its eligibility for pooling as "producer milk" under the order.

The current order does not provide for diversions of milk to nonpool plants for Class II purposes. The order does provide that milk may be moved directly from farms to nonpool plants for Class I use. In this connection, the proposed diversion provision adopted herein would eliminate the need for §§ 1068.11(b) and 1068.44(c) of the current order, under which a cooperative, as a handler, may move milk directly from producers' farms to nonpool plants for Class I purposes. This change will enable the cooperative to divert within the specific limits, to a nonpool plant for use in either class.

Except for the above situation, all milk must be received at a pool plant to be eligible for pricing and pooling, as producer milk, under the present order. However, when milk is not needed in the market for Class I purposes, the movement of such milk to a nonpool plant for manufacturing purposes should be further facilitated.

Requiring all milk to be received at a pool plant to qualify as producer milk can result in uneconomic milk movements. In this circumstance, when milk is not needed at the pool plant, it must be reloaded and hauled to a nonpool plant for manufacturing. This can be a costly procedure. The order should be amended to eliminate to the extent possible the necessity for uneconomic handling of the market's production in excess of fluid needs.

A group of cooperatives proposed amending the order to accommodate diversions of producer milk to nonpool manufacturing plants. Proponents contended that this would meet the current needs of the market. There was no opposition to the proposal presented at the hearing or in briefs.

The diversion provisions provided herein basically follow those proposed. The association's proposal included a provision to allow a cooperative association, as a handler, to divert 10 percent of its total receipts of member milk during September–November and 25 percent of such receipts in the other months.

Proponent testified that the marketing situation with respect to handling the market's reserve supply has changed significantly in the past 2 years. Cooperatives supplying the market's fluid needs have assumed primary responsibility for disposal of the market's surplus. Two years ago the largest cooperative in the market did not operate a nonpool plant. Today most of the nonpool manufacturing outlets being used for this purpose are owned and operated by cooperatives supplying milk to the market. Many of these plants are located a considerable distance from the main consumption centers.

Because of the day-to-day and seasonal variation in both production and sales, a producer's milk may not always be needed at a pool plant each day. The day-to-day sales variation is influenced primarily by bottling plant operations that are conducted on a 5-day week. Milk purchases by consumers tend to be greater on the weekend than during the week. Therefore, daily bottling schedules at processing plants vary also.

Distributing plants tend to associate a supply of milk sufficient to meet their needs on peak bottling days. This leaves substantial quantities of milk produced on other than the peak bottling days, weekends and holidays, that must be moved to manufacturing outlets. Diversion provisions are provided to enable handlers operating pool plants and cooperative associations to divert producer milk on such occasions when the milk is not needed in the market for Class I purposes.

Prior to expansion of the marketing area in May 1969, the surplus handling problem was not so acute. Since the market utilization was considerably higher at that time and the available reserve could be processed in pool plants, lack of the diversion privilege for manufacturing use did not create significant problems for handlers.

Production has increased considerably since the marketing area expansion in May 1969. In June 1969, 167 million pounds of producer milk were pooled under the Minneapolis-St. Paul order. Of this total 35 percent was utilized in Class I. During June 1971, 193 million pounds of producer milk were pooled and only 33 percent was used in Class I. The increase in producer milk and a decrease in the portion used in Class I has resulted in a greater amount of surplus to be disposed of, and has required the use of distant nonpool plants for the manufacture of some of this surplus.

Also, the milk supply area for the market is gradually moving farther away from the central market of Minneapolis-St. Paul. Land near the city used for dairy farms in the past now is being used for suburban residential housing. As the milkshed moves farther away from the city, it becomes more efficient to ship milk in excess of fluid needs directly to a nearby nonpool plant than to require it to be received at a pool plant, reloaded and hauled back to a nonpool plant located nearer the producers' farms.

While it is appropriate to provide for diversions for Class II use, it is necessary also to provide limitations on the amount of milk that may be diverted in order that only milk genuinely associated with the market will be eligible for diversion, and that diversion will occur only to accommodate regular supplies when not needed in the market for Class I purposes. The "producer milk" definition is rewritten accordingly.

Diversion of producer milk by a cooperative association to a nonpool plant should be limited to 10 percent of the milk received from its producer-members at pool plants (including both the milk actually received at pool plants and diverted therefrom) during any month of September through November. Similarly, a pool plant operator other than a cooperative association should be in position to divert for his account up to 10 percent of the producer milk received from producers at his plant (including both the milk actually received at the pool plant and diverted from the plant) during any month of September through November. The pool plant operator may divert producers who are not members of a cooperative association diverting from such plant. As proposed, the percentage limits would be 25 percent during the December–August period.

The proposal provided that a cooperative be allowed to divert 10 percent of its total member milk during September through November and 25 percent in other months. Some of the cooperatives

supplying the market also supply milk to other Federal order markets. Based on the market's present need to divert milk to nonpool plants for manufacturing the proposal to base diversion on total member milk is unnecessarily liberal. The market's diversion need for Class II purposes can be served adequately by providing a more limited provision that will still assure orderly marketing. Accordingly, the percentage adopted should be related only to the amount of member producer milk that a cooperative associates with the Minneapolis-St. Paul market.

Under the proposal, only a cooperative association could be the handler on diverted producer milk. It is deemed appropriate, however, that a pool plant operator should be afforded the same opportunity as a cooperative association to divert milk in excess of fluid needs to nonpool plants for Class II use. Accordingly, a pool plant operator may divert milk of producers who are not members of a cooperative association, subject to the same monthly limitations as the cooperative association.

Only milk genuinely associated with the market and available to the market on a continuing basis should be eligible to be diverted to nonpool plants. Therefore, it should be provided, in addition, that at least 6 days' production of the producer must be received at a pool plant during the month to qualify any of his production for diversion in the same month within the limits described above. A producer shipping on an every-other-day basis thus would be required to deliver his milk to pool plants 3 days each month. The requirement herein adopted is sufficient to establish a producer's continuing association with the fluid market and still permit the necessary flexibility in diverting milk not needed for fluid use.

Milk diverted to nonpool plants in excess of the limitations provided would not be considered producer milk. Hence, eligibility for pricing and pooling under the order would be forfeited on any excess quantity. In such instances, the diverting handler would specify the milk that is ineligible as producer milk. If the handler fails to make such designation, thereby making it infeasible for the market administrator specifically to determine which milk was overdiverted, all milk diverted to nonpool plants by such handler would be ineligible as producer milk.

As proposed, diverted producer milk should be priced at the location of the plant to which diverted rather than the location of the pool plant to which it is customarily delivered. If such milk were priced at the pool plant from which diverted, producers regularly supplying the market could be placed in the position of "subsidizing" those producers whose milk is diverted to manufacturing plants. This would be particularly disadvantageous when the diverted milk both originates and is diverted at a great distance from the market center. A producer who does not incur the cost of transporting milk from his farm to the market center should not receive the f.o.b. market price as if he had incurred such cost, as do producers who actually pay to have their milk delivered to the main consumption center.

To carry out the intent of the diversion provisions provided herein, the "producer" definition needs to be revised. Since the present order does not provide for all types of diversions, the "producer" definition is silent concerning the producer status of a dairy farmer whose milk is diverted to a nonpool plant that is a pool plant under another order. As proposed herein, a dairy farmer will not be a producer under this order if his milk is moved directly from the farm to a pool plant regulated by another order. Such milk will be producer milk under the order where the milk is actually received. Otherwise the result might be that such dairy farmer would be a producer under both orders for the same milk.

In cases where milk may be diverted from pool plants under another order (such as the Dairyland order) to a Minneapolis-St. Paul pool plant, Order 68 should provide that the dairy farmer whose milk was so diverted would not obtain producer status under the Minneapolis-St. Paul order if both handlers request a Class II utilization on their reports of receipts and utilization filed with their respective market administrator, and the other order provides for such diversion of producer milk to other order plants. If the other order does not provide for such diversion of producer milk to other order plants, the dairy farmer whose milk is delivered directly from the farm to pool plants regulated by this order would be a producer under the Minneapolis-St. Paul order.

In addition, the definition of "handler" should be amended by adding a new paragraph to make a cooperative associaion the handler on milk diverted to a nonpool plant for the account of the association. Since cooperatives have assumed the primary responsibility for the market's surplus disposal, the order should provide that the cooperative may be the handler on diverted producer milk.

5. *Mileage limitation on classification of transfers to nonpool plants.* The mileage basis for classifying certain transfers to nonpool plants as Class I should be removed from the Minneapolis-St. Paul order.

The order now provides that milk transferred to any nonpool plant located more than 150 miles from the Minnesota Transfer Viaduct at University Avenue in St. Paul, Minn., shall be classified in Class I irrespective of the actual use of such milk at the nonpool plant.

The proponent, a group of cooperatives, testified that the mandatory Class I classification of transfers over 150 miles is unnecessary and inappropriate under today's marketing conditions. There was no opposition to the proposal at the hearing or in briefs.

When this provision was placed in the order, milk markets, including the Minneapolis-St. Paul market, tended to be smaller and more localized, and much of the milk supply moved in cans. Compared with manufactured dairy products, fluid milk is costly to transport because of its bulky, perishable nature. There were ample facilities in the Minneapolis-St. Paul milkshed for manufacturing reserve supplies. Accordingly, milk moved more than 150 miles from the market at that time was intended primarily for fluid use and it was classified as Class I milk.

As indicated by proponent, the milk marketing situation is different today. Milk has become increasingly more mobile. Milk travels in bulk tank trucks, and it is not unusual for milk to move from producers' farms to distant plants regularly not only for fluid use but also for manufacturing.

Proponent indicated that important outlets for surplus milk may be located beyond the 150-mile limit within which milk may be moved and classified as Class II under the present provisions. Proponent stated, as an example, there are times during the year when the cooperative would like to transfer surplus milk from its supply plant at Milaca, Minn., to a nonpool manufacturing plant located at Perham, Minn., to produce butter and nonfat dry milk or to a nonpool plant located at Hibbing, Minn., to be used in ice cream or cottage cheese. However, both Perham and Hibbing, Minn., are located beyond the 150-mile radius and all such transfers must be classified in Class I regardless of the end use of the milk.

In addition, milk handling facilities are being consolidated into fewer but larger units. These larger units may do business in several different market areas. The more widespread organizations become the more important it is to have uniform order provisions regarding classification. The change adopted herein will implement this procedure.

In earlier years, limiting distant movements of milk to Class I classification was appropriate not only in terms of the milk handling costs and practices of the period but also in terms of a saving in administrative cost. The costs involved in verifying utilization at distant plants is not a problem today, however, because the Federal milk order program is extensive. The 62 Federal milk orders operate in most of the larger cities and arrangements for checking utilization at distant nonpool plants are readily made through the cooperative efforts of the market administrators.

Removal of the automatic Class I classification for milk moved to nonpool plants located more than 150 miles from St. Paul will result in handlers accounting to the producer-settlement fund on the basis of use at the nonpool plant to which the milk is transferred or diverted. If a handler claims Class II utilization in his monthly report of receipts and utilization filed with the market administrator, the operator of the nonpool plant will be required to maintain records that must be made available to the market administrator upon request.

6. *Location adjustments.* The location adjustment provisions of the Minneapolis-St. Paul order should be amended to (a) expand to a radius of 40 miles

from the St. Paul basing point the area within which no adjustment applies, (b) revise the rate schedule, and (c) base the computation of mileage on hard-surfaced highway distance.

The order now provides no price adjustment on milk received at plants located less than 15 miles in any direction from the basing point in St. Paul. The order also provides for reducing the Class I and uniform prices 3 cents for milk received at plants at least 15 miles but less than 20 miles from the basing point. Such prices are reduced further at the rate of 3 cents for each 10 miles or fraction thereof for milk received at plants located at least 20 but less than 50 miles from the St. Paul basing point. In addition, for distances 50 miles and over the prices are reduced in increments of 1 cent for each 10 miles or fraction thereof.

The purpose of location adjustments is to reflect the value of milk at the point of receipt at a plant. If a producer delivers his milk to a plant located in the zero zone, he bears the cost of hauling the milk all the way to the market, or consuming area, and should be compensated for such cost by receiving the zero zone price. Contrarily, if the producer delivers his milk to a plant located nearer his farm, the pay price to such a producer should not reflect the cost of moving the milk to the market center, since it is not he but the plant operator who must bear the cost of transporting the milk to the market.

The changes to expand the "no adjustment zone" and to revise the rate were proposed by a cooperative association representing a majority of producers on the market. At the hearing, the proponent contended that the 15-mile radius is no longer appropriate, stating that since the consuming area, and the area of competition among fluid milk handlers, have expanded substantially, the area where no location adjustment would apply should be expanded also.

In recent years, suburbs have expanded around the cities of Minneapolis and St. Paul. While these areas are outside the city limits of Minneapolis and St. Paul, they represent an extension of the market center, thereby changing the makeup of the total consuming area.

The population in a nine-county area surrounding the Twin-Cities, and within a 40-mile radius of the St. Paul basing point, has increased significantly over the past 10 years. Population increases in this nine-county area ranged from 12 percent in one county to 80 percent in another of the nine betwen 1960 and 1970. In 1960 about 1.6 million persons were residing in the nine-county area, while in 1970 the population was almost 2 million. During this same 10-year period the population for the State of Minnesota rose about 10 percent, while in the nine counties, the rate of population increase was more than double that rate, at 23 percent.

Under the order's present location adjustment provisions, plants located at least 15 miles but less than 40 miles from the basing point receive location adjustments ranging from minus 3 to minus 9 cents to cover the cost of transporting the milk into the consuming center. However, with the extension of the market center, it is not always necessary to move all milk to Minneapolis or St. Paul, because the distributing plants located at outlying points from such major cities are now serving these areas. Distributing plants located less than 15 miles from St. Paul, now receiving no location adjustment, are in strong competition in a common sales area with plants located between 15–40 miles from the basing point that receive price adjustments ranging from minus 3 to minus 9 cents.

In addition, areas of milk procurement have moved somewhat farther away from the city as suburban areas have developed. Some land used for dairy farms in the past is now used for homes and shopping centers for an expanded population.

The changed circumstances in distribution resulting from population shifts, and changes in areas of milk procurement, warrant an extension, to a radius of 40 miles from St. Paul, of the area within which no location adjustment should apply. The applicable Class I and uniform prices for milk received at plants located at least 40 but less than 50 miles from the St. Paul basing point should be reduced 6 cents.

Further adjustments, at the rate of 1.5 cents for each 10 miles, or fraction thereof, should apply at plants located 50 miles or more from the St. Paul basing point. Proponent testified that the proposed rate of 1.5 cents for each 10 miles is an appropriate measure of the cost of transporting bulk milk in this market. Such a rate has been widely accepted as a reasonable measure of the cost of transporting bulk milk, and is used as a standard in applying location adjustments in most Federal orders at the present time.

For the purpose of establishing location adjustments, mileage distances between the basing point in St. Paul and various plant locations are determined by the market administrator. The determinations currently are made in terms of airline miles.

Milk is delivered in bulk tank trucks moving over highways; therefore, in computing such adjustments, the costs associated with transporting milk would be reflected more accurately by using highway miles rather than airline miles. This procedure is a more practical method to establish location adjustments and is being used in all other Federal order markets at the present time.

It is concluded that the basis for computing mileage in determination of location adjustments be changed. All future mileage distances determined by the market administrator should be measured by the shortest hard-surfaced highway distance.

The changes in the location adjustment provisions adopted herein would result, in most cases, in location adjustments at individual plants that range between the plant's present location adjustment and that which was proposed. Generally, the location adjustments provided herein would be less than those now provided by the order.

7. *Miscellaneous, administrative, and conforming changes.* Three changes in the Minneapolis-St. Paul order were proposed for administrative improvement. A witness for the cooperatives testified on each of the proposals.

The first change deals with the requirement that a handler must have paid producers or cooperative associations for the prior month to have his report of receipts and utilization included in the next computation of the uniform price. This prerequisite should be eliminated.

The order now excludes from the computation of the uniform price the receipts and utilization of a handler: (1) Who has not filed his report of receipts and utilization for the month; (2) who has not paid his producer-settlement fund obligation for the preceding month; and (3) who has not paid producers or cooperative associations for the preceding month.

Obviously, if a handler does not file a report of his receipts and utilization such data cannot be included in the current uniform price computation. Federal orders generally exclude a handler's utilization from the uniform price computation for the additional reason that the handler has failed to pay his previous month's obligation to the producer-settlement fund. If the handler reports, but has failed to pay his producer-settlement fund obligation for the preceding month, this fact is known to the market administrator prior to the time for computing a uniform price in the following month.

Except for a "de minimus" situation, it is reasonable to require that payment to the producer-settlement fund for the preceding month also be a prerequisite for including the handler's receipts and uses in the current pool. Failure to pay in the preceding month provides strong indication of the handler's intention for the current month, which could affect moneys available for payments out of the pool.

Excluding a handler's utilization from the computation of the uniform price, if he has not also paid producers or cooperative associations, presents obvious administrative difficulties. At the time the uniform price is computed, the market administrator may not know whether a handler has paid producers or cooperative associations for the prior month. Audit of such payments for the preceding month normally has not been made by the date of the current uniform price computation. Whether such payments have been made could involve disputed questions of fact or arrangements between producers or cooperative associations, and handlers. The market administrator may not know, prior to the next computation of the pool, the complete facts concerning a particular incident of payment. It may not be feasible to have such questions cleared up prior to the date on which the uniform price must be computed. For this reason, the order should be amended to eliminate payments to producers and cooperatives as a prerequisite to pooling in the current month.

The prompt and timely payment of producers and cooperative associations is essential, and these requirements will continue to be enforced. However, experience in a substantial number of markets demonstrates that it is not necessary to use such nonpayment for the preceding month as a criterion for excluding a handler's utilization from the uniform price computation the next month.

As a second administrative change, the order should be amended to eliminate the possibility of double charges on milk moving from a regulated plant to an unregulated plant and thence to a regulated plant.

More and more, plants are tending to specialize in the processing of certain products, or in the packaging of products in particular types of containers. It is not uncommon for milk to be transferred from a pool plant to a nonpool plant for special processing and the finished products to be moved back to a regulated plant. When the milk is initially priced at the Class I price, the market price structure is in no way undermined if this milk, or its equivalent, is disposed of by the nonpool plant in the regulated market.

The order should provide that the pool plant operator will have no obligation to the pool on such other source Class I milk. This is achieved through a revision of the allocation provisions and the procedure for computing the pool obligation of the pool plant operator. Receipts of packaged fluid milk products at a pool plant from an unregulated supply plant would be allocated to the pool plant's Class I utilization to the extent that an equivalent amount of skim milk or butterfat disposed of to the unregulated plant by handlers fully regulated under any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order. This allocation would be made prior to any other allocation of receipts to the plant's Class I utilization, and no order obligation would apply to the milk so allocated to Class I. In the case of fluid milk products received at a pool plant from an unregulated supply plant in bulk form, the provisions setting forth a handler's pool obligation would specify that no payment would apply to any such milk allocated to Class I if, as just described for packaged milk, an equivalent amount of milk received at the unregulated plant had been priced as Class I milk under some order.

The provisions prescribing the obligation of a partially regulated distributing plant should be changed also in this regard. When such plant's obligation is computed as though it were a pool plant, proper recognition must be given to any transfers from the plant to a regulated plant that already have been priced as Class I milk under another Federal order. Also, in computing such a plant's pool obligation on route sales in the marketing area, recognition should be given to any receipt of milk at such plant from an unregulated plant if an equivalent amount of milk received at the latter plant already has been priced as Class I milk under another order.

The order now imposes a handler assessment for administering the order on all other source Class I milk, except that received in fluid form from a pool plant or an other order plant. This may include milk that already has been priced as Class I milk under some Federal order as described above. With the removal of a "double" Class I charge on such milk the order should be changed to remove any assessment on such milk for administrative expenses when such milk is subject to an administrative assessment under the order that initially priced the milk.

The third change would correct a cross-reference in paragraph (a)(6) of the allocation section (§ 1068.46) of the order. Also, in the proviso of paragraph (c) of the "pool plant" section (§ 1068.9) August 1 should be changed to September 1. These changes are needed for clarification purposes.

Another change made herein is a corollary change to carry out the objective of better coordinating the pooling provisions among the orders in this region, and particularly between the Southeastern Minnesota-Northern Iowa order and the Minneapolis-St. Paul order. Changing the pool plant performance standards was an issue for each market at the hearing.

The corollary change would amend the provision for determining under which order a plant should be regulated when it qualifies as a pool plant under more than one order. The Minneapolis-St. Paul order would be changed so that the determination would be based on marketing area route disposition and on disposition to pool distributing plants in the respective markets.

ISSUES CONCERNING ORDER 61 SOUTHEASTERN MINNESOTA-NORTHERN IOWA (DAIRYLAND)

8. *Distributing plant pooling standard.* The proportion of a distributing plant's receipts of Grade A fluid milk products that must be disposed of as Class I milk on routes should be increased in the Southeastern Minnesota-Northern Iowa order as a basis for pooling qualification.

The order now provides that during the months of February–August distributing plants must dispose of at least 15 percent of such Grade A receipts as Class I milk either on routes or in the form of packaged fluid milk products moved to other plants in order to qualify for pool plant status. During the months of September–January the applicable percentage is 20 percent.

A cooperative association, representing a majority of producers supplying the market, proposed increasing the minimum standard for pooling distributing plants to 30 percent during the months of February–August, and 40 percent in the other months. The proposal is supported by five other cooperatives.

No change was proposed in the 10 percent minimum in-area sales performance standard for distributing plants.

The minimum Class I disposition performance standard for qualifying distributing plants regulated under this order is lower than the similar pooling standards included in nearby contiguous orders.

Under the Minneapolis-St. Paul order distributing plants must dispose of 30 percent of their Grade A receipts as Class I milk during the months of January–June, and 50 percent during July–December, to qualify for pooling. To qualify under the Chicago Regional order, distributing plants must dispose of 45 percent of their Grade A receipts as packaged fluid milk products on routes or moved to other plants. Under the Eastern South Dakota and Nebraska-Western Iowa orders, distributing plants must dispose of 35 percent of their Grade A receipts on routes as Class I milk to qualify as a pool plant. These compare with a performance standard of only 15–20 percent, as described earlier in this decision, for distributing plants regulated under this order.

The minimum pooling standard should be increased, as proposed, to coordinate more effectively the performance standard of this order with the performance standards provided in surrounding Federal order markets. Coordinating the pooling standards to the extent possible will promote a more uniform and orderly method for pooling distributing plants located in this region under the various regulatory programs.

At the present time, the Dairyland order provides that a distributing plant may obtain pool status when a specified proportion of its receipts of milk is disposed of on routes or moved as packaged fluid milk products to other plants. Better coordination, particularly with the Minneapolis-St. Paul order, can be achieved by limiting this standard to route disposition. This corollary change will insure that the pool distributing plant standard for each market will provide pooling for such plants on approximately the same basis in each market.

Increasing the minimum percentage standard to 30–40 percent, as proposed, would not affect the pool plant status of any distributing plant currently serving the market, because distributing plants regulated by the order are demonstrating a higher Class I utilization than that proposed.

9. *Supply plant pooling standard.* The minimum performance standard for pooling plants under the Southeastern Minnesota-Northern Iowa order should be changed.

The order now provides that a supply plant must deliver at least 15 percent of its Grade A receipts from dairy farmers to pool distributing plants to qualify for pool plant status. A cooperative, representing a majority of producers on the market, proposed increasing the shipping percentage to 30 percent. The proposal is supported by five other cooperatives. The witness for the proponent cooperative testified that undue quantities of milk have been attached to this market since the order was promulgated because of the low minimum performance standard.

During May 1969 there were 704 dairy farmers delivering producer milk to this market. In May 1970 the number increased to 909 and during May 1971 there

were 1,109 producers. This represents an increase of 405 producers, or almost 60 percent.

In August 1970 a hearing was held to consider a proposal to increase the shipping percentage for supply plants. At that time only one supply plant was qualifying as a pool plant. The proposed increase was denied because it would have made ineligible for pooling, without adequate supporting reasons, the milk of a substantial number of producers who had been shipping to the market since the inception of the order.

Since the hearing in August 1970, four supply plants have been added to the market. At the time of the most recent hearing (August 1971) five supply plants were being pooled. Four of these plants came on the market during September 1970. Such plants could qualify easily under the relatively low performance standard provided in this order, even though the milk were not needed for fluid use, and certainly more easily than in other markets in this region with marketwide pooling provisions.

It is appropriate that the performance standard for pooling supply plants in this market be consonant with the standards in nearby Federal order markets. Some supply plants pooled under this order are so situated that they could become pool supply plants under the Minneapolis-St. Paul order or the Chicago Regional order. Similarly, some supply plants regulated under such nearby orders readily could become pool plants under this order.

The monthly shipping standards for pooling supply plants in each of the surrounding markets are: 30 percent under the Minneapolis-St. Paul order; 40 percent during September–November and 30 percent in the other months under the Chicago Regional order; 35 percent under the Eastern South Dakota order; and 50 percent under the Nebraska-Western Iowa order. These compare with a shipping standard of 15 percent under this order.

Obviously, the shipping standard of this order is substantially lower than for the nearby markets. Such difference could cause any additional milk supply in the area that is attempting to find a market to gravitate in undue proportion to this market. This would result in a lower Class I utilization in this market, depressing the blend price for all producers serving the market as compared to the other markets drawing milk from the same general area.

Increasing the shipping standard to 30 percent, as proposed, will better coordinate the performance standards for qualifying supply plants with those of surrounding markets, and more specifically with the recently amended shipping standard for the Minneapolis-St. Paul order.

When markets draw milk from a common supply area, as is the case in this region, the respective markets should have substantially the same opportunity to draw supplies on the basis of relative prices and need. Under these circumstances, similar pooling standards will facilitate the opportunity for milk to gravitate toward the market that has the need. Relative blend prices are an effcient way to draw the milk to such market.

Two producer organizations opposed the proposal in their brief. They proposed increasing the shipping percentage in two steps, an increase to 20 percent for the 1972 qualifying period, and consideration of an increase to 30 percent at some future time. All supply plants that qualified during the September–November 1971 period have automatic pool status until September 1972. Supply plant operators consequently are afforded adequate time to reprogram their operations to accommodate the increase in the shipping percentage.

10. *Computation of supply plant pooling qualification.* The proposal to determine a supply plant's qualification under the Southeastern Minnesota-Northern Iowa order based on its "net" shipments to pool distributing plants should not be adopted.

The order now provides that a supply plant must deliver 15 percent of its Grade A receipts from dairy farmers to pool distributing plants to qualify as a pool plant. This decision changes the shipping performance standard to 30 percent of such receipts.

The change in the computational method used to determine whether a supply plant has met the shipping percentage was proposed by the same cooperative that proposed the increase in the shipping percentage. Five other cooperative associations supported the change.

Under the proposal, only the net amount of milk received at pool distributing plants would be counted toward meeting the minimum shipping percentage for qualifying a supply plant. Transfers and diversions of milk from the distributing plant for manufacturing purposes on the day of any receipt from a supply plant would be subtracted from the distributing plant's receipts from the supply plant in arriving at the "net" shipments from such plant.

Several examples of practices that could circumvent the intent of the shipping standard of an order were cited by proponent at the hearing. In some instances, shipments of milk from a supply plant to distributing plants might be made only for the purpose of qualifying the supply plant without relation to the utility of the milk in serving the Class I market. Also, a supply plant might make the necessary shipments to meet the minimum shipping percentage during the qualifying period only to get automatic pool status in the other months without making any shipments.

Further, a supply plant operator might make specific prearrangements with distributing plants that receive his milk to transfer an equivalent amount back to the supply plant or to a nonpool manufacturing plant for processing into manufactured products (Class II). Also, a supply plant operator might be willing to pay handling charges in various amounts to operators of distributing plants to pool his milk in this manner. These payments and the added hauling cost incurred could be offset by the benefits of pooling the milk, since the supply plant operator would account for the milk at the Class II price and be credited at the higher uniform price for payment to his producers.

Proponent indicated that the pooling practices described above are not a problem in this market at the present time, but that the proposed change is needed to insure the intent of the performance standard. Concern was expressed that some supply plants regulated under the Chicago order may attempt to become associated with this market. At this time, no such development has occurred and the problem is one of apprehension on the part of producers. Accordingly, we may not conclude that the proposed change is necessary at this time to maintain orderly marketing.

While it was pointed out that the Chicago Regional order provides for pooling a supply plant on the basis of its "net" shipments to distributing plants, the supply conditions of the Chicago market are quite different from those in this market. In the Chicago market, country supply plants and reload points are regularly used to assemble distant milk supplies for transshipment to the city to meet a large proportion of the fluid needs of the market. In the Southeastern Minnesota-Northern Iowa market there is an adequate supply of nearby milk available that may be moved directly from producers' farms to city plants to meet such needs.

Ruling on Objection

Prior to taking testimony on proposed amendments to Order No. 61 (Southeastern Minnesota-Northern Iowa), an attorney for a cooperative objected to this part of the proceeding on the ground that interested parties were not given an opportunity to submit additional proposals. The Hearing Examiner stated that reasonable time was provided between the publication of the hearing notice and the hearing date to enable interested parties to submit additional proposals or to request other action. Since no action was taken during this time period, he overruled the objection. The ruling of the Hearing Examiner is affirmed.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determination hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection

with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders:

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

RECOMMENDED MARKETING AGREEMENT AND ORDER AMENDING THE ORDER

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa (Dairyland) areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

PART 1061—MILK IN SOUTHEASTERN MINNESOTA-NORTHERN IOWA (DAIRYLAND) MARKETING AREA

In § 1061.11, paragraph (a) (1) and (2) and the introductory text of paragraph (b) are revised as follows:

§ 1061.11 Pool plant.

* * * * *

(a) * * *

(1) Not less than 10 percent of such receipts is disposed of from such plant as Class I milk in the marketing area as route disposition. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants; and

(2) Not less than 30 percent during the months of February–August and 40 percent during the months of September–January of such receipts is disposed of as Class I milk as route disposition. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(b) A supply plant from which not less than 30 percent of its total Grade A milk receipts from dairy farmers during the month is delivered as fluid milk products to pool plants pursuant to paragraph (a) of this section subject to subparagraphs (1) and (2) of this paragraph:

* * * * *

PART 1068—MILK IN MINNEAPOLIS-ST. PAUL, MINNESOTA MARKETING AREA

1. In § 1068.9, paragraph (c) is revised as follows:

§ 1068.9 Pool plant.

* * * * *

(c) Upon written request by the handler to the market administrator, received or postmarked on or before the last day of any month, any plant qualified as a pool plant pursuant to paragraph (b) of this section may be withdrawn from pool plant status beginning with the next month. Any such plant withdrawn from automatic pool plant status may not regain such status prior to the next September 1 and then only by meeting the requirements set forth in the first proviso of paragraph (b) of this section in the same manner as a plant qualifying for pool plant status for the first time.

2. Section 1068.11 is revised as follows:

§ 1068.11 Producer.

"Producer" means any person, other than a producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is received at a pool plant as producer milk directly from the farm; or diverted from a pool plant to a nonpool plant subject to the rules in § 1068.12. "Producer" shall not include the milk of any person produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and the handler diverting such milk and the operator of the pool plant have each requested Class II classification on the reports filed with their respective market administrators. Neither shall it include the milk of any person produced by him which is diverted to an other order plant if such person is designated as a producer with respect to such milk under the other order.

3. Section 1068.12 is revised as follows:

§ 1068.12 Producer milk.

"Producer milk" means the skim milk and butterfat in Grade A milk:

(a) Received at a pool plant directly from a dairy farmer; and

(b) Diverted from a pool plant to a nonpool plant (except a producer handler plant or an other order plant) subject to the following conditions:

(1) Such milk shall be priced at the location of the nonpool plant to which diverted;

(2) In any month that less than 6 days' production of a producer is delivered to pool plants the quantity of milk of the producer diverted during the month that exceeds that delivered to pool plants shall not be producer milk;

(3) During the months of September through November, a cooperative association handler may divert for his account the milk of any member producer. The total quantity of producer milk diverted by such handler in excess of 10 percent of the milk received from member producers at pool plants during the month shall not be producer milk;

(4) During the months of December through August, a cooperative association handler may divert for his account the milk of any member producer. The total quantity of producer milk diverted by such handler in excess of 25 percent of the milk received from member producers at pool plants during the month shall not be producer milk;

(5) During the months of September through November, the operator of a pool plant, other than a cooperative association, may divert for his account the milk of any producer other than a member of a cooperative association. The total quantity of producer milk diverted by such handler in excess of 10 percent of the milk received at such pool plant during the month from producers who are not members of a cooperative association shall not be producer milk;

(6) During the months of December through August, the operator of a pool plant, other than a cooperative association, may divert for his account the milk of any producer other than a member of a cooperative association. The total quantity of producer milk diverted by such handler in excess of 25 percent of the milk received at such pool plant during the month from producers who are not members of a cooperative association shall not be producer milk; and

(7) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to subparagraphs (3), (4), (5), and (6) of this paragraph. If the handler fails to make such designation, no milk diverted by him shall be producer milk.

4. In § 1068.13, a new paragraph (a–1) is added as follows:

§ 1068.13 Handler.

* * * * *

(a–1) Any cooperative association with respect to milk of its members diverted for its account from a pool plant to a nonpool plant subject to the provisions of § 1068.12.

* * * * *

5. In § 1068.30, paragraph (a)(1) is revised and a new paragraph (d) is added as follows:

§ 1068.30 Monthly reports of receipts and utilization.

(a) * * *

(1) The quantities of skim milk and the quantities of butterfat contained in milk received from producers (including diverted milk, and such handler's own production) producer-handlers' and other pool plants.

* * * * *

(d) On or before the 10th day of each month and in detail as prescribed by the market administrator each handler specified in § 1068.13(a–1) shall report to the market administrator for the preceding month the utilization of all skim milk and butterfat in diverted producer milk pursuant to § 1068.12.

6. In paragraph (b)(5) of § 1068.41, a new subdivision (vii) is added as follows.

§ 1068.41 Classes of utilization.

* * * * *

(b) * * *

(5) * * *

(vii) 1.5 percent of producer milk diverted to a nonpool plant pursuant to § 1068.12 except that if the operator of the nonpool plant to which the milk is diverted accounts for such milk on the basis of farm weights, the applicable percentage shall be 2 percent; and

* * * * *

7. Section 1068.44 is revised as follows:

§ 1068.44 Transfers.

Skim milk or butterfat in the form of a fluid milk product shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred from a pool plant to the pool plant of another handler, subject in either event to the following conditions:

(1) The skim milk or butterfat so assigned to either class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1068.46(a)(7) and the corresponding step of § 1068.46 (b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1068.46(a)(3), the skim milk and butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1068.46(a) (6) or (7) and the corresponding steps of § 1068.46(b), the skim milk and butterfat so transferred up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant;

(b) As Class I milk, if transferred from a pool plant to a producer-handler;

(c) As Class I milk, if transferred or diverted from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph.

(1) The transferring or diverting handler claims classification pursuant to the assignment set forth in subparagraph (3) of this paragraph in his report submitted to the market administrator pursuant to § 1068.30 for the month within which such transaction occurred;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat so transferred or diverted shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants;

(i) Any Class I utilization disposed of on routes in the marketing area shall be first assigned to the skim milk and butterfat in fluid milk products so transferred or diverted from pool plants, next pro rata to receipts from other order plants and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply of Grade A milk for such nonpool plant;

(ii) Any Class I utilization disposed of on routes in the marketing area of another order issued pursuant to the Act shall be first assigned to receipts from plants fully regulated by such order, next pro rata to receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply for such nonpool plant;

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular sources of supply for such nonpool plant and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants; and

(iv) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat so transferred or diverted shall be classified as Class II milk;

(d) As follows, if transferred to an other order plant in excess of receipts from such plant in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

(1) If transferred in packaged form, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated as a fluid milk product under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both the transferor and transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, transfers in bulk form shall be classified as Class II to the extent of the Class II utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, milk allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and milk allocated to other classes shall be classified as Class II; and

(6) If the form in which any fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1068.41.

8. In § 1068.46(a), subparagraphs (1), (4), (5), and (6) are revised as follows:

§ 1068.46 Allocation of skim milk and butterfat classified.

* * * * *

(a) * * *

(1) Subtract from the total pounds of skim milk classified:

(i) From Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order;

(ii) From Class II the pounds of skim milk classified as Class II milk pursuant to § 1068.41(b)(5);

* * * * *

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II, but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraph (1)(i) of this paragraph;

(*a*) For which the handler requests Class II utilization; or

(*b*) Which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk the sum of the pounds of skim milk in producer milk, receipts from a cooperative association as a handler pursuant to the proviso of § 1068.13(a), receipts from pool plants of other handlers, and receipts in bulk from other order plants; and

(ii) Receipts of fluid milk products in bulk from an other order plant in excess

of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(5) Add to the remaining pounds of skim milk the pounds subtracted pursuant to subparagraph (1)(ii) of this paragraph;

(6) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraph (1)(i) or (4)(i) of this paragraph;

* * * * *

9. Section 1068.55 is revised as follows:

§ 1068.55 Location adjustments to handlers.

The Class I price for producer milk and other source milk (for which a location adjustment is applicable) received at a plant located at least 40 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) from the Minnesota Transfer Viaduct at University Avenue in St. Paul, Minn., shall be reduced by an amount indicated below.

Plant location (miles):	Amount of deduction (cents)
Less than 40	0
40 but less than 50	6

For distances of 50 miles or more, an additional 1.5 cents for each 10 miles or fraction thereof beyond 50 miles.

9a. In § 1068.62, paragraph (a) is revised as follows:

§ 1068.62 Milk under more than one Federal order.

* * * * *

(a) The Secretary determines that a greater quantity of milk in fluid form is disposed of from such plant to a regulated marketing area as defined in another order issued pursuant to the Act either on routes or to pool plants qualified on the basis of route disposition than is disposed of from such plant in the Minneapolis-St. Paul marketing area either on routes or to pool plants qualified on the basis of route disposition.

* * * * *

10. In § 1068.64, subdivision (i) of paragraph (a)(1) and paragraph (b)(2) are revised as follows:

§ 1068.64 Obligations of handlers operating a partially regulated distributing plant.

* * * * *

(a) * * *

(1)(i) The obligation that would have been computed pursuant to § 1068.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk. No obligation shall apply to Class I milk transferred to a pool plant or an other order plant if such Class I utilization is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants at which such milk was classified and priced as Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1068.70(d) and a credit in the amount specified in § 1068.84(b)(2) with respect to receipts from an unregulated supply plant, unless an obligation with respect to such plant is computed as specified below in this subparagraph.

* * * * *

(b) * * *

(2) Deduct the respective amounts of skim milk and butterfat received at the plant:

(i) As Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) From a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order;

* * * * *

11. In § 1068.70, paragraph (d) is revised as follows:

§ 1068.70 Computation of the net pool obligation of each pool handler.

* * * * *

(d) Add the value at the Class I price, adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received of the skim milk and butter fat subtracted from Class I pursuant to § 1068.46(a)(6) and the corresponding step of § 1068.46(b), excluding such skim milk or butterfat in bulk receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order.

12. In § 1068.71, paragraph (a) is revised as follows:

§ 1068.71 Computation of uniform price.

* * * * *

(a) Combine into one total the values computed pursuant to § 1068.70 for all handlers who filed reports pursuant to § 1068.30 for the month and who made the payments pursuant to § 1068.84 for the preceding month;

* * * * *

13. Section 1068.82 is revised as follows:

§ 1068.82 Location adjustments to producers and on nonpool milk.

(a) In making payments pursuant to § 1068.80 (b) and (c) for milk received at a pool plant located 40 miles or more from the Minnesota Transfer Viaduct at University Avenue in St. Paul, Minn., each handler shall deduct from the applicable price payable to such producers an amount in accordance with the location of the plant based on the rates set forth in § 1068.55; and

(b) For the purpose of computations pursuant to §§ 1068.84 and 1068.85, the uniform price shall be adjusted at the rates set forth in § 1068.55 applicable at the location of the nonpool plant from which the milk was received, except that the uniform price shall not be less than the Class II price.

14. Section 1068.90 is revised as follows:

§ 1068.90 Expense of administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 3 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to (a) producer milk (including such handler's own production); (b) other source milk allocated to Class I pursuant to § 1068.46(a) (3) and (6) and the corresponding steps of § 1068.46(b) except such other source milk on which no handler obligation applies pursuant to § 1068.70(d); and (c) Class I route disposition in the marketing area by partially regulated distributing plants that exceeds the Class I milk:

(1) Received during the month at such plant from pool plants and other order plants that is not used as an offset under a similar provision of another order pursuant to the Act; and

(2) Specified in § 1068.64(b)(2)(ii).

15. Section 1068.92 is revised as follows:

§ 1068.92 Adjustment of overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1068.64, and 1068.84, and 1068.86(a), for which remittance has not been made by the close of business on the next day following the date specified for such payment shall be increased three-fourths of 1 percent for each month and any remaining amount due shall be increased at a similar rate on the corresponding day of each month thereafter until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously made pursuant to this section; and for the purpose of this section any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due, shall be considered to have been payable by the date it would have

been due if the report had been filed when due.

Signed at Washington, D.C., on January 20, 1972.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[FR Doc.72-1067 Filed 1-21-72;8:50 am]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[49 CFR Part 571]

[Dockets Nos. 1-9, 1-10; Notice 10]

EXTERIOR PROTECTION STANDARDS

Proposal to Permit Removal of Trailer Hitches During Testing

The purpose of this notice is to propose an amendment of Motor Vehicle Safety Standard No. 215, 49 CFR 571.215, that would add a new test condition, S6.1.5, to permit removal of trailer hitches during testing.

The proposal is made in response to a request from General Motors, in which the company indicated that it installs large numbers of trailer hitches on passenger cars prior to sale to customers. The configuration of these hitches is such that a vehicle carrying them would not conform to the pendulum test requirements of the Exterior Protection Standard, No. 215. GM points out that the use of these hitches is well established, and that if factory installations are effectively prohibited by the standard, as they are at present, automobile buyers would almost certainly have them installed after purchase of the vehicle. Thus, the standard would have no effect with respect to trailer hitches except to alter the normal marketing pattern, and would have a negligible or negative net benefit to consumers.

Accordingly, it is proposed that Standard No. 215, 49 CFR 571.215, be amended by adding a new S6.1.5, reading as follows:

§ 571.215 Standard No. 215; exterior protection.

* * * * *

S6.1.5 Trailer hitches are removed from the vehicle.

* * * * *

Proposed effective date: September 1, 1972.

Interested persons are invited to submit written data, views, and arguments concerning the proposed amendment. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5221, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on February 21, 1972, will be considered, and will be available for examination in the docket at the above address both before and after the closing date. To the extent possible, comments filed after the above date will also be considered by the Administration. However, the rulemaking action may proceed at any time after that date, and comments filed after the above date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The Administration will continue to file relevant material, as it becomes available, in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

This notice of proposed rule making is issued under the authority of sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1392, 1407, and the delegations of authority at 49 CFR 1.51 and 49 CFR 501.8.

Issued on January 17, 1972.

ROBERT L. CARTER,
Acting Associate Administrator,
Motor Vehicle Programs.

[FR Doc.72-978 Filed 1-21-72;8:47 am]

ATOMIC ENERGY COMMISSION

[10 CFR Part 110]

FOREIGN ATOMIC ENERGY PROGRAMS

Unclassified Activities; Extension of Time for Filing of Comments

On January 5, 1972, the Atomic Energy Commission published in the FEDERAL REGISTER (37 F.R. 92) proposed amendments to 10 CFR Part 110, to require specific Commission authorization to engage in a number of activities outside the United States involving facilities for the chemical processing of irradiated special nuclear material, facilities for the production of heavy water and facilities for the separation of isotopes of uranium. Interested persons were invited to submit comments or suggestions within 30 days after publication of the notice of proposed rule making in the FEDERAL REGISTER.

The Commission is hereby extending the time for submitting comments to March 6, 1972. Comments received after that date will be considered if it is practicable to do so, but assurance of consideration cannot be given except as to comments filed within the time specified. Copies of the comments received may be examined at the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

(Sec. 161, 68 Stat. 948; 42 U.S.C. 2201)

Dated at Germantown, Md., this 18th day of January 1972.

For the Atomic Energy Commission.

W. B. MCCOOL,
Secretary of the Commission.

[FR Doc.72-977 Filed 1-21-72;8:47 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 164]

RULES GOVERNING ADVISORY COMMITTEES AND RULES OF PRACTICE GOVERNING HEARINGS UNDER FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

Notice of Proposed Rule Making

Notice is hereby given that Part 164 of Chapter I of Title 40 of the Code of Federal Regulations, issued pursuant to sections 4 and 6 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135b, 135d), is proposed to be revised to read as set forth below. Any person may file comments on this proposal within 30 days from the date of publication of this notice in the FEDERAL REGISTER. Such comments should be filed in duplicate and addressed to the Hearing Clerk, Environmental Protection Agency, Room 3125, South Agriculture Building, 14th and Independence Avenue SW., Washington, D.C. All written submissions filed pursuant to this notice will be available for public inspection.

It is proposed that these rules, when adopted in final form, will govern all future cancellation and suspension proceedings under this part and shall apply to any proceeding now underway insofar as it is practicable and will not be prejudicial to any party. In developing these rules this Agency has taken into account prior experience under this part and also recent judicial pronouncements.

Dated: January 19, 1972.

DAVID D. DOMINICK,
Assistant Administrator
for Categorical Programs.

Explanatory statement. This explanatory statement should assist interested persons in the preparation of comments on one aspect of the proposed rules, viz., the sections dealing with the relationship between the Agency's decisions whether to issue or continue in effect notices of cancellation and the right of persons adversely affected by such decisions to take administrative appeals (§§ 164.4(b) and 164.12(j)).

Recent judicial decisions have underscored the importance of bringing "the public into the decision-making process, and creat[ing] a record that facilitates judicial review" of decisions concerning the registration and cancellation of pesticides. Environmental Defense Fund v. Ruckelshaus, 439 F. 2d 584 (C.A.D.C., 1971); Wellford v. Ruckelshaus, 439 F. 2d 598 (C.A.D.C., 1971). Of particular concern to the courts was the absence of any procedure whereby administrative appeals could be taken from the Agency's refusal to issue notices of cancellation.

These rules represent an attempt by the Agency to be responsive to those decisions and to insure that the public voice is heard in the decision-making process.

The rules provide that, in considering whether to issue notices of cancellation initially or continue them in effect after review by an advisory committee, the Agency staff will weigh benefits against risks and make a determination on the merits of the registration. If that determination is for cancellation, administrative review will proceed as it has previously. If, on the other hand, the determination is for continued registration, the Agency will at the same time state whether that registration presented at least a substantial question of safety. If it did, persons who oppose that determination will be able to demand the issuance, or continuation in effect, of the notices of cancellation as a means of triggering further administrative review. Adoption of this procedure now, to govern the Agency's broad review of registrations, will result in a more reasonable approach to cancellation decisions. That approach should be satisfactory, on the one hand, to registrants and users of pesticides, for they will not be faced with cancellation decisions which have the support of neither the Agency nor other interested persons. On the other hand, it will afford to persons who oppose registration a mechanism, not previously available, for insuring that a full public hearing is held when necessary. In addition, this approach will assist the office of the General Counsel in taking a position at the administrative hearings consistent with the Agency's policy determinations, for it is difficult to make the initial decision to cancel in a vacuum that ignores overriding benefits which this Agency's staff would, itself, wish to emphasize at a public hearing.

Subpart A—General

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164.36 Examiner's report.
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Subpart A—General

§ 164.1 Meaning of words.

As used in this part, words in the singular form shall be deemed to import the plural, and vice-versa, as the case may require.

§ 164.2 Definitions.

For the purposes of this part, the following terms shall be construed, respectively, to mean:

(a) The term "Act" means the Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat. 163, et seq. as amended, 7 U.S.C. 135–135k).

(b) The term "Administrator" means the Administrator, Environmental Protection Agency, or any officer or employee of the Agency to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead. When used in Subpart C of this part the term Administrator shall be interchangeable with judicial officer.

(c) The term "Advisory Committee" means a group of qualified scientists refered by the National Academy of Sciences and designated to submit an independent report to the Administrator regarding the registration of an economic poison.

(d) The term "Agency", unless otherwise specified, means Environmental Protection Agency.

(e) The term "applicant" means any person who has made application to have an economic poison registered pursuant to the provisions of the Act.

(f) The term "examiner" means a hearing examiner appointed pursuant to section 3105 of title 5 of the United States Code.

(g) The term "hearing" means a public hearing which is conducted pursuant to the provisions of the Administrative Procedure Act and the regulations in this part.

(h) The term "hearing clerk" means the Hearing Clerk, Environmental Protection Agency, Washington, D.C.

(i) The term "judicial officer" shall mean an officer or employee of the Agency appointed pursuant to these rules and who shall perform functions as herein provided.

(1) *Office.* There may be designated for the Agency one or more judicial officers, one of whom may be Chief Judicial Officer. As work requires, there may be a judicial officer designated to act for the purpose of a particular case. All prior designations of judicial officer shall stay in force until further notice.

(2) *Qualifications.* A judicial officer may be a permanent or temporary employee of the Agency who performs other duties for the Agency. Such judicial officer shall not be employed by the office of pesticides, or have any connection with the preparation or presentation of evidence for a hearing.

(3) *Functions.* The Administrator may delegate any or part of his authority to act in a given case under Subpart C of this part to a judicial officer. The Administrator can separately delegate his authority to rule on interlocutory orders and motions, and may also delegate his authority to make findings of fact and draw conclusions of law in a particular proceeding, providing that this delegation shall not preclude the judicial officer from referring any motion or case to the Administrator when the judicial officer determines such referral to be appropriate. The Administrator, in deciding a case himself, may consult with and assign the preliminary drafting of conclusions of law and findings of fact to any judicial officer.

(4) *Other duties.* The chief judicial officer shall supervise the hearing clerk in the performance of the duties assigned by these rules, and be responsible for scheduling hearings.

(j) The term "party" means any person, group, organization, or any Federal agency or department that participates in a hearing.

(k) The term "person" includes any individual, partnership, association, corporation, or any organized group of persons, whether incorporated or not.

(l) The term "recommended decision" means a report made by an examiner to the Administrator containing (1) proposed findings of fact and conclusions regarding all material issues of fact, law or discretion, as well as the reasons or basis therefor and (2) a proposed order.

(m) The term "registrant" means any person who has registered an economic poison pursuant to the provisions of the Act.

§ 164.3 Scope and applicability of this part.

The provisions of Subpart B of this part shall be applicable to the appointment, compensation, and proceedings of an advisory committee; and the provisions of Subpart C of this part shall govern hearings conducted pursuant to the provisions of the Act. The rules in this part upon adoption in final form shall apply to remaining phases of all proceedings underway insofar as practicable and fair, provided that once commenced or passed, any phase of a proceeding which might have been conducted differently under the rules in this part shall not be affected. For the purpose of the rules in this part, the advisory committee proceeding and Administrator's determination thereafter, pleading, prehearing discovery, the hearing, post-hearing objections and briefs, final and interlocutory appeals to the Administrator shall each constitute a separate phase.

§ 164.4 Administrative review of determinations respecting economic poisons.

(a) *Applications for registration of an economic poison under the Act.* Whenever the Administrator determines, in connection with an application for registration of an economic poison under the Act, that it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of the Act, the Administrator shall notify the applicant of the manner in which the article, labeling or other material required to be submitted fails to comply with the Act and the applicant shall have an opportunity to make the necessary corrections, where possible. If the applicant does not make the corrections, or if no corrections are possible, the Administrator will refuse to register the article. An applicant may, within 30 days after service of notice of refusal to register and the reasons therefor:

(1) File a petition with the hearing clerk requesting that the matter be referred to an advisory committee, or

(2) File objections with the hearing clerk and request a public hearing respecting the matter.

(b) *Cancellation of the registration of an economic poison under the Act.* The Administrator may, upon his own initiative or in response to a petition filed by any person with him, review the registration of an economic poison to determine whether such registration should be canceled. The Administrator may cancel any registration whenever he determines that the article or its labeling or other material required to be submitted does not comply with the provisions of the Act.

(1) When cancellation or suspension action is requested by petition, immediate notice of receipt of the petition shall be given in the FEDERAL REGISTER and the Administrator shall act on such petition within 120 days of its receipt by the Agency Hearing Clerk.

(2) Whenever, after review of the registration of an economic poison, the Administrator determines that a registration of an economic poison should be canceled, he will notify the registrant of his action and state the reasons therefor. He may at the same time, or at any time thereafter, suspend the registration, pursuant to paragraph (c) of this section. A cancellation of registration shall be effective 30 days after service of the cancellation notice on the registrant unless within such time the registrant:

(i) Makes the necessary corrections, if possible in light of the reasons for cancellation;

(ii) Files a petition with the hearing clerk requesting that the matter be referred to an advisory committee and serves a copy on the Administrator; or

(iii) Files objections with the hearing clerk and requests a public hearing and serves a copy on the Administrator.

(3) (i) Whenever, following either the filing of a petition by any person pursuant to the opening language of this paragraph or any major, intensive review of a registration undertaken on his own initiative, the Administrator determines that, considering all relevant factors, an economic poison is entitled to retain its registration, he shall within 120 days of the receipt of the petition publish a notice of his decision in the FEDERAL REGISTER and, if his review was occasioned by the filing of a petition, shall notify the person filing such petition directly. In his decision the Administrator shall state whether he found, in the course of evaluating the registration, the existence of a substantial question of safety.

(ii) Within 30 days after such publication or notification, whichever occurs later, any person may file a petition requesting that, notwithstanding the decision that the product is entitled to retain its registration, the Administrator issue a notice of cancellation of the registration of the product on the ground that its continued registration presents a substantial question of safety. If the Administrator has stated in his decision that such a question exists, he shall forthwith issue the notice of cancellation. In such case, the registrant shall have the same opportunity to correct his registration or request administrative review as is provided under subparagraph (1) of this paragraph. If the registrant requests a hearing, the hearing shall proceed on the same basis as a hearing held pursuant to subparagraph (1) of this paragraph, except with respect to the position taken by counsel for the Agency. The burden to establish all the elements necessary to continued registration shall be on the registrant at the hearing: *Provided*, That no person appears at the hearing to oppose registration, the examiner shall order that the notice of cancellation be withdrawn.

(iii) If the Administrator's order finds that no substantial question of safety arises in connection with the registration, that shall be a final Agency order.

(c) *Suspension of the registration of an economic poison under the Act.* Whenever the Administrator finds that such action is necessary to prevent an imminent hazard to the public, he may suspend the registration of the economic poison immediately. Unless he has previously done so, he shall at the same time issue a notice of cancellation of the registration. Whenever the Administrator suspends the registration of an economic poison he will give the registrant notice of that action and the registrant shall have the opportunity to have the matter submitted to an advisory committee and shall have the opportunity for an expedited hearing regarding the matter in accordance with the provisions of the regulations in this part governing refusals to register and cancellations of registrations.

§ 164.5 Arrangements for monitoring Agency records, transcripts, and decisions.

(a) *Reporting of opinions and reports.* All advisory committee reports and other decisions required by the rules in this part, including conclusions of law and findings of fact, whether issued by an examiner, judicial officer, or the Administrator, shall be made available to the public and notice of availability shall be given in the FEDERAL REGISTER.

(b) *Establishment of an Agency repository.* All transcripts and docket entries shall become part of the official docket and shall be retained by the hearing clerk. At least two copies of all opinions and reports shall be retained by the hearing clerk and filed chronologically according to the date of issuance. These shall be periodically bound and indexed. All documents shall be made available to the public for reasonable inspection during agency hours.

Subpart B—Rules Governing the Advisory Committees

§ 164.10 Docketing of request for advisory committee.

Whenever a petition requesting that a matter be referred to an advisory committee is filed with the hearing clerk, the hearing clerk shall docket the matter and assign it an "I.F.&R." docket number.

§ 164.11 Appointment of advisory committee.

(a) *Selection of members.* Whenever a petition for an advisory committee is filed or the Administrator otherwise deems such referral desirable, the Administrator shall request the National Academy of Sciences, National Research Council, to refer a specified number of experts of adequately diversified professional background, including at least one representative from a land-grant college, willing to serve on the advisory committee. The Administrator shall request the National Academy of Sciences, when it furnishes the names of such experts, to supply biographical sketches showing the background of their experience and education. Copies of such such biographical sketches will be available to any person upon request.

(1) Upon receipt of the names of the experts, the Administrator shall ascertain whether any of them is affected by a financial or other conflict of interest. Any experts found to be so affected or who express unwillingness to serve or who fail to respond to inquiries as to availability or conflict of interest within a reasonable period of time shall be disqualified by the Administrator.

(2) In the event the number of eligible experts referred by the Academy and available for service exceeds in number the size of the proposed committee, the Administrator shall select a panel of appropriately diversified background and discipline, including one representative from a land-grant college.

(3) In the event that at any time experts selected by the Academy and available for service constitute less than the number required to fill the committee or reflect insufficient diversity, the Administrator shall request the National Academy of Sciences to refer additional experts.

(4) At the earliest opportunity, the advisory committee shall select one of its

members to act as chairman. The chairman shall be the spokesman for the committee and shall carry out such other functions for the committee as may be necessary.

(b) *Compensation for members*. The Administrator shall appoint the experts so selected and fix their compensation at $75 per day for actual time spent in committee work, plus necessary traveling and subsistence expenses while the members are serving away from their places of residence. Subsistence expenses shall not exceed the maximum per diem permitted by this Agency.

§ 164.12 Procedure for advisory committee.

(a) *Secretariat*. A secretariat to assist advisory committees will be established by the Administrator.

(b) *Submission of information to advisory committee*. The Administrator shall submit to the secretariat for distribution to the chairman of the committee the petition filed by the applicant or registrant and such other relevant information, including any petition filed pursuant to § 164.4(b), as he may have available with respect to registration of the product. At that time, the Administrator shall charge the committee to report to him concerning the scientific questions posed by the registration or application involved. When the secretariat submits a matter to an advisory committee he shall furnish the applicant or registrant and any person who has filed a petition pursuant to § 164.4(b) with copies of the material that is furnished to the committee. A copy of such material shall be available for public inspection in the office of the hearing clerk. The chairman shall acknowledge receipt of the information and the readiness of the committee to act. A copy of this acknowledgement shall be forwarded by the secretariat to the applicant or registrant and to any person who has filed a petition pursuant to § 164.4(b).

(c) *Advisory committee meetings*. If the chairman of the committee believes that a meeting of the committee is necessary before making a recommendation, he shall so advise the secretariat. The secretariat shall advise the applicant and registrant and other persons who have requested that they receive such advice of the date and place of any such meetings. Such meeting shall be held in Washington, D.C., or such other appropriate place as the chairman may designate. The secretariat shall arrange a suitable meeting place for the committee. If a meeting is held, the secretariat shall keep the minutes and provide clerical and such other assistance as may be required.

(d) *Presentation of evidence*—(1) *Consultation with advisory committee*. The applicant or registrant, any person who has submitted a petition pursuant to § 164.4(b), and representatives of the Environmental Protection Agency shall have the right to consult with the advisory committee. Such persons shall notify the chairman of a desire to consult with the committee and, if practicable, make appointments through him. In addition, the committee may request or permit any other person to appear before it or submit written data relevant to the matter under consideration. The report of the advisory committee shall show the names of all persons, other than committee members, discussing the petition or referral with the committee or a committee member.

(2) *Submission of written data to the committee and to the Administrator*. As soon as practicable after the referral of a matter to an advisory committee, the committee shall establish a time period of not less than 30 days within which the committee will entertain the submission of any additional written data pertaining to the scientific effects of the registered product in accordance with the procedure established below. The secretariat shall publish notice of that time period, or any extension thereof similarly established and published, in the Federal Register. Any person may submit to the secretariat in duplicate data in written form bearing on the scientific questions before the committee concerning the registration of the article. The secretariat shall promptly inform the members of the committee of the receipt of such data. One copy of such data shall be available for public inspection in the office of the hearing clerk.

(e) *Confidentiality of data*. All data in support of a petition submitted by the registrant or applicant to an advisory committee shall be considered confidential by such committee, unless the registrant or applicant waives its right to confidentiality. This paragraph shall not be construed as prohibiting the use of such data by the committee in connection with its consultation with the applicant or registrant or representatives of the Agency, and in connection with its report and recommendations to the Administrator. After the submission of the committee's report, such data shall be available for public inspection in the office of the hearing clerk, except for matters contained therein the disclosure of which is prohibited by statute.

(f) *Report of the advisory committee*. As soon as practicable, but not later than 60 days after the date on which the information referred to in paragraph (b) of this section has been received by the committee (unless the time has been extended as provided in paragraph (g) of this section), the chairman shall certify to the Administrator the report of the committee including any minority report. The report shall respond to the charge given to the committee and be accompanied by copies of all data or material submitted to or considered by the committee (including information received under paragraph (d)(2) of this section) except that in the case of scientific literature readily available in scientific libraries, proper reference may be made to it instead of furnishing actual copies. Notice of the certification of the report shall be given in the Federal Register. The report of the advisory committee shall be furnished upon request by any person. The Agency may charge for the cost of reproducing the report.

(g) *Extension of time for advisory committee report*. If at any time within the 60-day period referred to in paragraph (f) of this section the chairman believes that the advisory committee needs more time, he shall so inform the Administrator in writing, in which case the Administrator may extend said time not to exced 60 additional days. Notification of any such extension of time will be sent to the applicant or registrant and other interested persons by the secretariat.

(h) *Assessment of costs of submission to an advisory committee*. (1) In the event that an applicant or a registrant requests that a matter concerning the registration of an economic poison be referred to an advisory committee, the costs of such referral shall be borne by the applicant or the registrant unless the committee shall recommend in favor of the applicant or the registrant.

(2) Costs of the advisory committee shall include compensation for experts as provided in § 164.10(b) and the expense of the secretariat, including the costs of duplicating petitions and other related material referred to the committee.

(3) An advance deposit shall be made in the amount of $5,000 to cover the costs. Further advance deposits of $2,500 each shall be made upon request of the Administrator when necessary to cover additional costs. Any deposits in excess of actual expenses will be refunded to the depositor.

(4) All deposits and fees required by the regulations in this part shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency, Washington, D.C., whereupon after making appropriate record thereof they will be transmitted to the Treasurer of the United States, for deposit to the proper account.

(5) The Administrator may waive or refund such fees in whole or in part when in his judgment such action will be warranted and equitable under the particular circumstances and promote the public interest.

(i) *Submission of comments*. Any person may within 45 days of publication of the notice of certification of the report to the Administrator from the advisory committee submit comments pertaining to the issues before the Administrator. Such comments shall not be in the nature of evidence or data that could have been submitted to the advisory committee pursuant to paragraph (d) of this section.

(j) *Order of the Administrator*. Within 90 days of the date of his receipt of the advisory committee report and recommendations, the Administrator shall make the determination and issue the order required by the Act and file that decision with the hearing clerk. Any applicant or registrant aggrieved by such an order may, within 60 days from the date of such order, file objections thereto and request a public hearing thereon. Any person aggrieved by an order granting or continuing registration may, if the Administrator's determination includes

the statement that a substantial question of safety exists concerning the registration, request that the Administrator reconsider his order and continue the cancellation in effect on that basis. The Administrator shall forthwith grant any such request and issue a notice continuing cancellation. Any applicant or registrant aggrieved by such reconsidered order may, within 60 days from that date of that reconsidered order, file objections thereto and request a public hearing thereon. Such a hearing shall proceed on the same basis as one held pursuant to § 164.4(b)(2).

(k) *Chairman to designate committee member to testify.* At the request of the examiner or any party to the hearing, the Chairman or another member of the committee designated by the Chairman will be available to appear and testify at a public hearing, if one occurs, with respect to the report and recommendations of the committee: *Provided, however,* That this shall not preclude any other member of the committee from being requested to appear and testify at such hearing.

Subpart C—Rules of Practice Governing Hearings

§ 164.20 Docketing of request for hearing.

Whenever a document setting forth objections and requesting a public hearing is filed with the hearing clerk, the matter shall be docketed and assigned and "I.F.&R." docket number: *Provided,* That if the matter has previously been assigned an "I.F.&R." number pursuant to § 164.10, it shall be assigned that same number. Notice of the filing of such objection shall be given to the public by appropriate announcement in the FEDERAL REGISTER.

§ 164.21 Contents of document setting forth objections.

(a) *Concise statement required.* Any document containing objections to an order of the Administrator refusing to register an economic poison or determining to cancel or suspend the registration of such a product, shall clearly and concisely set forth such objections and the basis for each objection, including relevant allegations of fact concerning the economic poison under consideration.

(b) *Amendments to objections.* Objections may be amended at any time prior to the public hearing by leave of the examiner or by written consent of all adverse parties. The examiner shall freely grant such leave when justice so requires. If the examiner determines that additional time is necessary in order to permit a party to prepare for matters raised by amendments to objections, the commencement of the hearing shall be delayed for an appropriate period.

§ 164.22 Filing copies of notification respecting registration.

After a copy of the document setting forth the objections and requesting a public hearing is served upon the Administrator, the Administrator shall file with the hearing clerk a copy of the notice of cancellation or suspension of the registration of such economic poison.

§ 164.23 Answer to objections not required.

The filing of an answer to objections is not required. An answer may be filed within 30 days after service of the objections.

§ 164.24 Motions and requests.

(a) *General.* All motions and requests except those made orally during the course of a public hearing must be in writing and shall be filed with the hearing clerk. The examiner is authorized to rule upon all motions and requests filed or made prior to the filing of his report with the hearing clerk as hereinafter provided in § 164.32. The Administrator will rule upon all motions and requests filed after that time.

(b) *Motions.* All motions and requests concerning the sufficiency of the objections must be made within 30 days after service of the objections. All such motions and requests shall state with particularity the ground upon which the objection is alleged to be insufficient and shall state the nature of the relief requested.

(c) *Answers to motions and requests.* Within 10 days after service of any written motion or request filed pursuant to this subpart, or within any longer period fixed by the Administrator or the examiner, an opposing party shall file an answer to the motion or request or shall be deemed to have no objection to the granting of the relief asked for in the motion or request. Unless specifically permitted by the Administrator or the examiner on motion made by a party, the movant shall have no right to respond to the answer to his motion.

(d) *Certification of interlocutory issues to the Administrator.* Except as provided herein, appeals shall lie to the Administrator only from a final judgment by the hearing examiner. Appeals from other rulings will, except as provided in this section, lie only if the examiner certifies such rulings for appeal. The examiner shall certify a ruling for appeal to the Administrator when: (1) The ruling involves an important question of law or policy about which there is substantial ground for difference of opinion; and (2) either an immediate appeal from the ruling will materially advance the ultimate termination of the proceeding or review after the final judgment is issued will be inadequate or ineffective. The examiner shall certify rulings for appeal only upon the request of a party. If the Administrator determines that certification was improvidently granted, or takes no action within 30 days of the certification, the appeal shall be deemed dismissed. When a ruling is not certified by the examiner, it shall be reviewed by the Administrator only upon appeal from the final judgment except when the Administrator determines, upon request of a party and in exceptional circumstances, that delaying review would be deleterious to vital public or private interests. Except under extraordinary circumstances, proceedings will not be stayed pending an interlocutory appeal; a stay of more than 30 days must be approved by the Administrator. Ordinarily, the interlocutory appeal will be decided on the basis of the submission made to the examiner, but the Administrator may allow further briefs and oral argument.

§ 164.25 Intervention.

(a) *Pleading.* Any person may file a petition for leave to intervene in a hearing conducted under this Subpart. A petition must set forth the grounds for the proposed intervention, the position and interest of the petitioner in the proceeding, and whether petitioner's position is in support of or opposition to the order of the Administrator to which objection has been taken.

(b) *When filed.* A petition for leave to intervene in a hearing may be filed any time prior to the commencement of the hearing. Any petition filed after that time shall contain, in addition to the information set forth in paragraph (a) of this section, a statement of good cause for the failure to file the petition prior to the commencement of the hearing. A motion to intervene for the purpose of appeal may be filed and submitted to the Administrator.

(c) *Reply.* Any opposition to a petition for leave to intervene must be filed within 10 days after service of the petition.

(d) *Disposition.* Leave to intervene will be freely granted but only insofar as it raises matters which are reasonably pertinent to and do not unreasonably broaden the issues already presented. If leave is granted, the petitioner thereby shall become a party to the proceeding.

§ 164.26 Depositions.

(a) *Application for taking deposition.* Upon the application of a party to the proceeding, the examiner may, at any time after the filing of the moving paper, authorize, under the facsimile signature of the Administrator, the taking of testimony by deposition. The application shall be in writing and shall be filed with the hearing clerk and shall set forth: (1) The name and address of the proposed deponent; (2) the name and address of the person (referred to in this section as the "officer"), qualified under the rules in this part to take depositions, before whom the proposed examination is to be made; (3) the proposed time and place of the examination, which should be at least 15 days after the date of the mailing of the application; and (4) the reasons why deposition should be taken.

(b) *Examiner's order for taking deposition.* If the examiner is satisfied that good cause for taking the deposition is present, he may order its taking. The order shall be filed with the hearing clerk and shall be served upon the parties and shall state: (1) The time and place of the examination (which shall not be less than 10 days after the filing of the order); (2) the name of the officer before whom the examination is to be made; and (3) the name of the

deponent. The officer and the time and place need not be the same as those suggested in the application.

(c) *Qualifications of officer*. The deposition shall be made before the examiner, or before an officer authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before an officer authorized by the Administrator to administer oaths. No deposition shall be made before an officer who is a relative (within the third degree of blood or marriage), employee, attorney, or counsel of any party or who is a relative (within the third degree by blood or marriage) or employee of any attorney or counsel for any party or who is financially interested in the result of the proceeding.

(d) *Procedure on examination*. (1) The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. The testimony of the deponent shall be recorded by the officer or by some person under his direction and in his presence. In lieu of oral cross-examination, parties may transmit written cross-interrogatories to the officer prior to the examination and the officer shall propound such cross-interrogatories to the deponent.

(2) The applicant must arrange for the examination of the witness either by oral examination or by written interrogatories. If it is found by the examiner, upon protest of a party to the proceeding, that such party has his residence and his place of business more than 100 miles from the place of the examination and that it would constitute an undue hardship upon such party to be represented at the examination, the applicant will be required to conduct the examination by means of interrogatories. When the examination is conducted by means of interrogatories, copies of the interrogatories shall be served upon the other parties to the proceeding at least 5 days prior to the date set for the examination, and the other parties shall be afforded an opportunity to file with the officer cross-interrogatories at any time prior to the time of the examination.

(e) *Signature by witness*. The transscript of the deposition shall be read to or by the deponent, unless such reading is waived by the parties and the deponent. Any changes which the deponent wishes to make shall be entered upon the deposition by the officer, with a statement of the reasons given by the deponent for such changes. The deposition shall be signed by the deponent, unless the parties by stipulation waive such signing, or unless the deponent is ill or cannot be found or refuses to sign. If the deponent does not sign the officer shall sign and shall state on the record the reason why the deponent did not sign. In such case the deposition shall be as valid as though signed by the deponent, unless the examiner finds that the reason given by the deponent for his refusal to sign requires rejection of the deposition in whole or in part.

(f) *Certification by officer*. The officer shall certify on the deposition that the deponent was duly sworn by him and that the deposition is a true record of the deponent's testimony. He shall then securely seal the deposition, together with two copies thereof, in an envelope and mail the same by registered mail to the hearing clerk.

(g) *Use of depositions*. A deposition ordered and taken in accord with the provisions of this section, or in accord with the provisions of the Rules of Civil Procedure of the Courts of the United States, may be used in a proceeding under the act if the examiner finds that the evidence is relevant and material and (1) that the witness is dead; or (2) that the witness is at a greater distance than 100 miles from the place of hearing, unless it appears that the absence of the witness was procured by the party offering the deposition; or (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (4), in any event, upon application and notice that such exceptional circumstances exist as to make it desirable, in the interests of justice and with due regard to the importance of presenting the testimony orally before the examiner, to allow the deposition to be used. If any part of a deposition is put in evidence by a party, any other party may require the production of the remainder, or any portion, of the deposition.

§ 164.27 Fees of witnesses.

Witnesses who appear before the examiner or the Administrator shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken, and the persons taking the same, shall be entitled to the same fees as are paid for like services in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears or the deposition is taken.

§ 164.28 Consolidation.

Whenever it appears to the examiner, by motion or otherwise, that it will expedite or simplify consideration of the issues in two or more docketed proceedings involving the same economic poison under this subpart, he may consolidate such proceedings. Consolidation shall not preclude the right of any party to raise issues that could otherwise be raised if such consolidation had not occurred. At the conclusion of proceedings consolidated under this section, the examiner shall issue one report under § 164.36.

§ 164.29 Prehearing conference.

(a) Except as otherwise provided herein, the examiner shall, prior to the commencement of the hearing and for the purpose of expediting the hearing, file with the hearing clerk an order for a prehearing conference. Such order shall request the parties or their counsel to consider (1) the simplification of issues; (2) the necessity or desirability of amendments to the pleadings; (3) the possibility of obtaining stipulations of fact and documents which will avoid unnecessary proof; (4) the limitation of the number of experts and other witnesses; and (5) any other matter that may expedite the hearing or aid in the disposition of the matter. No transcript of such prehearing conference shall be made unless a request therefor by one of the parties is granted by the examiner in view of the nature of the matters to be considered at the conference and the purposes of the conference. In the absence of a transcript, the examiner shall prepare and file for the record a written summary of the action taken at such conference, which shall incorporate any written stipulations or agreements made by the parties at or as a result of the conference.

(b) If circumstances render a prehearing impracticable, the examiner may request the parties to correspond with him for the purpose of accomplishing any of the objectives set forth in this section. The examiner shall forward copies of letters and documents sent to him in this connection to the parties as the circumstances require. Correspondence in such negotiations shall not be a part of the record, but the examiner shall submit a written summary for the record if any action is taken.

§ 164.30 Qualifications and duties of examiner.

(a) *Qualifications*. Examiners shall have the qualifications required by statute and shall not have any direct connection with the office of pesticides. No person shall act to decide any matter in connection with a hearing where such person has a financial interest in any of the parties or a relationship with a party that would make it otherwise inappropriate for him to act.

(b) *Disqualification of the examiner*. (1) Any party may, by motion made to the examiner, request that the examiner disqualify himself and withdraw from the proceeding. The examiner shall then rule upon the motion and, upon request of the movant, shall certify an adverse ruling for appeal.

(2) An examiner may withdraw from any proceeding in which he deems himself disqualified for any reason.

(c) *Conduct*. The examiner shall conduct the proceeding in a fair and impartial manner, and shall not consult with any party or person on any matter in issue unless upon notice and opportunity for all parties to participate.

(d) *Power*. Subject to review, as provided elsewhere in this part, the examiner shall have power to:

(1) Rule upon motions and requests;

(2) Set the time and place of hearing, adjourn the hearing from time to time, and change the time and place of hearing;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine witnesses;

(5) Rule on objections and admit evidence relevant and material to the issues and exclude other evidence;

(6) Hear oral argument on the facts or on the law; and

(7) Do all acts and take all measures necessary for the maintenance of order at the hearing and for the efficient, fair and impartial conduct of the proceeding.

(e) *Who may act in the absence of the examiner.* In case of the absence of the examiner or his inability to act, the powers and duties to be performed by him under this part in connection with a hearing assigned to him may, without abatement of the proceeding unless otherwise directed by the Administrator, be assigned to another examiner.

§ 164.31 Procedure for a public hearing.

(a) *Time and place of hearing.* After a proceeding has been instituted in accordance with the procedures set forth in this part the examiner, after giving careful consideration to the convenience of all the parties and the public interest, shall set a time and place for hearing and shall file with the hearing clerk a notice stating the time and place of hearing which shall be served upon the parties. If any change in the time or place of hearing is made, the examiner shall file with the hearing clerk a notice of such change, which notice shall be served upon the parties unless the change is made during the course of the public hearing and is made a part of the transcript.

(b) *Appearances*—(1) *Representatives.* Parties may appear in person or by counsel or other representative. Persons who appear as counsel or in a representative capacity must conform to the standards of ethical conduct required of practitioners before the courts of the United States. Whenever the Administrator finds, after notice and opportunity for hearing, that a person who is acting or has acted as counsel or representative for another person in any proceeding before the Administrator is unfit to act as such counsel or representative, he will order that such person be precluded from acting as counsel or representative in any proceeding under the Act.

(2) *Failure to appear.* If any party to the proceeding after being duly notified, fails to appear at the hearing, he shall be deemed to have waived the right to participate in the public hearing in the proceeding. Except as provided in § 164.4(b)(2), in the event that a party appears at the hearing and no party appears for the opposing side, the examiner shall recommend that a decision be entered in favor of the party who is present and the Administrator shall enter his decision in accordance with such recommendation.

(c) *Broadcasting of proceedings.* The hearing examiner shall grant any request for permission to record hearings for subsequent radio, television, or other form of broadcasting. The hearing examiner may impose such limitations upon the manner in which the recording is obtained, including the nature of the equipment utilized, as he deems necessary to minimize the physical disruption of the proceedings. The hearing examiner shall, upon the request of any witness, prohibit the recording of the testimony of that witness and may, if he believes that the recording process is generally having an adverse impact upon the conduct of proceedings, order that the recording be discontinued entirely.

§ 164.32 Order of proceeding and burden of proof.

At the hearing, the registrant or applicant shall have the burden to establish the elements necessary to entitle the product to registration. If, after pretrial proceedings, the examiner determines in the interest of justice, or clarifying the issues, or expediting the hearing, that another party other than the registrant should proceed first at the hearing, he may so order.

§ 164.33 Evidence.

(a) *General.* The examiner shall admit all relevant and material evidence, except evidence that is unduly repetitious. Relevant and material evidence may be received at any hearing even though inadmissible under the rules or evidence applicable to judicial proceedings. The weight to be given evidence shall be determined by its reliability and probative value. Parties shall have the right to cross-examine a witness who appears at the hearing. In multiparty proceedings the examiner may limit cross-examination to the Agency and to one other party on each side if it appears that the cross-examination by one party will adequately protect parties similarly situated. Other parties may, however, engage in cross-examination if they can demonstrate that their cross-examination will go into matters not already covered by previous cross-examination.

(b) *Report of an advisory committee.* If a matter concerning the registration of an economic poison had been submitted to an advisory committee, the report of the advisory committee and the material accompanying it shall be made a part of the record of the hearing in accordance with the provisions of 7 U.S.C. 135b(c).

(c) *Testimony of member of advisory committee.* If a matter concerning the registration of an economic poison had been submitted to an advisory committee, the testimony of the chairman of the advisory committee, or other member designated by him pursuant to § 164.12 (k), with respect to the report and recommendations of such committee shall be received on request of any party or the examiner: *Provided, however,* That this shall not preclude any other member of the advisory committee from appearing and testifying at the hearing pursuant to such a request.

(d) *Objections.* If a party objects to the admission or rejection of any evidence or the limitation of the scope of any examination or cross-examination, he shall state briefly the grounds for such objection. The transcript shall include any argument or debate thereon, unless the examiner, with the consent of all parties, orders that such argument not be transcribed. The ruling of the examiner on any objection shall be a part of the transcript. An automatic exception will follow if the objection is overruled by the examiner.

(e) *Records of the agency.* A true copy of every written entry in the records of the Environmental Protection Agency, made by an officer or employee thereof in the course of his official duty and relevant and material to the issues involved in the hearing, shall be admissible as prima facie evidence of the facts stated therein, without the production of such officer or employee.

(f) *Exhibits.* Except where the examiner finds that the furnishing of copies is impracticable, a copy of each exhibit filed with the examiner shall be furnished to each other party. A true copy of an exhibit may, in the discretion of the examiner, be substituted for the original.

(g) *Official notice.* Official notice may be taken of the official publications of the Environmental Protection Agency and other Federal agencies, of such matters as are judicially noticed in the courts of the United States, and of any other matter of technical or scientific fact of established character: *Provided, however,* That the parties shall be given adequate opportunity to show that such facts are erroneously noticed.

(h) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. If the evidence consists of an exhibit, it shall be inserted in the record in total. In the event the Administrator decides that the examiner's ruling in excluding the evidence was erroneous and prejudicial, the hearing may be reopened to permit the taking of such evidence, or, where appropriate, the Administrator may evaluate the evidence and proceed to a final decision.

(i) *Verified statements.* With the approval of the examiner, a witness may read into the record, as his testimony, statements of fact or opinion prepared by him, or written answers to interrogatories of counsel, or may submit as an exhibit his prepared statement, provided that such statements or answers must not include argument. Before any such statement or answer is read or admitted in evidence the witness shall deliver to the examiner, the reporter, and opposing counsel a copy of such. The admissibility of the evidence contained in such statement shall be subject to the same rules as if such testimony were produced in the usual manner, including the right of cross-examination of the witness. Such approval may be denied when it appears to the examiner that the memory or the demeanor of the witness is of importance.

§ 164.34 Transcripts.

(a) *Filing and certification.* Oral hearings shall be stenographically reported and transcribed. As soon as practicable after the taking of the last evidence, the examiner shall certify (1) that the original transcript is a true transcript of the testimony offered or received at the hearing, except in such particulars as he shall specify and (2) that the exhibits accompanying the transcript are all the exhibits introduced at the hearing, with such exceptions as he shall specify. A copy of such certificate shall

be attached to each of the copies of the transcript.

(b) *Ordering copies*. Parties to the proceeding or other persons who desire a copy of the transcript of the hearing may place orders with the reporter who will furnish and deliver such copies directly to the purchaser upon payment therefor at the rate per page provided by the contract between the reporter and purchaser.

§ 164.35 Proposed findings of fact, conclusions and order.

Within 30 days after the last evidence is taken, each party may file with the hearing clerk proposed findings of fact, conclusions and orders, based solely on the record, and a brief in support thereof. A copy of each such document filed by a party shall be served upon the other party or parties. The hearing shall be deemed closed at the conclusion of that 30-day period.

§ 164.36 Examiner's report.

The examiner, within 25 days after the close of the hearing, shall prepare on the basis of the record and shall file with the hearing clerk, his recommended decision, a copy of which shall be served upon each of the parties.

§ 164.37 Exceptions, objections, request for oral argument.

(a) Within 20 days after service of the examiner's recommended decision, each party may take exception to any matter set forth in such decision and in such case shall file exceptions in writing with the hearing clerk, with an attachment reproducing the relevant portions of the record including a complete copy of the examiner's finding and conclusions, and suggesting corrected findings of fact, conclusions or order. Within the same period of time, each party may file with the hearing clerk a brief statement in writing upon which the party wishes to rely concerning each of the objections taken to the action of the examiner at the hearing, as set out in § 164.33(d). There shall be an attachment reproducing if any, the relevant portions of the record. A party may file a brief in support of any exceptions or objections which he may file.

(b) Where more than one party is filing objections or exceptions the parties may agree to submit a joint appendix reproducing the relevant portions of the record and other information required as an attachment under paragraph (a) of this section.

(c) Within 7 days of the service of exceptions, objections or a brief under paragraph (a) of this section, any other party may file and serve a brief responding to exceptions and objections or arguments raised by any other party by the papers submitted pursuant to paragraph (a) of this section. Such brief shall include an appendix reproducing any additional portions of the record on which respondent chooses to rely. Such brief shall not, however, raise additional exceptions or objections.

(d) A party, if he files exceptions or a statement of objections, or a brief, shall state in writing whether he desires to make an oral argument thereon before the Administrator; otherwise, he shall be deemed to have waived such oral argument.

(e) Copies of all material filed under this section shall be filed with the clerk.

§ 164.38 Argument before the Administrator.

Except where the Administrator determines that argument on additional issues would be helpful, argument whether oral or on brief, shall be limited to the issues raised by the exceptions and statement of objections to action of the examiner. If the Administrator determines that additional issues should be argued, counsel for the parties shall be given reasonable notice of such determination so as to permit preparation of adequate argument on all the issues to be argued.

§ 164.39 Final order.

As soon as practicable, but no later than after the expiration of the period for filing exceptions, objections and responding briefs, three copies of objections, exceptions, briefs, attachments, and appendices, and the record shall be submitted to the Administrator by the clerk. As soon as practicable thereafter, but not more than 90 days after the close of the hearing, unless otherwise stipulated by the parties, the Administrator shall issue his final decision and order, including his rulings on any exceptions or objections filed by the parties. Such final order may accept or reject the recommended findings of the examiner even if acceptable to the parties.

§ 164.40 Ex parte discussion of proceeding.

At no stage of the hearing between its institution and the issuance of the final order shall the Administrator discuss ex parte the merits of the proceeding with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate, or in an investigative or expert capacity, or with any representative of such person: *Provided, however*, That the Administrator may discuss the merits of the case with any such person if all parties to the proceeding, or their representatives, have been given reasonable notice and opportunity to be present. Any memorandum or other communication addressed to the Administrator, during the pendency of the proceeding, and relating to the merits thereof, by or on behalf of any party, shall be regarded as argument made in the proceeding. The Administrator shall cause any such communication to be filed with the hearing clerk and served upon all other parties to the proceeding, who will be given the opportunity to file a reply thereto.

§ 164.41 Application for reopening hearings; for rehearing; or reargument of proceeding; or for reconsideration of order.

(a) *Filing; service*. An application for reopening the hearing to take further evidence, or for rehearing or reargument of the proceeding or for reconsideration of the order, must be made by petition to the Administrator filed with the hearing clerk. Every such petition must state specifically the grounds relied upon.

(b) *Petitions to reopen hearings*. A petition to reopen a hearing to take further evidence may be filed at any time prior to the issuance of the final order. Every such petition shall state briefly the nature and purpose of the evidence to be adduced, shall show that such evidence is not merely cumulative, and shall set forth a good reason why such evidence was not adduced at a hearing.

(c) *Petitions to rehear or reargue proceedings, or to reconsider orders*. A petition to rehear or reargue or reopen the proceeding or to reconsider the order shall be filed within 10 days after the date of service of the order. Every such petition must state specifically the matters claimed to have been erroneously decided and alleged errors must be briefly stated.

§ 164.42 Procedure for disposition of petitions.

Within 7 days following the service of any petition provided for in § 164.41, any other party to the proceeding may file with the hearing clerk an answer thereto. As soon as practicable thereafter, the Administrator shall announce his decision whether to grant or to deny the petition. Unless the Administrator shall determine otherwise, operation of the order shall not be stayed pending the decision to grant or to deny the petition. In the event that any such petition is granted by the Administrator, the applicable rules of practice, as set out elsewhere herein, shall be followed.

§ 164.43 Filing and service.

(a) All documents or papers required or authorized to be filed, except as provided otherwise in this part, shall be filed with the hearing clerk and shall be accompanied by sufficient copies for all other parties. If filing is accomplished by mail addressed to the clerk, filing shall be deemed timely if the papers are mailed on the due date. The hearing clerk shall promptly cause the copies to be served upon all other parties.

(b) Each document filed shall contain the I.F. & R. docket number and, if the document affects less than all of the registrations included under that docket number, the registration number or file symbol of each product which is the subject of the document.

(c) In addition to copies served on other parties, each party shall file three (3) copies of any memoranda, briefs, reply briefs or memoranda or appendices filed in connection with an appeal to the Administrator.

§ 164.44 Computation and extensions of time.

(a) Saturdays, Sundays, and holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided, however*, That, when such time expires on a Saturday, Sunday, or legal holiday, such period shall be extended to include the next following business day.

(b) Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him, the period shall be computed from the day on which the paper is mailed or otherwise served by the hearing clerk.

(c) The time for the filing of any document or paper required or authorized to be filed under the rules in this part may be extended by the examiner (before the examiner's report is filed), or by the Administrator (after the examiner's report is filed) if request for such extension of time is made prior to the final date allowed for such filing and if in the judgment of the Administrator, after notice to and consideration of the views of the other party when practicable there is good reason for the extension. In this connection, consideration shall also be given to the fact that, under the provisions of the Act (7 U.S.C. 135b), the Administrator must issue his order not later than 90 days after the completion of the hearing, unless all parties agree by stiplation to extend this period of time pursuant to § 164.39.

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FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 19401; FCC 72-45]

FM BROADCAST STATIONS IN CERTAIN CITIES IN IOWA, WEST VIRGINIA, AND FLORIDA

Proposed Table of Assignments

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM broadcast stations. (Hampton, Pella, Cedar Rapids, and Charles City, Iowa; Keyser, W. Va.; Crystal River and Gainesville, Fla.), Docket No. 19401, RM-1750, RM-1756, RM-1757, RM-1777, RM-1790, RM-1829.

1. Notice of proposed rule making is hereby given concerning the amendment of § 73.202(b) of the Commission's rules, the FM Table of Assignments, as listed and discussed below. Briefly, the petitions involve request for:

(a) First assignments at Hampton and Pella, Iowa; and Crystal River, Fla. The Hampton and Pella proposals conflict with each other, and the Crystal River proposal conflicts with one of the Gainesville, Fla., proposals below.

(b) A change in the assignment at Keyser, W. Va.

(c) A third and a fourth assignment at Gainesville, Fla.

2. The proposals summarized above are advanced herein for comments. In some cases, as discussed below, we have substantial reservations about whether the proposed amendments should be adopted, and the fact that comments are invited does not indicate a present Commission view, even tentatively, that they should be.

3. Hampton, Pella, Cedar Rapids, and Charles City, Iowa (RM-1750 and RM-1829). Mr. Obed S. Borgen (RM-1750) petitions for assignment of Channel 276A at Hampton, Iowa. He suggests that such an assignment could be made if Channel 275 assigned to Cedar Rapids, Iowa, were to be changed to 276A.[1] As an alternative solution, he suggests that Channel 275 could be retained at Cedar Rapids if its use were to be limited to a site 8 to 10 miles south or east of the community. However, this proposal conflicts with a request for assignment of Channel 277 at Pella, Iowa, and these will be considered jointly.

4. Hampton, with a population of 4,376, is the seat of Franklin County, Iowa (population 13,255).[2] There are no AM, FM, or TV stations assigned to Hampton or to Franklin County. Mr. Borgen asserts that Channel 276A is the last reasonable opportunity for a local broadcast service to Hampton, Iowa. However, Mr. Willie Howard opposes the proposed change in the assignment at Cedar Rapids and the restriction that would be placed in the selection of a transmitter site. He states that he plans to apply for the channel at Cedar Rapids and locate the transmitter site northwest of the city in an effort to serve the Black populations of Cedar Rapids, Waterloo, and the intervening cities in the east-central part of Iowa.

5. Mr. Dwaine F. Meyer (RM-1829) seeks assignment of Class C Channel 277 to Pella, Iowa, which may be assigned there without changing any of the presently assigned channels Pella (population 6,688) is located in Marion County (population 26,352). Although there is one FM assignment (Class A) and a daytime-only AM station in Marion County at Knoxville, there are no AM or FM stations or assignments at Pella, some 12 miles from Knoxville. Mr. Meyer asserts that Pella is one of the fastest growing nonsuburban cities in Iowa, with a number of industries and schools, and a college, and that a Class C channel is needed to serve large areas under development around Red Rock Dam, where there are a large number of sports activities which are of interest to the wide area, and to serve a large number of Dutch speaking people living within 30 to 40 miles of Pella.

6. The petitioner's preclusion study indicates that the assignment of Channel 277 at Pella would preclude the use of Channel 276A and 280A in limited areas. However, Mr. Meyer shows that there are other channels available for assignment to the communities located within these areas. In addition, the proposed coverage showing indicates that there are fairly large areas where a first and a second FM service could be provided by a Class C station at Pella. However, it failed to specify the size and the population that would be involved. A cursory examination reveals that if the study had been made using the presently authorized facilities of stations which exceed the level generally assumed in such calculations of 75 kw. and 500 feet for Class C stations (e.g., Station WHO-FM, 87 kw. and 1,700 feet), the unserved and the underserved areas may not be as large as shown.[3]

7. As stated above, the proposal to assign Channel 277 at Pella conflicts with the proposal to assign Channel 276A to Hampton and to change the assignment at Cedar Rapids from Channel 275 to Channel 276A. Mr. Meyer suggests that if Channel 285A at Charles City, Iowa, were to be deleted and replaced with Channel 240A, which could be assigned there without altering other assignments, then Channel 285A could be assigned to Hampton, leaving Channel 275 at Cedar Rapids unchanged, and Channel 277 could be assigned to Pella. However, in view of the above question as to whether a Class C station at Pella would provide a first and second service to wide areas, we are not convinced, at this time, that Channel 277 should be assigned there. It has been shown that Channel 292A could be assigned to Pella without affecting any of the other assignments. For additional reasons which are discussed below, we will tentatively propose to assign either Channel 277 or Channel 292A to Pella, Iowa. The petitioner must make a convincing showing of a need for a Class C channel and supply the missing information. We would, under normal circumstances, assign a Class A channel to a community of the size of Pella.

8. As to Hampton, Iowa, Channel 276A could be assigned there if Channel 292A were to be assigned at Pella. However, it would require either changing the assignment of Channel 275 at Cedar Rapids to Channel 276A or retaining Channel 275 with a limitation in the selection of a transmitter site. Since there are three Class C stations in operation at Cedar Rapids, we do not believe it would be desirable to intermix them with a Class A station. Further, placing restriction on the use of the presently assigned channel would create hardship on the applicant, or applicants, seeking the use of Channel 275. The only possible solution, if the assignment of a channel to Hampton is imperative, would be to implement Mr. Meyer's suggestion to assign Channel 285A at Hampton and replace Channel 285A with Channel 240A at Charles City. This would also allow for the possible use of Channel 277 at Pella, Iowa.

9. We are of the opinion that, since Hampton and Franklin County, in which it is located, do not have a local aural broadcast facility, it would be in the public interest to propose the assignment of Channel 285A to Hampton. However, it would require Radio Incorporated, the licensee of Station KCHA-FM at Charles City, Iowa, to change its channel assignment from Channel 285A to Channel 240A. The beneficiaries of the changeover would be the permittees for the Hampton Channel 285A and for Pella Channel 277, if this channel were to be

[1] There are two applications pending for Channel 275 at Cedar Rapids, Iowa.

[2] All population figures are from the 1970 U.S. Census unless indicated.

[3] Consideration also should be given to the recent change in the assignment at Centerville, Iowa, from Channel 237A to Channel 254, Docket No. 19297, FCC 71-1158, adopted Nov. 10, 1971.

assigned there instead of Channel 292A. Thus, the proponents herein should state, if granted construction permits, whether they would be willing to reimburse Station KCHA-FM their pro rata share of the reasonable expense that would be incurred in the changeover of the assignments. If Channel 292A were assigned to Pella, the permittee at Hampton would be expected to reimburse the entire share of the reasonable cost of changeover.

10. Keyser, W. Va. (RM-1756). Four Star Broadcasters, Inc. (Four Star), is seeking an assignment of Class B Channel 231 to Keyser, W. Va. This would be its second assignment as Channel 240A is presently assigned there. It appears that Four Star made application for Channel 240A but encountered difficulties in finding a suitable site which would comport with the requirements of § 73.207 of the rules. It asserts that the use of Channel 231 is limited to a very small area around Keyser. However the assignment there would preclude the use of Channels 228A and 232A in limited areas. Although there are a number of communities within the precluded areas, the communities either have channel assignments or there are other channels available for assignment. Four Star shows that a Class B station would provide a first service to 2,090 persons in an area of 175 square miles and a second service to 4,540 persons in an area of 230 square miles. A Class A station would not provide such services.

11. Keyser with a population of 6,586 is the seat of Mineral County, W. Va. (population 22,219). There is one local day-time only AM station in Keyser. In support of its request, Four Star recites the history and growth of Keyser, including schools and colleges, industry, news media, etc. Four Star asserts that its experience with a Class A facility in rugged mountainous terrain such as that surrounding Keyser leaves much to be desired and that a Class B station, with additional power, would result in better coverage of the rural areas.

12. It appears that the public interest would be served by instituting a rule making proceeding to propose assignment of a Class B channel at Keyser, W. Va. A Class B channel here would provide for an FM station serving the rural areas located in the mountainous region which are without an FM service or with only one service. However, there is a question as to the necessity of assigning two channels to a community of the size of Keyser. Since the use of Channel 240A is restricted by assignment at Williamsport, Md., it would appear that it should be removed from Keyser and made available for assignment to some other community where the employment of the channel is less restricted. It would also provide flexibility in the use of Channel 240A at Williamsport. The current restriction at Williamsport requires an applicant there to select a site at least 2 miles east of the community.

13. Crystal River and Gainesville, Fla. (RM-1757, RM-1777, and RM-1790): George N. Manthos seeks assignment of Channel 253 at Crystal River, Fla. (RM-1757). The channel can be assigned there without requiring any changes in the present Table of Assignments. However, this proposal conflicts with that of Capitol City Broadcasting, Inc. (Capitol City) (RM-1777), requesting the assignment of the same channel at Gainesville, Fla.,[4] and these will be considered together. In addition, the proposal submitted by James M. Hansford and Frank J. Terrell (RM-1790) for assignment of Channel 265A at Gainesville will also be considered herein. Channel 265A may be assigned there without affecting any present assignments.

14. Crystal River (population 1,676) is located in Citrus County (population 19,196). Although there is a daytime AM station at Inverness, the seat of Citrus County, there are no aural broadcast facilities in Crystal River. Mr. Manthos points to the growth in population and rise in personal income and retail sales as evidence of need for an FM station. He states that Crystal River is an incorporated municipality with its own water and sewage disposal service, shopping centers, bank, other community sponsored conveniences and accommodations, schools and social organizations. Mr. Manthos contends that the current need will be accentuated and increased as the population growth continues, and the FM station will be used to broadcast the availability of public services, agricultural reports, community events, public affairs programing and storm warnings.

15. Gainesville, with a population of 64,510, is the seat of Alachua County (population 104,754). Presently Gainesville has four standard broadcast stations, two of which operate during daytime hours only, and two FM stations, a Class A and a Class C station.[5] In urging assignment of Channel 253, Capitol City contents that Gainesville is the largest city in the county, the focal point of industrial activity in north central Florida and the home of the University of Florida and a number of other schools. The Gainesville petitioners contend that there is a need for a nighttime broadcast service to provide emergency and disaster warnings to the outlying areas and to disseminate public affairs, government, civic, social and entertainment information. Messrs. Hansford and Terrell also contend that there is a need to serve the youthful community of college students with programs more attuned to the group.

16. The preclusion studies for Channel 253 indicate that Channels 252A and 253 would be precluding limited areas in Florida by the proposed assignments at Crystal River and Gainesville, and Channel 254 in a limited area in Georgia by the Gainesville proposal. Channel 265A at Gainesville would preclude the use of Channel 265A only in a limited area in Florida. All of the communities located within the precluded areas either have an FM assignment or are not of sufficient size to warrant an assignment and are located near other communities which have at least one FM assignment. Thus, the preclusionary effects of the proposed assignments on the two channels are not sufficient to foreclose consideration of the proposals herein.

17. The questions we are faced with here are whether Gainesville should have one or two additional FM assignments, a Class A and/or a Class C channel, or should a Class C assignment be made to Crystal River instead (or none at either or both communities). Mr. Manthos shows that, if a Crystal River station were to operate with a facility of 75 kw. and 500 feet, it could provide a first service to 750 square miles, compared to 215 square miles for a Class A station operating with 3 kw. and 300-foot facility. He asserts that a Gainesville Class C station could only provide first service to 35 square miles.[6] No showing was made of the population that would be affected. In our view, Gainesville, with a population of 64,510, warrants assignment of one additional channel. Since it presently has a Class A and a Class C station, the question is which class of station should be assigned there. In contrast a Crystal River Class C station could provide service to a large unserved area. However, to a community the size of Crystal River, we would normally assign a Class A station, and our study shows that there are two Class A channels available for assignment to this area. Due to the complexity of the problem, we need additional information on the areas and populations that are presently unserved and underserved within the 1 mv/m contours of proponents' Class C FM stations, if authorized, compared to a Class A station operating with a maximum facility.[7] Graphic showings of the affected areas should also be included. In the interim, we tentatively propose to assign either Channel 224A or Channel 253 to Crystal River, and either Channel 253 or Channel 269A to Gainesville, Fla.

18. Showings required. Comments are invited upon the various proposals discussed above and listed below. As indicated, in some cases the Commission has reservations or questions concerning the proposals, and proponents of the proposed assignments will be expected to answer them. More generally, the proponents of the various proposals contained herein are expected to file comments, even if they do little more than

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[4] Channel 253 at Gainesville would have to be sited at least 10 miles south of the city.

[5] An opposition to the Gainesville proposals was filed June 18, 1971, by Gator Radio, Inc., a recent assignee of AM Station WGGG (1230 kHz), contending that there is no need for an additional radio broadcast service in Gainesville.

[6] Mr. Manthos filed, Aug. 18, 1971, a petition requesting acceptance of further pleading, contending that the sole purpose of the supplement is to provide the Commission with significant and relevant comparative data, which is merely informational. The petition is granted.

[7] The showing should be made in accordance with the criteria set forth in Roanoke Rapids and Goldsboro, N.C., 9 FCC 2d 672 (1967).

resubmit or refer to their petitions. They are expected, among other things, to state their intention to apply for the channels if assigned, and, if authorized, to promptly build their stations. Failure to make these showings may result in denial of the proposals.

19. Cutoff procedure: As in other recent FM rule making proceedings, the following procedures will govern:

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered, if advanced in reply comments.

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

20. In view of the foregoing, subject to the conditions and reservations set forth hereinabove in certain respects, and pursuant to authority found in sections (4)(i), 303 (g) and (r), of the Communications Act of 1934, as amended, it is proposed to amend § 73.202(b) of the Commission's rules, the FM Table of Assignments, as follows (where indicated by footnote indicator below, the assignment must be used at a short distance outside of the specific city):

City	Channel No.	
	Present	Proposed
Crystal River, Fla.		224A or 253
Gainesville, Fla.	279, 288A	253 [1] or 269A and 279, 288A
Charles City, Iowa	285A	240A
Hampton, Iowa		285A
Pella, Iowa		277 or 292A
Keyser, W. Va.	240A	231

[1] Proposed assignment at Gainesville, Fla., must be used at a point approximately 10 miles south of the community.

21. Further, if the assignment above which involves a change in the channel of an existing station is concluded to be in the public interest and is adopted, the following licensee will be ordered to show cause why the license of its stations should not be modified to specify the new channel instead of its present channel as indicated below (subject to reimbursement of the reasonable costs of changing channel by the party or parties which become the permittee or permittees on the new assignments thus made possible):

Station and location	Licensee	Present channel	Proposed channel
KCHA-FM, Charles City, Iowa.	Radio, Inc.	285A	240A

22. Pursuant to applicable procedures set out in § 1.415 of the Commission's rules, interested persons may file comments on or before February 25, 1972, and reply comments on or before March 7, 1972. All submissions by parties to this proceeding, or persons acting in behalf of such parties, must be made in written comments, reply comments, or other appropriate pleadings.

23. In accordance with the provisions of § 1.419 of the rules, an original and 14 copies of all comments, replies, pleadings, briefs, and other documents shall be furnished the Commission. Responses will be available for public inspection during regular business hours in the Commission's Broadcast and Docket Reference Room at its headquarters in Washington, D.C.

Adopted: January 12, 1972.

Released: January 17, 1972.

FEDERAL COMMUNICATIONS COMMISSION [8]

[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-981 Filed 1-21-72;8:47 am]

[8] Commissioners H. Rex Lee and Reid absent.

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

CROW CREEK AND LOWER BRULE RESERVATIONS

Establishment of Agencies

JANUARY 14, 1972.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2 (32 F.R. 13938).

Notice is hereby given that the Crow Creek Agency and the Lower Brule Agency will be established effective January 1, 1972. The headquarters office for the Crow Creek Agency will be located at Fort Thompson, S. Dak. 57339. The headquarters office for the Lower Brule Agency will be located at Lower Brule, S. Dak. 57548.

LOUIS R. BRUCE,
Commissioner.

[FR Doc.72-969 Filed 1-21-72;8:46 am]

National Park Service

PADRE ISLAND NATIONAL SEASHORE, TEX.

Suitability as Wilderness; Public Hearing

Notice is hereby given in accordance with the provisions of the Act of September 3, 1964 (78 Stat. 890, 892; 16 U.S.C. 1131, 1132), and in accordance with departmental procedures as identified in 43 CFR 19.5 that a public hearing will be held beginning at 1 p.m. on March 23, 1972, at the Fort Brown Motor Hotel, 1900 East Elizabeth Street, Brownsville, TX, and on March 25, 1972, at City Hall, 302 South Shoreline, Corpus Christi, TX, for the purpose of receiving comments and suggestions as to the suitability of lands within Padre Island National Seashore for designation as wilderness. The seashore is located in Kleberg, Kenedy, and Willacy Counties, Texas.

A packet containing a draft master plan, a map depicting the roadless area studied, and providing additional information about the suitability study, may be obtained from the Superintendent, Padre Island National Seashore, Post Office Box 8560, Corpus Christi, TX 78412, or from the Director, Southwest Region, National Park Service, Old Santa Fe Trail, Post Office Box 728, Santa Fe, NM 87501.

A topographic map of the area studied for its suitability or nonsuitabilty as wilderness is available for review in the above offices and in Room 1013 of the Department of the Interior Building at 18th and C Streets NW., Washington, DC.

Interested individuals, representatives of organizations and public officials are invited to express their views in person at the aforementioned public hearing, provided they notify the Hearing Office, in care of the Superintendent, Padre Island National Seashore, Post Office Box 8560, Corpus Christi, TX 78412, by March 21 of their desire to appear. Those not wishing to appear in person may submit written statements on the suitability study to the Hearing Officer, at that address for inclusion in the official record, which will be held open for 30 days following conclusion of the hearing.

Time limitations may make it necessary to limit the length of oral presentations and to restrict to one person the presentation made in behalf of an organization. An oral statement may, however, be supplemented by a more complete written statement which may be submitted to the Hearing Officer at the time of presentation of the oral statement. Written statements presented in person at the hearing will be considered for inclusion in the transcribed hearing record. However, all materials so presented at the hearing shall be subject to determinations that they are appropriate for inclusion in the transcribed hearing record. To the extent that time is available after presentation of oral statements by those who have given the required advance notice, the Hearing Officer will give others present an opportunity to be heard.

After an explanation of the proposal by a representative of the National Park Service, the Hearing Officer, insofar as possible, will adhere to the following order in calling for the presentation of oral statements:

(1) Governor of the State or his representative.

(2) Members of Congress.

(3) Members of the State Legislature.

(4) Official representative of the counties in which the national seashore is located.

(5) Officials of other Federal agencies or public bodies.

(6) Organizations in alphabetical order.

(7) Individuals in alphabetical order.

(8) Others not giving advance notices, to the extent there is remaining time.

Dated: December 30, 1971.

LAURENCE C. HADLEY,
Acting Director,
National Park Service.

[FR Doc.72-613 Filed 1-21-72;8:45 am]

DEPARTMENT OF AGRICULTURE

Forest Service

REGIONAL FORESTERS

Delegation of Authority

Pursuant to (a) the Delegation of Authority and Assignment of Functions by the Secretary of Agriculture dated November 27, 1964 (29 F.R. 16210), (b) the Delegations of Authority effective October 20, 1971, by the Acting Secretary of Agriculture and the Assistant Secretary for Rural Development and Conservation (36 F.R. 21529), and (c) the Delegation of Authority by the Chief, Forest Service, dated June 5, 1968 (33 F.R. 8552) the following delegations are made to each Regional Forester of the Forest Service:

1. The authority to perform all duties and to exercise all the powers and functions required in connection with lands or interests in lands acquired in conformance with Public Law 91-646, January 2, 1971, as specified by the implementing rules and regulations of the Secretary of Agriculture dated April 28, 1971 (36 F.R. 8433) as amended September 22, 1971 (36 F.R. 19007); Title 7, Part 21, except §§ 21.107, 21.108, 21.803 (a) when the amount established by appraisal exceeds Regional approval authority, § 21.809 when notice is less than 90 days, and § 21.901.

2. The authority to enter into and execute on behalf of the Forest Service agreements with displaced homeowners which provide for a provisional replacement housing payment to the homeowner when the exact amount due as required by sections 203 and 204, Public Law 91-646, January 2, 1971, cannot be determined until final adjudication of the case in a condemnation suit, and provided further that such an agreement provides that—

(a) Upon final adjudication of the condemnation suit the replacement housing payment will be recomputed on the basis of the acquisition price determined by the court; (b) if the acquisition price as determined by the court is greater than the agency's offer upon which the provisional replacement housing is based, the recomputed replacement housing payment will be less than the provisional replacement housing payment, and the difference shall be refunded to the Forest Service or applied as a credit to the deficiency payment made to satisfy the excess award of the court; (c) if the acquisition price as determined by the court is less than the agency's offer upon which the provisional housing payment is based the recomputed replacement housing payment will be more than the provisional replacement housing payment and the difference shall be paid to the homeowner.

3. The authority to redelegate any authority conferred upon him herein to each Forest Supervisor.

Effective date. This delegation of authority shall be effective upon publication in the FEDERAL REGISTER (1-22-72).

EDWARD W. SCHULTZ,
Deputy Chief, Forest Service.

JANUARY 17, 1972.

[FR Doc.72-1012 Filed 1-21-72;8:49 am]

Office of the Secretary

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

Proposed Transfer of Assignments of Functions and Delegations of Authority

In accordance with Reorganization Plan No. 2 of 1953, and in order to afford interested persons and groups an opportunity to place before the Department their views with respect to the proposed action, the Department is giving advance public notice of a proposed transfer of assigned functions and delegations of authority and the establishment of a new agency.

1. *General.* a. In carrying out its responsibilities to protect the animal and plant resources of the Nation the U.S. Department of Agriculture:

Makes surveys to detect harmful pests and diseases;

Establishes programs to control, contain, and eradicate animal and plant health problems;

Operates a port of entry inspection and quarantine program to prevent the introduction of harmful pests and diseases into the United States;

Undertakes emergency programs to control and eradicate emergency outbreaks of animal and plant diseases, insects and nematodes;

Certifies plants and plant products for export;

Administers laws and regulations to protect and insure the welfare and humane care of transported livestock and certain laboratory animals;

Directs efforts to prevent the production and interstate distribution of worthless or harmful veterinary biologics;

Checks the effect of the use of herbicides and pesticides on the environment;

Cooperates closely with State and local agencies and with foreign goverments in these programs.

These programs, which are of extreme importance to insuring a stable and consistent supply of wholesome food and fiber products are administered by the Animal and Plant Health Service reporting to the Director of Science and Education.

b. In carrying out its poultry and meat inspection responsibilities the Department:

Inspects for wholesomeness all poultry and meat and related products processed by plants meeting Department inspection requirements and qualifying to sell across State lines or to other countries.

Reviews foreign inspection systems and packing plants which export poultry and meat to this country, and reinspects imported products at U.S. ports of entry.

Checks plant facilities and equipment, slaughter and processing methods, containers and labeling for adherence to approved standards.

Cooperates with, and provides assistance to States to develop poultry and meat inspection programs which meet Federal standards.

These programs, of extreme importance to the health and welfare of consumers, have been administered by a Deputy Administrator for Meat and Poultry Inspection in the Consumer and Marketing Service which Service reports to the Assistant Secretary for Marketing and Consumer Services.

2. *Functions shifted.* In order to more effectively carry out these programs, to accommodate to changing industry patterns and State participation, and to gain economics and efficiencies through cross utilization of similar skills it is proposed to accomplish the following in sequential order:

a. Establish a new agency, the Animal and Plant Health Inspection Service to be headed by an Administrator reporting to the Assistant Secretary for Marketing and Consumer Services.

b. Transfer those functions, responsibilities, and Delegations of Authority now exercised by or under the Administrator of the Animal and Plant Health Service from the Director of Science and Education to the Assistant Secretary for Marketing and Consumer Services, with authority to delegate them to the Administrator of the proposed Animal and Plant Health Inspection Service.

c. Continue to vest those functions, responsibilities, and Delegations of Authorities exercised by or under the Consumer and Marketing Services Deputy Administrator for Meat and Poultry Inspection in the Assistant Secretary for Marketing and Consumer Services, with the authority to delegate them to the Administrator of the proposed Animal and Plant Health Inspection Service.

d. Change the name of the Consumer and Marketing Service to the Agricultural Marketing Service.

3. *Management support activities.* All finance, budget, personnel, administrative services, information, and other management support activities performed by the Consumer and Marketing Service or by the Animal and Plant Health Service in the administration of the functions identified in section 2 above will be transferred to the proposed Animal and Plant Health Inspection Service.

In order to be considered, views and comments of the interested persons and groups must be received by the Secretary by March 1, 1972. All written submissions made pursuant to this notice will be made available for public inspection at the office of the hearing clerk during regular business hours (7 CFR 1.27(b)).

Done at Washington, D.C., this 18th day of January 1972.

EARL L. BUTZ,
Secretary.

[FR Doc.72-1028 Filed 1-21-72;8:50 am]

ARKANSAS

Designation of Areas for Emergency Loans

For the purpose of making Emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961) and section 232 of the Disaster Relief Act of 1970 (Public Law 91-606), it has been determined that in the following counties in the State of Arkansas natural disasters have caused a general need for agricultural credit:

COUNTIES

Crittenden.	Miller.
Desha.	Monroe.
Independence.	Phillips.
Jackson.	Poinsett.
Lafayette.	Randolph.
Lawrence.	St. Francis.
Lee.	White.

Emergency loans will not be made in the above-named counties under this designation pursuant to applications received after June 30, 1972, except subsequent loans to qualified borrowers who received initial loans under this designation.

The urgency of the need for Emergency loans in the designated areas makes it impracticable and contrary to the public interest to give advance notice of proposed rule making and invite public participation.

Done at Washington, D.C., this 19th day of January 1972.

EARL L. BUTZ,
Secretary.

[FR Doc.72-1013 Filed 1-21-72;8:49 am]

SOUTH CAROLINA

Designation of Areas for Emergency Loans

For the purpose of making Emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961) and section 232 of the Disaster Relief Act of 1970 (Public Law 91-606), it has been determined that in the following county in the State of South Carolina natural disasters have caused a general need for agricultural credit:

COUNTY

Clarendon.

Emergency loans will not be made in the above-named county under this designation pursuant to applications received after June 30, 1972, except subsequent loans to qualified borrowers who received initial loans under this designation.

The urgency of the need for Emergency loans in the designated areas makes it impracticable and contrary to the public interest to give advance notice of proposed rule making and invite public participation.

Done at Washington, D.C., this 19th day of January 1972.

EARL L. BUTZ,
Secretary.

[FR Doc.72-1014 Filed 1-21-72;8:49 am]

UTAH

Designation of Areas for Emergency Loans

For the purpose of making Emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961) and section 232 of the Disaster Relief Act of 1970

(Public Law 91-606), it has been determined that in the following counties in the State of Utah natural disasters have caused a general need for agricultural credit:

COUNTIES

Grand. San Juan.

Emergency loans will not be made in the above-named counties under this designation pursuant to applications received after June 30, 1972, except subsequent loans to qualified borrowers who received initial loans under this designation.

The urgency of the need for Emergency loans in the designated areas makes it impracticable and contrary to the public interest to give advance notice of proposed rule making and invite public participation.

Done at Washington, D.C., this 19th day of January 1972.

EARL L. BUTZ,
Secretary.

[FR Doc.72-1015 Filed 1-21-72;8:49 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-72-141]

ASSISTANT TO THE SECRETARY

Designation

The Assistant Secretary for Housing Production and Mortgage Credit—Federal Housing Commissioner (Federal Housing Administration) is designated as the Assistant to the Secretary who shall be responsible for providing information and advice to nonprofit organizations desiring to sponsor housing projects assisted under programs administered by the Department.

(Sec. 917 of the Housing and Urban Development Act of 1970, 84 Stat. 1816; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Effective date. This designation shall be effective as of January 1, 1972.

GEORGE ROMNEY,
Secretary of Housing and Urban Development.

[FR Doc.72-1016 Filed 1-21-72;8:49 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

KENTUCKY

Transfer of Air Carrier Functions

Notice is hereby given that on or about February 1, 1972, Flight Standards Air Carrier functions for the State of Kentucky will be transferred from the Eastern Region to the Southern Region. These functions will be assumed by the Air Carrier District Office, SO-ACDO-35, at Nashville, Tenn. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in East Point, Ga., on January 14, 1972.

DUANE W. FREER,
Acting Director, Southern Region.

[FR Doc.72-971 Filed 1-21-72;8:46 am]

OLD TOWN, MAINE

Relocation of Flight Service Station

Notice is hereby given that on or about February 1, 1972, the Flight Service Station at Old Town, Maine, will be relocated to Bangor, Maine. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Boston, Mass., on January 14, 1972.

W. E. CROSBY,
Acting Director, New England Region.

[FR Doc.72-972 Filed 1-21-72;8:46 am]

Office of Pipeline Safety

[Notice No. W-4; Docket No. OPS-16]

PETITION FOR WAIVER OF GAS PIPELINE SAFETY STANDARDS

Notice of Hearing

The New Orleans Public Service, Inc., of New Orleans, La., has petitioned for a waiver from the requirements of § 192.455 of the Federal safety standards for gas pipelines (49 CFR Part 192). Section 192.455 establishes requirements for control of external corrosion on buried or submerged pipelines installed after July 31, 1971. The corrosion protection method which petitioner desires to use does not meet the requirements of § 192.455(a).

In support of a grant of waiver, petitioner makes the following arguments:

For short isolated sections of steel distribution mains and 1½" and 2" utilization pressure (¼ p.s.i.g.) screw coupled steel service piping from cast iron distribution mains, we have found it advantageous and perfectly satisfactory to use a protective cement coating without cathodic protection. The coating is a one part cement and three parts sand mix cast to a minimum ¾" thickness. The passivation effect of cement on steel inhibits corrosion of the metal and provides effective protection of the pipeline. This method has been successfully practiced by our company since 1902. We would appreciate your investigation into our practice and also provide us an opportunity to further demonstrate its effectiveness.

Accurate statistics are not available relative to the number of small isolated sections of steel main installed by this method, but they are considerable and certainly in excess of 100,000. We have no record or supporting data to indicate even one (1) corrosion failure on these installations.

A total of 95,822 cement-coated services, not cathodically protected, were on our system as of December 31, 1970. During 1970, leaks from all causes occurred on only 175 or 0.18 percent of the cement-coated services and over 50 percent of these were by outside forces. Corrosion was a possible factor on 20 of these leaks of which all occurred on cement-coated services installed prior to 1930.

This experience record proves that our practice of cement coating is sound and entirely consistent with gas pipeline safety. In view of this, we request a tentative continuation of our practice until final action can be provided on our request for waiver.

Complying with section 192.455 would require measures that would result in higher costs for installation, surveillance and maintenance which are not warranted from an operational or safety standpoint based on 69 years of experience.

In accordance with section 3(e) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1672(e)), notice is hereby given that a hearing on the petition by the New Orleans Public Service, Inc., will be held at 10 a.m. on February 24, 1972, in Room 1715, 400 Sixth Street SW., Washington, DC 20590.

Interested persons are invited to present their views at the hearing or to submit them in writing by February 17, 1972, to the Office of Pipeline Safety, Department of Transportation, Washington, D.C. 20590.

Issued in Washington, D.C., on January 19, 1972.

JOSEPH C. CALDWELL,
Acting Director, Office of Pipeline Safety.

[FR Doc.72-995 Filed 1-21-72;8:50 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

FMC CORP.

Notice of Withdrawal of Petition for Food Additives

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786; 21 U.S.C. 348(b)), the following notice is issued:

In accordance with § 121.52 *Withdrawal of petitions without prejudice* of the procedural food additive regulations (21 CFR 121.52), American Viscose Divison, FMC Corp., Marcus Hook, Pa. 19061, has withdrawn its petition (FAP 1B2703), for which notice of filing was published in the FEDERAL REGISTER of August 3, 1971 (36 F.R. 14279), proposing that § 121.2535 *Textiles and textile fibers* (21 CFR 121.2535) be amended to provide for the safe use of polyethylene terephthalate in the manufacture of textiles and textile fibers for food-contact use.

Dated: January 11, 1972.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.72-867 Filed 1-21-72;8:46 am]

ATOMIC ENERGY COMMISSION

[Dockets Nos. 50-254, 50-265]

COMMONWEALTH EDISON CO.

Notice of Availability of Applicant's Supplemental Environmental Report

Pursuant to the National Environmental Policy Act of 1969 and the Atomic Energy Commission's regulations in Appendix D to 10 CFR Part 50, notice is hereby given that a report entitled "Environmental Impact Assessment, Supplemental Information to the Quad-Cities Environmental Report" by the Commonwealth Edison Co. is being placed in the Commission's Public Document Room at 1717 H Street NW., Washington, DC, and in the Moline Public Library, 504 17th Street, Moline, IL 61265. The report is also being made available to the public at the Office of Planning and Analysis, Executive Office of the Governor, Room 614, State Office Building, Springfield, Ill. 62706 and the Bi-State Metropolitan Planning Commission, 1054 Third Avenue, Rock Island, IL 61201. This report discusses environmental considerations related to the operation of the Quad-Cities Nuclear Power Station located in Rock Island County, Ill.

After the Supplemental report has been analyzed by the Commission's Director of Regulation or his designee, a supplemental draft detailed statement of environmental considerations will be prepared. Upon preparation of the supplemental draft detailed statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a summary notice of the supplemental draft detailed statement. The summary notice will request comments from interested persons on the proposed action and on the supplemental draft statement. The summary notice will also contain a statement to the effect that the comments of Federal agencies and State and local officials thereon will be available when received.

Dated at Bethesda, Md., this 12th day of January 1972.

For the Atomic Energy Commission.

ROGER S. BOYD,
Assistant Director for Boiling Water Reactors, Division of Reactor Licensing.

[FR Doc.72-962 Filed 1-21-72;8:45 am]

[Dockets Nos. 50-373, 50-374]

COMMONWEALTH EDISON CO.

Notice of Availability of Applicant's Environmental Report

Pursuant to the National Environmental Policy Act of 1969 and the Atomic Energy Commission's regulations in Appendix D to 10 CFR Part 50, notice is hereby given that a report entitled "Environmental Report for La Salle County Station Units 1 and 2" dated November 4, 1971, by the Commonwealth Edison Co. is being placed in the Commission's Public Document Room at 1717 H Street NW., Washington, DC, and in the Reddicks Public Library, 100 West Lafayette Street, Ottawa, IL 61350. The report is also being made available to the public at the Office of Planning and Analysis, Executive Office of the Governor, Room 614, State Office Building, Springfield, Ill. 62706.

This report discusses environmental considerations related to the proposed construction of the La Salle County Nuclear Power Station Units 1 and 2 to be located in Brookfield Township, La Salle County, Ill. After the report has been analyzed by the Commission's Director of Regulation or his designee, a draft detailed statement of environmental considerations related to the proposed action will be prepared. Upon preparation of the draft detailed statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a summary notice of availability of the draft detailed statement. The summary notice will request comments from interested persons on the proposed action and on the draft statement. The summary notice will also contain a statement to the effect that the comments of Federal agencies and State and local officials thereon will be available when received.

Dated at Bethesda, Md., this 12th day of January 1972.

For the Atomic Energy Commission.

ROGER S. BOYD,
Assistant Director for Boiling Water Reactors, Division of Reactor Licensing.

[FR Doc.72-961 Filed 1-21-72;8:45 am]

[Docket No. 50-367]

NORTHERN INDIANA PUBLIC SERVICE CO.

Notice of Availability of Applicant's Environmental Report

Pursuant to the National Environmental policy act of 1969 and the Atomic Energy Commission's regulations in Appendix D to 10 CFR Part 50, notice is hereby given that a report entitled "Environmental Report for Bailly Generating Station—Nuclear 1—Construction Permit Stage" dated March 22, 1971, by the Northern Indiana Public Service Co. is being placed in the Commission's Public Document Room at 1717 H Street NW., Washington, DC, and in the West Chester Township Public Library, 125 South Second Street, Chesterton, IN 46304. The report is also being made available to the public at the Office of the Governor, 206 State House, Indianapolis, IN 46204 and the Lake-Porter County Regional Transportation and Planning Commission, 9290 Taft Place, Crown Point, IN 46307. Amendment No. 1 to the Environmental Report, dated November 23, 1971, is also being made available at the above locations.

This report as amended, discusses environmental considerations related to the proposed construction of the Bailly Generating Station—Nuclear 1 to be located in Westchester Township, Porter County, Ind. After the report has been analyzed by the Commission's Director of Regulation or his designee, a draft detailed statement of environmental considerations related to the proposed action will be prepared. Upon preparation of the draft detailed statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a summary notice of availability of the draft detailed statement. The summary notice will request comments from interested persons on the proposed action and on the draft statement. The summary notice will also contain a statement to the effect that the comments of Federal agencies and State and local officials thereon will be available when received.

Dated at Bethesda, Md., this 12th day of January 1972.

For the Atomic Energy Commission.

ROGER S. BOYD,
Assistant Director for Boiling Water Reactors, Division of Reactor Licensing.

[FR Doc.72-963 Filed 1-21-72;8:45 am]

[Docket No. 50-263]

NORTHERN STATES POWER CO.

Notice of Availability of Applicant's Environmental Report

Pursuant to the National Environmental Policy Act of 1969 and the Atomic Energy Commission's regulations in Appendix D to 10 CFR Part 50, notice is hereby given that a report entitled "Environmental Report", dated November 3, 1971, by the Northern States Power Co. is being placed in the Commission's Public Document Room at 1717 H Street NW., Washington, DC, and in the Environmental Resource Center, Minneapolis Public Library, 1222 Southeast Fourth Street, Minneapolis, MN 55414. The report is also being made available to the public at the office of the Minnesota State Planning Agency, Suite 603, 550 Cedar Street, St. Paul, MN 55101.

This report discusses environmental considerations related to the operation of the Monticello Nuclear Generating Plant located in Wright and Sherburne Counties, Minn. After the report has been analyzed by the Commission's Director of Regulation or his designee, a draft detailed statement of environmental considerations related to the proposed action will be prepared. Upon preparation of the draft detailed statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a summary notice of availability of the draft detailed statement. The summary notice will request comments from interested persons on the proposed action and on the draft statement. The summary notice will also contain a statement to the effect that the comments of Federal agencies and State and local officials thereon will be available when received.

Dated at Bethesda, Md., this 17th day of January 1972.

For the Atomic Energy Commission.

ROGER S. BOYD,
Assistant Director for Boiling Water Reactors, Division of Reactor Licensing.

[FR Doc.72-964 Filed 1-21-72;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 23827]

AIR WEST

Notice of Prehearing Conference Regarding Deletion of Roseburg, Oreg.

Hughes Air Corp. d/b/a Air West; deletion of Roseburg, Oreg.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on February 24, 1972, at 10 a.m. (local time), in Room 503, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Examiner William J. Madden.

In order to facilitate the conduct of the conference, parties are instructed to submit to the Examiner and other parties (1) proposed statements of issues; (2) proposed stipulations; (3) requests for information; (4) statement of positions of parties; and (5) proposed procedural dates. The Bureau of Operating Rights will circulate its material on or before February 10, 1972, and the other parties on or before February 18, 1972. The submissions of the other parties shall be limited to points on which they differ with the Bureau of Operating Rights.

Dated at Washington, D.C., January 19, 1972.

[SEAL] RALPH L. WISER,
Chief Examiner.

[FR Doc.72-1005 Filed 1-21-72;8:48 am]

[Docket No. 23542]

ATC BYLAWS INVESTIGATION

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on March 1, 1972 at 10 a.m. (local time), in Room 911, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Examiner Henry Whitehouse.

In order to facilitate the conduct of the conference parties are instructed to submit to the Examiner and other parties (1) proposed statements of issues; (2) proposed stipulations; (3) requests for information; (4) statement of positions of parties; and (5) proposed procedural dates. The Bureau of Operating Rights will circulate its material on or before February 16, 1972, and the other parties on or before February 24, 1972. The submissions of the other parties shall be limited to points on which they differ with the Bureau of Operating Rights.

Dated at Washington, D.C., January 19, 1972.

[SEAL] RALPH L. WISER,
Chief Examiner.

[FR Doc.72-1003 Filed 1-21-72;8:48 am]

[Docket No. 23661]

EASTERN AIR LINES, INC.

Notice of Prehearing Conference Regarding Deletion of Reading, Pa.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on February 29, 1972, at 10 a.m. (local time), in Room 503, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Examiner Thomas P. Sheehan.

In order to facilitate the conduct of the conference parties are instructed to submit to the Examiner and other parties (1) proposed statements of issues; (2) proposed stipulations; (3) requests for information; (4) statement of positions of parties; and (5) proposed procedural dates. The Bureau of Operating Rights will circulate its material on or before February 11, 1972, and the other parties on or before February 22, 1972. The submissions of the other parties shall be limited to points on which they differ with the Bureau of Operating Rights.

Dated at Washington, D.C., January 19, 1972.

[SEAL] RALPH L. WISER,
Chief Examiner.

[FR Doc.72-1004 Filed 1-21-72;8:48 am]

[Docket No. 23760]

KODIAK-WESTERN ALASKA MERGER CASE

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on February 8, 1972, at 10 a.m. (local time), in Room 911, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Examiner Merritt Ruhlen.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the prehearing conference report served on December 28, 1971, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., January 18, 1972.

[SEAL] MERRITT RUHLEN,
Hearing Examiner.

[FR Doc.72-1006 Filed 1-21-72;8:49 am]

[Docket No. 24130]

TEXAS INTERNATIONAL AIRLINES, INC.

Notice of Prehearing Conference Regarding Acquisition of Control by Jet Capital Corp.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on February 15, 1972, at 10 a.m. (local time), in Room 503, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Examiner Hyman Goldberg.

In order to facilitate the conduct of the conference parties are instructed to submit to the Examiner and other parties (1) proposed statements of issues; (2) proposed stipulations; (3) requests for information; (4) statement of positions of parties; and (5) proposed procedural dates. The Bureau of Operating Rights will circulate its material on or before February 3, 1972, and the other parties on or before February 10, 1972. The submissions of the other parties shall be limited to points on which they differ with the Bureau of Operating Rights.

Dated at Washington, D.C., January 19, 1972.

[SEAL] RALPH L. WISER,
Chief Examiner.

[FR Doc.72-1007 Filed 1-21-72;8:49 am]

[Docket No. 21115, etc.]

WISCONSIN POINTS DEHYPHENATION CASE

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on February 23, 1972, at 10 a.m. (local time) in Room 503, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Examiner Joseph L. Fitzmaurice.

In order to facilitate the conduct of the conference, parties are instructed to submit to the Examiner and other parties (1) proposed statements of issues; (2) proposed stipulations; (3) requests for information; (4) statement of positions of parties; and (5) proposed procedural dates. The Bureau of Operating Rights will circulate its material on or before February 9, 1972, and the other parties on or before February 18, 1972. The submissions of the other parties shall be limited to points on which they differ with the Bureau of Operating Rights.

Dated at Washington, D.C., January 19, 1972.

[SEAL] RALPH L. WISER,
Chief Examiner.

[FR Doc.72-1008 Filed 1-21-72;8:49 am]

CIVIL SERVICE COMMISSION

MINIMUM RATES AND RATE RANGES

Notice of Adjustment

Under the authority of 5 U.S.C. 5303 and Executive Order 11073, the Civil Service Commission has adjusted the minimum rates and rate ranges for certain occupations and grade levels for which special rates were approved under 5 U.S.C. 5303. The following tables contain the basic special salary rate information for each occupation and grade level for which special rates are authorized. Only the special minimum and special maximum rate (i.e., 10th step) are shown; however, a full special rate range is authorized for each occupation and grade level specified. The full range of special rates can be prepared by successively adding the amount of the within grade increase, as shown for each grade, beginning with the special minimum to produce a rate for each step up to the special maximum rate.

The effective date of the revised rates is the pay period that begins on or after January 1, 1972.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

Occupational Series Coverage	Geographic Coverage	Grade	1st step rate	10th step rate	Within grade increase	Effective Date
	GS-000 MISCELLANEOUS OCCUPATIONS GROUP					
GS-007 Correctional Officer Series Table No. 009	District of Columbia Government.	GS-6	$8,425	$10,873	$272	1-1-72
GS-081 Firefighter (General) Firefighter (Structural) Firefighter (Airfield) Table No. 001	Naval Training Center, Great Lakes Illinois and Federal installations within a 22-mile radius of the Center.	GS-3 GS-4 GS-5	6,410 6,980 7,563	8,156 8,942 9,759	194 218 244	1-1-72
GS-081 Firefighter (General) [1] Firefighter (Structural) [1] Firefighter (Airfield) [1] Fire Protection Inspector [1] Fire Chief [1] Covers both nonsupervisory and supervisory positions at applicable grade levels Table No. 002	San Francisco and 35-mile radius extended to include Travis Air Force Base near Fairfield, Calif.	GS-3 GS-4 GS-5 GS-6 GS-7 GS-8	7,186 8,070 8,539 8,969 9,657 10,347	8,932 10,032 10,735 11,417 12,375 13,353	194 218 244 272 302 334	1-1-72
GS-081 Fire Protection and Prevention Series Table No. 003	Washington, D.C. SMSA, including Quantico Marine Base	GS-3 GS-4 GS-5 GS-6	6,992 7,416 7,807 8,425	8,738 9,378 10,003 10,873	194 218 244 272	1-1-72
GS-081 Fire Protection and Prevention Series Table No. 004	San Diego County, Calif.	GS-3 GS-4 GS-5 GS-6 GS-7 GS-8	7,186 8,070 8,539 8,969 9,657 10,347	8,932 10,032 10,735 11,417 12,375 13,353	194 218 244 272 302 334	1-1-72
GS-081 Fire Protection and Prevention Series Table No. 005	Ventura County, Calif.	GS-3 GS-4 GS-5 GS-6	6,798 7,198 7,807 8,425	8,544 9,160 10,003 10,873	194 218 244 272	1-1-72
GS-081 Fire Protection and Prevention Series Table No. 006	City of Stockton, Calif., including Sharpe Army Depot, and Defense Depot, Tracy, Calif.	GS-3 GS-4 GS-5	6,410 6,980 7,563	8,156 8,942 9,759	194 218 244	1-1-72
GS-083 Police Series Table No. 008	Washington, D.C. SMSA, including District of Columbia Children's Center, Laurel, Md., and Quantico Marine Base	GS-4 GS-5 GS-6	7,852 8,295 8,697	9,814 10,491 11,145	218 244 272	1-1-72
GS-085 Guard Series Table No. 007	Washington, D.C. SMSA, including District of Columbia Children's Center, Laurel, Md., and Quantico Marine Base	GS-2 GS-3 GS-4 GS-5 GS-6	6,370 7,186 7,852 8,295 8,697	7,918 8,932 9,814 10,491 11,145	172 194 218 244 272	1-1-72
GS-085 Guard Series Table No. 010	U.S. Naval Ordnance Station, Indian Head, Md.	GS-2 GS-3 GS-4 GS-5 GS-6	6,370 7,186 7,852 8,295 8,697	7,918 8,932 9,814 10,491 11,145	172 194 218 244 272	1-1-72
	GS-100 SOCIAL SCIENCE, PSYCHOLOGY AND WELFARE GROUP					
GS-180 Psychology Series Table No. 050	Worldwide	GS-11	$14,197	$18,193	$444	1-1-72
	GS-300 GENERAL ADMINISTRATIVE, CLERICAL, AND OFFICE SERVICES GROUP					
GS-301 Police Cadet Table No. 150	District of Columbia Metropolitan Police Department	GS-2 GS-3	$5,854 6,410	$7,402 8,156	$172 194	1-1-72
GS-312 Clerk-Stenographer GS-316 Clerk-Dictating Machine Transcriber GS-318 Secretary GS-322 Clerk-Typist Table No. 152	Cook County, Ill. (includes city ot Chicago)	GS-2 GS-3	5,338 6,022	6,886 7,768	172 194	1-1-72
GS-312 Clerk-Stenographer GS-316 Clerk-Dictating Machine Transcriber GS-318 Secretary	New York, N.Y. (includes the counties of Bronx, Kings, New York, Queens, and Richmond)	GS-2 GS-3	5,510 6,022	7,058 7,768	172 194	1-1-72

GS-300 GENERAL ADMINISTRATIVE, CLERICAL, AND OFFICE SERVICES GROUP—Continued

Occupational Series Coverage	Geographic Coverage	Grade	1st step rate	10th step rate	Within grade increase	Effective date
GS-322 Clerk-Typist In addition to above series, coverage includes all positions in grades GS-2 and GS-3 with the following parenthetical titles: (Typing); or (Stenography); or (Dictating Machine Transcribing). Use of any of the parenthetical titles cited indicates that a substantial requirement for the skill identified exists in the position, and the requirement is of sufficient significance to warrant selective certification from an appropriate clerical register (or equivalent selectivity in noncompetitive actions). In all cases the position description must reflect those duties which necessitated the use of the parenthetical title. Table No. 900						
GS-343 GAO Management Auditor Table No. 250	Worldwide (except for New York, New York SMSA)	GS-7 GS-9	$10,563 11,414	$13,281 14,726	$302 368	1-1-72
GS-343 GAO Management Auditor Table No. 251	New York, N.Y., SMSA	GS-7 GS-9	11,167 12,150	13,885 15,462	302 368	1-1-72
GS-356 Card Punch Operation Series Table No. 156	San Francisco-Oakland Standard Metropolitan Statistical Area (includes Alameda, Contra Costa, Marin, San Francisco, and San Mateo Counties); Santa Clara County; Solano County; Los Angeles County; Orange County; and Government Activities at Edwards AFB in Kern County, Calif.	GS-3	6,022	7,768	194	1-1-72
GS-356 Card Punch Operation Series Table No. 157	Boston, Mass. SMSA (includes Essex County (Part), Middlesex County (Part), Norfolk County (Part), Plymouth County (Part) and Suffolk County)	GS-2 GS-3 GS-4	5,682 6,216 6,762	7,230 7,962 8,724	172 194 218	1-1-72
GS-359 Electric Accounting Machine Operating Series, Grade 4 Only GS-362 Electric Accounting Machine Project Planning Series, Grade 7 Only Table No. 154	Juneau Election District, Alaska	GS-4 GS-7	7,198 9,355	9,160 12,073	218 302	1-1-72
GS-400 BIOLOGICAL SCIENCES GROUP						
GS-403 Microbiology Series Table No. 220	Nationwide	GS-5	$7,807	$10,003	$244	1-1-72
GS-500 ACCOUNTING AND BUDGET GROUP						
GS-510 Accounting Series GS-512 Internal Revenue Agent Series Table No. 258	Worldwide (except for New York, N.Y. SMSA.)	GS-5 GS-6 GS-7 GS-8 GS-9	$9,027 9,785 10,563 11,015 11,414	$11,223 12,233 13,281 14,021 14,726	$244 272 302 334 368	1-1-72
GS-510 Accounting Series GS-512 Internal Revenue Agent Series Table No. 259	New York, N.Y. SMSA	GS-5 GS-6 GS-7 GS-8 GS-9 GS-10	9,027 10,057 11,167 11,683 12,150 12,961	11,223 12,505 13,885 14,689 15,462 16,606	244 272 302 334 368 405	1-1-72
GS-600 MEDICAL, HOSPITAL, DENTAL, AND PUBLIC HEALTH GROUP						
GS-602 Medical Officer Series Table No. 290	Worldwide	GS-11 GS-12 GS-13 GS-14 GS-15	$17,305 20,627 23,737 25,620 27,289	$21,301 25,388 29,362 32,208 34,966	$444 529 625 732 853	1-1-72
GS-610 Nurse Series Table No. 306	Galveston, Tex.	GS-4 GS-5 GS-6	8,070 8,539 8,697	10,032 10,735 11,145	218 244 272	1-1-72
GS-610 Nurse Series Table No. 301	State of California (Excluding San Francisco, Calif., and 35-mile radius extended to include Travis Air Force Base; San Diego County; and Division of Indian Health Nurses)	GS-4 GS-5 GS-6	8,070 8,539 8,697	10,032 10,735 11,145	218 244 272	1-1-72
GS-610 Nurse Series Table No. 303	San Francisco, Calif., and 35-mile radius extended to include Travis Air Force Base	GS-4 GS-5 GS-6 GS-7 GS-8 GS-9	8,506 9,027 9,513 9,959 10,681 11,414	10,468 11,223 11,961 12,677 13,687 14,726	218 244 272 302 334 368	1-1-72
GS-610 Nurse Series GS-615 Public Health Nurse Series Table No. 293	Division of Indian Health, Public Health Service, Continental United States; Ellsworth Air Force Base, Rapid City, S. Dak.; Albuquerque, N. Mex., including Kirtland Air Force Base and Sandia Base Military Reservation; Fort Sill, Okla.; Job Corps center Box Elder, S. Dak.; State of Alaska	GS-4 GS-5	7,416 8,051	9,378 10,247	218 244	1-1-72
GS-610 Nurse Series Table No. 299	Seattle and Bremerton, Wash.	GS-4 GS-5 GS-6	7,852 8,295 8,697	9,814 10,491 11,145	218 244 272	1-1-72
GS-610 Nurse Series Table No. 297	Philadelphia, Pa.	GS-4 GS-5	7,416 8,051	9,378 10,247	218 244	1-1-72
GS-610 Nurse Series Table No. 295	New Orleans, La.	GS-4 GS-5	6,980 7,563	8,942 9,759	218 244	1-1-72
GS-610 Nurse Series Table No. 292	Baltimore, Md., Standard Metropolitan Statistical Area	GS-4 GS-5 GS-6	7,852 8,295 8,697	9,814 10,491 11,145	218 244 272	1-1-72

GS-600 Medical, Hospital, Dental, and Public Health Group—Continued

Occupational Series Coverage	Geographic Coverage	Grade	1st step rate	10th step rate	Within grade increase	Effective date
GS-610 Nurse Series	Boston, Mass., Standard Metropolitan Statistical Area	GS-4	$8,070	$10,032	$218	1-1-72
		GS-5	8,539	10,735	244	
Table No. 305		GS-6	8,697	11,145	272	
GS-615 Public Health Nurse Series Table No. 300	Washington, D.C., Standard Metropolitan Statistical Area	GS-5	8,539	10,735	244	1-1-72
GS-610 Nurse Series	Washington, D.C., Standard Metropolitan Statistical Area Including the D.C. Government's Children's Center, Laurel, Md., and the U.S. Marine Corps Base, Quantico, Va.	GS-4	8,288	10,250	218	1-1-72
Table No. 304		GS-5	8,783	10,979	244	
GS-610 Nurse Series GS-615 Public Health Nurse Series	New York, N.Y.	GS-4	8,506	10,468	218	1-1-72
		GS-5	9,515	11,711	244	
		GS-6	10,057	12,505	272	
		GS-7	10,563	13,281	302	
		GS-8	11,349	14,355	334	
		GS-9	12,150	15,462	368	
Table No. 296		GS-10	12,556	16,201	405	
GS-621 Nursing Assistant Series Table No. 307	City of Palo Alto and Federal Installations within a 10-mile radius, Calif.	GS-2	5,510	7,058	172	1-1-72
		GS-3	6,022	7,768	194	
GS-621 Nursing Assistant Series (Excluding Licensed Practical Nurse) Table No. 333	New York, N.Y., SMSA (Includes New York City; Nassau, Rockland, Suffolk, and Westchester Counties)	GS-2	5,510	7,058	172	1-1-72
		GS-3	6,022	7,768	194	
GS-621 Licensed Practical Nurse	New York, N.Y. SMSA	GS-3	7,186	8,932	194	1-1-72
		GS-4	7,634	9,596	218	
		GS-5	8,051	10,247	244	
Table No. 334		GS-6	8,425	10,873	272	
GS-621 Licensed Practical Nurse Table No. 337	Cook County, Ill. (Including the city of Chicago)	GS-3	6,410	8,156	194	1-1-72
		GS-4	6,980	8,942	218	
GS-621 Nursing Assistant Series (Excluding Licensed Practical Nurse) Table No. 335	East Orange and Lyons Veterans Administration Hospitals, N.J.	GS-2	5,510	7,058	172	1-1-72
		GS-3	6,022	7,768	194	
GS-621 Licensed Practical Nurse	West Haven, Conn.	GS-3	6,798	8,544	194	1-1-72
Table No. 342		GS-4	7,198	9,160	218	
		GS-5	7,563	9,759	244	
GS-621 Licensed Practical Nurse	Boston SMSA and Brockton, Mass.	GS-3	6,798	8,544	194	1-1-72
Table No. 343		GS-4	7,198	9,160	218	
		GS-5	7,563	9,759	244	
GS-621 Licensed Practical Nurse Table No. 336	East Orange and Lyons Veterans Administration Hospitals, N.J.	GS-3	6,410	8,156	194	1-1-72
		GS-4	6,980	8,942	218	
GS-631 Occupational Therapists GS-633 Physical Therapists Table No. 308	Washington, D.C. SMSA	GS-5	8,539	10,735	244	1-1-72
		GS-6	8,697	11,145	272	
GS-631 Occupational Therapist GS-633 Physical Therapist	Los Angeles—Long Beach, Calif., SMSA	GS-5	8,783	10,979	244	1-1-72
		GS-6	9,241	11,689	272	
		GS-7	9,657	12,375	302	
Table No. 309		GS-8	10,347	13,353	334	
GS-633 Physical Therapist Table No. 311	Cincinnati, Ohio, SMSA	GS-5	8,295	10,491	244	1-1-72
		GS-6	8,425	10,873	272	
GS-631 Occupational Therapist GS-633 Physical Therapist	New York City and Suffolk County, N.Y.	GS-5	9,515	11,711	244	1-1-72
		GS-6	10,057	12,505	272	
		GS-7	10,563	13,281	302	
		GS-8	11,015	14,021	334	
Table No. 310		GS-9	11,414	14,726	368	
GS-644 Medical Technologist Series Table No. 318	Washington, D.C., SMSA	GS-5	8,539	10,735	244	1-1-72
GS-644 Medical Technologist Series Table No. 317	Omaha, Nebr., Standard Metropolitan Statistical Area	GS-5	7,807	10,003	244	1-1-72
GS-644 Medical Technologist Series Table No. 316	Ann Arbor, Mich., Standard Metropolitan Statistical Area	GS-5	9,027	11,223	244	1-1-72
		GS-7	9,657	12,375	302	
GS-644 Medical Technologist Series Table No. 315	New Orleans, La.	GS-5	7,563	9,759	244	1-1-72
GS-644 Medical Technologist Series Table No. 314	Milwaukee, Wis.	GS-5	8,539	10,735	244	1-1-72
		GS-7	9,355	12,073	302	
GS-644 Medical Technologist Series Table No. 312	Baltimore, Md., SMSA	GS-5	8,051	10,247	244	1-1-72
GS-644 Medical Technologist Series	State of California	GS-5	9,027	11,223	244	1-1-72
		GS-6	9,513	11,961	272	
		GS-7	10,261	12,979	302	
		GS-8	10,681	13,687	334	
Table No. 313		GS-9	11,414	14,726	368	
GS-644 Medical Technologist Series Table No. 319	Chicago and Hines, Ill.	GS-5	8,051	10,247	244	1-1-72
GS-644 Medical Technologist Series Table No. 331	New York City, N.Y. (Includes Bronx, Kings, New York, Queens, and Richmond Counties)	GS-5	8,295	10,491	244	1-1-72

GS-600 MEDICAL, HOSPITAL, DENTAL, AND PUBLIC HEALTH GROUP—Continued

Occupational Series Coverage	Geographic Coverage	Grade	1st step rate	10th step rate	Within grade increase	Effective date
GS-647 Medical Radiology Technician Series Table No. 320	New York City	GS-4	$8,506	$10,468	$218	1-1-71
		GS-5	9,027	11,223	244	
		GS-6	9,513	11,961	272	
		GS-7	10,261	12,979	302	
		GS-8	10,681	13,687	334	
GS-647 Medical Radiology Technician Series Table No. 321	San Francisco, Calif., and Federal installations within a 35-mile radius	GS-5	8,051	10,247	244	1-1-71
		GS-6	8,697	11,145	272	
		GS-7	9,355	12,073	302	
GS-647 Medical Radiology Technician Series Table No. 340	Los Angeles—Long Beach, Calif., SMSA (includes all of Los Angeles County)	GS-4	8,070	10,032	218	1-1-71
		GS-5	8,295	10,491	244	
		GS-6	8,697	11,146	272	
		GS-7	9,355	12,073	302	
GS-647 Medical Radiology Technician Series Table No. 341	Cook County, Ill. (including the city of Chicago)	GS-4	7,634	9,596	218	1-1-71
		GS-5	8,051	10,247	244	
		GS-6	8,425	10,873	272	
GS-649 Inhalation Therapy Technician Table No. 344	New York, N.Y. SMSA (includes New York City, Nassau, Rockland, Suffolk, and Westchester Counties)	GS-4	7,852	9,814	218	1-1-71
		GS-5	8,539	10,735	244	
		GS-6	8,969	11,417	272	
		GS-7	9,355	12,073	302	
GS-649 Inhalation Therapy Technician Table No. 339	Seattle, Wash.	GS-4	7,198	9,160	218	1-1-72
		GS-5	7,807	10,003	244	
		GS-6	8,425	10,873	272	
GS-649 Inhalation Therapy Technician Table No. 330	West Haven, Conn.	GS-4	7,198	9,160	218	1-1-72
		GS-5	7,807	10,003	244	
		GS-6	8,425	10,873	272	
GS-660 Pharmacist Table No. 322	State of California	GS-9	12,518	15,830	368	1-1-72
		GS-10	13,366	17,011	405	
		GS-11	14,197	18,193	444	
GS-665 Speech Pathology and Audiology Series Table No. 324	Worldwide	GS-11	14,197	18,193	444	1-1-72
GS-668 Podiatrist Table No. 325	Washington, D.C., SMSA	GS-9	12,518	15,830	368	1-1-72
		GS-10	13,771	17,416	405	
		GS-11	15,085	19,081	444	
GS-682 Dental Hygienist Series Table No. 327	Norfolk and Newport News-Hampton, Va. SMSA's	GS-4	8,070	10,032	218	1-1-72
		GS-5	9,027	11,223	244	
GS-682 Dental Hygienist Series Table No. 328	States of California and Nevada	GS-4	7,634	9,596	218	1-1-72
		GS-5	8,539	10,735	244	
		GS-6	8,969	11,417	272	
		GS-7	9,657	12,375	302	
GS-682 Dental Hygienist Series Table No. 338	Denver, Colo. SMSA	GS-4	7,852	9,814	218	1-1-72
		GS-5	8,295	10,491	244	
		GS-6	8,969	11,417	272	
		GS-7	9,657	12,375	302	
GS-682 Dental Hygienist Series Table No. 332	Boston SMSA, Brockton, and Fort Devens, Mass.	GS-4	6,980	8,942	218	1-1-72
		GS-5	7,563	9,759	244	
GS-690 Industrial Hygiene Series Table No. 329	Worldwide	GS-5	8,783	10,979	244	1-1-72
		GS-6	9,785	12,233	272	
		GS-7	10,865	13,583	302	
		GS-8	11,349	14,355	334	
		GS-9	12,150	15,462	368	
		GS-10	12,556	16,201	405	

GS-700 VETERINARY MEDICAL SCIENCE GROUP

Occupational Series Coverage	Geographic Coverage	Grade	1st step rate	10th step rate	Within grade increase	Effective date
GS-701 Veterinarian Series Table No. 400	Worldwide	GS-9	$11,782	$15,094	$368	1-1-72

GS-800 ENGINEERING AND ARCHITECTURE GROUP

Occupational Series Coverage	Geographic Coverage	Grade	1st step rate	10th step rate	Within grade increase	Effective date
GS-800 All Professional Series in the Engineering and Architecture Group. Professional Series in the GS-800 Group Are: GS-801 General GS-803 Safety GS-804 Fire Prevention GS-806 Materials GS-807 Landscape Architecture GS-808 Architecture GS-810 Civil GS-819 Sanitary GS-830 Mechanical GS-840 Nuclear GS-850 Electrical GS-855 Electronic GS-861 Aerospace GS-870 Marine GS-871 Naval Architecture GS-880 Mining GS-881 Petroleum GS-890 Agricultural GS-892 Ceramic GS-893 Chemical GS-894 Welding GS-896 Industrial Table No. 410	Worldwide	GS-5	$9,027	$11,223	$244	1-1-72
		GS-6	10,057	12,505	272	
		GS-7	11,167	13,885	302	
		GS-8	11,683	14,689	334	
		GS-9	12,150	15,462	368	
		GS-10	12,556	16,201	405	

Occupational Series Coverage	Geographic Coverage	Grade	1st step rate	10th step rate	Within grade increase	Effective date
GS-1100 Business and Industry Group						
GS-1169 Revenue Officer Table No. 550	State of California	GS-5	$7,807	$10,003	$244	1-1-72
GS-1200 Copyright, Patent, and Trade-Mark Group						
GS-1221 Patent Adviser	Worldwide	GS-5	$ 9,027	$11,223	$244	1-1-72
GS-1223 Patent Classifying		GS-6	10,057	12,505	272	
GS-1224 Patent Examining		GS-7	11,167	13,885	302	
		GS-8	11,683	14,689	334	
		GS-9	12,150	15,462	368	
Table No. 575		GS-10	12,556	16,201	405	
GS-1300 Physical Sciences Group						
GS-1301.1 Physical Science Subseries	Worldwide	GS-5	$9,027	$11,223	$244	1-1-72
		GS-6	10,057	12,505	272	
		GS-7	11,167	13,885	302	
		GS-8	11,683	14,689	334	
		GS-9	12,150	15,462	368	
Table No. 585		GS-10	12,556	16,201	405	
Certain Series in the GS-1300 Group as follows:	Worldwide	GS-5	8,783	10,979	244	1-1-72
GS-1306 Health Physics		GS-6	9,785	12,233	272	
GS-1310 Physics		GS-7	10,865	13,583	302	
GS-1313 Geophysics		GS-8	11,349	14,355	334	
GS-1315 Hydrology		GS-9	12,150	15,462	368	
GS-1320 Chemistry		GS-10	12,556	16,201	405	
GS-1321 Metallurgy						
GS-1330 Astronomy and Space Science						
GS-1340 Meteorology						
GS-1360 Oceanography						
GS-1372 Geodesy						
GS-1380 Forest Products Technology						
GS-1386 Photographic Technology						
Table No. 586						
GS-1350 Geology Series	Worldwide	GS-5	9,027	11,223	244	1-1-72
Table No. 587		GS-7	9,959	12,677	302	
GS-1370 Cartographer Series GS-1301 Physical Science Series Table No. 588	(1) Cartographer, GS-1370, in grades GS-5 through 7, in the St Louis, Missouri Standard Metropolitan Ststistical Area, and the Washington, D.C., SMSA. (2) Physical Scientists, GS-1301, in grade GS-7 at the Air Force Aeronautical Chart and Information Center in the St, Louis, Mo., SMSA. (Incumbents of these positions perform professional work in cartography in combination with professional work in at least one other recognized scientific occupation, such as geodesy. Such positions are normally filled by reassignment or promotion from positions of cartographer.)	GS-5 GS-6 GS-7	8,051 8,969 9,959	10,247 11,417 12,677	244 272 302	1-1-72
GS-1500 Mathematics and Statistics Group						
GS-1510 Actuary	Worldwide	GS-5	$8,295	$10,491	$244	1-1-72
GS-1515 Operations Research		GS-6	9,241	11,689	272	
GS-1520 Mathematics Series		GS-7	10,261	12,979	302	
GS-1529 Mathematical Statistics		GS-8	11,015	14,021	334	
Table No. 695		GS-9	11,782	15,094	368	
GS-1600 Equipment, Facilities, and Service Group						
GS-1654 Printing Management Series	Nationwide	GS-5	$9,027	$11,223	$244	1-1-72
(Note: Eligibility for these special rates is limited to employees who have at least a Baccalaureate Degree with a major in printing management.) Table No. 725		GS-7	9,657	12,375	302	
GS-1700 Education Group						
GS-1710 Teacher	Mary G. Zeigler School, Department of Public Welfare,	GS-5	$8,783	$10,979	$244	1-1-72
Note: Eligibility for these special rates is limited to employees engaged in teaching students with "special needs" in the school identified. Table No. 750	District of Columbia Government, Laurel, Md.	GS-7	9,355	12,073	302	
GS-1800 Investigation Group						
GS-1811 Criminal Investigator (Limited to positions of Special Agent (Intelligence) in the Internal Revenue Service)	Nationwide (Except New York, N.Y. SMSA)	GS-5	$9,027	$11,223	$244	1-1-72
		GS-6	9,785	12,233	272	
		GS-7	10,563	13,281	302	
		GS-8	11,015	14,021	334	
Table No. 260		GS-9	11,414	14,726	368	
GS-1811 Criminal Investigator (Limited to positions of Special Agent (Intelligence) in the Internal Revenue Service)	New York, N.Y. SMSA	GS-5	9,027	11,223	244	1-1-72
		GS-6	10,057	12,505	272	
		GS-7	11,167	13,885	302	
		GS-8	11,683	14,689	334	
		GS-9	12,150	15,462	368	
Table No. 261		GS-10	12,961	16,606	405	

Grade	Statutory range (Effective the first day of the first pay period beginning on or after Jan. 1, 1972)										Extended range for special rates									Within grade increases
GS-1	$4,564	$4,716	$4,868	$5,020	$5,172	$5,324	$5,476	$5,628	$5,780	$5,932	$6,084	$6,236	$6,388	$6,540	$6,692	$6,844	$6,996	$7,148	$7,300	$152
GS-2	5,166	5,338	5,510	5,682	5,854	6,026	6,198	6,370	6,542	6,714	6,886	7,058	7,230	7,402	7,574	7,746	7,918	8,090	8,262	172
GS-3	5,828	6,022	6,216	6,410	6,604	6,798	6,992	7,186	7,380	7,574	7,768	7,962	8,156	8,350	8,544	8,738	8,932	9,126	9,320	194
GS-4	6,544	6,762	6,980	7,198	7,416	7,634	7,852	8,070	8,288	8,506	8,724	8,942	9,160	9,378	9,596	9,814	10,032	10,250	10,468	218
GS-5	7,319	7,563	7,807	8,051	8,295	8,539	8,783	9,027	9,271	9,515	9,759	10,003	10,247	10,491	10,735	10,979	11,223	11,467	11,711	244
GS-6	8,153	8,425	8,697	8,969	9,241	9,513	9,785	10,057	10,329	10,601	10,873	11,145	11,417	11,689	11,961	12,233	12,505	12,777	13,049	272
GS-7	9,053	9,355	9,657	9,959	10,261	10,563	10,865	11,167	11,469	11,771	12,073	12,375	12,677	12,979	13,281	13,583	13,885	14,187	14,489	302
GS-8	10,013	10,347	10,681	11,015	11,349	11,683	12,017	12,351	12,685	13,019	13,353	13,687	14,021	14,355	14,689	15,023	15,357	15,691	16,025	334
GS-9	11,046	11,414	11,782	12,150	12,518	12,886	13,254	13,622	13,990	14,358	14,726	15,094	15,462	15,830	16,198	16,566	16,934	17,302	17,670	368
GS-10	12,151	12,556	12,961	13,366	13,771	14,176	14,581	14,986	15,391	15,796	16,201	16,606	17,011	17,416	17,821	18,226	18,631	19,036	19,441	405
GS-11	13,309	13,753	14,197	14,641	15,085	15,529	15,973	16,417	16,861	17,305	17,749	18,193	18,637	19,081	19,525	19,969	20,413	20,857	21,301	444
GS-12	15,866	16,395	16,924	17,453	17,982	18,511	19,040	19,569	20,098	20,627	21,156	21,685	22,214	22,743	23,272	23,801	24,330	24,859	25,388	529
GS-13	18,737	19,362	19,987	20,612	21,237	21,862	22,487	23,112	23,737	24,362	24,987	25,612	26,237	26,862	27,487	28,112	28,737	29,362	29,987	625
GS-14	21,960	22,692	23,424	24,156	24,888	25,620	26,352	27,084	27,816	28,548	29,280	30,012	30,744	31,476	32,208	32,940	33,672	34,404	35,136	732
GS-15	25,583	26,436	27,289	28,142	28,995	29,848	30,701	31,554	32,407	33,260	34,113	34,966	35,819	[1] 36,672	[1] 37,525	[1] 38,378	[1] 39,231	[1] 40,084	[1] 40,937	853

[1] Rates may not exceed the rate for Executive Level V. As of Jan. 1972, Executive Level V rate was $36,000.

[FR Doc.72-853 Filed 1-21-72;8:45 am]

MINIMUM RATES AND RATE RANGES

Notice of Adjustment

Under the authority of 5 U.S.C. 5303 and Executive Order 11073, the Civil Service Commission has adjusted the minimum rates and rate ranges for certain occupations and grade levels for which special rates were approved under 5 U.S.C. 5303. The following tables contain the basic special salary rate information for each occupation and grade level for which special rates are authorized. Only the special minimum and special maximum rate (i.e., 10th step) are shown; however, a full special rate range is authorized for each occupation and grade level specified. The full range of special rates can be prepared by successively adding the amount of the within grade increase, as shown for each grade, beginning with the special minimum to produce a rate for each step up to the special maximum rate.

The effective date of the revised rates is the pay period that begins on or after February 6, 1972.

[SEAL]

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

GS-000 MISCELLANEOUS OCCUPATIONS

Occupational series coverage	Geographic coverage	Grade	1st step rate	10th step rate	Within grade increase	Effective date
GS-081 Firefighter (General) Firefighter (Structural) Firefighter (Airfield)	Naval Training Center, Great Lakes, Ill., and Federal installations within a 22-mile radius of the Center	GS-3	$6,410	$8,156	$194	2-6-72
		GS-4	6,980	8,942	218	
Table No. 001		GS-5	7,563	9,759	244	
GS-083 Police Series	Washington, D.C. SMSA, including District of Columbia Children's Center, Laurel, Md., and Quantico Marine Base	GS-4	7,416	9,378	218	2-6-72
Table No. 008		GS-5	7,807	10,003	244	
GS-300 GENERAL ADMINISTRATIVE, CLERICAL, AND OFFICE SERVICES GROUP						
GS-301 Police Cadet	District of Columbia Metropolitan Police Department	GS-2	$5,510	$7,058	$172	2-6-72
Table No. 150		GS-3	6,022	7,768	194	
GS-359 Electric Accounting Machine Operating Series, Grade 4 Only	Juneau Election District, Alaska	GS-4	7,198	9,160	218	2-6-72
GS-362 Electric Accounting Machine Project Planning Series, Grade 7 Only		GS-7	9,355	12,073	302	
Table No. 154						
GS-600 MEDICAL, HOSPITAL, DENTAL, AND PUBLIC HEALTH GROUP						
GS-602 Medical Officer Series	Worldwide	GS-11	$17,305	$21,301	$444	2-6-72
		GS-12	20,627	25,388	529	
		GS-13	23,737	29,362	625	
		GS-14	25,620	32,208	732	
Table No. 290		GS-15	27,280	34,966	853	
GS-610 Nurse Series	Galveston, Tex.	GS-4	7,634	9,596	218	2-6-72
Table No. 306		GS-5	8,051	10,247	244	
GS-610 Nurse Series	San Fracisco, Calif., and 35-mile radius extended to include Travis Air Force Base	GS-4	8,070	10,032	218	2-6-72
		GS-5	8,539	10,735	244	
		GS-6	8,969	11,417	272	
Table No. 303		GS-7	9,355	12,073	302	
GS-610 Nurse Series	Baltimore, Md., Standard Metropolitan Statistical Area	GS-4	7,852	9,814	218	2-6-72
		GS-5	8,295	10,491	244	
Table No. 292		GS-6	8,697	11,145	272	
GS-610 Nurse Series	Boston, Mass., Standard Metropolitan Statistical Area	GS-4	7,634	9,596	218	2-6-72
Table No. 305		GS-5	8,051	10,247	244	
GS-610 Nurse Series	Washington, D.C., Standard Metropolitan Statistical Area including the D.C. Government's Children's Center, Laurel, Md., and the U.S. Marine Corps Base, Quantico, Va.	GS-4	7,852	9,814	218	2-6-72
Table No. 304		GS-5	8,295	10,491	244	
GS-610 Nurse Series GS-615 Public Health Nurse Series	New York, N.Y.	GS-4	8,070	10,032	218	2-6-72
		GS-5	9,027	11,223	244	
		GS-6	9,513	11,961	272	
		GS-7	9,959	12,677	302	
		GS-8	10,681	13,687	334	
Table No. 296		GS-9	11,414	14,726	368	

GS-600 MEDICAL, HOSPITAL, DENTAL, AND PUBLIC HEALTH GROUP—Continued

Occupational series coverage	Geographic coverage	Grade	1st step rate	10th step rate	Within grade increase	Effective date
GS-621 Licensed Practical Nurse Table No. 334	New York, N.Y., SMSA	GS-3 GS-4 GS-5	$6,798 7,198 7,563	$8,544 9,160 9,759	$194 218 244	2-6-72
GS-621 Licensed Practical Nurse Table No. 337	Cook County, Ill. (Including the city of Chicago).	GS-3 GS-4	6,410 6,980	8,156 8,942	194 218	2-6-72
GS-621 Licensed Practical Nurse Table No. 342	West Haven, Conn.	GS-3 GS-4	6,410 6,980	8,156 8,942	194 218	2-6-72
GS-621 Licensed Practical Nurse Table No. 343	Boston SMSA and Brockton, Mass.	GS-3 GS-4	6,410 6,980	8,156 8,942	194 218	2-6-72
GS-631 Occupational Therapists GS-633 Physical Therapists Table No. 308	Washington, D.C. SMSA	GS-5 GS-6	8,539 8,697	10,735 11,145	244 272	2-6-72
GS-631 Occupational Therapist GS-633 Physical Therapist Table No. 309	Los Angeles—Long Beach, Calif., SMSA	GS-6	8,697	11,145	272	2-6-72
GS-631 Occupational Therapist GS-633 Physical Therapist Table No. 310	New York City and Suffolk County, N.Y.	GS-6 GS-7 GS-8	9,513 9,959 10,347	11,961 12,677 13,353	272 302 334	2-6-72
GS-644 Medical Technologist Series Table No. 318	Washington, D.C. SMSA	GS-5	8,051	10,247	244	2-6-72
GS-644 Medical Technologist Series Table No. 316	Ann Arbor, Mich., Standard Metropolitan Statistical Area	GS-5	8,539	10,735	244	2-6-72
GS-644 Medical Technologist Series Table No. 314	Milwaukee, Wis.	GS-5	8,051	10,247	244	2-6-72
GS-644 Medical Technologist Series Table No. 313	State of California	GS-5 GS-7	8,539 9,657	10,735 12,375	244 302	2-6-72
GS-644 Medical Technologist Series Table No. 331	New York City, N.Y. (includes Bronx, Kings, New York, Queens, and Richmond Counties)	GS-5	8,295	10,491	244	2-6-72
GS-647 Medical Radiology Technician Series Table No. 320	New York City	GS-4 GS-5 GS-6 GS-7	8,070 8,539 8,969 9,657	10,032 10,735 11,417 12,375	218 244 272 302	2-6-72
GS-647 Medical Radiology Technician Series Table No. 321	San Francisco, Calif., and Federal installations within a 35-mile radius	GS-5	7,563	9,759	244	2-6-72
GS-647 Medical Radiology Technician Series Table No. 340	Los Angeles—Long Beach, Calif., SMSA (includes all of Los Angeles County)	GS-4 GS-5	7,634 7,807	9,596 10,003	218 244	2-6-72
GS-647 Medical Radiology Technician Series Table No. 341	Cook County, Ill. (including the city of Chicago)	GS-4 GS-5	7,198 7,563	9,160 9,759	218 244	2-6-72
GS-649 Inhalation Therapy Technician Table No. 344	New York, N.Y. SMSA (includes New York City, Nassau, Rockland, Suffolk, and Westchester Counties)	GS-4 GS-5 GS-6	7,416 8,051 8,425	9,378 10,247 10,873	218 244 272	2-6-72
GS-660 Pharmacist Table No. 322	State of California	GS-9 GS-10	11,782 12,556	15,094 16,201	368 405	2-6-72
GS-682 Dental Hygienist Series Table No. 327	Norfolk and Newport News-Hampton, Va. SMSA's	GS-4 GS-5	7,634 8,539	9,596 10,735	218 244	2-6-72
GS-682 Dental Hygienist Series Table No. 328	States of California and Nevada	GS-4 GS-5 GS-6	7,198 8,051 8,425	9,160 10,247 10,873	218 244 272	2-6-72
GS-682 Dental Hygienist Series Table No. 338	Denver, Colo., SMSA	GS-4 GS-5 GS-6	7,416 7,807 8,425	9,378 10,003 10,873	218 244 272	2-6-72
	GS-000 MISCELLANEOUS OCCUPATIONS					
GS-701 Veterinarian Series Table No. 400	Worldwide	GS-9	$11,782	$15,094	$368	2-6-72
GS-1654 Printing Management Series (Note: Eligibility for these special rates is limited to employees who have at least a Baccalaureate Degree with a major in printing management.) Table No. 725	Nationwide	GS-5	8,539	10,735	244	2-6-72
GS-1710 Teacher (Note: Eligibility for these special rates is limited to employees engaged in teaching students with "special needs" in the school identified.) Table No. 750	Mary G. Zeigler School, Department of Public Welfare, District of Columbia Government, Laurel, Md.	GS-5	8,295	10,491	244	2-6-72

Grade	Statutory range (Effective the first day of the first pay period beginning on or after Jan. 1, 1972)										Extended range for special rates									Within grade in-creases
GS-1	$4,564	$4,716	$4,868	$5,020	$5,172	$5,324	$5,476	$5,628	$5,780	$5,932	$6,084	$6,236	$6,388	$6,540	$6,692	$6,844	$6,996	$7,148	$7,300	152
GS-2	5,166	5,338	5,510	5,682	5,854	6,026	6,198	6,370	6,542	6,714	6,886	7,058	7,230	7,402	7,574	7,746	7,918	8,090	8,262	172
GS-3	5,828	6,022	6,216	6,410	6,604	6,798	6,992	7,186	7,380	7,574	7,768	7,962	8,156	8,350	8,544	8,738	8,932	9,126	9,320	194
GS-4	6,544	6,762	6,980	7,198	7,416	7,634	7,852	8,070	8,288	8,506	8,724	8,942	9,160	9,378	9,596	9,814	10,032	10,250	10,468	218
GS-5	7,319	7,563	7,807	8,051	8,295	8,539	8,783	9,027	9,271	9,515	9,759	10,003	10,247	10,491	10,735	10,979	11,223	11,467	11,711	244
GS-6	8,153	8,425	8,697	8,969	9,241	9,513	9,785	10,057	10,329	10,601	10,873	11,145	11,417	11,689	11,961	12,233	12,505	12,777	13,049	272
GS-7	9,053	9,355	9,657	9,959	10,261	10,563	10,865	11,167	11,469	11,771	12,073	12,375	12,677	12,979	13,281	13,583	13,885	14,187	14,489	302
GS-8	10,013	10,347	10,681	11,015	11,349	11,683	12,017	12,351	12,685	13,019	13,353	13,687	14,021	14,355	14,689	15,023	15,357	15,691	16,025	334
GS-9	11,046	11,414	11,782	12,150	12,518	12,886	13,254	13,622	13,990	14,358	14,726	15,094	15,462	15,830	16,198	16,566	16,934	17,302	17,670	368
GS-10	12,151	12,556	12,961	13,366	13,771	14,176	14,581	14,986	15,391	15,796	16,201	16,606	17,011	17,416	17,821	18,226	18,631	19,036	19,441	405
GS-11	13,309	13,753	14,197	14,641	15,085	15,529	15,973	16,417	16,861	17,305	17,749	18,193	18,637	19,081	19,525	19,969	20,413	20,857	21,301	444
GS-12	15,866	16,395	16,924	17,453	17,982	18,511	19,040	19,569	20,098	20,627	21,156	21,685	22,214	22,743	23,272	23,801	24,330	24,859	25,388	529
GS-13	18,737	19,362	19,987	20,612	21,237	21,862	22,487	23,112	23,737	24,362	24,987	25,612	26,237	26,862	27,487	28,112	28,737	29,362	29,987	625
GS-14	21,960	22,692	23,424	24,156	24,888	25,620	26,352	27,084	27,816	28,548	29,280	30,012	30,744	31,476	32,208	32,940	33,672	34,404	35,136	732
GS-15	25,583	26,436	27,289	28,142	28,995	29,848	30,701	31,554	32,407	33,260	34,113	34,966	35,819	[1] 36,672	[1] 37,525	[1] 38,378	[1] 39,231	[1] 40,084	[1] 40,937	853

[1] Rates may not exceed the rate for Executive Level V. As of Jan. 1972, Executive Level V rate was $36,000.

[FR Doc.72-854 Filed 1-21-72;8:45 am]

COUNCIL ON ENVIRONMENTAL QUALITY

ENVIRONMENTAL IMPACT STATEMENTS

Notice of Public Availability

Environmental impact statements received by the Council on Environmental Quality, January 10–January 14, 1972.

NOTE: At the head of the listing of statements received from each agency is the name of an individual who can answer questions regarding those statements.

DEPARTMENT OF AGRICULTURE

Contact: Dr. T. C. Byerly, Office of the Secretary, Washington, D.C. 20250, (202) 388-7803.

FOREST SERVICE

Draft, January 4

Transfer of 2,240 acres of Lincoln National Forest, N. Mex., to the Department of the Interior to be held in trust for the Mescalero Apache Tribe. Operating the Sierra Blanca Ski area under a special-use permit from the Forest Service, the Tribe has requested the transfer on the premise that obtaining title to the land would facilitate obtaining financing for further expansion and development of the Area. (ELR Order No. 1560, 24 pages) (NTIS Order No. PB-205 450-D)

Draft, January 6

Mount Bailey winter sports site, Douglas County, Oreg. Construction of a major regional winter sports complex on Mount Bailey to include base area, aerial lifts, 11 miles of ski runs and trails and an access road to base area. Will affect 1,300 acres. (ELR Order No. 1571, 8 pages) (NTIS Order No. PB-205 454-D)

Draft, December 13

Federal-State cooperative 1972 Gypsy Moth suppression program. Treatment of 300,000 acres in Alabama, Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and Wisconsin with carbaryl. Will temporarily reduce certain beneficial insects and arthropods. (ELR Order No. 1579, 104 pages) (NTIS Order No. PB-205 589-D)

SOIL CONSERVATION SERVICE

Final, January 5

Winnebago-Bean Creek Watershed, Richardson County, Nebr. Conservation land treatment of 3,100 acres over a 5-year period and construction of 16 grade stabilization structures. Will inundate 6 miles of intermittent stream channels and periodically inundate 90 acres in the detention pools. Comments made by Army, EPA, HEW, DOI, Nebraska Game and Parks Commission, and Nebraska Soil and Water Conservation Commission. (ELR Order No. 1586, 32 pages) (NTIS Order No. PB-201 254-F)

ATOMIC ENERGY COMMISSION

Contact: For Nonregulatory Matters: Joseph J. DiNunno, Director, Office of Environmental Affairs, Washington, D.C. 29545, (202) 973-5391.

For Regulatory Matters: Christopher L. Henderson, Assistant Director of Regulation for Administration, Washington, D.C. 20545, (202) 973-7531.

Draft, January 7

Midland Plant Units 1 and 2, Midland, Mich. Application for construction permit and operating license by Consumers Power Co. for two pressurized water reactors (1,300 mw.); 4,050,000 pounds per hour of stream will be delivered to Dow Chemical Co. Will affect downstream flow of Tittabawassee River. Dockets 50-329 and 50-330. (ELR Order No. 1580, 134 pages) (NTIS Order No. PB-205 573-D)

DEPARTMENT OF DEFENSE

DEPARTMENT OF ARMY

CORPS OF ENGINEERS

Contact: Francis X. Kelly, Assistant for Conservation Liaison, Public Affairs Office, Office, Chief of Engineers, 1000 Independence Avenue SW., Washington, DC 20314 (202) 639-6346.

Draft, January 6

Corte Madera Creek, Marin County, Calif. Flood control by dredging and channel excavation (completed), rectangular concrete channel on Tamalpais Creek (completed), rectangular concrete channel with stilling basin from earth channel to 600 feet below Lagunitas Road Bridge (under construction) and rectangular concrete channel upstream to Sir Francis Drake Boulevard. Involves loss of marshland and riparian woodland associations. (ELR Order No. 1570, 38 pages) (NTIS Order No. PB-205 455-D)

Draft, January 5

Diked disposal area, Ashland Harbor, Ashland, Wis. Diking of 6 acres of land area for containment of polluted dredge spoils previously deposited in open waters of Lake Superior. Will produce some noxious odors. (ELR Order No. 1587, 18 pages) (NTIS Order No. PB-205 586-D)

Diked disposal area, Ontonagon Harbor, Ontonagon, Mich. Diking of 20 acres of land area for containment of polluted dredge spoils previously deposited in open waters of Lake Superior. Will produce some noxious odors. (ELR Order No. 1588, 15 pages) (NTIS Order No. PB-205 587-D)

Final, January 4

Battery Park City Authority bulkhead and fill project, Hudson River, Borough of Manhatten, N.Y. Bulkhead and fill to be placed in Hudson River between the Battery and Reade Street, extending 600-950 feet offshore to create 90.8 acres of land. Involves demolition of old structures and dredging. Comments made by USDA, DOC, EPA, DOI, DOT, New York State Department of Environmental Conservation, and three city agencies. (ELR Order No. 1562, 35 pages) (NTIS Order No. PB-202 086-F)

ENVIRONMENTAL PROTECTION AGENCY

Contact: George Marienthal, Acting Director, Office of Federal Activities, 1750 K Street NW., Room 440, Washington, DC 20460, (202) 254-7420.

Draft, January 4

Palm Beach County, Fla., sewerage improvement program. A regional system connected to one waste water treatment facility. Four projects: New and expanded secondary waste water treatment and disposal facilities owned and operated by West Palm Beach to serve coastal region of the county and interceptor sewers, major sewage pumping stations and force mains to connect with the facilities, part to be owned and operated by the county. Projects WPC-FLA-328, -329, -330, and -331. (ELR Order No. 1589, 176 pages) (NTIS Order No. PB-205 588-D)

GENERAL SERVICES ADMINISTRATION

Contact: Rod Kreger, Deputy Administrator, General Services Administration—AD, Washington, D.C. 20405, (202) 343-6077.

Alternate Contact: Aaron Woloshin, Director, Office of Environmental Affairs, General Services Administration—AD, (202) 343-4161.

Draft, January 7

Disposal of 198 acres of Fort Des Moines, Des Moines, Iowa, by assigning 95 acres to HEW for conveyance to Des Moines for educational use and 103 acres to BOR for conveyance to Polk County for park and recreational use. (ELR Order No. 1568, 12 pages) (NTIS Order No. PB-205 446-D)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Contact: Richard H. Broun, Director, Environmental and Land Use Planning Division, Washington, D.C. 20410, (202) 755-6186.

Final, January 7

Pike Plaza redevelopment project, Seattle, Wash. The city of Seattle is requesting a loan and grant contract for clearance and redevelopment of 22.81 acres except for the Public Market, about 7 acres, to include shops, markets, apartments, office buildings, etc. Comments made by EPA, HEW, DOT, Washington Planning and Community Affairs Agency, Advisory Council on Historic Preservation, and Puget Sound Governmental Conference. (ELR Order No. 1553, 30 pages) (NTIS Order No. PB-201 252-F)

DEPARTMENT OF INTERIOR

Contact: Office of Communications, Room 7214, Washington, D.C. 20240, (202) 343-6416.

BUREAU OF RECLAMATION

Draft, January 6

China Meadows Dam and Reservoir, Lyman Project, Utah. Construction of an earthfill dam and dike on the East Fork of Smiths Fork. Inundation of 372 acres of meadow and forest will result in loss of 2 miles of trout stream, 205 acres of timber, grazing for 24 cows, forage for wildlife and 13 family campground units. (ELR Order No. 1606, 73 pages) (NTIS Order No. PB-205 581-D)

BUREAU OF RECREATION

Draft, January 10

Legislative proposal for establishment of the Potomac Heritage National Scenic Trail, generally following the Potomac River shore and passing through the District of Columbia, Maryland, Pennsylvania, Virginia and West Virginia (874 miles). (ELR Order No. 1612, 25 pages) (NTIS Order No. PB-205 577-D)

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Contact: Ralph E. Cushman, Special Assistant, Office of Administration, Washington, D.C. 20546, (202) 967-8107.

Final, January 10

Pioneer F/G Program to conduct exploration beyond the orbit of Mars and the interplanetary medium, the nature of the Asteroid Belt and the planet Jupiter. Comments made by AEC, CEQ, EPA, and the Attorney General of Massachusetts. (ELR Order No. 1585, 37 pages) (NTIS Order No. PB-202 085-F)

DEPARTMENT OF TRANSPORTATION

Contact: Martin Convisser,[1] Director, Office of Program Coordination, 400 Seventh Street SW., Washington, DC 20590, (202) 462-4357.

FEDERAL AVIATION ADMINISTRATION

Draft, January 10

Dade County Airport, Trenton, Ga. Construction of a basic utility airport adequate for 95 percent of propeller-driven aircraft weighing less than 12,500 pounds. (ELR Order No. 1611, 23 pages) (NTIS Order No. PB-205 578-D)

Final, January 5

Shively Field, Saratoga, Wyo. Extension and paving runway, construction of taxiway and enlargement of apron. Comments made by USDA, Army COE, and EPA. (ELR Order No. 1561, 34 pages) (NTIS Order No. PB-203 475-F)

Pittsfield Municipal Airport, Pittsfield, Mass. Installation of a medium intensity lighting system on one runway and relocation of existing system to another runway. Comments made by DOI, DOT, Massachusetts Office of Planning and Program Coordination, Berkshire County Regional Planning Commission, and Pittsfield Conservation Commission. (ELR Order No. 1569, 25 pages) (NTIS Order No. PB-203 471-F)

University Park Airport, University Park, Pa. Construction of runway and taxiway and extension of runway. Comments made by USDA, Army COE, EPA, HUD, DOI, DOT, four State agencies, three Pennsylvania State University Offices, Phillipsburg Area Chamber of Commerce, and five businesses. (ELR Order No. 1574, 45 pages) (NTIS Order No. PB-202 798-F)

Final, January 12

Manchester Municipal Airport, Manchester, N.H. Acquisition of easements and removal of trees and poles obstructing runway approaches. Comments made by EPA, FPC, HEW, HUD, DOI, DOT, and ten State offices. (ELR Order No. 1607, 29 pages) (NTIS Order No. PB-203 226-F)

FEDERAL HIGHWAY ADMINISTRATION

Draft, January 3

S.R.-37: Perry County, Ind. Relocation from Tell City to S.R.-62/I-64 interchange north of St. Croix (20.8 miles). 4(f) determination required for use of 72 acres of Hoosier National Forest for right-of-way. Project F-19(3) A-D. (ELR Order No. 1563, 25 pages) (NTIS Order No. PB-205 451-D)

S.R.-16 and S.R.-76: Coshocton County, Ohio. Improvement of alignment of S.R.-16 from Township Road 285 east to County Road 6 and construction of interchange at S.R.-16/S.R.-76 intersection. Will affect 26 families, two farms, and two businesses. Project COS-16/76-4.42/8.82. (ELR Order No. 1565, 11 pages) (NTIS Order No. PB-205 449-D)

Draft, January 5

S.R.-95, Lake Havasu City—I-40 Highway: Mohave County, Ariz. Construction from south boundary of Lake Havasu City north to 1 mile south of I-40. Projects S-405-601(R/W) and S-405-602(R/W). (ELR Order No. 1566, 13 pages) (NTIS Order No. PB-205 449-D)

[1] Mr. Convisser's office will refer you to the regional office from which the statement originated.

Draft, January 7

S.R.-60 Bypass: Bradley County, Tenn. Construction of last link of bypass around central Cleveland (2.2 miles). Will displace 16 residences and three businesses. Project F-086-1( ), 06069-5207-04 (ELR Order No. 1567, 16 pages) (NTIS Order No. PB-205 447-D)

Draft, January 6

FAS Route 297 (County Road 531) and Cisco-Lindsley Bridge: Gogebic County, Mich. Relocation from FAS Route 1043 (C.R. 535) to FAS Route 295 and construction of a bridge and approaches connecting Cisco and Lindsley Lakes on relocated route. Project S 297( ). (ELR Order No. 1572, 30 pages) (NTIS Order No. PB-205 457-D)

U.S. 73-75 and Nebr.-1 (Murray intersection and Murray East): Cass County, Nebr. Improvement of intersection of U.S. 73-75/N-1 intersection, improvement on U.S. 73-75 (0.9 mile) and rebuilding of N-1 from intersection to Murray (1.1 miles). Requires removal of service station, mobile homes, a dwelling, and various other buildings. Projects F-28(10) and S-534(11). (ELR Order No. 1573, 10 pages) (NTIS Order No. PB-205 456-D)

Draft, January 5

Supplement to draft (5/21), 4(f) information relating to 1.6 acres of Windsor Meadow Management Resource Area. I-291 Windsor to Manchester, Conn., connection between I-91 and I-86. Project I-291-5(1). (ELR Order No. 1575, supplement, 50 pages) (draft, NTIS Order No. PB-199 252-D; supplement, NTIS Order No. PB-205 572)

Draft, January 3

U.S.-2 (Arrowhead Bridge and approaches): Duluth, Minn., and Superior, Wis. Relocation of bridge over St. Louis River. Minnesota project F 170001-4( ); Wisconsin project F 08-5, I.D. 8680-0-00. (ELR Order No. 1576, 25 pages) (NTIS Order No. PB-205 452-D)

Draft, January 6

Wilson Bridge and approaches: Wahiawa, Oahu, Hawaii. Replacement of bridge and widening of Kamehameha Highway to Kilani Avenue (2,500 feet). Will displace residences and businesses. Project F-080-1(3) (ELR Order No. 1577, 40 pages) (NTIS Order No. PB-205 453-D)

Draft, January 7

Route 86: Riverside County, Calif. Freeway construction between the Imperial County line and Indio (21 miles). Will displace 69 people. Project 11-Riv-86, 11 201-094111, -094121, -094131, -094141. (ELR Order No. 1600, 13 pages) (NTIS Order No. PB-205 580-D)

Draft, January 11

U.S.-74: Columbus County, N.C. Relocation from Hallsboro to Bolton. Will displace 12 families and affect wildlife in cutting through Friar Swamp. Project 6.801570. (ELR Order No. 1602, 16 pages) (NTIS Order No. PB-205 584-D)

I-95 (Fayetteville Bypass): Cumberland County, N.C. Construction from 6.6 miles south of Fayetteville to 4.8 miles north of Fayetteville (15.2 miles). Will displace 29 families. Project 8.1347401, FA I-95-2(24)32. (ELR Order No. 1603, 30 pages) (NTIS Order No. PB-205 583-D)

County Route 40/8 (Wheeling hospital access road): Wheeling, Ohio County, W. Va. Upgrading and extension of

Mount De Chantel Road from Washington Avenue southeast to the new hospital site (0.83 mile). Project APL–9422(001). (ELR Order No. 1604, 40 pages) (NTIS Order No. PB–205 585–D)

S.R.–1216 and S.R.–1201: Carteret County, N.C. Improvement from the new Bogue Sound Bridge to Atlantic Beach (17.3 miles). Project 9.8025201 (ELR Order No. 1605, 21 pages) (NTIS Order No. PB–205 582–D)

Draft, January 10.

I–505 (Industrial Freeway): Northwest Portland, Multonomah County, Oreg. Freeway construction from I–405 west to St. Helens Road (U.S.–30). Will displace residents and commercial/industrial units. (ELR Order No. 1608, 28 pages) (NTIS Order No. PB–205 579–D)

U.S.–31–E: Allen County, Ky. Construction from just south of U.S.–231 1.5 miles west of Scottsville to a point south of Jefferson School Road (4.55 miles). Will displace 11 families and one business. Project F 28 (17), SP 2–95–9L (sec. 1). (ELR Order No. 1613, 20 pages) (NTIS Order No. PB–205 576–D)

Draft, January 11.

S.R.–2000–2180: Kannapolis, Cabarrus County, N.C. Widening Lane Street from I–85 west to Cannon Boulevard. Project 6.803080. (ELR Order No. 1614, 14 pages) (NTIS Order No. PB–205 574–D)

U.S.–30 (Columbia River Highway): Columbia County, Oreg. Improvement to four lanes from Scappoose to Warren (4.6 miles). Will dislocate 29 residential units and 10 businesses. (ELR Order No. 1615, 8 pages) (NTIS Order No. PB–205 575–D)

Final, January 5

Routes 347 (Hauppauge-Port Jefferson, S.H.–9376), and 25 (Smithtown Branch-Coram, S.H.–8268), Smithtown and Brookhaven, Suffolk County, N.Y. Upgrading to expressway standards of Route 347 between Browns Road and Route 25A (8 miles) and reconstruction of Route 25 from Sunny Road to Hawkins Road (2 miles). Projects PIN 0041.00 and PIN 0054.01. Comments made by HUD, New York Department of Environmental Conservation, Nassau-Suffolk Regional Planning Board, and Suffolk County Council on Environmental Quality. (ELR Order No. 1581, 27 pages) (NTIS Order No. PB–200 530–F)

Red Lake River Bridge and approaches: Polk County, Minn. Construction between TH–220 and TH–2 1.5 miles south of East Grand Forks. Project SP 60–663–01 (C.S.A.H. 63) ER 69 (11). Comments made by USDA, Army COE, EPA, DOC, FPC, HUD, DOI, OCD, DOT, Minnesota Soil Conservation Service, Minnesota Planning Agency, Polk County Planning Commission, and city of East Grand Forks. (ELR Order No. 1582, 40 pages) (NTIS Order No. PB–203 217–F)

Final, January 6

U.S.–52: Moncks Corner, Berkeley County, S.C. Widening to four lanes from U.S.–52 relocation north to U.S.–17A and S.C.–402 (3.1 miles). Comments made by HUD and DOT. (ELR Order No. 1583, 15 pages) (NTIS Order No. PB–198 848–F)

Final, January 5

U.S.–3: Northumberland, Coos County, N.H. Rerouting of U.S.–3 from a section on Main and State Streets to Church Street (0.2 mile). Project F–035–2(6); P–1636. Comments made by USDA, EPA, HUD, DOT, and State Office of Planning. (ELR Order No. 1584, 37 pages) (NTIS Order No. PB–202 179–F)

Final, January 6

I–H–1, Nimitz Spur: Oahu, Hawaii. Completion of the remaining portion between the Pearl Harbor Interchange and connections to the military reservations. Comments made by USDA, Army COE, DOC, DOD, DOI, DOT, six State agencies, and four offices of city and county of Honolulu. (ELR Order No. 1590, 62 pages) (NTIS Order No. PB–201 571–F).

Final, January 5

La.–21 (Bush-Sun Highway): St. Tammany Parish, La. Widening from 1 mile south of the Bogue Chitto River Bridge north to its junction with La.–16 at Sun (2 miles). Involves replacement of bridge with twin structures. Project 30–02–12, 30–02–17, BR–F–F–244(10), F–244(11). Comments made by Advisory Council on Historic Preservation, USDA, Army COE, EPA, GSA, HEW, DOI, Louisiana Bureau of Outdoor Recreation, Louisiana State University, and Regional Planning Commission. (ELR Order No. 1591, 24 pages) (NTIS Order No. PB–202 324–F)

LR–50 Spur S, section A10, Pennsylvania Route 950: Jefferson County, Pa. Relocation of 0.6 mile to accommodate expansion of the Crescent brick plant. Comments made by USDA and twelve State agencies. (ELR Order No. 1592, 35 pages) (NTIS Order No. PB–202 299–F)

Final, January 6

STH–78 (Gratiot-Argyle Road): Lafayette County, Wis. Grading and surfacing of roadway and relocation of two sections (4.4 miles). Project S 0252(6), I.D. 5591–1–100. Comments made by USDA, EPA, HUD, DOI, DOT, and Wisconsin Department of Natural Resources. (ELR Order No. 1593, 13 pages) (NTIS Order No. PB–201 250–F)

North Carolina 24: Onslow County, N.C. Widening from two to four lanes from Camp Lejeune at Hubert to Swansboro (7 miles). Project 6.801743, Part II. Comments made by USDA, EPA, FPC, GSA, HUD, DOI, OEO, State Clearinghouse, and Neuse River Regional Planning and Development Council. (ELR Order No. 1594, 33 pages) (NTIS Order No. PB–200 782–F)

S.R.–62: Knoxville, Tenn. Construction of expressway from Hinton Road west of the proposed I–640 interchange to the Oldham Avenue/I–75 interchange (3.05 miles). Will displace businesses and residences. Project U–083–2( ). Comments made by USDA, FAA, HUD, DOI, TVA, Tennessee Office of Urban and Federal Affairs, and eight State agencies, East Tennessee Economic Development District, Knox County Judge, Knoxville-Knox County Metropolitan Planning Commission, and Knoxville Housing Authority. (ELR Order No. 1595, 66 pages) (NTIS Order No. PB–205 594–F)

Pine and Cincinnati Streets intersection: Tulsa, Okla. Reconstruction of intersection. Project T 8390(202). Comments made by HEW, DOI, Tulsa Metropolitan Area Planning Commission, Model City and State Clearinghouse. (ELR Order No. 1596, 43 pages) (NTIS Order No. PB–202 656–F)

Vermont Route 109: Lamoille County, Vt. Upgrading from intersection with Town Highway 8 in Belvidere Center to its intersection with Vermont Route 118 and Town Highway 8 (3.7 miles). Project S 0282(2). Comments made by EPA and State Clearinghouse. (ELR Order No. 1597, 22 pages) (NTIS Order No. PB–202 590–F)

Batesville Topics, Broad Street grade separation: Independence County, Ark. Construction of an overpass across the Missouri Pacific RR. and Polk Bayou to connect Broad Street with Bayou Street. (1,500 feet). Project T–8020(3), Job 5613 (5622). Comments made by DOI, six State agencies, and White River Planning and Development District. (ELR Order No. 1598, 19 pages) (NTIS Order No. PB–200 209–F)

Route 13 (Crane Bypass): Stone County, Mo. Construction from its junction with Route 248 in Galena, in part on a new location, to about 1.2 miles south of Bailey Creek. Job 8–P–13–4, F–FG–13–1 (2). Comments made by USDA, Army COE, EPA, HUD, DOI, DOT, State Clearinghouse, and Lakes Country Regional Planning Commission. (ELR Order No. 1599, 21 pages) (NTIS Order No. PB–199 858–F)

Final, January 12

S.R.–24: Alachua County, Fla. Upgrading from Sperry plant in Gainesville to Waldo (9.3 miles). Job 26050–1506, F–008–1(9). Comments made by USDA, EPA, DOI, North Central Florida Regional Planning Council, and four State agencies. (ELR Order No. 1617, 35 pages) (NTIS Order No. PB–202 171–F)

TIMOTHY ATKESON,
General Counsel.

[FR Doc.72–1017 Filed 1–21–72;8:50 am]

ENVIRONMENTAL PROTECTION AGENCY

ASSISTANT ADMINISTRATOR FOR CATEGORICAL PROGRAMS

Delegation of Authority To Publish Rules

Authority to publish revised rules governing Advisory Committees and Rules of Practice governing hearings under the Federal Insecticide, Fungicide, and Rodenticide Act is hereby delegated to the Assistant Administrator for Categorical Programs.

WILLIAM D. RUCKELSHAUS,
Administrator.

JANUARY 19, 1972.

[FR Doc.72–992 Filed 1–21–72;8:48 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19274; FCC 72–52]

ACTION RADIO, INC.

Order Extending Time

In regard application of Action Radio, Inc. for renewal of license of Radio Station KTLK, Denver, Colo. Docket No. 19274, File No. BR–1969.

1. The Commission has under consideration: (a) A petition for further extension of time filed January 7, 1972, by Action Radio, Inc., (b) an opposition thereto filed January 11, 1972, by the Chief,

Broadcast Bureau, and (c) a reply filed January 12, 1972, by Action Radio.

2. Petitioner seeks an extension of time to and including February 14, 1972, within which to file a reply to the Broadcast Bureau's opposition to petition for reconsideration of order designating case for hearing, asserting that additional time is required for preparation of the pleading due to the illness of counsel and his family and so that a deposition in support of the pleading can be taken. According to the Bureau, however, while it does not object to an extension to January 21, 1972, based on counsel's illnesses, the purpose of a petition for reconsideration is to demonstrate that no basis for a hearing exists, discovery procedures herein are not to begin until after action is taken on the petition for reconsideration of the designation order, and, thus, the taking of a deposition is totally irrelevant to the requested extension of time. In reply, petitioner contends that the proposed deposition is necessary to present all of the facts for the Commission's consideration in passing on the petition for reconsideration and that counsel for both parties had reserved the right to use discovery techniques in connection with the petition for reconsideration.

3. During the July 28, 1971, prehearing conference in this proceeding, counsel for both parties agreed that the time for invoking discovery procedures would not begin to run until after action has been taken upon Action Radio's petition for reconsideration, and counsel for both parties reserved the right to use discovery procedures. Without regard to the question concerning the propriety of filing depositions in support of a petition for reconsideration submitted pursuant to § 1.111 of the rules, we believe that good cause has been shown, in light of the agreement of counsel in this proceeding, for the relatively brief extension of time.

4. *Accordingly, it is ordered,* That the petition for further extension of time filed January 7, 1972, by Action Radio, Inc. is granted and the time for filing a reply pleading is extended to and including February 14, 1972.

Adopted: January 14, 1972.

Released: January 17, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE, *Secretary.*

[FR Doc.72-986 Filed 1-21-72;8:47 am]

[1] Commissioners H. Rex Lee and Reid absent.

[FCC 72-53]

AMERICAN BROADCASTING COMPANIES, INC.

Memorandum Opinion and Order Regarding "Prime Time" Waiver in Connection With Certain Sports Events

In the matter of request by American Broadcasting Cos., Inc. (ABC), for waiver of the "Prime Time Access" rule (§ 73.658(k)) in connection with certain sports events.

1. The Commission here considers a request filed on January 7, 1972, by American Broadcasting Cos., Inc. (ABC) for waiver of the "prime time access rule", § 73.658(k), in connection with three sports events, involving five Saturday or Sunday dates in January and early February 1972. The events, all in the afternoon, are an NBA basketball game on Sunday, January 16, the Andy Williams San Diego golf tournament on Saturday and Sunday, January 29 and 30, and the Hawaiian Open golf tournament on the next Saturday and Sunday, February 5 and 6. In all cases, ABC contemplates that coverage will be completed by 7 p.m., e.s.t. (6 p.m. c.s.t.), which is when "prime time", as defined in the rule, begins; but waiver is asked in case unexpected "runovers" prevent completion of coverage by that time.

2. ABC earlier asked for waivers in connection with these events, and others; and as to these waivers, was denied Commission action, October 6, 1971 (FCC 71-1037). However, the earlier request was on a different basis, ABC contemplating coverage lasting until 7:30 p.m., e.s.t. on the 4 golf days and 8 p.m. for the basketball game. ABC has now revised its scheduling, and the basketball game starting time has been moved up from 5:30 to 4:55 p.m., so that ABC believes coverage in all cases can be expected to be completed by 7 p.m., e.s.t. It is stated that any "runover" time, if necessary, will be only that necessary for the completion of the contest, with no "post-game" or "post-match" coverage. The waiver is requested in case it is necessary because of overtime or "sudden death" playoffs, or rain delays in the case of the golf tournaments.[1] ABC asserts that the Commission recognized this type of situation in "Footnote 35" of the May 1970 report and order adopting the prime time access rule, and followed the same principle in the October 6, 1971 decision mentioned, granting waivers to CBS and NBC in essentially similar circumstances (including one golf tournament in the case of NBC).

3. Upon consideration of this request, the Commission is of the view that the events involved do fall within the "Footnote 35" principle and the October 1971 action concerning CBS and NBC, and accordingly that waiver here is appropriate: *Accordingly, it is ordered,* That the provisions of § 73.658(k) are waived, with respect to stations affiliated with the ABC network, to permit them to carry to completion the coverage of the NBA basketball game on January 16, 1972, the Andy Williams San Diego golf tournament on January 29 and January 30, 1972, and the Hawaiian Open golf tournament on February 5 and February 6, 1972, without counting toward the time of permissible "prime time" network programs under that rule. This waiver shall not extend to the presentation of any material concerning these events following completion of the events themselves.

[1] ABC states that its policy in connection with Saturday golf coverage is not to extend coverage beyond the scheduled closing time simply to complete a round, but only if some development occurs at about the scheduled closing time which must be completed. It does normally carry Sunday coverage to completion, but it states that the rounds are scheduled so that this should be over well before 7 p.m. The chief need for the waiver is the possibility of a tie and resulting "sudden death" playoff.

Adopted: January 14, 1972.

Released: January 17, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[2]

[SEAL] BEN F. WAPLE, *Secretary.*

[FR Doc.72-985 Filed 1-21-72;8:47 am]

[2] Commissioners Johnson and H. Rex Lee absent.

[Docket No. 19396; FCC 72-28]

DEPARTMENT OF DEFENSE AND WESTERN UNION TELEGRAPH CO.

Memorandum Opinion and Order Designating Matter for Hearing

U.S. Department of Defense, Washington, D.C., Complainant, versus the Western Union Telegraph Co., New York, N.Y., Defendant, regarding Bomb Alarm Service, Defendant, Docket No. 19396.

1. The Commission has before it a complaint filed April 23, 1970, by the U.S. Department of Defense (DOD) against the Western Union Telegraph Co. (W.U.) requesting refund of asserted "overcharges" for communication service allegedly furnished in violation of section 201(b) of the Communications Act of 1934, as amended, 47 U.S.C. 201 (b). The complaint concerns the Attack Assessment/Bomb Alarm System (Bomb Alarm), a private line telecommunications service, which complainant obtained from W.U. during the period from February 10, 1961 to February 20, 1970.[1] The asserted overcharges, covering nearly 8 years, amount to $4,461,629. W.U.'s answer, filed on October 23, 1970, denies that it collected any sum from DOD in excess of just and reasonable charges. DOD subsequently filed a reply to such answer on November 12, 1970. Thereafter, we exchanged correspondence with the parties in order to clarify certain allegations of the pleadings and to obtain stipulation as to certain facts. As a result W.U. filed a supplement to its answer on or about August 31, 1971.

2. Bomb Alarm was a system of electronic detectors designed to detect and report the fact of nuclear explosions, to identify all sites hit, to provide information on the numbers of detonations and automatically to feed such information to DOD Display Centers. Specifically, DOD alleges unlawful "overcharges" during the following periods of service:

a. From February 10, 1961, through October 15, 1965—DOD alleges that the

[1] Charges for Bomb Alarm are currently set forth in W.U. Tariff FCC No. 254 at pages 301-305.

operating expenses claimed by W.U. were "grossly excessive," by $2,161,000.

b. From February 10, 1961, through December 31, 1969—DOD alleges that the maintenance expenses claimed by W.U. were "exhorbitant" and exceeded amounts actually incurred by $1,005,072.

c. From February 10, 1961, through December 31, 1969—DOD alleges that W.U. included factors in its rate calculations to cover Federal income taxes and return even though W.U. was not liable for and did not in fact pay any such taxes and the amount of return was calculated at 10 percent rather than the 9 percent allowed by the Commission, with a resulting "overcharge" of $1,294,557.

3. DOD requests that Defendant be ordered to refund the alleged unlawful charges in the amount of $4,461,429, or such other or greater amount as may be determined at hearing, together with interest. DOD seeks also such further relief as the Commission may deem to be warranted.

4. W.U. answers by pointing out that DOD has failed to submit any study regarding the total revenues received by W.U. from DOD as compared to the total overall cost of the Bomb Alarm service in its entirety. DOD has not, W.U. claims, provided the detail required to sustain a prima facie claim of specific violation under the Communications Act. W.U. further maintains that the fact of overcharges cannot be determined by reference to a single cost item, e.g., Federal income tax charges or maintenance charges, as DOD seeks to do herein; that the Bomb Alarm System service was a complete service, indivisible by categories of W.U. expenses; and that DOD's fragmentation of expenses is predicated upon a "patently erroneous rate-making theory." In essense, W.U. claims that it did not realize an amount in excess of a reasonable return on the total Bomb Alarm System service, or on its private line service generally, or on its total common carrier operations. W.U. claims in its supplemental answer that its rate of return for Bomb Alarm equipment was 18.8 percent per year (weighted average, pretax) on net investment; this is said to be the equivalent to an after-tax rate of return of approximately 11 percent.[2]

5. We reject W.U.'s claim that DOD has failed to provide "the detail required to sustain a prima facie claim of specific violation of the Communications Act" (Answer, p. 4). The complaint identifies, with reasonable certainty, the nature of the service in question, and alleges sufficient facts to raise questions as to whether the total charges for the Bomb Alarm service were unjust and unreasonable in violation of section 201(b). We believe that a cause of action has been stated and that we cannot resolve the issues without a hearing. Therefore, we shall set the complaint for hearing upon the issues raised therein. However, we agree with W.U. that the question to be resolved herein is whether the total charges for the Bomb Alarm service in its entirety were just and reasonable. Thus, DOD will be required to prove not only the factual allegations set forth in its complaint, but will be required to show that the total overall return to W.U. for the Bomb Alarm service as a separate class of service was in excess of a fair and reasonable return for such service.

6. Complainant uses the term "overcharges" in seeking relief herein. However, this terminology is appropriate only in conjunction with claims under section 203 of the Act. (See the definition of "overcharges" in section 415(g) of the Act.) The present matter does not concern "overcharges" but involves damages claimed for the alleged imposition by the carrier of unjust and unreasonable charges within the meaning of section 201(b) of the Act.

7. *Accordingly, it is ordered,* That, pursuant to sections 201–209 of the Communications Act of 1934, as amended, this matter is designated for hearing at the Commission's offices in Washington, D.C., at a time to be specified, and that the examiner to be designated to preside at the hearing shall, upon the close of the record, prepare an initial decision which shall be subject to the submittal of exceptions and requests for oral argument as provided in 47 CFR 1.276 and 1.277, after which the Review Board shall issue its decision as provided in 47 CFR 0.365.

8. *It is further ordered,* That the issues in this proceeding shall be as follows:

1. Whether the total charges for the aforementioned Bomb Alarm service (including circuitry) provided by W.U. to DOD from February 10, 1961, through February 20, 1970, were unjust and unreasonable within the meaning of section 201(b) of the Act;

2. Whether, in the light of the evidence adduced under the foregoing issue, DOD is entitled to monetary damages and, if so, how much.

Adopted: January 5, 1972.

Released: January 14, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[3]

[SEAL] BEN F. WAPLE, *Secretary.*

[FR Doc.72-983 Filed 1-21-72;8:47 am]

[2] These alleged rates of return are limited to the equipment dedicated to Bomb Alarm and do not reflect the cost-revenue relationship of the circuitry utilized in connection with that system.

[3] Commissioner H. Rex Lee absent.

[Dockets Nos. 19291, 19292; FCC 72R-4]

KFPW BROADCASTING CO. AND GEORGE T. HERNREICH

Memorandum Opinion and Order Enlarging Issues

In regard applications of George T. Hernreich, trading as KFPW Broadcasting Co. (KFPW-TV) Fort Smith, Ark., for license to cover construction permit, Docket No. 19291, File No. BLCT-2093; George T. Hernreich (KAIT-TV), Jonesboro, Ark., for renewal of license, Docket No. 19292, File No. BRCT-623.

1. This proceeding involves the application of George T. Hernreich (Hernreich), trading as KFPW Broadcasting Co., for a license to cover a construction permit for television Station KFPW-TV, Fort Smith, Ark.; and Hernreich's application for renewal of license of television Station KAIT-TV, Jonesboro, Ark. The proceeding was designated for hearing by Commission Order, FCC 71-768, 30 FCC 2d 903, released July 29, 1971, on the following issues:

(1) To determine all of the facts and circumstances surrounding the payments made by George T. Hernreich to a representative of the American Broadcasting Co. and the changes in the station KAIT-TV affiliation agreement relevant thereto.

(2) To determine whether George T. Hernreich made any misrepresentations to the Commission or was lacking in candor in connection with his representations to the Commission.

(3) To determine in light of the evidence adduced pursuant to the above issues, whether George T. Hernreich has the requisite qualifications to be a licensee of the Commission.

(4) To determine in light of the evidence adduced pursuant to the above issues, whether a grant of the applications would serve the public interest, convenience and necessity.[1]

The resolution of these issues was made res judicata to Hernreich and to all his licensed or authorized broadcasting facilities.[2] Presently before the Review Board is a petition to enlarge issues, filed August 19, 1971, by Hernreich,[3] seeking the addition of issues which would allow the introduction of evidence concerning the past programing of Stations KAIT-TV, KFPW-TV, KFPW-AM, and KZNG (AM).

2. In support of his request, Hernreich argues that he would be denied a full and fair hearing if the hearing were limited to the "negative" issues already specified, i.e., the bribery and misrepresentation issues. Therefore, Hernreich urges that he be allowed to introduce evidence concerning the past programing of all of his stations (radio and television) and to

[1] These issues arose out of the Commission's nonpublic inquiry in Docket 18811 ("Inquiry into alleged practices of broadcast licensees or permittees involving payments to employees or officers of networks to influence the grant of network affiliations"). The record in Docket 18811 was certified to the Commission by Order of the Chief Hearing Examiner, FCC 71M-1548, released Sept. 24, 1971.

[2] This would include Stations KFPW-AM, Fort Smith, Ark., and KZNG(AM), Hot Springs, Ark. In an Initial Decision released Dec. 17, 1971 (FCC 71D-97), the Hearing Examiner recommended a conditional grant of Hernreich's application for a new FM broadcast facility at Fort Smith, Ark. Consistent with paragraph 4 of the designation order in this proceeding (FCC 71-768, supra), the grant of the FM permit was conditioned on the eventual outcome of this proceeding.

[3] Also before the Review Board are: (a) Broadcast Bureau's comments, filed Sept. 24, 1971; and (b) reply, filed Oct. 19, 1971, by Hernreich.

demonstrate the record of public service operations at these stations so that the Commission may weigh the alleged benefits along with the results of the other issues.[4] Hernreich cites five cases in which the Commission allegedly permitted applicants in analogous situations to introduce their past broadcast records into evidence in order to mitigate violations of the Commission's rules or to justify waiver of the rules.[5]

The Broadcast Bureau, in its comments, opposes the addition of the issue concerning the past programing of KAIT-TV. In the Bureau's view, such an issue is unnecessary because the station is presumed to have been operated in the public interest. The Bureau argues that the cases cited in support of Hernreich's position (see note 5, supra) involved situations where the operational record of the licensee was in issue, and, therefore, the Commission could consider past meritorious programing as relevant to mitigate such violations. The Bureau cites two court decisions "(Immaculate Conception Church of Los Angeles v. FCC," 116 U.S. App., D.C. 73, 320 F. 2d 795, 25 RR 2128a, cert. denied 375 U.S. 904 (1963); and "Lorain Journal Company v. FCC," 122 U.S. App. D.C. 127, 351 F. 2d 824, 5 RR 2d 2111 (1965), cert. denied sub nom. "WWIZ, Inc. v. FCC, 383 U.S. 967 (1966))" for the proposition that the Commission need not consider the public service rendered by a station where the licensee is disqualified because of his character. The Bureau also opposes the addition of an issue going to the past programing of KFPW-TV. The station received its program test authority on July 29, 1971, and, according to the Bureau, only programing broadcast prior to the time a licensee became aware of the threat to his application may be considered, citing Chronicle Broadcasting Co., supra, note 5. The Bureau asserts that, since the bribery and misrepresentation issues were designated on July 29, 1971, and the investigation obviously began earlier, KFPW-TV would have no past programing that the Commission could consider. Finally, the Bureau opposes the addition of a past programing issue relating to Stations KFPW-AM and KZNG(AM) because their renewal applications are not in an adjudicatory posture; they are not part of the instant proceeding; and, therefore, Hernreich's request for such an issue is premature. In reply, Hernreich states that he seeks to show, by addition of the requested programing issue, that his stations have gone well beyond minimum FCC or public interest requirements to provide outstanding public service programing to their communities.

4. The Review Board, consistent with past practice, will permit the introduction of evidence of KAIT-TV's past programing, insofar as it is meritorious, since the Commission has the discretion to consider such evidence to mitigate violations of law. See General Electric Co., FCC 64-641, 2 RR 2d 1038 (1964); Melody Music, 37 FCC 405, 2 RR 2d 996 (1964). However, the Board will limit the applicability of the programing evidence to issue (1) (the so-called "bribery" issue) based on the authority of "Immaculate Conception Church of Los Angeles v. FCC," supra, which held that: "The Commission need not consider the public service rendered by a station where a licensee is disqualified by its attempts to deceive the Commission." 116 U.S. App. D.C. at 75, 320 F. 2d at 797, 25 RR at 2130. Thus, if it is ultimately determined that Hernreich made willful misrepresentations to the Commission, the fact that Station KAIT-TV may have served the public interest, no matter how well, would be of no decisional significance. See "Immaculate Conception Church of Los Angeles v. FCC," supra. "Cf. FCC v. WOKO, Inc.," 329 U.S. 223 (1946); "Lorain Journal Company v. FCC," supra.[6] Further, although petitioner has requested a broadly framed programing issue ("To determine the past operational record of KAIT-TV and the public service benefits to be derived from a renewal of its license"), the Board, as the Broadcast Bureau suggests, will add a "meritorious programing" issue similar to the one added in Star Stations of Indiana, Inc., 28 FCC 2d 488, 21 RR 2d 646 (1971). See also Jack Straw Memorial Foundation, 26 FCC 2d 97, 20 RR 2d 492 (1970); and Wagoner Radio Co., 12 FCC 2d 978, 13 RR 2d 114 (1968). Such wording is more in keeping with Hernreich's argument supporting addition of the issue because of his statement, in his reply, that he desires to show that his programing has gone well beyond minimal FCC or public interest requirements to provide outstanding public service programing. Addition of this issue will not, of course, preclude the parties from arguing the weight to be accorded the evidence adduced. Hawaiian Paradise Park Corp., 31 FCC 2d 745, 19 RR 2d 824 (1970). The Board is also in agreement with the Bureau that the Chronicle case, supra, precludes consideration of evidence of the past broadcast record of KFPW-TV. In Chronicle, it was held that, "no consideration will be given to alleged meritorious programing instituted after the licensee received notice that action against it was being contemplated by the Commission." 18 FCC 2d 122, 16 RR 2d at 497. See also Hawaiian Paradise Park, supra. In his reply, Hernreich acknowledges that Chronicle would exclude evidence concerning KFPW-TV's past programing, but argues that his program proposal for that station was submitted prior to the emergence of the bribery and misrepresentation issues. Therefore, Hernreich requests an opportunity to demonstrate the extent to which he has implemented the proposal. The Board is of the opinion that the latter phrasing of the issue does not change the result. Any implementation of the program proposals would have occurred after Hernreich learned of the issues that were to be raised against him; therefore, under the reasoning in Chronicle, supra, this evidence cannot be considered.

5. Finally, we will deny Hernreich's request that the past programing of radio Stations KFPW-AM and KZNG (AM) be considered at the hearing. Hernreich contends that, since the Commission, in its designation order, specified that the outcome of the bribery and misrepresentation charges would be res judicata as to all of his broadcast facilities, consideration of his radio stations' programing is essential to a full and fair hearing on his television applications. Hernreich does not contest the applicability of the res judicata principle by the Commission, but indicates, in his reply, that this is the one "turn at bat" for his radio stations. The Board cannot accept the inference that these two stations will be deprived of a fair hearing if their past programing is not considered in this proceeding. Hernreich, the licensee of these stations, will have ample opportunity to defend himself against the bribery and misrepresentation charges in the present hearing; and, if these issues are not resolved in his favor, he then may request that the past programing records of Stations KFPW-AM and KZNG be considered when and if the renewal applications of these stations are designated for hearing. At present, since the renewal applications for these stations are being held in abeyance pending the outcome of this proceeding, the Board finds that the request is premature.

6. *Accordingly, it is ordered*, That the petition to enlarge issues, filed August 19, 1971, by George T. Hernreich, is granted to the extent indicated below and is denied in all other respects; and

7. *It is further ordered*, That the issues in this proceeding are enlarged by the addition of the following issue:

To determine whether the programing of Station KAIT-TV has been meritorious, particularly with regard to public service programs, so as to mitigate possible adverse findings under issue (1); and

8. *It is further ordered*, That the burdens of proceeding with the introduction

[4] Petitioner states that the addition of "past record of operations" and "public service benefits" issues is required by section 310(b) of the Communications Act of 1934, as amended. However, that section deals with transfers of construction permits and station licenses or any rights thereunder or control of any corporation holding such a license. The relevance of the statutory provision to the instant request is not shown by Hernreich, and the relevance is not apparent on its face.

[5] Hernreich cites: Chronicle Broadcasting Co., 18 FCC 2d 120, 16 RR 2d 494 (1969) (anticompetitive and news slanting issues); Metropolitan Television Co., 13 FCC 2d 295, 346, 13 RR 2d 479 (1968) (television multiple ownership rules); Daily Telegraph Printing Co., 20 FCC 2d 976, 18 RR 2d 95 (1969) (UHF impact issue); Metals Broadcasting Co., Inc., 20 FCC 2d 242, 17 RR 2d 761 (1969) (technical violations); and Reginaldo Espinozo, II, 17 RR 2d 1018 (1969) (failure to file requested ownership report).

[6] To the extent that our prior opinion in Western Connecticut Broadcasting Co., 26 FCC 2d 1019, 20 RR 2d 961 (1970), is inconsistent with the holding herein, that opinion is overruled by the instant case.

of evidence and proof on the issue herein designated shall be on George T. Hernreich.

Adopted: January 11, 1972.

Released: January 12, 1972.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-984 Filed 1-21-72;8:47 am]

[Dockets Nos. 19294 etc.; FCC 72R-13]

PHIL D. JACKSON ET AL.

Memorandum Opinion and Order Modifying Issues

In regard applications of Phil D. Jackson, Eureka, Calif., Docket No. 19294, File No. BP-18196; W. H. Hansen, Eureka, Calif., Docket No. 19295, File No. BP-18455; Carroll R. Hauser, Eureka, Calif., Docket No. 19296, File No. BP-18463; for construction permits.

1. This proceeding involves the mutually exclusive applications of Phil D. Jackson, W. H. Hansen (Hansen), and Carroll R. Hauser (Hauser) for authorization to construct a new standard broadcast station at Eureka, Calif., to replace the deleted facilities of former Station KDAN.[1] The applications were designated for consolidated hearing under five issues by Commission memorandum opinion and order, FCC 71-800, 36 F.R. 16131, published August 19, 1971. The Commission specified four issues against Hansen, including the following:

(1) To determine with respect to the application of W. H. Hansen:

(a) The basis for the estimate of the first year's operating expenses and whether such estimate is reasonable.

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

(4) To determine, in the light of the record in Docket No. 18349, et seq., whether W. H. Hansen has the requisite qualifications to be a licensee of the Commission and, if so, the impact of such matters on his comparative qualifications.[2]

Presently before the Board is a petition to enlarge issues, filed September 27, 1971, by Hauser,[3] which seeks to expand the financial issue and add a misrepresentation—§ 1.65 issue against Hansen.

FINANCIAL ISSUE

2. Hauser concedes that his petition is filed beyond the timeliness requirements of § 1.229(b) of the Commission's rules. In an affidavit, he avers that good cause exists to accept his petition because the necessary information came to him after the filing deadline, whereupon he immediately prepared and filed the instant petition. According to petitioner, Hansen in his application relies upon his ownership of the former KDAN property (see note 1, supra) to justify his estimate of no costs for construction. Hauser states that in Hansen's balance sheet of November 26, 1968, Hansen estimated the value of the property at $100,000, and reported a mortgage of $7,500 on the property. Hauser maintains that there are liens and encumbrances on the KDAN property "far in excess" of the $7,500 mortgage shown on Hansen's balance sheet. In particular, petitioner asserts that the property is subject to liens and encumbrances totaling at least $41,566.20, which Hauser states is $9,000 more than Hansen's total estimated construction and first year operation costs. Hauser therefore requests a general financial issue against Hansen. In support, he attaches a statement of the auditor-controller of Humboldt County, Calif., and a title report concerning the KDAN property. The declaration of the auditor-controller states that the KDAN property was "sold to" the State of California for taxes in 1968, and the total amount due through September 30, 1971, is $3,778.87. The title report shows, in addition: (1) A $25,000 mortgage on the property contingent upon grant of a construction permit to operate on the former KDAN site or sale of the property, whichever occurs first; (2) a $12,631.59 deed of trust; and (3) a $155.74 county tax lien. Hauser also charges that Hansen's estimates for legal fees may be low in view of the pending comparative hearing; that Hansen makes no provision for repair of the long-dormant KDAN facilities; and that no financial plan has been submitted regarding the proposal to install auxiliary equipment. Hauser concludes, therefore, that a general financial issue is necessary against Hansen to examine the availability of funds and his overall financial qualifications.

3. The Broadcast Bureau, in its comments, notes that Hauser's petition is late filed, but believes that the public interest will be served by consideration of the issues raised. After reviewing all the alleged encumbrances, the Bureau concludes that an issue should be added unless Hansen can adequately explain the existence of the encumbrances upon the KDAN property. Hansen opposes Hauser's petition as untimely and contends that good cause has not been shown for the tardiness. On the merits, Hansen submits a letter from the office of the auditor-controller of Humboldt County stating that the phrase "sold to the state" is a formality which means that taxes are delinquent. Hansen also alleges that his November, 1968, balance sheet was in error because he had transposed the $7,500 figure assigned to the liabilities on his property with a $14,000 figure assigned to a mortgage on his house trailer. Therefore, as corrected, the amount of liabilities upon the property should read $14,000, and the mortgage on the house trailer should read $7,500.[4] According to Hansen, the $14,000 figure included all tax liens and the deed of trust on the property. In regard to the outstanding $25,000 mortgage, Hansen states that it was his belief that the note was conditioned upon either reassignment of the KDAN license to Hansen (subsequently dismissed by the Commission) or sale and transfer of the KDAN property, and both conditions have failed. Hansen does concede, however, that legal questions may exist regarding the effectiveness of the $25,000 mortgage. In addition, Hansen attaches a new loan commitment totaling $60,000 from Jean Robnett, to cover any additional first year costs of operation.

4. In reply, Hauser contends that Hansen's amended financial statement of November 2, 1971 (see note 4, supra), raises further questions because Hansen fails to demonstrate the availability of capital to cover all first year costs and repayment of all current financial obligations. Hauser submits that Hansen's new estimates for first year of operation make no provision for repayment of $9,300 in current liabilities, the $25,000 mortgage, or any of his long-term obligations. Moreover, asserts petitioner, there appears to be a discrepancy between Hansen's balance sheet submitted in Docket 18349 (see note 2, supra), and Hansen's amended financial statement in this proceeding, which raises further questions concerning the actual amount of liabilities on the former KDAN property.

5. The Board is not persuaded that Hauser has shown good cause for acceptance of his late-filed petition. However, we agree with the Broadcast Bureau that the petition does raise substantial public interest questions which should be considered on their merits. Furthermore, addition of a general financial issue will not burden or unduly disrupt the proceeding. Therefore, following the policy outlined in previous cases,[5] the Board will

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[1] Station KDAN was formerly licensed to Hansen until 1959, when it was transferred to Radio KDAN, Inc. Radio KDAN went bankrupt and, pursuant to a mortgage note, Hansen foreclosed on the property. The parties applied for assignment of the license back to Hansen, but the Commission declared the license forfeit because the station had remained dark without Commission consent and the assignment application was dismissed as moot. See Radio Station KDAN, Inc., 11 FCC 2d 934, 12 RR 2d 584 (1968).

[2] The proceeding in Docket 18349 involves three applications for broadcast stations in Oregon and California, with several hearing issues against Hansen alleging, inter alia, intentional misrepresentation to the Commission, participation in an unauthorized transfer of control, and concealment of station ownership. In an Initial Decision, FCC 69D-59, released November 25, 1969 (17 RR 2d 1129), the Hearing Examiner resolved all of the character qualifications issues against Hansen and therefore concluded that Hansen was unfit to be a Commission licensee. The case is presently pending before the Commission on exceptions to the Initial Decision. Oral argument was held on Dec. 13, 1971.

[3] Other pleadings before the Board are: (a) Opposition, filed Oct. 27, 1971, by Hansen; (b) comments filed Oct. 27, 1971, by the Broadcast Bureau; and (c) reply, filed Nov. 8, 1971, by Hauser.

[4] Hansen's amendment, filed Nov. 2, 1971, was accepted by the Hearing Examiner, by Order, FCC 71M-1799, released Nov. 17, 1971.

[5] E.g., Medford Broadcasters, Inc., 18 FCC 2d 699, 16 RR 2d 900 (1969); DeWitt Radio, 18 FCC 2d 494, 16 RR 2d 821 (1969).

consider the merits of Hauser's petition. In our opinion, Hauser's petition raises serious questions concerning Hansen's financial qualifications, and, in particular, the availability to Hansen of sufficient funds to cover construction and first year operation costs. With regard to the encumbrances on the KDAN property, Hansen merely submits statements which show that the phrase, "sold to the state" is a legal formality used with regard to state tax liens. With respect to the tax liens and deed of trust, Hansen explains his previous failure to make repayment provision by asserting that a transposition error had been made in his original balance sheet. By his amendment of November 2, 1971 (see note 4, supra), he finally corrected the error and has now included these indebtednesses under his current liabilities. Also included in this new amended financial plan is a loan commitment for $60,000 from Jean Robnett and data supporting her ability to lend the money. With regard to the $25,000 mortgage note, however, Hansen has neither made provision for repayment nor has he included the mortgage note in his revised balance sheet. While he admits that financial obligations may still exist under the note, he presents no documentary showing to support his belief that his obligation is ended. Significantly, there is no statement from the mortgagees supporting Hansen's opinion. The Board therefore believes that since Hansen may have a legal commitment under this note, it is necessary to include this obligation in his overall financial plans. See Orange County Broadcasting, Inc., 15 FCC 2d 991, 15 RR 2d 306 (1969). Other discrepancies exist concerning the adequacy of Hansen's financial resources. As Hauser's reply demonstrates, Hansen's amended proposal will require a total of $56,720. If the $9,300 amount of current liabilities listed on Hansen's balance sheet is added to this estimate, the total amount is over $60,000, the maximum amount of Mrs. Robnett's proposed loan. Furthermore, Hansen has $24,100 in long-term liabilities for which he has made no repayment provisions or explanation. The Board is not satisfied that Hansen, even under his amended financial proposal, has demonstrated the availability of adequate funds to construct and operate his proposed station for 1 year without reliance on revenues. Therefore, the Board will add the issue requested by Hauser. See Christian Voice of Central Ohio, 15 FCC 2d 303, 14 RR 2d 785 (1968).

MISREPRESENTATION AND § 1.65 ISSUES

6. Hauser also requests a misrepresentation-Rule 1.65 issue against Hansen based on the alleged concealment of facts regarding the aforementioned encumbrances on the former KDAN property, including the state and county tax liens, the deed of trust, and the $25,000 mortgage note. According to Hauser, Hansen's application contains numerous misrepresentations because he failed to disclose substantial matters which are of decisional significance. In violation of § 1.65, Hauser argues, Hansen has continuously failed to amend his application to correct his financial statement. In his opposition, Hansen asserts that he is the legal owner of the former KDAN property and documents the use of the term "sold for taxes" as a legal formality. See paragraph 3, supra. Hansen contends that there was a transposition of figures in his original balance sheet of November, 1968, and for this reason, the two tax liens and deed of trust were not included under current liabilities. Hansen avers that he has attempted to correct this deficiency with an amended financial statement. With regard to the $25,000 mortgage note, Hansen attempts to explain that it was his understanding that the obligation has ceased since the conditions upon which it was predicated have failed. The Broadcast Bureau supports Hauser's request and also questions Hansen's failure to include the liens and encumbrances in his original balance sheet. Hauser's reply criticizes Hansen's long-standing failure of 33 months to correct his balance sheet and notes that Hansen continues to be in violation of the Commission's rules for failure to report the existence of the $25,000 mortgage note on the property.

7. The Board believes that misrepresentation and Rule 1.65 issues are warranted against Hansen because he failed to disclose material facts of decisional significance in his application and he did not report subsequent changes regarding his financial qualifications. Factors affecting an applicant's financial qualifications have long been held to be of decisional significance. See, e.g., Eastern Broadcasting Corp., 30 FCC 2d 745, 22 RR 2d 472 (1971). In his original application, Hansen failed to report the full amount of existing tax liens on the former KDAN property and the existence of the deed of trust. He attempts to explain his initial failure to disclose by relying upon a transposition of figures in the original balance sheet, and he seeks to correct the error with a financial amendment. However, the Board notes that the error remained unchanged for almost 3 years, and this fact, in our view, raises questions of a possible intent by Hansen to mislead the Commission. See Home Service Broadcasting Corp., 22 FCC 2d 464, 18 RR 2d 972 (1970). Furthermore, Hansen's amended financial statement still fails to report the existence of the $25,000 mortgage note on the property, which Hansen admits may be legally binding on him. Hansen's continued failure to report the existence of this encumbrance raises both misrepresentation and Rule 1.65 issues. See Voice of Reason, Inc. (KICM), 23 FCC 2d 782, 19 RR 2d 288 (1970); United Television Co., Inc., 19 FCC 2d 1060, 17 RR 2d 467 (1969).

8. *Accordingly, it is ordered*, That the petition to enlarge issues filed Sept. 27, 1971, by Carroll R. Hauser is granted; and

9. *It is further ordered*, That Issue No. 1 is modified to read as follows:

(1) To determine with respect to the application of W. H. Hansen:

(a) The basis for the estimate of the first year's operating expenses and whether such estimate is reasonable;

(b) The availability of sufficient funds, without reliance on revenues, to construct and operate his proposed Eureka, Calif., AM station for 1 year; and

(c) Whether, in light of the evidence adduced pursuant to (a) and (b) above, the applicant is financially qualified.

10. *It is further ordered*, That issue No. 5 is renumbered to No. 7 and a new issue No. 5 is added to read as follows:

(5) To determine whether W. H. Hansen has misrepresented his financial qualifications to the Commission and, if so, whether such conduct reflects adversely on his basic and/or comparative qualifications to be a Commission licensee.

11. *It is further ordered*, That issue No. 6 is added to read as follows:

(6) To determine whether W. H. Hansen has complied with the provisions of § 1.65 of the Commission's rules by keeping the Commission advised of substantial and significant changes as required by § 1.65, and, if not, the effect of such noncompliance on his basic and/or comparative qualifications to be a Commission licensee.

12. *It is further ordered*, That the burden of proceeding under issues (5) and (6) added herein shall be on Carroll R. Hauser; and that the burden of proof under those issues shall be on W. H. Hansen.

Adopted: January 14, 1972.

Released: January 18, 1972.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-988 Filed 1-21-72;8:47 am]

[Docket No. 18774; FCC 72-12]

PRIMER ON ASCERTAINMENT OF COMMUNITY PROBLEMS BY BROADCAST APPLICANTS

Report and Order

Order regarding FCC 71-176 (36 F.R. 4092). In the matter of: primer on ascertainment of community problems by broadcast applicants, Part I, sections IV-A and IV-B of FCC Forms Docket No. 18774.

1. On February 18, 1971, we adopted a Primer on the ascertainment of community problems by broadcast applicants, 27 FCC 2d 650, 21 RR 2d 1507. Now before us is a petition filed March 26, 1971, by the National Association of Broadcasters (NAB) seeking reconsideration of answer 17 of the Primer.

2. Question and answer 17 of the Primer are as follows:

Question: In consultations to ascertain community problems, may a preprinted form or questionnaire be used?

Answer: Yes. A questionnaire may serve as a useful guide for consultations with community leaders, but cannot be used in lieu of personal consultations. Members of the general public may be asked to fill out a questionnaire to be collected by the applicant. If the applicant uses a form or questionnaire, a copy should be submitted with the application.

The NAB requests that answer 17 be amended "to permit broadcast applicants to make use of mail surveys which involve the voluntary return of the questionnaire by a stamped, self-addressed envelope supplied by the applicant-interviewer."

3. As we indicated in the Report and Order in Docket No. 18774, 27 FCC 2d 650, 21 RR 2d 1507 (1971), in which we adopted the Primer, consultations with members of the general public are required. This was based on our belief that they may perceive community problems differently than community leaders.[1] So that a wide range of their views would be known and evaluated, we sought to assure that those members of the general public who were consulted would be generally distributed throughout the population of the city of license. This can, of course, be quite simply accomplished by using a telephone directory to select members of the general public to be called. On the other hand, we do not believe that the mailing of questionnaires which are to be voluntarily returned by the person whose views are sought will result in an appropriate distribution. For example, a study of broadcast renewals submitted by one party, in response to our notice of inquiry in this proceeding, found some instances where the response was less than 25 percent from a very small sample. Thus, a substantial question is raised as to whether there was a general distribution. While we do not require statistical accuracy, we believe that this factor reduces the efficacy of consultations with members of the general public to a point where such consultations would serve little purpose.

4. The NAB states, however, that there are followup procedures for improving response rates and generally avoiding the pitfalls we saw in the mailed questionnaire which was to be voluntarily returned by the persons consulted. Our goal, as stated above, is to assure that those members of the general public who are consulted are generally distributed throughout the city of license. Therefore, if the applicant can demonstrate that this goal can be reached by using mailed questionnaires with appropriate followup procedures, he may rely on that method. But, as a general rule, we believe that the considerations set out in paragraph two, above, remain valid. Accordingly, answer 17 will be changed to read as follows:

Answer: Yes. A questionnaire may serve as a useful guide for consultations with community leaders, but cannot be used in lieu of personal consultations. Members of the general public may be asked to fill out a questionnaire to be collected by the applicant. The applicant may also permit members of the general public to return the questionnaires by mail, but only if the applicant submits an appropriate showing that this method has resulted in responses from members of the general public who are generally distributed throughout the community to be served. If the applicant uses a form or questionnaire, a copy should be submitted with the application.

[1] See paragraph 20 of the Report and Order in Docket No. 18774, adopting the Primer.

5. *Accordingly, it is ordered,* That the petition for reconsideration filed by the National Association of Broadcasters is granted to the extent indicated above.

Adopted: January 5, 1972.

Released: January 13, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[2]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-987 Filed 1-21-72;8:47 am]

[2] Commissioner Johnson dissenting and issuing a statement which is filed as part of the original document; Commissioner H. Rex Lee absent.

FEDERAL POWER COMMISSION

[Docket No. CS71-68 etc.]

JOHN H. HILL ET AL.

Notice of Applications for "Small Producer" Certificates[1]

JANUARY 12, 1972.

Take notice that each of the applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 7, 1972, file with the Federal Power Commisison, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

Docket No.	Date Filed	Name of Applicant
CS71-68	10-22-71	John H. Hill,[1] Suite 406, Bank of Dallas Bldg., 3635 Lemmon Ave., Dallas, TX 75219.
CS71-625	12-28-71	Chieftain Petroleum, Inc. (successor to Big Chief Drilling Co.), Post Office Box 1437, Oklahoma City, OK 73114.
CS72-506	12-15-71	Oliver H. Daniel, Trustee, 6019 Berkshire Lane, Suite 215, Dallas, TX 75225.
CS72-507	12-15-71	Mortimer M. Caplin, Trustee of Webb & Knapp, Inc., 430 Park Ave., New York, NY 10022.
CS72-508	12-15-71	U-Tex Oil Co., 1112 Walker Bank Bldg., Salt Lake City, Utah 84111.
CS72-509	12-16-71	William D. Johnson, 1003 Fort Worth National Bank Bldg., Fort Worth, Tex. 76102.
CS72-510	12-17-71	E. A. Courtney, Post Office Box 519, Hammond, LA 70401.
CS72-511	12-16-71	Caroline Gruss, 55 Broad St., New York, NY 10004.
CS72-512	12-16-71	Evmar Oil Corp., 55 Broad St., New York, NY 10004.
CS72-513	12-16-71	Joseph S. Gruss, 55 Broad St., New York, NY 10004.
CS72-514	12-16-71	Jogruss Oil Corp., 55 Broad St., New York, NY 10004.
CS72-515	12-27-71	R. C. Wynn, 1525 Republic Bank Bldg., Dallas, Tex. 75201.
CS72-516	12-20-71	Pierce & Dehlinger, Post Office Box 82, Midland, TX 79701.
CS72-517	12-17-71	Mid Tex Oil Corp., Post Office Box 251, Mount Carmel, IL 62863.
CS72-518	12-20-71	C. S. McCain, Jr., 1009 Commercial National Bank Bldg., Shreveport, La. 71101.
CS72-519	12-20-71	Winwell Inc., 1011 Commercial National Bank Bldg., Shreveport, La. 71101.
CS72-520	12-20-71	O. B. Mobley, Jr., 1011 Commercial National Bank Bldg., Shreveport, La. 71101.
CS72-521	12-21-71	London Gas Co., 4704 North Miller, Oklahoma City, OK 73112.
CS72-522	12-21-71	Olive G. Devore, 585 18th St., Beaumont, TX 77706.
CS72-523	12-21-71	Odds-On Oil Corp., Post Office Box 51875, OCS, Lafayette, LA 70501.
CS72-524	12-21-71	Don C. Wiley, Jr., Post Office Box 51875, OCS, Lafayette, LA 70501.
CS72-525	12-22-71	Louis G. Shushan, 550 Saratoga Bldg., New Orleans, La. 70112.
CS72-526	12-22-71	New & Hughes Drilling Co., Inc., Post Office Box 1487, Natchez, MS 39120.
CS72-527	12-22-71	Dr. William S. Renaudin, 2520 Napoleon Ave., New Orleans, LA 70115.
CS72-528	12-22-71	Salmen Co., Post Office Box 53335, New Orleans, LA 70150.
CS72-529	12-22-71	Salsul Co., Post Office Box 53335, New Orleans, LA 70150.
CS72-530	12-22-71	Roger E. Kelly, 458 South Spring St., Los Angeles, CA 90013.
CS72-531	12-22-71	A. H. Stall, 30th Floor, Bank of New Orleans Bldg., New Orleans, La. 70130.
CS72-532	12-22-71	Paul H. Byrne, Jr., Post Office Box 1227, Natchez, MS 39120.
CS72-533	12-22-71	T. J. Guido, Box 951, Natchez, MS 39120.
CS72-534	12-22-71	Alexander Harthill, D.V.M., 3200 Woodside Rd., Louisville, KY 40222.
CS72-535	12-22-71	Irving D. Goldman, 438 Whitman Ct., Cincinnati, OH 45202.
CS72-536	12-22-71	Frederic E. Franz, 453 Coventry Green, Crystal Lake, IL 60014.
CS72-537	12-22-71	Rennie Kelly (Enterprises), 1500 National Bank of Commerce Bldg., New Orleans, La. 70112.

See footnote at end of table.

Docket No.	Date Filed	Name of Applicant
CS72-538	12-22-71	Shelley Schuster, Trimex International, Inc., 2 Canal St., New Orleans, LA 70130.
CS72-539	12-22-71	T. J. Tillman, 1500 National Bank of Commerce Bldg., New Orleans, La. 70112.
CS72-540	12-22-71	James C. Franz, 453 Coventry Green, Crystal Lake, IL 60014.
CS72-541	12-23-71	Reynolds Mining Corp., Post Office Box 27003, Richmond, VA 23261.
CS72-542	12-23-71	D-N-C Exploration Corp., 220 Cravens Bldg., Oklahoma City, OK 73102.
CS72-543	12-27-71	Smith Operating & Management Co., Inc., 604 Johnson Bldg., Shreveport, La. 71101.
CS72-544	12-27-71	General Crude Oil Co., Post Office Box 2252, Houston, TX 77001.
CS72-545	12-27-71	Dean A. Draper, 2344 North Woodward Ave., Royal Oak, MI 48073.
CS72-546	12-27-71	Roy R. Gardner, 706 First City National Bank Bldg., Houston, Tex. 77002.
CS72-547	12-27-71	Richard H. Forgey, 810 Fair Foundation Bldg., Tyler, Tex. 75701.
CS72-548	12-27-71	Columbia Trust, R. A. Graddy, Trustee, Post Office Box 576, Richardson, TX 75080.
CS72-549	12-27-71	James A. Noe, Post Office Box 4067, Monroe, LA 71201.
CS72-550	12-27-71	H. C. Federer, 804 Amarillo Bldg., Amarillo, Tex. 79101.
CS72-551	12-28-71	Jack E. Trigg, 410 Woolworth Bldg., Boulder, Colo. 80302.
CS72-552	12-27-71	Rueda Oil & Gas Industry, Inc., Post Office Box 709, Hebbronville, TX 78361.
CS72-553	12-27-71	W. D. Greenshields, Post Office Box 630, Ponca City, OK 74601.
CS72-554	12-28-71	C. H. Thigpen, 331 Ricou-Brewster Bldg., Shreveport, La. 71101.
CS72-555	12-27-71	Craig Steel & Salvage Co., Box 778, Craig, CO 81625.
CS72-556	12-27-71	K. D. Lankford, 604 Johnson Bldg., Shreveport, La. 71101.
CS72-557	12-28-71	Laurel Royalty Co., 1145 19th St. NW., Washington, DC 20036.
CS72-558	12-30-71	Nora Laskey Minter, c/o The First National Bank of Shreveport, Post Office Box 1116, Shreveport, La. 71154.
CS72-559	12-29-71	The Hunter Co., Inc., Post Office Box 532, Shreveport, LA 71162.
CS72-560	12-30-71	Kedco Corp., 1111 Vickers Tower, Wichita, Kans. 67202.
CS72-561	12-29-71	G. C. Walters, Jr., Post Office Box 51875, OCS, Lafayette, LA 70501.
CS72-562	1- 3-72	Priscilla Goodrich Rea, 609 Bank of the Southwest Bldg., Houston, Tex. 77002.
CS72-563	1- 3-72	Hugh R. Goodrich, 609 Bank of the Southwest Bldg., Houston, Tex. 77002.
CS72-564	1- 3-72	Thomas E. Berry, 609 Bank of the Southwest Bldg., Houston, Tex. 77002.
CS72-565	1- 3-72	John C. Bowers, 825 Beck Bldg., Shreveport, La. 71101.
CS72-566	1- 3-72	Webb Resources, Inc., 1776 Lincoln St., Denver, CO 80203.
CS72-567	1- 3-72	R. S. Brennand, Jr., Scharbauer Hotel, Midland, Tex. 79701.
CS72-568	1- 3-72	Tomlinson Oil Co., Inc., 200 West Douglas, Wichita, KS 66610.
CS72-569	1- 3-72	Western Oil & Minerals Corp., Post Office Box 191, Farmington, NM 87401.
CS72-570	1- 3-72	Justin R. Querbes, Jr., Post Office Box 5, Shreveport, LA 71161.
CS72-571	1- 3-72	Santa Fe Oil Co., 2020 N.B.C. Bldg., San Antonio, Tex. 78205.
CS72-572	1- 3-72	Mercantile National Bank at Dallas, Trustee for Florence A. Florance Trust, Post Office Box 5415, Dallas, TX 75222.
CS72-573	1- 3-72	Mercantile National Bank at Dallas, Trustee for Douglas E. J. Florance Trust No. I, Post Office Box 5415, Dallas, TX 75222.
CS72-574	1- 3-72	Mercantile National Bank at Dallas, Trustee for James Joseph Florance Trust No. I, Post Office Box 5415, Dallas, TX 75222.
CS72-575	1- 3-72	Mercantile National Bank at Dallas, Trustee for Maurice J. Florance, Jr., Trust No. I, Post Office Box 5415, Dallas, TX 75222.
CS72-576	1- 3-72	Mercantile National Bank at Dallas, Trustee for Maureen Ellen Florance Trust No. I, Post Office Box 5415, Dallas, TX 75222.
CS72-577	1- 3-72	Mercantile National Bank at Dallas, Trustee for Catherine Mary Florance Trust No. I, Post Office Box 5415, Dallas, TX 75222.

See footnote at end of table.

[1] Application to amend to cover interests of J. W. Bullion, Trustee, and Texas Broadcasting Corp.

[FR Doc.72-895 Filed 1-21-72;8:45 am]

[Docket No. CP72-179]

PENNZOIL PIPELINE CO.

Notice of Application

JANUARY 19, 1972.

Take notice that on January 13, 1972, Pennzoil Pipeline Co. (applicant), 1500 Southwest Tower, Houston, Tex. 77002, filed in Docket No. CP72-179 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to United Gas Pipe Line Co. (United) in Fort Bend County, Tex., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it commenced the sale of gas to United on December 4, 1971, within the contemplation of section 2.86 of the Commission's general policy and interpretations (18 CFR 2.68) and that it proposes to continue said sale for 1 year from February 2, 1972, within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Applicant proposes to sell and deliver an average daily quantity of 8,000 Mcf of gas at the rate of 31.75 cents per Mcf at 14.65 p.s.i.a. subject to prospective change to the same price specified in United's then applicable Rate Schedule PLE-C.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before January 31, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-991 Filed 1-21-72;8:48 am]

FEDERAL RESERVE SYSTEM

AUGLAIZE COUNTY BANK

Order Approving Application for Merger of Banks

The Auglaize County Bank, St. Marys, Ohio, which is to be a member State bank of the Federal Reserve System, has applied for the Board's approval pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) of the merger of that bank with The Home Banking Co., St. Marys, Ohio. As an incident to the merger, the present offices of The Home Banking Co. would become branches of The Auglaize County Bank.

As required by the Act, notice of the proposed merger, in form approved by the Board, has been published, and the Board has requested reports on competitive factors from the Attorney General, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

The Board has considered the application and all comments and reports received in the light of the factors set forth in the Act, and finds that:

Applicant is a wholly owned subsidiary of Central Bancorporation, Inc., a registered bank holding company. The proposed merger is one step in a plan of corporate reorganization whereby Central Bancorporation, Inc., is to acquire all of the capital stock of The Home Banking Co. Central Bancorporation has already received approval of the Board under the Bank Holding Company Act to acquire The Home Banking Company (36 F.R. 18034).

The proposed merger of The Home Banking Co. and applicant, a nonoperating bank formed solely to facilitate the corporate reorganization described above, would itself have no effect on competition or on banking convenience and needs. The financial and managerial resources and prospects of The Home Banking Co. are satisfactory, as they will be with respect to the resulting bank.

Accordingly, the Board concludes that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Cleveland pursuant to delegated authority.

By order of the Board of Governors,[1] January 18, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc. 72-999 Filed 1-21-72;8:48 am]

BANKSHARES OF NEBRASKA, INC.

Formation of One-Bank Holding Company

Bankshares of Nebraska, Inc., Grand Island, Nebr., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to First National Bank of Grand Island, Grand Island, Nebr. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank to be received not later than February 11, 1972.

Pursuant to § 225.3(b) of Regulation Y, this application shall be deemed to be approved on February 25, 1972, unless the applicant is notified to the contrary before that time, or is granted approval at an earlier date.

Board of Governors of the Federal Reserve System, January 17, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-965 Filed 1-21-72;8:46 am]

[1] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Maisel, Brimmer, and Sheehan. Absent and not voting: Governor Robertson.

SECURITY PACIFIC CORP.

Formation of One-Bank Holding Company

Security Pacific Corp., Los Angeles, Calif., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 100 percent of the voting shares (less directors' qualifying shares) of Security Pacific National Bank, Los Angeles, Calif. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the Federal Reserve Bank of San Francisco. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank to be received not later than February 11, 1972.

Pursuant to § 225.3(b) of Regulation Y, this application shall be deemed to be approved on February 25, 1972, unless the applicant is notified to the contrary before that time, or is granted approval at an earlier date.

Board of Governors of the Federal Reserve System, January 17, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-966 Filed 1-21-72;8:46 am]

GENERAL SERVICES ADMINISTRATION

[Federal Property Management Regs. Temporary Reg. F-131]

SECRETARY OF DEFENSE

Delegation of Authority

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in a gas service rate proceeding.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205 (d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government before the Montana Public Service Commission in a proceeding (Docket No. 6117) involving the application of the Great Falls Gas Co. for a rate increase.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and, further, shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

ROD KREGER,
Acting Administrator of General Services.

JANUARY 14, 1972.

[FR Doc.72-967 Filed 1-21-72;8:46 am]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area 863; Class B]

WISCONSIN

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of December 1971, because of the effects of certain disasters damage resulted to homes and business property located in the State of Wisconsin;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such area constitutes a catastrophe within the purview of the Small Business Act, as amended.

Now, therefore, as Associate Administrator for Operations and Investment of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property situated in Waukesha, Wis., suffered damage or destruction resulting from fire on December 20, 1971.

OFFICE

Small Business Administration District Office, 25 West Main Street, Madison, WI 53703.

2. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to June 30, 1972.

Dated: December 23, 1971.

A. H. SINGER,
Associate Administrator for Operations and Investment.

[FR Doc.72-970 Filed 1-21-72;8:46 am]

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF HEARINGS

JANUARY 19, 1972.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only

once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 1872 Sub 76, Ashworth Transfer, Inc., MC 43716 Sub 28, Bigge Drayage Co., now being assigned February 22, 1972, in Room 2437 Federal Building, 125 South State Street, Salt Lake City, UT, March 6, 1972, in Room 1540 U.S. Courthouse, 312 North Spring Street, Los Angeles, CA, March 8, 1972, in Room 13025 Federal Building, 450 Golden Gate Avenue, San Francisco, CA, March 13, 1972, in Room 401 Multnomah Building, 319 Southwest Pine Street, Portland, OR, March 16, 1972, in Denver, Colo., in a hearing room to be later designated.

MC 13250 Sub 110, J. H. Rose Truck Line, Inc., now being assigned March 6, 1972, at the Statler Hilton Hotel, 930 Wilshire Boulevard, Los Angeles, CA.

MC 105997 Sub 11, Oil-Ways Co., now assigned January 24, 1972, at New York, N.Y., will be held in Room E-2222, 26 Federal Plaza.

MC 34975 Sub 5, Tredways Express, Inc., now assigned February 14, 1972, at New York, N.Y., canceled and the application is dismissed.

FD 26629, San Francisco Belt Railroad Abandonment Ferry Slip, San Francisco, Calif., now being assigned February 28, 1972, in Room 13025 Federal Building, 450 Golden Gate Avenue, San Francisco, CA.

MC 119619 Sub 43, Distributors Service Co., now assigned February 14, 1972, at Washington, D.C., postponed indefinitely.

No. 35380, National Electrical Manufacturers Association et al. v. Aberdeen and Rockfish Railroad Co. et al., assigned April 11, 1972, at Washington, D.C., is postponed to May 31, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 31879 Sub 32, Exhibitors Film Delivery & Service Co., Inc., assigned for hearings on March 6, 1972, at Kansas City, Mo., on March 13, 1972, at Denver, Colo., and on March 20, 1972, at Albuquerque, N. Mex., in hearing rooms to be later designated.

No. 35481, Public Service Co., of Indiana, Penn Central Transportation Co. et al., now assigned Jan. 26, 1972, at Washington, postponed to April 18, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 135728, Richard J. Franks, now being assigned March 9, 1972, in Buffalo, N.Y., in a hearing room to be later designated.

MC 108359 Sub 6, Western New York Motor Lines, Inc., now being assigned March 6, 1972, at Buffalo, N.Y., in a hearing room to be later designated.

MC-F-11170, Hyman Freightways, Inc.—Control—Tri-D Truck Line, Inc., assigned for continued hearing March 6, 1972, at Kansas City, Mo., in a hearing room to be later designated.

MC-F-11221, Alleghany Corp, doing business as Jones Motor—Control—R. F. Post, now assigned January 24, 1972, at Washington, D.C., canceled and transfered to modified procedure.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.72-1009 Filed 1-21-72;8:49 am]

[No. MC-113678 (Sub-No 285)]

CURTIS, INC., DENVER, COLO.

Notice of Hearing Regarding Meats Over Irregular Routes

Order. At a session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D.C., on the 16th day of December, 1971.

Upon consideration of the record in the above-entitled proceeding, and of:

(1) Petition of applicant (entitled "Objections, Notice, and Election"), filed November 12, 1971, for oral hearing;

(2) Reply (letter) by Frozen Food Express, intervener in opposition, filed December 1, 1971;

and good cause appearing therefor:

It is ordered, That the proceeding be, and it is hereby, designated for oral hearing, at a time and place to be fixed, for the purpose of giving applicant the opportunity to show cause why Certificate No. MC-113678 (Sub-No. 285), dated May 24, 1968, should not be modified in the manner and to the extent authorized by the Commission, Division 1, by report and order entered April 12, 1971 (printed at 113 M.C.C. 170), and to establish the existence of a public need for the operation described in part (B) of the findings paragraph appearing on pages 187-188 of the said report.

It is further ordered, That notice of the action taken in this order be published in the FEDERAL REGISTER.

By the Commission, Division 1.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.72-1010 Filed 1-21-72;8:49 am]

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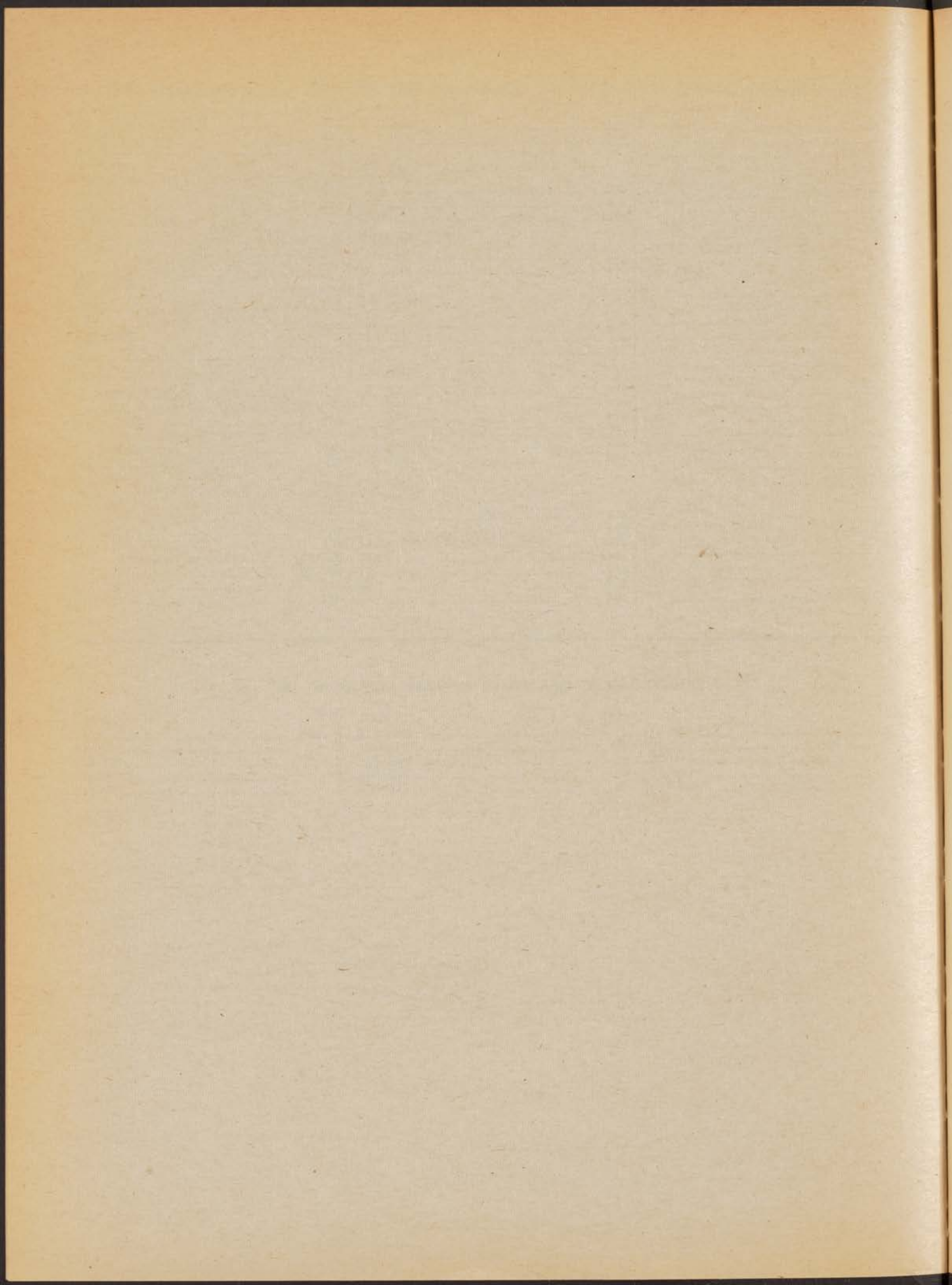

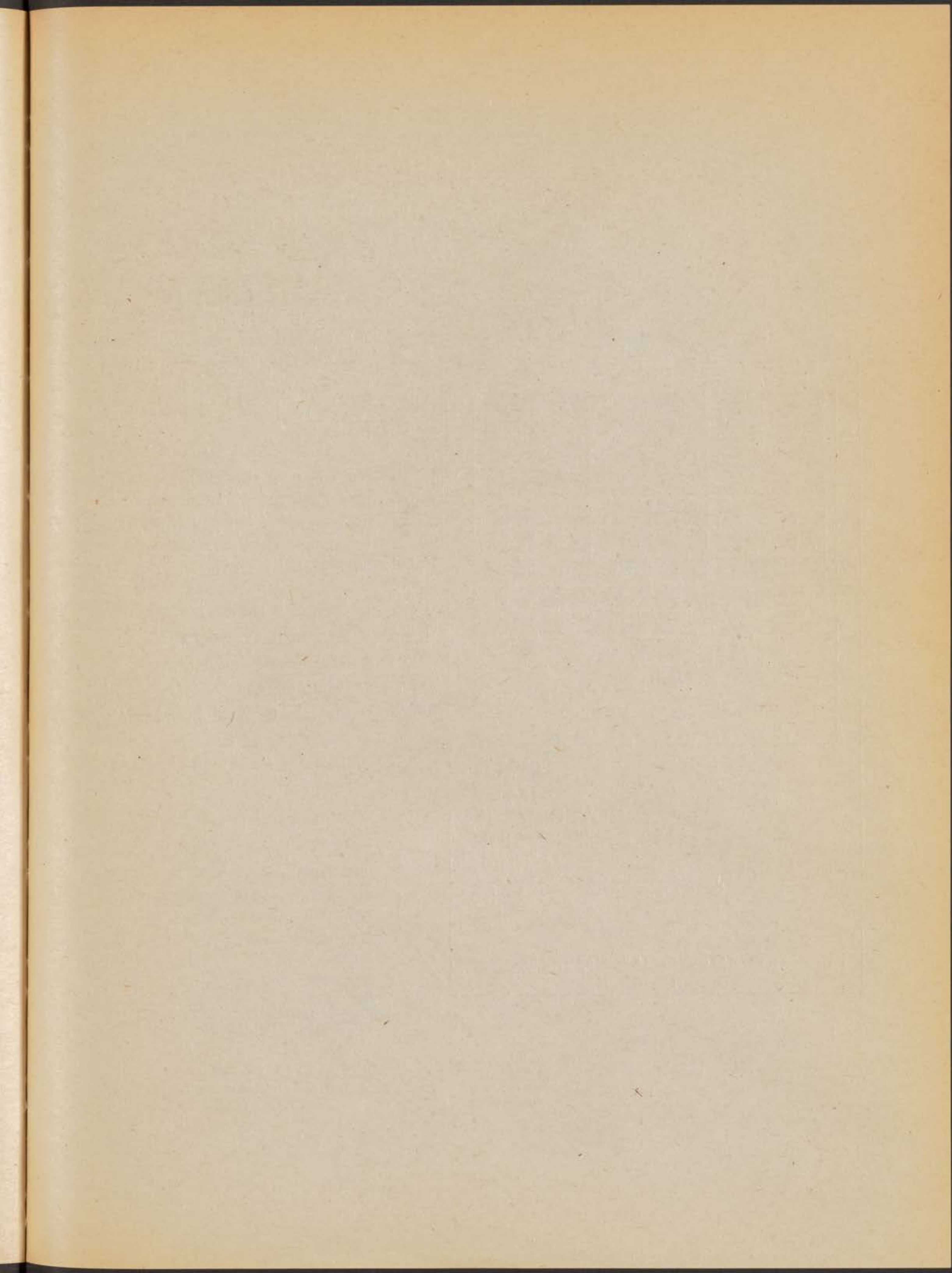

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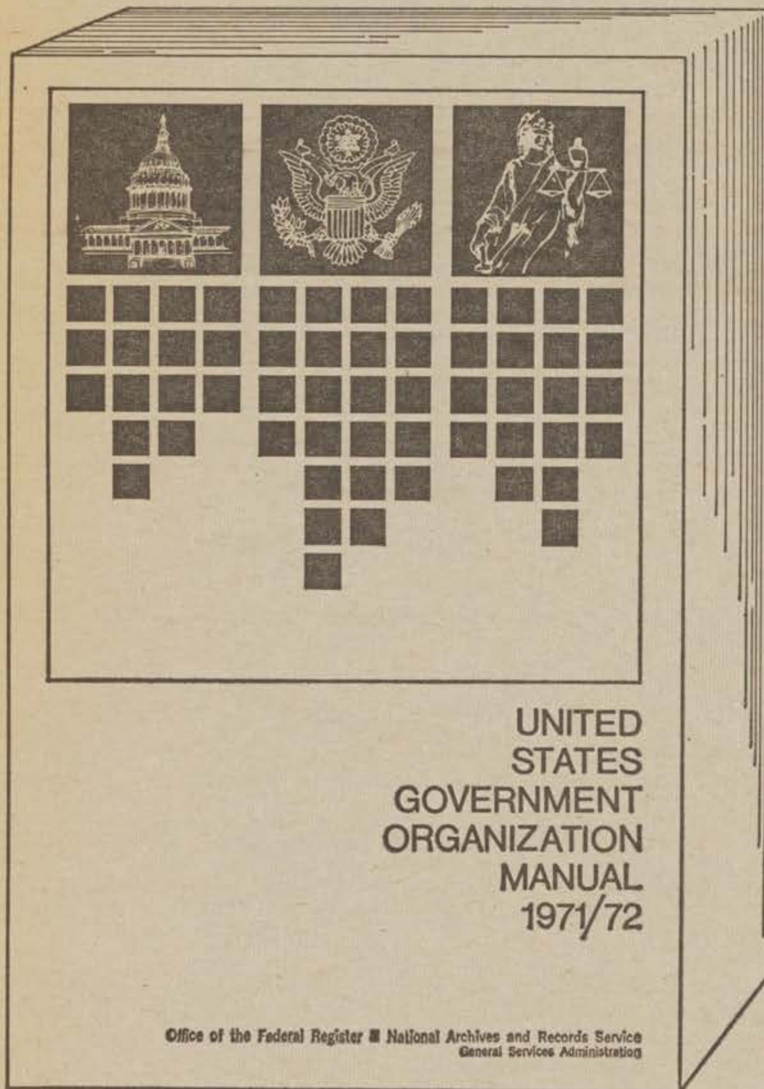

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