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PART I



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

Title 6—Economic Stabilization

CHAPTER I—COST OF LIVING COUNCIL

PART 150—PHASE IV PRICE REGULATIONS

PART 152—PHASE IV PAY REGULATIONS

General Retail Trade Exemptions

The purpose of these amendments is to exempt prices charged by certain retail establishments and to add a parallel exceptions under Phase IV pay regulations.

The price exemption extends to prices charged by retail establishments listed in the Standard Industrial Classification Manual, 1972 Edition, under Major Groups 52 (Building Materials, Hardware, Garden Supply, and Mobile Home Dealers), 53 (General Merchandise Stores), 56 (Apparel and Accessory Stores), 57 (Furniture, Home Furnishings, and Equipment Stores), 58 (Eating and Drinking Places—price category II and III only), 59 (Miscellaneous Retail except Group 598—Fuel Dealers), Industrial Codes 5551 (Boat Dealers), and 5561 (Recreational and Utility Trailer Dealers).

The price exemption does not extend to sales by retail food stores, sales by retailers of petroleum and petroleum products, retail sales of motor vehicles, parts and equipment, or to sales of price category I eating and drinking establishments. The present exemptions affect only about 25 percent of all retail sales since controls are retained on another 25 percent (food, automotive and petroleum) and the balance of 50 percent of retail sales has long been exempt under the small business exemption. On the wage side, 85 percent of retail workers are already exempt from Phase IV wage controls either because of the exemption for wages of $3.50 per hour or less, or the small business exemption, or both. Therefore, after the exclusion of food stores, price category I eating and drinking establishments, automotive dealers, gasoline service stations and fuel dealers, this exemption affects only about 14 percent of the total employment in retail trade or approximately 2 percent of the total labor force.

As part of its policy of gradual decontrol as conditions permit, the Council has decided to extend exemption to the general retail level in view of several considerations. The retail trade is generally controlled by competitive restraints which result from the wide choice of stores usually available to the consumer. In addition, retail prices are to a large extent directly related to the cost of goods sold as determined by manufacturers and wholesalers which in most cases remain under price controls. Prices in the retail sector affected by these amendments have therefore not substantially contributed to increases in the Consumer Price Index.

The current downward trend in retail sales levels should further contribute to increased competition and moderate prices. Furthermore, retail catalog sales are usually not adjusted except at 6-month intervals. The Spring/Summer catalogs were published earlier this month and will therefore not be revised to reflect price increases until July.

Ten large firms in the retail trade industry have separately made commitments to the Council in connection with this exemption. Sears Roebuck & Co., Marcor, Inc. (Montgomery Ward), and J. C. Penney Co., have committed not to charge prices for catalog merchandise in excess of the prices published in their 1974 Spring/Summer general catalogs. These prices will remain in effect without any increases whatsoever until August 1, 1974. These firms have also committed to maintain the traditional relationship between catalog prices and the in-store prices charged for similar merchandise.

The in-store price usually approximates the total of the printed catalog price and the applicable transportation charges for delivery to the geographic area in which the store is located.

In addition, the ten large firms have separately committed to hold their profit margins for the first half of the first fiscal year beginning after December 31, 1973, or at least through August 1, 1974, to levels no higher than the levels realized for the preceding fiscal year.

The ten major firms which have individually committed to these agreements are: Sears Roebuck & Co., Marcor, Inc. (Montgomery Ward), J. C. Penney Company, S.S. Kresge Company, F.W. Woolworth Company, Federated Department Stores, Inc., Allied Stores Corporation, Broadway-Hale Stores, Macy's Inc., and Marshall Field & Company.

Because these commitments extend to ten of the largest merchandise retailing companies, they will undoubtedly have a restraining effect on price increases contemplated by other retailers during the period covered by the commitments.

As previously mentioned, prices charged by automotive dealers, retail food stores, price category I food service establishments, retailers of petroleum products, and wholesalers are not included in this exemption. New trends have recently developed in the retail automotive industry such as the reduction in trade-in value of used large cars and the sizeable increase in demand for small cars. The Council wishes to study these developments further before considering exemptions in this area. In addition the Council wants to ensure that commitments made by automobile manufacturers regarding price restraint on small cars are not neutralized by pricing behavior at the dealer level. Inflationary trends continue in the food industry and the current energy problems dictate continuance of controls by the Federal Energy Office on retail sales of petroleum products. A decision respecting wholesale activities will be made at a later time.

Under §§ 150.11(e) and 150.161(b), a firm remains subject to the profit margin constraints and reporting provisions of the Phase IV program unless in its most recent fiscal year it derived both less than $50 million in annual sales and revenues from the sale or lease of nonexempt items and 90 percent or more of its annual sales and revenues from the sale of exempt items or exempt sales. Category I and Category II retail firms covered by this exemption will therefore generally remain subject to the Council's quarterly reporting requirements pursuant to §§ 150.311 and 150.161(b). However, for quarters beginning after the effective date of these amendments the Schedule T may be omitted with respect to retail activities covered by these exemptions. Price category II eating and drinking establishments (classified by the Council as food service organizations rather than retailers) may omit for quarters beginning after the effective date of these amendments the portions of the quarterly report which loss/low profit firms may omit pursuant to Phase IV Price Notice No. 1973–6 with respect to affected activities.

As a complementary action to the exemption from price controls, the Council has also exempted pay adjustments affecting employees engaged on a regular and continuing basis in the operation of an establishment engaged in retail trade. The exemption does not apply to employees of food stores, automotive dealers, gasoline service stations, or fuel dealers, which are not within the enumerated SIC classifications, or to employees of price category I eating and drinking establishments. The exemption is set forth in new § 152.40m. The exemption is inapplicable to any such employee who receives an item of incentive compensation, or who is a member of an executive control group. The exemption is also inapplicable to any such employee whose duties and responsibilities are not of a type exclusively performed in or re-

lated to the exempted retail trade industry and whose pay adjustments are historically related to the pay adjustments of employees performing such duties outside the industry and are not related to the pay adjustments of other employees that are within the exemption. The exemption is further inapplicable to employees who are part of an appropriate employee unit where 25 percent or more of the members of such unit are not engaged on a regular and continuing basis in the operation of an establishment in the exempted retail trade industry or in support thereof. In cases of uncertainty of application, inquiries concerning the scope or coverage of the exemption should be addressed to the Administrator, Office of Wage Stabilization, P.O. Box 672, Washington, D.C. 20044.

The Council retains the authority to reestablish price and wage controls over any of the industries exempted by these amendments if price or wage behavior is inconsistent with the policies of the Economic Stabilization Program. The Council also has the power, under §§ 150.26 and 152.6, to require firms to file special or separate reports setting forth information relating to the Economic Stabilization Program in addition to any other reports which may be required under the Phase IV controls program.

Because the purpose of this amendment is to grant an immediate exemption from the Phase IV price and pay regulations, the Council finds that publication in accordance with normal rule making procedure is impracticable and that good cause exists for making this amendment effective in less than 30 days. Interested persons may submit written comments regarding this amendment. Communications should be addressed to the Office of the General Counsel, Cost of Living Council, 2000 M Street, NW, Washington, D.C. 20508.

(Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11695, 38 FR 1473; E.O. 11730, 38 FR 19345; Cost of Living Council Order No. 14, 38 FR 1489.)

In consideration of the foregoing, Parts 150 and 152 of Title 6 of the Code of Federal Regulations are amended as set forth herein, effective February 1, 1974.

Issued in Washington, D.C., on February 1, 1974.

JOHN T. DUNLOP,
Director, Cost of Living Council.

1. In 6 CFR Part 150, § 150.54 is amended to add a new paragraph (ff) to read as follows:

§ 150.54 Certain price adjustments.

* * * * *

(ff) *Certain sales at the retail level.* Prices charged by retail establishments listed in the SIC Manual, 1972 edition, under major groups 52, 53, 56, 57, 59 (except Group No. 598), and Industry Codes 5551 and 5561, are exempt. In addition, prices charged by price category II and III firms engaged in food service activities with respect to activities within the scope of major group 58 are exempt.

2. In 6 CFR Part 152, Subpart D is amended by adding thereto a new § 152.40m to read as follows:

§ 152.40m Retail trade.

(a) *Exemption.* Except as provided in paragraph (d) of this section, pay adjustments affecting employees engaged on a regular and continuing basis in the operation of an establishment in the retail trade industry or in support of such operation are exempt from and not limited by the provisions of this title.

(b) *Establishment in the retail trade industry.* For purposes of this section, "Establishment in the retail trade industry" means an establishment classified in the Standard Industrial Classification Manual, 1972 edition, under Major Group, 52—Building Materials, Hardware, Supply, and Mobile Home Dealers, 53—General Merchandise Stores, 56—Apparel and Accessory Stores, 57—Furniture, Home Furnishing, and Equipment Stores, 58—Eating and Drinking Places (except for an establishment classified as a price Category I firm), or 59—Miscellaneous Retail (except for an establishment classified under Group 598—Fuel Dealers), or under Industrial Code 5551 (Boat Dealers) or 5561 (Recreational and Utility Trailer Dealers).

(c) *Covered employees.* For purposes of this section, an employee is considered to be engaged on a regular and continuing basis in the operation of an establishment in the retail trade industry or in support of such operation only if such employee is employed at an establishment in the retail trade industry and only if such employee is employed by the firm which operates such establishment.

(d) *Limitations.* The exemption provided in paragraph (a) of this section shall not be applicable to—

(1) An employee who receives an item of incentive compensation subject to the provisions of §§ 152.124, 152.125, or 152.126;

(2) An employee who is a member of an executive control group (determined pursuant to § 152.130);

(3) Employees whose occupational duties and responsibilities are of a type not exclusively performed in or related to the retail trade industry and whose pay adjustments are—

(i) Historically related to the pay adjustments of employees performing such duties outside the retail trade industry; and

(ii) Not related to pay adjustments of another unit of employees engaged on a regular and continuing basis in the operation of an establishment in the retail trade industry or in support of such operation within the meaning of paragraph (c) of this section; or

(4) Employees who are members of an appropriate employee unit if 25% or more of the employees who are members of such unit are not engaged on a regular and continuing basis in the operation of an establishment in the retail trade industry or in support of such operation.

(e) *Effective date.* The exemption provided in this section shall be applicable to pay adjustments with respect to work performed on and after February 1, 1974.

[FR Doc.74-3061 Filed 2-1-74;4:40 pm]

PART 152—COST OF LIVING COUNCIL PHASE IV PAY REGULATIONS

Change in Prenotification and Reporting Requirements for Pay Adjustments in the Food Industry

Correction

In FR Doc. 74-2393 appearing at page 3556 of the issue for Monday, January 28, 1974, make the following changes:

1. After the fifth line in § 152.72(c), insert "employees engaged on a regular and con-".

2. In § 152.76(d), in the ninth line of Example (1), "Form PB-4 (or Form PB-3A," should read "Form PB-3 (or Form PB-3A,".

Title 7—Agriculture

CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (AGRICULTURAL ADJUSTMENT), DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 723—CIGAR-FILLER (TYPE 41) AND MARYLAND TOBACCO

Proclamations, Determinations and Announcements of National Marketing Quotas and Referendum Results

Basis and purpose. Sections 723.1 and 723.2 are issued pursuant to, and in accordance with, the Agricultural Adjustment Act of 1938, as amended, hereinafter referred to as the "Act", to proclaim national marketing quotas for cigar-filler (type 41) and Maryland tobacco for each of the three marketing years beginning October 1, 1974, October 1, 1975, and October 1, 1976. Sections 723.11 and 723.12 are also issued pursuant to the Act to determine the reserve supply level and the total supply of each kind of tobacco for the marketing year beginning October 1, 1973, to announce for the 1974-75 marketing year the amounts of the national marketing quotas, national acreage allotments (less reserves) to old farms, and the amounts of the national reserves and parts thereof available for (a) new farms and (b) making corrections and adjusting inequities in old farm allotments for such kinds of tobacco. The material previously appearing in these sections under centerheads proclamation of Quotas and Determinations and Announcements—1971-72 Marketing Year remain in full force and effect for the crops to which it was applicable.

The determinations contained in §§ 723.11 and 723.12 have been made on the basis of the latest available statistics of the Federal Government, and after due consideration of data, views, and recommendations received from cigar-filler (type 41) and Maryland tobacco

producers and others as provided in a notice (38 FR 35008) given in accordance with the provisions of 5 U.S.C. 553.

Since the Act requires the holding of separate referenda of cigar-filler (type 41) and Maryland tobacco producers within 30 days after issuance of the proclamation of national marketing quotas for such kinds of tobacco to determine whether such producers favor marketing quotas, since such farmers must be notified, insofar as practicable, of their farm acreage allotments prior to the referenda and since notices of allotments cannot be mailed until the issuance of the proclamations herein, it is hereby found that compliance with the 30-day effective date provision of 5 U.S.C. 553 is impracticable and contrary to the public interest. Therefore, the proclamations, determinations and announcements contained herein shall become effective on January 31, 1974.

Section 312(b) of the Act provides, in part, that the amount of the national marketing quota is the total quantity of a kind of tobacco which may be marketed which will make available during such marketing year a supply of such tobacco equal to the reserve supply level. The amount of the national marketing quota so announced may, not later than the following March 1, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restrictions of marketings in adjusting the total supply to the reserve supply level.

The reserve supply level is defined in the Act as 105 percent of the normal supply. The normal supply is defined in the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic consumption and 65 percent of a normal year's exports. A normal year's domestic consumption is defined in the Act as the yearly average quantity produced in the United States and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption. A normal year's export is defined in the Act as the yearly average quantity produced in the United States which was exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

CIGAR-FILLER (TYPE 41) TOBACCO

The yearly average quantity of cigar-filler (type 41) tocabbo produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1973–74 marketing year was about 45.0 million pounds. The average annual quantity of cigar-filler (type 41) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1973–74 marketing year was 0.7 million pounds (farm-sales weight basis). Since both domestic use and exports have been trending downward during the 10-year period, 41.0 million pounds have been used as a normal year's domestic consumption and 0.4 million pounds have been used as a normal year's exports. Application of the formula prescribed by the Act results in a reserve supply level of 119.1 million pounds.

Manufacturers and dealers reported stocks of cigar-filler (type 41) tobacco held on October 1, 1973, as 53.7 million pounds. The 1973 cigar-filler (type 41) tobacco crop is estimated to be 23.1 million pounds. Therefore, the total supply of cigar-filler (type 41) tobacco for the 1973–74 marketing year is 76.8 million pounds. During the 1973–74 marketing year, it is estimated that disappearance will total about 35.0 million pounds. By deducting this disappearance from the total supply, a carryover of 41.8 million pounds for the 1974–75 marketing year, is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1974, results in a national marketing quota for the 1974–75 marketing year of 77.3 million pounds.

In accordance with section 313(g) of the Act, the 1974 national marketing quota, divided by the 1969–73, 5-year national average yield of 1,657 pounds per acre, results in a 1974 national acreage allotment of 46,650.57 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 2.43 is determined by dividing the national acreage allotment, less a national reserve of 377.78 acres, by the total of the 1974 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less reserve, to old farms.

MARYLAND TOBACCO

The yearly average quantity of Maryland tobacco produced in the United States which is estimated to have been consumed in the United States during the ten years preceding the 1973–74 marketing year was about 23.8 million pounds. The average annual quantity of Maryland tobacco produced in the United States and exported during the 10 marketing years preceding the 1973–74 marketing year was 12.0 million pounds (farm-sales weight basis). During the past 5 years, domestic consumption has trended downward due, in part, to restricted supplies. With this in mind, the 10-year average domestic use has been adjusted downward to 21.6 million pounds as a normal year's domestic consumption and the ten-year average exports of 12.0 million pounds has been used as a normal year's exports. Application of the formula prescribed by the Act results in a reserve supply level of 83.2 million pounds.

Carryover stocks of Maryland tobacco in the hands of manufacturers and dealers on January 1, 1974, are estimated to be 45.0 million pounds. The 1973 Maryland tobacco crop is estimated to be 26.4 million pounds. Therefore, the total supply of Maryland tobacco for the 1973–74 marketing year is 71.4 million pounds. During the 1973–74 marketing year it is estimated that disappearance will total about 26.0 million pounds. By deducting this disappearance from the total supply, a carryover of 45.4 million pounds for the 1974–75 marketing year, is obtained.

The difference between the reserve supply level and the estimated carryover for the 1973–74 marketing year, results in a national marketing quota for the 1974–75 marketing year of 37.8 million pounds.

In accordance with section 313(g) of the Act, the 1974 national marketing quota, divided by the 1969–73, 5-year national average yield of 1,056 pounds per acre, results in a 1974 national acreage allotment of 35,795.45 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 357.95 acres, by the total of the 1974 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less reserve, to old farms.

Sections 723.1, 723.2, 723.11, and 723.12 are revised to read as follows:

PROCLAMATION OF QUOTAS

§ 723.1 Cigar-filler (type 41) tobacco—1974–75, 1975–76, and 1976–77 marketing years.

Since the 1973–74 marketing year is the last of 3 consecutive years for which marketing quotas previously proclaimed were disapproved by producers of cigar-filler (type 41) tobacco in a referendum, and since producers of such kind of tobacco had disapproved national marketing quotas on such kind of tobacco in referenda held in 3 successive years subsequent to 1952, section 312(a)(4) of the Act requires the proclamation of a national marketing quota for each of the three marketing years beginning October 1, 1974, October 1, 1975, and October 1, 1976; and each such quota is hereby proclaimed.

§ 723.2 Maryland tobacco—1974–75, 1975–76, and 1976–77 marketing years.

Since the 1973–74 marketing year is the last of three consecutive years for which marketing quotas previously proclaimed were disapproved by producers of Maryland tobacco in a referendum, and since producers of such kind of tobacco had disapproved national marketing quotas on such kind of tobacco in referenda held in three successive years subsequent to 1952, section 312(a)(4) of the Act requires the proclamation of a national marketing quota for each of the three marketing years beginning October 1, 1974, October 1, 1975, and October 1, 1976; and each such quota is hereby proclaimed.

DETERMINATIONS AND ANNOUNCEMENTS—1974–75 MARKETING YEAR

§ 723.11 Cigar-filler tobacco.

(a) *Reserve supply level.*[1] The reserve supply level for cigar-filler (type 41) tobacco is 119.1 million pounds, calculated, as provided in the Act, from a normal year's domestic consumption of 41.0 million pounds and a normal year's exports of 0.4 million pounds.

(b) *Total supply.*[1] The total supply of cigar-filler (type 41) tobacco for the marketing year beginning October 1, 1973, calculated in accordance with the Act, is 76.8 million pounds, consisting of carryover of 53.7 million pounds and estimated 1973 production of 23.1 million pounds.

(c) *Carryover.*[1] The estimated carryover of cigar-filler (type 41) tobacco for the marketing year beginning October 1, 1974, is 41.8 million pounds, calculated in accordance with the Act by subtracting the estimated disappearance for the marketing year beginning October 1, 1973, of 35.0 million pounds from the total supply of such tobacco.

(d) *National marketing quota.*[1] The amount of cigar-filler (type 41) tobacco which will make available during the marketing year beginning October 1, 1974, a supply of cigar-filler (type 41) tobacco equal to the reserve supply level of such tobacco is 77.3 million pounds, and a national marketing quota of such amount is hereby announced.

(e) *National acreage allotment.* The national acreage allotment, calculated in accordance with the Act by dividing the national marketing quota for the 1974–75 marketing year by the 5-year, 1969–73, national average yield of 1,657 pounds, is 46,650.57 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1974–75 marketing year is 2.43. It was calculated in accordance with the Act by dividing the national acreage allotment, less reserve, by the total of the preliminary allotments for 1974 old farms.

(g) *National reserve.* The national acreage reserve is 377.78 acres, of which 50.00 acres are made available for 1974 new farms, and 327.78 acres are made available for making corrections and adjusting inequities in old farm allotments.

§ 723.12 Maryland tobacco.

(a) *Reserve supply level.*[1] The reserve supply level for Maryland tobacco is 83.2 million pounds, calculated as provided in the Act, from a normal year's domestic consumption of 21.6 million pounds and a normal year's exports of 12.0 million pounds.

(b) *Total supply.*[1] The total supply of Maryland tobacco for the marketing year beginning October 1, 1973, calculated in accordance with the Act, is 71.4 million pounds consisting of estimated carryover of 45.0 million pounds and estimated 1973 production of 26.4 million pounds.

[1] Rounded to the nearest tenth of a million pounds.

(c) *Carryover.*[1] The estimate carryover of Maryland tobacco for the 1974–75 marketing year is 45.4 million pounds, calculated in accordance with the Act by subtracting the estimated disappearance of 26.0 million pounds for the 1973–74 marketing year from the total supply of such tobacco.

(d) *National marketing quota.*[1] The amount of Maryland tobacco which will make available during the 1974–75 marketing year, a supply of Maryland tobacco equal to the reserve supply level of such tobacco is 37.8 million pounds, and a national marketing quota of such amount is hereby announced.

(e) *National acreage allotment.* The national acreage allotment, calculated in accordance with the Act by dividing the national marketing quota for the 1974–75 marketing year by the 5-year, 1969–73 national average yield of 1,056 pounds, is 35,795.45 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1974–75 marketing year is 1.00. It was calculated in accordance with the Act by dividing the national acreage allotment, less reserve, by the total of the 1974 preliminary allotments for 1974 old farms.

(g) *National reserve.* The national acreage reserve is 357.95 acres, of which 40.00 acres are made available for 1974 new farms, and 317.95 acres are made available for making corrections and adjusting inequities in old farm allotments.

(Secs. 301, 312, 313, 375, 52 Stat. 38, as amended, 46, as amended, 47, as amended, 66, as amended; 7 U.S.C. 1301, 1312, 1313, 137.5)

Effective date: January 31, 1974.

Signed at Washington, D.C., on January 31, 1974.

GLENN A. WEIR,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.74-2905 Filed 1-31-74;2:14 pm]

PART 724—FIRE-CURED, DARK AIR-CURED, VIRGINIA SUN-CURED, CIGAR-BINDER (TYPES 51 AND 52), AND CIGAR-FILLER AND BINDER (TYPES 42, 43, 44, 53, 54, AND 55)

Proclamations, Determinations and Announcements of National Marketing Quotas and Referendum Results

Basis and purpose. Section 724.5 is issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended, hereinafter referred to as the "Act", to proclaim national marketing quotas for Virginia sun-cured tobacco for each of the three marketing years beginning October 1, 1974, October 1, 1975, and October 1, 1976. Sections 724.12 through 724.15 are issued pursuant to, and in accordance with, the Act to determine the reserve supply level and the total supply of fire-cured, dark air-cured and Virginia sun-cured tobacco for the marketing year beginning October 1, 1973, and to announce for the 1974–75 marketing year the amounts of the national marketing quotas, national acreage allotments, national acreage factors for apportioning the national acreage allotments (less reserves) to old farms, and the amounts of the national reserves and parts thereof available for (a) new farms and (b) making corrections and adjusting inequities in old farm allotments for fire-cured (type 21), fire-cured (types 22–24), dark air-cured, and Virginia sun-cured tobacco. The material previously appearing in these sections under centerheads Proclamation of Quotas and Determinations and Announcements—1973–74 Marketing Year remain in full force and effect as to the crop to which it was applicable.

The determinations contained in §§ 724.12 through 724.15 have been made on the basis of the latest available statistics of the Federal Government, and after due consideration of data, views, and recommendations received from tobacco producers and others as provided in a notice (38 FR 35009) given in accordance with the provisions of 5 U.S.C. 553.

It is determined that acreage-poundage quotas will not be announced for the 1974–75 marketing year for fire-cured and dark air-cured tobacco.

Since the Act requires the holding of a referendum of Virginia sun-cured tobacco farmers within 30 days after issuance of the proclamation of national marketing quotas to determine whether such farmers favor marketing quotas, since such farmers must be notified, insofar as practicable, of their farm acreage allotments prior to the referenda and since notices of allotments cannot be mailed until the issuance of the proclamation, and since fire-cured and dark air-cured tobacco farmers are now making their plans for producing tobacco in 1974 and need to know, at the earliest possible date, the applicable 1974 tobacco allotments for their farms, it is hereby found that compliance with the 30-day effective date provisions of 5 U.S.C. 553 is impracticable and contrary to the public interest. Therefore, the proclamations, determinations and announcements contained herein shall become effective on January 31, 1974.

Section 312(b) of the Act provides, in part, that the amount of the national marketing quota is the total quantity of a kind of tobacco which may be marketed which will make available during such marketing year a supply of such tobacco equal to the reserve supply level. The amount of the national marketing quota so announced may, not later than the following March 1, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restrictions of marketings in adjusting the total supply to the reserve supply level.

The reserve supply level is defined in the Act as 105 percent of the normal supply. The normal supply is defined in the Act as a normal year's domestic consumption and exports, plus 175 percent

of a normal year's domestic consumption and 65 percent of a normal year's exports. A normal year's domestic consumption is defined in the Act as the yearly average quantity produced in the United States and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption. A normal year's exports is defined in the Act as the yearly average quantity produced in the United States which was exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

FIRE-CURED (TYPE 21) TOBACCO

The yearly average quantity of fire-cured (type 21) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1973–74 marketing year was about 2.7 million pounds. The average annual quantity of fire-cured (type 21) tobacco produced in the United States and exported from the United States during the ten marketing years preceding the 1973–74 marketing year was 5.4 million pounds (farm-sales weight basis). Taking into account the irregular pattern of both domestic use and exports, and the market demand for the various grades, 2.9 million pounds have been used as a normal year's domestic consumption and 5.4 million pounds have been used as a normal year's exports. Application of the formula prescribed by the Act results in a reserve supply level of 17.7 million pounds.

Manufacturers and dealers reported stocks of fire-cured (type 21) tobacco held on October 1, 1973, as 7.6 million pounds. The 1973 fire-cure (type 21) tobacco crop is estimated to be 5.8 million pounds. Therefore, the total supply of fire-cured (type 21) tobacco for the 1973–74 marketing year is 13.4 million pounds. During the 1973–74 marketing year, it is estimated that disappearance will total about 6.0 million pounds. By deducting this disappearance from the total supply, a carryover of 7.4 million pounds for the 1974–75 marketing year, is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1974, results in a computed national marketing quota for the 1974–75 marketing year of 10.3 million pounds. Use of the authority of the Secretary in section 312(b) of the Act to increase the computed quota by 20 percent to 12.4 million pounds, is deemed to be justified in order to avoid undue restrictions of marketings. This results in a national marketing quota of 12.4 million pounds.

In accordance with section 313(g) of the Act, the 1974 national marketing quota, divided by the 1969–73, 5-year national average yield of 1,194 pounds per acre, results in a 1974 national acreage allotment of 10,385.25 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 103.85 acres, by the total of the 1974 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less reserve, to old farms.

FIRE-CURED (TYPES 22–24) TOBACCO

The yearly average quantity of fire-cured (types 22–24) tobacco produced in the United States which is estimated to have been consumed in the United States during the ten years preceding the 1973–74 marketing year was about 17.2 million pounds. The average annual quantity of fire-cured (types 22–24) tobacco produced in the United States and exported during the ten marketing years preceding the 1973–74 marketing year was 23.4 million pounds (farm-sales weight basis). Exports of fire-cured weight basis). Exports of fire-cured (types 22–24) tobacco have trended slight (types 22–24) tobacco have trended slightly upward during the ten-year period. During the past 5 years, total disappearance has exceeded production by 19.8 million pounds. With this in mind, the 10-year average domestic use has been adjusted upward to 17.5 million pounds as a normal year's domestic consumption and the ten-year average exports has been adjusted upward to 24.9 million pounds as a normal year's exports. Application of the formula prescribed by the Act results in a reserve supply level of 93.7 million pounds.

Manufacturers and dealers reported stocks of fire-cured (types 22–24) tobacco held on October 1, 1973, as 57.3 million pounds. The 1973 fire-cured (types 22–24) crop is estimated to be 29.6 million pounds. Therefore, the total supply of fire-cured (types 22–24) tobacco for the marketing year beginning October 1, 1973 is 86.9 million pounds. During the 1973–74 marketing year it is estimated that disappearance will total about 38.0 million pounds. By deducting this disappearance from the total supply, a carryover of 48.9 million pounds for the 1974–75 marketing year, is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1974, results in a computed national marketing quota for the 1974–75 marketing year of 44.8 million pounds. Use of the authority of the Secretary in section 312(b) of the Act to increase the computed quota by 20 percent to 53.8 million pounds is deemed to be justified in order to avoid undue restrictions of marketings. This results in a national marketing quota of 53.8 million pounds.

In accordance with section 313(g) of the Act, the 1974 national marketing quota, divided by the 1969–73, 5-year national average yield of 1,817 pounds per acre, results in a 1974 national acreage allotment of 29,609.24 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 296.09 acres, by the total of the 1974 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313 (g) for apportioning the national acreage allotment, less reserve, to old farms.

DARK AIR-CURED TOBACCO

The yearly average quantity of dark air-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the ten years preceding the 1973–74 marketing year was about 16.9 million pounds, and the average annual quantity produced domestically and exported during this period was 2.9 million pounds (farm-sales weight basis). Total disappearance of dark air-cured tobacco has been trending downward for many years, although the average disappearance for the last 5 years of the 10-year period is only slightly less than the 10-year average. Even with the decline, production has been less than disappearance in 7 years of the 10-year base period. In view of these facts, 17.8 million pounds have been used as a normal year's domestic consumption and 2.9 million pounds as a normal year's exports. Application of the formula prescribed by the Act results in a reserve supply level of 56.5 million pounds.

Manufacturers and dealers reported stocks of dark air-cured tobacco held on October 1, 1973, as 44.7 million pounds. The 1973 dark air-cured crop is estimated to be 13.2 million pounds. Therefore, the total supply for the marketing year beginning October 1, 1973 is 57.9 million pounds. During the 1973–74 marketing year it is estimated that disappearance will total about 18.2 million pounds. By deducting this disappearance from the total supply, a carryover of 39.7 million pounds for the 1974–75 marketing year, is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1974, results in a computed national marketing quota for the 1974–75 marketing year of 16.8 million pounds. Use of the authority of the Secretary in section 312(b) of the Act to increase the computed quota by 20 percent to 20.2 million pounds is deemed to be justified in order to avoid undue restrictions of marketings. This results in a national marketing quota of 20.2 million pounds.

In accordance with section 313(g) of the Act, the 1974 national marketing quota, divided by the 1969–73, 5-year national average yield of 1,821 pounds per acre, results in a 1974 national acreage allotment of 11,092.80 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 110.92 acres, by the total of the 1974 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section

313(g) for apportioning the national acreage allotment, less reserve, to old farms.

VIRGINIA SUN-CURED TOBACCO

The yearly average quantity of Virginia sun-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the ten marketing years preceding the 1973–74 marketing year was about 1,231 thousand pounds, and the average annual quantity produced in the United States and exported during the same period was 285 thousand pounds (farm-sales weight basis). While there has been a downward trend in exports and domestic use during the base period, total disappearance has exceeded production during 7 years of the 10-year period. Farms are producing only about 37 percent of the allotted acreage and disappearance has declined because of inadequate supplies. With this in mind, 1,483 thousand pounds have been used as a normal year's domestic consumption and 300 thousand pounds as a normal year's exports. Application of the formula prescribed by the Act results in a reserve supply level of 4,802 thousand pounds.

Manufacturers and dealers reported stocks of Virginia sun-cured tobacco held on October 1, 1973, as 3,204 thousand pounds. The 1973 Virginia sun-cured tobacco crop is estimated to be 804 thousand pounds. Therefore, the total supply of Virginia sun-cured tobacco for the 1973–74 marketing year is 4,044 thousand pounds. During the 1973–74 marketing year, it is estimated that disappearance will total about 800 thousand pounds. By deducting this disappearance from the total supply, a carryover of 3,244 thousand pounds for the 1974–75 marketing year, is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1974 results in a computed national marketing quota for the 1973–74 marketing year of 1,558 thousand pounds. Use of the authority of the Secretary in section 312(b) of the Act to increase the computed quota by 20 percent of 1,870 thousand pounds is deemed to be justified in order to avoid undue restrictions of marketings. This results in a national marketing quota of 1,870 thousand pounds.

In accordance with section 313(g) of the Act, the 1974 national marketing quota, divided by the 1969–73 5-year national average yield of 1,147 pounds per acre, results in a 1974 national acreage allotment of 1,630.34 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 16.30 acres, by the total of the 1974 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less reserve, to old farms.

1. Section 724.5 is revised to read as follows:

PROCLAMATION OF QUOTAS

§ 724.5 Virginia Sun-Cured tobacco—1974–75, 1975–76, and 1976–77 marketing years.

Since the 1973–74 marketing year is the last of three consecutive years for which marketing quotas previously proclaimed will be in effect for Virginia sun-cured tobacco, a national marketing quota for such kind of tobacco for each of the three marketing years beginning October 1, 1974, October 1, 1975, and October 1, 1976, is hereby proclaimed.

2. Section 724.12 is revised to read as follows:

DETERMINATIONS AND ANNOUNCEMENTS—1974–75 MARKETING YEAR

§ 724.12 Fire-cured (type 21) tobacco.[1]

(a) *Reserve supply level.*[1] The reserve supply level for fire-cured (type 21) tobacco is 17.7 million pounds, calculated, as provided in the Act, from a normal year's domestic consumption of 2.9 million pounds and a normal year's exports of 5.4 million pounds.

(b) *Total supply.*[1] The total supply of fire-cured (type 21) tobacco for the marketing year beginning October 1, 1973, is 13.4 million pounds, calculated in accordance with the Act, from a carryover of 7.6 million pounds and estimated 1973 production of 5.8 million pounds.

(c) *Carryover.*[1] The estimated carryover of fire-cured (type 21) tobacco for the marketing year beginning October 1, 1974, is 7.4 million pounds, calculated in accordance with the Act by subtracting the estimated disappearance for the marketing year beginning October 1, 1974, of 6.0 million pounds from the total supply of such tobacco.

(d) *National marketing quota.*[1] The amount of fire-cured (type 21) tobacco which will make available during the marketing year beginning October 1, 1974, a supply equal to the reserve supply level of such tobacco is 10.3 million pounds, and a national marketing quota of such amount is hereby announced. It is determined, however, that a national marketing quota in the amount of 10.3 million pounds would result in undue restriction of marketings during the 1974–75 marketing year and such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for fire-cured (type 21) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1974 is 12.4 million pounds.

(e) *National acreage allotment.* The national acreage allotment, calculated in accordance with the Act by dividing the national marketing quota for the 1974–75 marketing year by the 5-year 1969–73 national average yield of 1,194 pounds is 10,385.25 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments is 1.0. It was calculated in accordance with the Act by dividing the national acreage allotment, less the national reserve, by the total of the preliminary allotments for 1974 old farms.

(g) *National reserve.* The national acreage reserve is 103.85 acres, of which 15.00 acres are made available for 1974 new farms, and 88.85 acres are made available for making corrections and adjusting inequities in old farm allotments.

3. Section 724.13 is revised to read as follows:

§ 724.13 Fire-cured (types 22–24) tobacco.

(a) *Reserve supply level.*[1] The reserve supply level for fire-cured (types 22–24) tobacco is 93.7 million pounds, calculated, as provided in the Act, from a normal year's domestic consumption of 17.5 million pounds and a normal year's exports of 24.9 million pounds.

(b) *Total supply.*[1] The total supply of fire-cured (types 22–24) tobacco for the marketing year beginning October 1, 1973, is 86.9 million pounds, calculated in accordance with the Act, from a carryover of 57.3 million pounds and estimated 1973 production of 29.6 million pounds.

(c) *Carryover.*[1] The estimated carryover of fire-cured tobacco (types 22–24) for the marketing year beginning October 1, 1974, is 48.9 million pounds, calculated in accordance with the Act by subtracting the estimated disappearance for the marketing year beginning October 1, 1973, of 38.0 million pounds from the total supply of such tobacco.

(d) *National marketing quota.*[1] The amount of fire-cured (types 22–24) tobacco which will make available during the marketing year beginning October 1, 1974, a supply equal to the reserve supply level of such tobacco is 44.8 million pounds, and a national marketing quota of such amount is hereby announced. It is determined, however, that a national marketing quota in the amount of 44.8 million pounds would result in undue restriction of marketings during the 1974–75 marketing year and such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for fire-cured (types 22–24) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1974, is 53.8 million pounds.

(e) *National acreage allotment.* The national acreage allotment, calculated in accordance with the Act by dividing the national marketing quota for the 1974–75 marketing year by the 5-year 1969–73 national average yield of 1,817 pounds is 29,609.24 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1974–75 marketing year is 1.0. It was calculated in accordance with the Act by dividing the national acreage allotments for 1974 old farms.

(g) *National reserve.* The national acreage reserve is 296.09 acres, of which 10.00 acres are made available for 1974 new farms, and 286.09 acres are made

[1] Rounded to the nearest tenth of a million.

[1] Rounded to the nearest tenth of a million.

available for making corrections and adjusting inequities in old farm allotments.

4. Section 724.14 is revised to read as follows:

§ 724.14 Dark air-cured tobacco.

(a) *Reserve supply level.*[1] The reserve supply level for dark air-cured tobacco is 56.5 million pounds, calculated, as provided in the Act, from a normal year's domestic consumption of 17.8 million pounds and a normal year's exports of 2.9 million pounds.

(b) *Total supply.*[1] The total supply of dark air-cured tobacco for the marketing year beginning October 1, 1973, is 57.9 million pounds calculated in accordance with the Act, from a carryover of 44.7 million pounds and estimated 1973 production of 13.2 million pounds.

(c) *Carryover.*[1] The estimated carryover of dark air-cured tobacco for the marketing year beginning October 1, 1974, is 39.7 million pounds, calculated in accordance with the Act by subtracting the estimated disappearance for the marketing year beginning October 1, 1973, of 18.2 million pounds from the total supply of such tobacco.

(d) *National marketing quota.*[1] The amount of dark air-cured tobacco which will make available during the marketing year beginning October 1, 1974, a supply equal to the reserve supply level of such tobacco is 16.8 million pounds, and a national marketing quota of such amount is hereby announced. It is determined, however, that a national marketing quota in the amount of 16.8 million pounds would result in undue restriction of marketings during the 1974–75 marketing year and such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for dark air-cured tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1974 is 20.2 million pounds.

(e) *National acreage allotment.* The national acreage allotment, calculated in accordance with the Act by dividing the national marketing quota for the 1974–75 marketing year by the 5-year, 1969–73, national average yield of 1,821 pounds, is 11,092.80 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1974–75 marketing year is 1.0. It was calculated in accordance with the Act by dividing the national acreage allotment, less reserve, by the total of the preliminary allotments for 1974 old farms.

(g) *National reserve.* The national acreage reserve is 110.92 acres, of which 15.00 acres are made available for 1974 new farms, and 95.92 acres are made available for making corrections and adjusting inequities in old farm allotments.

5. Section 724.15 is revised to read as follows:

§ 724.15 Virginia sun-cured tobacco.

(a) *Reserve supply level.*[2] The reserve supply level for Virginia sun-cured tobacco is 4,802 thousand pounds, calculated, as provided in the Act, from a normal year's domestic consumption of 1,483 thousand pounds and a normal year's exports of 300 thousand pounds.

(b) *Total supply.*[2] The total supply of Virginia sun-cured tobacco for the marketing year beginning October 1, 1973, calculated in accordance with the Act, is 4,044 thousand pounds, consisting of carryover of 3,204 thousand pounds and estimated 1973 production of 804 thousand pounds.

(c) *Carryover.*[2] The estimated carryover of Virginia sun-cured tobacco for the marketing year beginning October 1, 1974, is 3,244 thousand pounds, calculated in accordance with the Act by subtracting the estimated disappearance for the marketing year beginning October 1, 1973, of 800 thousand pounds from the total supply of such tobacco.

(d) *National marketing quota.*[2] The amount of Virginia sun-cured tobacco which will make available during the marketing year beginning October 1, 1974, a supply equal to the reserve supply level of such tobacco is 1,558 thousand pounds, and a national marketing quota of such amount is hereby announced. It is determined, however, that a national marketing quota in the amount of 1,558 thousand pounds would result in undue restriction of marketings during the 1974–75 marketing year and such amount hereby increased by 20 percent. Therefore, the amount of the national marketing quota for Virginia sun-cured tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1974, is 1,870 thousand pounds.

(e) *National acreage allotment.* The national acreage allotment, calculated in accordance with the Act by dividing the national marketing quota for the 1974–75 marketing year by the 5-year, 1969–73, national average yield of 1,147 pounds, is 1,630.34 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1974–75 marketing year is 1.0. It was calculated in accordance with the Act by dividing the national acreage allotment, less reserve, by the total of the preliminary allotments for 1974 old farms.

(g) *National reserve.* The national acreage reserve is 16.30 acres, of which 5.00 acres are made available for 1974 new farms, and 11.30 acres are made available for making corrections and adjusting inequities in old farm allotments.

(Secs. 301, 312, 313, 375, 52 Stat. 38, as amended, 46, as amended, 66, as amended; 7 U.S.C. 1301, 1312, 1313, 1375)

Effective date: January 31, 1974.

Signed at Washington, D.C. on January 31, 1974.

GLENN A. WEIR,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.74-2903 Filed 1-31-74;2:10 pm]

[1] Rounded to the nearest tenth of a million.

[2] Rounded to the nearest thousand pounds.

PART 724—FIRE-CURED, DARK AIR-CURED, VIRGINIA SUN-CURED, CIGAR-BINDER (TYPES 51 AND 52), AND CIGAR-FILLER AND BINDER (TYPES 42, 43, 44, 53, 54, AND 55) TOBACCO

Proclamations, Determinations and Announcements of National Marketing Quotas and Referendum Results

Basis and purpose. Sections 724.16 and 724.17 are issued pursuant to, and in accordance with, the Agricultural Adjustment Act of 1938, as amended, hereinafter referred to as the "Act", to (1) determine the reserve supply levels for cigar-binder (types 51 and 52) tobacco, hereinafter referred to as "cigar binder", and cigar-filler and binder (types 42, 43, 44, 54, 53, and 55) tobacco, hereinafter referred to as "cigar-filler and binder" tobacco, (2) determine the total supply of each of these two kinds of tobacco for the marketing year beginning October 1, 1973, and (3) announce for the 1974–75 marketing year the amounts of the national marketing quotas, national acreage allotments, national acreage factors for apportioning the national acreage allotments (less reserves) to old farms, and the amounts of the national reserves and parts thereof available for (a) new farms and (b) making corrections and adjusting inequities in old farm allotments for each of these two kinds of tobacco.

The material previously appearing in these sections under centerhead Determinations and Announcements—1973–74 Marketing Year remain in full force and effect as to the crops to which it was applicable.

The determinations contained in §§ 724.16 and 724.17 have been made on the basis of the latest available statistics of the Federal Government. Due consideration has been given to data, views, and recommendations received from cigar-binder and cigar-filler and binder tobacco producers and others as provided in a notice (38 FR 35009) given in accordance with the provisions of 5 U.S.C. 553.

It is determined that acreage-poundage quotas will not be announced for cigar-binder or cigar-filler and binder tobacco for the 1974–75 marketing year.

Since tobacco farmers are now making their plans for producing tobacco in 1974 and need to know, at the earliest possible date, the applicable 1974 tobacco allotments for their farms, it is hereby found that compliance with the 30-day effective date provision of 5 U.S.C. 553 is impracticable and contrary to the public interest. Therefore, the determinations and announcements shall become effective on January 31, 1974.

Section 312(b) of the Act provides, in part, that the amount of the national

marketing quota is the total quantity of a kind of tobacco which may be marketed which will make available during the marketing year a supply of such tobacco equal to the reserve supply level. The amount of the national marketing quota so announced may, not later than the following March 1, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restrictions of marketings in adjusting the total supply to the reserve supply level.

The reserve supply level is defined in the Act as 105 percent of the normal supply. The normal supply is defined in the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic consumption and 65 percent of a normal year's exports. A normal year's domestic consumption is defined in the Act as the yearly average quantity produced in the United States and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption. A normal year's exports is defined in the Act as the yearly average quantity produced in the United States which was exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

CIGAR-BINDER TOBACCO

The yearly average quantity of cigar-binder tobacco produced in the United States which is estimated to have been consumed in the United States during the the ten years preceding the 1973–74 marketing year was about 4.4 million pounds. The average annual quantity of cigar-binder tobacco produced in the United States and exported from the United States during the ten marketing years preceding the 1973–74 marketing year was 1.1 million pounds (farm sales weight basis). Since farmers are producing only about 26 percent of the allotted acreage and since use is being controlled by the short supply, average domestic consumption have been used as a normal year's domestic consumption and average exports as a normal year's exports. Application of the formula prescribed by the Act, in a reserve supply level of 14.6 million pounds. Manufacturers and dealers reported stocks of cigar-binder tobacco held on October 1, 1973, as 7.5 million pounds. The 1973 cigar-binder crop is estimated to be 2.5 million pounds. Therefore, the total supply of cigar-binder tobacco for the 1973–74 marketing year is 10.0 million pounds. During the 1973–74 marketing year, it is estimated that disappearance will total about 2.6 million pounds. By deducting the estimated disappearance during the 1973–74 marketing year from the total supply, a carryover of 7.4 million pounds at the beginning of the 1974–75 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1974, results in a computed national marketing quota for the 1974–75 marketing year of 7.2 million pounds. Use of the authority of the Secretary in section 312(b) of the Act to increase the computed quota by 20 percent to 8.6 million pounds is deemed to be justified in order to avoid undue restrictions of marketings. This results in a national marketing quota of 8.6 million pounds.

In accordance with section 313(g) of the Act, the 1973 national marketing quota of 8.6 million pounds, divided by the 1969–73, 5-year national average yield of 1,667 pounds per acre, results in a 1974 national acreage allotment of 5,158.96 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 51.58 acres, by the total of the 1974 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national allotment, less reserve, to old farms.

CIGAR-FILLER AND BINDER TOBACCO

The yearly average quantity of cigar-filler and binder tobacco produced in the United States which is estimated to have been consumed in the United States during the ten years preceding the 1973–74 marketing year was about 24.5 million pounds. The average annual of cigar-filler and binder tobacco produced in the United States and exported from the United States during the ten marketing years preceding the 1973–74 marketing year was 0.3 million pounds (farm sales weight basis). The principal domestic use of this tobacco is in the manufacture of loose leaf chewing tobacco. Production of loose leaf chewing tobacco during January–September 1973 was 3 percent above the corresponding months a year earlier, and the highest of record. Further, we expect continued increases. In view of wide fluctuations, and increased potential for use, 25.4 million pounds have been used as a normal year's domestic consumption and 0.4 million pounds have been used as a normal year's exports. Application of the formula prescribed by the Act, results in a reserve supply level of 74.0 million pounds.

Manufacturers and dealers reported stocks of cigar-filler and binder tobacco held on October 1, 1973, as 45.8 million pounds. The 1973 cigar-filler and binder crop is estimated to be 23.3 million pounds. Therefore, the total supply of cigar-filler and binder tobacco for the 1973–74 marketing year is 69.1 million pounds. During the 1973–74 marketing year, it is estimated that disappearance will total about 23.5 million pounds. By deducting this disappearance from the total about 23.5 million pounds. By pounds at the beginning of the 1974–75 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1974, results in a computed national marketing quota for the 1974–75 marketing year of 28.4 million pounds. Use of the authority of the Secretary in section 312(b) of the Act to increase the computed quota by 20 percent to 34.1 million pounds is deemed to be justified in order to avoid undue restrictions on marketings. This results in a national marketing quota of 34.1 million pounds.

In accordance with section 313(g) of the Act, the 1974 national marketing quota of 34.1 million pounds, divided by the 1969–73, 5-year national average yield of 1,896 pounds per acre, results in the 1974 national acreage allotment of 17,985.23 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 179.85 acres, by the total of the 1974 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less reserve, to old farms.

1. Section 724.16 is revised to read as follows:

DETERMINATIONS AND ANNOUNCEMENTS—1974–75 MARKETING YEAR

§ 724.16 Cigar-binder (types 51 and 52) tobacco.

(a) *Reserve supply level.*[1] The reserve supply level for cigar-binder (types 51 & 52) tobacco is 14.6 million pounds estimated as provided in the Act, from a normal year's domestic consumption of 4.4 million pounds and a normal year's exports of 1.1 million pounds.

(b) *Total supply.*[1] The total supply of cigar-binder (types 51 & 52) tobacco for the marketing year beginning October 1, 1973, is 10.0 million pounds, calculated in accordance with the Act from a carryover of 7.5 million pounds and estimated 1973 production of 2.5 million pounds.

(c) *Carryover.*[1] The estimated carryover of cigar-binder (types 51 & 52) tobacco for the marketing year beginning October 1, 1974, is 7.4 million pounds, calculated in accordance with the Act, by subtracting the estimated disappearance for the marketing year beginning October 1, 1973, of 2.6 million pounds from the total supply of such tobacco.

(d) *National marketing quota.*[1] The amount of cigar-binder (types 51 & 52) tobacco which will make available during the marketing year beginning October 1, 1974, a supply equal to the reserve supply level of such tobacco is 7.2 million pounds, and a national marketing quota of such amount is hereby announced. It is determined, however, that a national marketing quota in the amount of 7.2 million pounds would result in undue restrictions of marketings during the 1974–75 marketing year and such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for cigar-binder (types 51 & 52) tobacco in terms of the total quantity of such tobacco which may be marketed

[1] Rounded to the nearest tenth of a million.

during the marketing year beginning October 1, 1974, is 8.6 million pounds.

(e) *National acreage allotment.* The national acreage allotment, calculated in accordance with the Act by dividing the national marketing quota for the 1974–75 marketing year by the 5-year, 1969–73 national average yield of 1.667 pounds is 5,158.96 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1974–75 marketing year is 1.0. It was calculated in accordance with the Act by dividing the national acreage allotment, less reserve, by the total of the preliminary allotments for 1974 old farms.

(g) *National reserve.* The national acreage reserve is 51.58 acres, of which 40.00 acres are made available for 1974 new farms, and 11.58 acres are made available for making corrections and adjusting inequities in old farm allotments.

2. Section 724.17 is revised to read as follows:

§ 724.17 Cigar-filler and binder (types 42–44, 53–55) tobacco.

(a) *Reserve supply level.*[1] The reserve supply level for cigar-filler and binder (types 42–44, 53–55) tobacco is 74.0 million pounds, calculated, as provided in the Act, from a normal year's domestic consumption of 25.4 million pounds and a normal year's exports of 0.4 million pounds.

(b) *Total supply.*[1] The total supply of cigar-filler and binder (types 42–44, 53–55) tobacco for the marketing year beginning October 1, 1973 is 69.1 million pounds calculated in accordance with the Act, from a carryover of 45.8 million pounds and estimated 1973 production of 23.3 million pounds.

(c) *Carryover.*[1] The estimated carryover of cigar-filler and binder (types 42–44, 53–55) tobacco for the marketing year beginning October 1, 1974, is 45.6 million pounds, calculated in accordance with the Act, by subtracting the estimated disapperance for the marketing year beginning October 1, 1973, of 23.5 million pounds from the total supply of such tobacco.

(d) *National marketing quota.*[1] The amount of cigar-filler and binder (types 42–44, 53–55) tobacco which will make available during the marketing year beginning October 1, 1974, a supply equal to the reserve supply level of such tobacco is 28.4 million pounds, and a national marketing quota of such amount is hereby announced. It is determined, however, that a national marketing quota in the amount of 28.4 million pounds would result in undue restriction of marketings during the 1974–75 marketing year and such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for cigar-filler and binder (types 42–44, 53–55) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1974, is 34.1 million pounds.

[1] Rounded to the nearest tenth of a million.

(e) *National acreage allotment.* The national acreage allotment, calculated in accordance with the Act by dividing the national marketing quota for the 1974–75 marketing year by the 5-year, 1969–73 national average yield of 1,896 pounds, is 17,985.23 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1974–75 marketing year is 1.0. It was calculated in accordance with the Act by dividing the national acreage allotment, less reserve by the total of the preliminary allotments for 1974 old farms.

(g) *National reserve.* The national acreage reserve is 179.85 acres, of which 140.00 acres are made available for 1974 new farms, and 39.85 acres are made available for making corrections and adjusting inequities in old farm allotments.

(Sec. 301, 312, 313, 375, 52 Stat. 38, as amended, 46, as amended, 47, as amended, 66, as amended; 7 U.S.C. 1301, 1312, 1313, 1375)

Effective date: January 31, 1974.

Signed in Washington, D.C. on: January 31, 1974.

GLENN A. WEIR,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.74-2904 Filed 1-31-74;2:13 pm]

PART 726—BURLEY TOBACCO

Proclamations, Determinations and Announcements of National Marketing Quotas and Referendum Results

Basis and purpose. Section 726.1 is issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended, hereinafter referred to as the "Act" to proclaim national marketing quotas for burley tobacco for the 1974–75, 1975–76 and 1976–77 marketing years. Section 726.11 is issued pursuant to the Act, to determine and announce for burley tobacco the amounts of the national marketing quota and the national reserve, and the national factor for the 1974–75 marketing year. The material previously appearing in these sections under centerheads Proclamation of Quotas and Determination and Announcements—1973–74 Marketing Year remain in full force and effect as to the crop to which it was applicable.

Since the 1973–74 marketing year is the last of three consecutive years for which marketing quotas previously proclaimed on a poundage basis will be in effect, section 319(b) of the Act provides that the Secretary shall proclaim marketing quotas for burley tobacco on a poundage basis.

Section 319(c) of the Act provides that the national marketing quota determined under such section for burley tobacco for any marketing year shall be the amount produced in the United States which the Secretary estimates will be utilized in the United States and will be exported during such marketing year, adjusted upward or downward in such amount as the Secretary, in his discretion, determines is desirable for the purpose of maintaining an adequate supply or for effecting an orderly reduction of supplies to the reserve supply level. Any such downward adjustment shall not exceed 5 percent of such estimated utilization and exports. For each marketing year for which marketing quotas are in effect under this section, the Secretary in his discretion may establish a reserve (hereinafter referred to as the "national reserve") from the national marketing quota in an amount not in excess of 1 percent of the national marketing quota to be available for making corrections and adjusting inequities in farm marketing quotas, and for establishing marketing quotas for new farms.

Section 319(e) provides, in part, that the 1974 farm marketing quota shall be determined by multiplying the previous year's farm marketing quota by a national factor obtained by dividing the national marketing quota (less the national reserve) by the sum of the farm marketing quotas for the immediately preceding year for all farms for which burley tobacco marketing quotas will be determined for 1974: *Provided,* That such national factor shall not be less than 95 percent.

The reserve supply level is defined in the Act as 105 percent of the normal supply. The normal supply is defined in the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic consumption and 65 percent of a normal year's exports. A normal year's domestic consumption is defined in the Act as the yearly average quantity produced in the United States and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption. A normal year's exports is defined in the Act as the yearly average quantity produced in the United States which was exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

The reserve supply level is 1,635 million pounds, based on a normal year's domestic consumption of 530 million pounds and a normal years exports of 60 million pounds. The average domestic usage for the past 10 marketing years amounted to 529 million pounds. Domestic use has averaged 515 million pounds during the past five marketing years and is expected to be about 550 million pounds for the 1973–74 marketing year. The 10 year average exports amounted to 58 million pounds. Exports have averaged 62 million pounds during the past three marketing years and are expected to be about 75 million pounds during the 1973–74 marketing year. In view of these data and estimates, a reserve supply level of 1,635 million pounds appears reasonable.

The total supply of 1,704 million pounds for the 1973–74 marketing year

exceeds the reserve supply level by 69 million pounds. The estimated total disappearance of 640 million pounds during the 1974–75 marketing year with the maximum downward adjustment permitted by section 319(c) of the Act, 32 million pounds, results in a quota of 608 million pounds for the 1974–75 marketing year. The sum of the preliminary farm marketing quotas for the 1974–75 marketing year is 559.8 million pounds. The quota of 608 million pounds, less a national reserve of 3 million pounds results in a national factor of 1.08.

Public notice was given (38 FR 35485) that the Secretary was preparing to proclaim marketing quotas for the 1974–75, 1975–76 and 1976–77 marketing years and announce a national marketing quota for burley tobacco for the marketing year beginning October 1, 1974. Due consideration has been given to views and recommendations received pursuant to the notice.

Since the Act requires the holding of a referendum of burley tobacco producers within 30 days after the issuance of the proclamation of quotas to determine whether the producers favor quotas and the Act requires, insofar as practicable, the mailing of farm allotment notices to farmers prior to the referendum, it is hereby found that compliance with the 30 day effective date provision of 5 U.S.C. 553 is impracticable and contrary to the public interest. Therefore, this document shall be effective on January 31, 1974.

1. Section 726.1 is revised to read as follows:

PROCLAMATION OF QUOTAS

§ 726.1 1974–75, 1975–76 and 1976–77 marketing years.

Since marketing quotas have been made effective for burley tobacco for the 1971–72, 1972–73 and 1973–74 marketing years (36 FR 7593), and since the 1973–74 marketing year is the last of three consecutive marketing years for which marketing quotas previously proclaimed will be in effect for burley tobacco, marketing quotas on a poundage basis are hereby proclaimed for burley tobacco for the 1974–75, 1975–76 and 1976–77 marketing years.

2. Section 726.11 is revised to read as follows:

DETERMINATIONS AND ANNOUNCEMENTS—1974–75 MARKETING YEAR

§ 726.11 Burley tobacco.

(a) *National marketing quota.* A national marketing quota for burley tobacco on a poundage basis for the marketing year beginning October 1, 1974, is hereby determined and announced in the amount of 608 million pounds, calculated, as provided in the Act, by adjusting the estimated disappearance of 640 million pounds downward by 32 million pounds.

(b) *National factor.* The national factor determined to be necessary to apportion the 1974 national quota to farms as provided in section 319(e) of the Act, is 1.08.

(c) *National reserve.* The national reserve for making corrections and adjusting inequities in old farm quotas and for establishing quotas for new farms is 3,000,000 pounds.

(Secs. 301, 319, 375, 52 Stat. 38, as amended, 85 Stat. 23, 52 Stat. 66, as amended; 7 U.S.C. 1301, 1314e, 1375)

Effective date: January 31, 1974.

Signed at Washington, D.C. on: January 31, 1974.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.74–2906 Filed 1–31–74;2:14 p.m.]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[CCC Grain Price Support Regulations, Amdt. 6]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Farm Storage Loans

The regulations issued by the Commodity Credit Corporation published at 35 FR 7363 and 7781, as amended, containing the General Regulations Governing Price Support for the 1970 and Subsequent Crops of Grain and Similarly Handled Commodities are hereby amended as follows:

New paragraphs (e), (f), and (g), are added to § 1421.18. The paragraphs provide for loan determinations on the basis of certification in specified areas and actions to be taken for miscertifications and for unauthorized removals of loan collateral. The new provisions are intended to acquire information to determine the operational practicality of producer certification of the quantity of commodity for farm-stored loan purposes and set forth the consequences of miscertification and unauthorized removals. The new paragraphs read as follows:

§ 1421.18 Farm Storage Loans.

* * * * *

(e) *Producer certification.* In addition to loan quantity determinations based on measurement, as provided in paragraph (a) of this section, in any county, State, or are designated by the Executive Vice President, CCC, such determinations may be made on the basis of the quantity of commodity which an eligible producer certifies in writing on Form CCC–666 is eligible, if in an approved farm storage, and is available for loan purposes.

(f) *Producer incorrect certification.* (i) If the county committee determines, by measurement or otherwise, that the actual quantity serving as collateral for a loan based on certification by the producer is less than the loan quantity, the county committee shall call the loan. In addition, the county committee may notify the producer that all other farm-stored loans outstanding shall mature upon the next maturity date, approve no further farm-stored loans for the producer on any commodity through the end of the next crop year after the crop year in which the incorrect certification was made and, if the county committee feels the seriousness of the matter justifies such action, refer the case to the State committee which may request the Office of Inspector General of the United States Department of Agriculture (hereinafter referred to as OIG) to make an investigation.

(ii) If the producer has incorrectly certified such quantities on more than one occasion, the county committee shall call the loan or loans involved, notify the producer that all other farm-stored loans outstanding shall mature upon the next maturity date, and approve no further farm-stored loans for the producer on any commodity through the end of the next crop year after the crop year in which the incorrect certification was made. If the county committee feels the seriousness of the matter so justifies they may deny further farm-stored loans to the producer for more than one year. They may also refer the case to the State committee which may request OIG to make an investigation.

(g) *Unauthorized removal.* If there has been an unauthorized removal of any part of farm-stored collateral, the county committee shall on the first offense, call the loan involved. In addition, the county committee may notify the producer that all other outstanding farm-stored loans shall mature upon the next maturity date, approve no further farm-stored loans for the producer on any commodity through the end of the next crop year after the crop year in which the unauthorized removal occurred, and if the county committee feels the seriousness of the matter justifies such action, refer the case to the State committee which may request an OIG investigation by the Office of Inspector General. If the unauthorized removal is the second offense the county committee shall: Call the loan involved, notify the producer that all other outstanding farm-stored loans shall mature upon the next maturity date, and approve no further farm-stored loans for the producer on any commodity through the end of the next crop year after the crop year in which the unauthorized removal occurred. The county committee may also, if they feel the seriousness of the matter so justifies, deny farm-stored loans to the producer for more than one year or refer the case to the State committee which may request an OIG investigation.

* * * * *

Since farm-stored loans are now being made on the 1973 crop and the provisions of the amendment are needed to carry out the loan program more effectively, compliance with the notice of proposed rulemaking procedure would be impractical and contrary to the public interest. Therefore, this amendment is issued without compliance with such procedure.

(Secs. 4 and 5, 62 Stat. 1070, as amended; secs. 101, 105, 107, 301, 401, 405, 63 Stat. 1051, as amended; 15 U.S.C. 714b and c; 7 U.S.C. 1441, 1447, 1421, 1425)

Effective date: February 5, 1974.

Signed at Washington, D.C., on January 30, 1974.

GLENN A. WEIR,
Executive Vice President,
Commodity Credit Corporation.

[FR Doc.74-2928 Filed 2-4-74;8:45 am]

[Rev. 3, Amdt. 12]

PART 1475—EMERGENCY FEED PROGRAM

Eligibility Provisions; Application and Approval

The regulations issued by the Commodity Credit Corporation published by 29 FR 13475, 30 FR 2854, 30 FR 6909, 31 FR 13532, 32 FR 14372, 34 FR 14206, 36 FR 9497, 37 FR 7149, 37 FR 13635, 37 FR 18181, 37 FR 22875 and 38 FR 6804 which contain specific requirements for the Livestock Feed Program are further amended to clarify the definition of eligible livestock § 1475.203(u), change the criteria for determining undue financial hardship § 1475.204(b), revise § 1475.205 (d) (2), (3) and (4) to clarify the quantities of feed grain which may be approved for eligible applicants and revise § 1475.205(e) (1) and (2) to provide that the State committee shall approve applications with 1000 or more animal units. Because these changes are urgently needed in emergency areas, it is hereby determined that compliance with the notice of proposed rule making is impractical and contrary to the public interest with respect to this amendment. The changes are as follows:

§ 1475.203 Definitions.

* * * * *

(u) "Eligible livestock" means (1) livestock which were owned by the applicant at least six months prior to the date of his application to purchase feed for such livestock and which were either located in the emergency area on the date the area was so designated or, as determined by the State committee, were moved into the area in accordance with the owner's normal livestock operation, such as rotation grazing and may include livestock leased in accordance with a contractual agreement which requires that the lessee furnish the feed for such livestock, provided that the lessee also has a beneficial interest in such livestock such as the right to market a share of the increase; (2) cattle, sheep, goats, and swine purchased by the applicant as replacement breeding stock according to his customary normal breeding operations; (3) livestock inherited by an applicant, or purchased by an applicant as part of a complete farm operation other than through foreclosure; and (4) offspring of livestock described in paragraphs (a) (1), (2) and (3) of this section. Work horses and mules shall be eligible only if they are used for pulling equipment, or for riding purposes necessary to the applicant's agricultural operations, or if they are being raised for these purposes.

§ 1475.204 Eligibility provisions.

* * * * *

(b) At the time the owner applies for feed grain he does not have, and is unable to obtain through normal channels of trade without undue financial hardship, sufficient feed for the livestock owned by him. Undue financial hardship shall be deemed to exist upon determination by the approving officials that under prevailing local standards the applicant's financial resources preclude his obtaining required feed from normal suppliers without imperiling continuance of his farming operations, defaulting on existing financial obligations, unsound borrowing or excessive disposal of livestock. Purchased feed shall be considered as a liquid asset in determining undue financial hardship. In making this determination approving officials shall give especially close scrutiny to applicants who locally are customarily regarded as being wealthy, having large financial reserves, or as having substantial non-farm sources of income. If the approving officials are uncertain as to whether the applicant meets the eligibility requirements, they may request such factual information as will permit them to make a determination. If the applicant is a partnership, the resources of the partnership and all of the partners must be taken into consideration in determining the eligibility of the partnership to receive assistance. If the applicant is a family corporation, the resources of such corporation and of the individuals who together with the corporation are considered as a person under § 1475.203(i) must be taken into consideration in determining the eligibility of the family corporation to receive assistance.

* * * * *

§ 1475.205 Application and approval.

* * * * *

(d) * * *

(2) The feed grain gross allowance for the authorized period shall not exceed 10 pounds per day per animal unit (or whatever lesser quantity is established by the State committee or county committee) times the number of days in the authorized period. If the applicant purchases oats hereunder, the feed grain gross allowance may be increased up to 120 percent of the feed grain gross allowance as determined in the manner described in the first sentence of this paragraph (d) (2).

(3) The net approved quantity for the approved period shall be the smaller of: (i) The gross allowance less the total quantity of feed or feed equivalent determined by the approving officials to be available to the owner for feeding his eligible livestock during the authorized period, or (ii) the quantity the approving officials determine to be adequate considering the total quantity of feed grain, hay, silage, pasture and range determined to be available to the owner for feeding his eligible livestock during the authorized period. All feed available to an applicant (corn, grain sorghum, barley, oats, and roughage) may be prorated over the entire feeding season. Notwithstanding the foregoing in paragraph (d) (3) (i) and (ii) of this section, the total amount of feed an applicant may purchase under the program may not exceed the amount of livestock feed lost by the owner as a result of the disaster.

(4) The total quantity of feed available to the owner shall be the quantity owned by him located in the county in which the application is filed and in adjoining counties determined by the county committee to be within reasonable hauling distance of the owner's livestock operation of the categories specified in the application plus feed sold by him in the period beginning 30 days before the county was designated as an emergency area, less feed on hand required to feed the owner's ineligible livestock and poultry during the authorized period and seed for the owner's own use. Purchased feed shall not be considered as feed available. In determining the total quantity of feed available if the owner is a partnership or a family corporation, the quantity of feed available to the individuals and other legal entities which are collectively considered as a person under § 1475.203(i) shall be combined and considered feed of the owner.

(e) *Action on applications.* (1) The county committee shall review each application filed as provided in paragraph (c) of this section. The county committee is authorized to approve or disapprove applications except that it shall only make recommendations with respect to applications (i) involving 1000 animal units or more or (ii) filed by county or State committeemen or office personnel.

(2) Applications with respect to which a recommendation is made by the county committee shall receive final approval or disapproval (i) by the State committee or its designee if filed by a county committeeman or county office personnel for less than 1000 animal units; (ii) by the State committee if involving 1000 animal units or more or if filed by State office personnel except State committeemen, or (iii) by DAP if filed by State committeemen.

(Secs. 1–4 of 73 Stat. 574, as amended; secs. 407 and 421 of 63 Stat. 1055, as amended; secs. 4 and 5 of 62 Stat. 1070, as amended; 7 U.S.C. 1427, 1427 note and 1433; 15 U.S.C. 714 b and c.)

Effective date: February 5, 1974.

Signed at Washington, D.C., on January 30, 1974.

GLENN A. WEIR,
Executive Vice President,
Commodity Credit Corporation.

[FR Doc.74-2927 Filed 2-4-74;8:45 am]

Title 9—Animals and Products

CHAPTER III—ANIMAL AND PLANT HEALTH INSPECTION SERVICE (MEAT AND POULTRY INSPECTION), DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—MANDATORY POULTRY PRODUCTS INSPECTION

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

Miscellaneous Amendments; Correction

Statement of considerations. On May 16, 1972, a revision of the Federal poultry products inspection regulations was published in the FEDERAL REGISTER (37 FR 9706–9747) under the Poultry Products Inspection Act (21 U.S.C. 451 et seq.) and other laws. That publication contained several typographical errors, inadvertent omissions from that published in the proposed rulemaking, or minor errors in codification format. There are a few cases where the codification could be improved but is not because of the risk of rendering cross references inaccurate.

The first few changes set forth herein are typographical or codification corrections. A more complete explanation of the other changes are as follows:

1. Section 381.1(b)(41) is amended to include a definition for "Poultry Food Product." This is necessary to clarify the intent of § 381.126(a).

2. Section 381.107 is amended to add a footnote to explain the reference to "Part 362" since that Part has not been published. The Department plans to publish a proposed Part 362 containing the inspection responsibilities now in Title 7, Part 70 of CFR.

3. Section 381.121(c) is amended to clarify the intent of the requirement for marking the net weight on random weight product in consumer-size packages. Many times when such product is weighed, the weighing machine will automatically print the net weight, price per unit of measure, and total price on a small self-adhesive sticker to be placed on the package. This service is frequently rendered upon request by the person ordering such product. Since such automatic weighing equipment is not capable of producing a weight statement in compliance with the required type size in § 381.121(c), and because of the nature of the operation, the dual declaration and placement requirements are unnecessary or impossible, the Department is making this exception. The exception provided for in this document was contained in the proposed regulations published May 27, 1971, but was inadvertently omitted in the revised regulations published May 16, 1972.

4. Section 381.125 is amended to delete "Until Display for Sale" from the present labeling requirement reading, "Shipped/Stored and Handled Frozen for Your Protection, Keep Refrigerated or Freeze Until Display for Sale." The present wording puts an unnecessary burden on the Department of determining compliance with the requirement. This change also makes the labeling policy, for the types of poultry products affected, better conform to the policy in effect for meat product without detracting from the intent. This change and the other minor changes in this section more accurately reflect the intent of the labeling requirement as a whole.

5. Section 381.126(a) is amended to more accurately reflect the intent of the regulations. As it now reads, any poultry packed in bulk in ice or frozen must be marked by code or otherwise with the date of packaging. Such requirement for poultry was nonexistent prior to the revisions of May 16, 1972; it was not intended in the revised regulations; and has not been enforced.

6. Section 381.147(f)(3), Table I, under Class of Substance, "Flavoring agents; protectors and developers" is amended by adding "corn syrup" and "glucose syrup" to "corn syrup solids." This was an inadvertent omission in the regulations. Corn syrup or glucose syrup has been accepted and is used in lieu of corn syrup solids.

7. Section 381.157(e), Table II, is amended to clarify the permitted content of canned boned poultry. The regulations in use prior to the May 16, 1972, revision permitted poultry meat with skin and fat as ingredients of such product. The proposed regulations published May 27, 1971, continued that same policy. However, the revised regulations published May 16, 1972, omitted the reference that skin and fat are permissible components. This document amends the regulations to reflect past and current practice in this respect.

8. Section 381.167, Table IV, is amended to clarify the permitted content of "(Kind) salad." Much of the industry's past and present practice is to use canned boned poultry, with proportions of skin and fat natural to the poultry used, in the manufacture of various poultry product salads. The Department believes there is no validity in altering the practice since the market for the product was built when the policy permitted the use of canned boned poultry with skin and fat.

9. In § 381.170(a)(1), (iv) and (vi) are amended to clarify the definition of a "roaster" chicken. The regulations in effect prior to May 16, 1972, defined "roaster" as "* * * a young chicken (usually 3 to 5 months of age), of either sex, that is tender-meated with soft, pliable, smooth-textured skin and breastbone cartilage that may be somewhat less flexible than that of a broiler or fryer." Another class of poultry, "Hen or stewing chicken or fowl," was defined as "* * * a mature female chicken (usually more than 10 months of age) with meat less tender than that of a roaster, and nonflexible breastbone tip." The proposed regulations published in the May 27, 1971, FEDERAL REGISTER contained the same definitions. However, when the regulations were published in the FEDERAL REGISTER in final form on May 16, 1972, that class of poultry previously called "Hen or stewing chicken or fowl" was called "Hen, fowl, or baking, stewing, or roasting chicken." The provision to permit a chicken over 10 months to be labeled as a "roasting chicken" was unintentional since it had not been previous policy or practice, and the proposed regulations made no provision for such change. To clarify the intent of that provision of the regulations, a roaster—being usually 3 to 5 months of age—can be called a "roaster or roasting chicken"; and a chicken over 10 months of age can be called "Hen, fowl, or baking, or stewing chicken."

10. Section 381.187 lists those States operating poultry products inspection programs which have been determined to be at least equal to those requirements imposed under sections 1–4, 6–10, and 12–22 of the Act, and also lists each State's certification date. However, since publishing the poultry products inspection regulations May 16, 1972, the Department has determined that § 381.187 is not a necessary part of the regulations. The Act requires that any State not operating a poultry products inspection program with requirements at least equal to those sections listed above shall be designated and subject to Federal administration of said sections upon expiration of 30 days following publication in the FEDERAL REGISTER of the notice of such designation. States so designated are listed in § 381.221. Any State not listed in § 381.221 is deemed to be operating with the provisions of the Act. Therefore, a separate listing of such States is unnecessary. This amendment revokes § 381.187 in its entirety.

11. The remaining changes set forth herein are organizational in nature or merely editorial. They reflect the reorganization of Program Divisions and Staffs following the transfer into the Animal and Plant Health Inspection Service in 1972.

Accordingly, under the authority of the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), the poultry products inspection regulations (9 CFR Part 381) are amended as set forth below:

1. In the Statement of Considerations, 37 FR 9707, first column, line 11, the word "good" is changed to "food."

§ 381.1 [Amended]

2. Section 381.1(b), subparagraph (41) is amended as follows: The present provisions of subparagraph (41) are designated as subdivision (i). A new subdivision (ii) is added thereto to read as follows:

(ii) *Poultry food product.* This term means any product capable of use as human food which is made in part from any poultry carcass or part thereof, excepting those exempted from definition as a poultry product in § 381.15.

§ 381.10 [Amended]

3. In § 381.10(d)(2)(iv), a closing parenthesis designation was omitted. The section in question is amended to add a closing parenthesis mark after the word "exempted" in line 8.

§ 381.66 [Amended]

3. The subdivision "(i)" designation is deleted from § 381.66(c)(5).

4. In § 381.66(d)(3), Table 3, on the line reading "8 lbs. 8 ozs. and under," and under column "Zone B," the figure "0.01" is changed to "10.0."

§ 381.75 [Amended]

5. In § 381.75 the paragraph designation "(a)," the colon on line 5, and the subparagraph designation "(1)" are deleted, and the material in that section shall be one paragraph and the capital letter "T" in line 6 is changed to a lowercase letter "t."

§ 381.107 [Amended]

6. Section 381.107 is amended by adding a footnote designation [1] after "Part 362" and a footnote to read:

[1] To be published later. This part will contain information regarding voluntary inspection services presently found in 7 CFR Part 70.

7. Section 381.121(c) is amended by adding a new subparagraph (9) as follows:

§ 381.121 Quantity of contents.

* * * * *

(c) * * *

(9) Random weight consumer-size packages bearing labels declaring net weight, price per pound, and total price shall be exempt from the type size, dual declaration, and placement requirements of this paragraph (c) if an accurate statement of net weight is shown conspicuously on the principal display panel of the package. A "random-weight package" is one of a lot, shipment, or delivery of packages of the same product with varying weights and with no fixed weight pattern.

§ 381.125 [Amended]

8. In § 381.125, "Keep Refrigerated or Frozen," is added immediately after "Keep Frozen," and "Until Display for Sale" is deleted from "Shipped/Stored and Handled Frozen for Your Protection, Keep Refrigerated or Freeze Until Display for Sale."

§ 381.126 [Amended]

9. Section 381.126(a) is amended by adding the word "food" immediately after the word "poultry."

§ 381.133 [Amended]

10. In § 381.133(b), the words "Chemical and Microbiological Branch of the Laboratory Division" are changed to "Chemistry Staff, Scientific and Technical Services"; and the words "Chemical and Microbiological Branch" are changed to "Chemistry Staff".

§ 381.135 [Amended]

11. In § 381.135(b), the words "Director of the Standards and Services Division" are changed to "Labels and Packaging Staff, Meat and Poultry Inspection, Animal and Plant Health Inspection Service, USDA, Washington, D.C. 20250."

§ 381.147 [Amended]

12. In § 381.147(f)(3), Table I, under "Class of substance" column referred to as "Synergists," under the "Amount" column, the amount for "Phosphoric acid" is changed from "0.0" to "0.01" percent.

13. In § 381.147(f)(3) in the portion of the table dealing with the "Class of Substance," "Flavoring agents; protectors and developers," the "Substance" column is amended by adding"; corn syrup; glucose syrup" to the line dealing with "corn syrup solids" immediately after the word "solids."

§ 381.156 [Amended]

14. In § 381.156, the paragraph designation "(a)" is deleted.

§ 381.157 [Amended]

15. In § 381.157(e), Table II, the heading of the second column is amended to read: "Minimum Percent Cooked Deboned Poultry Meat of Kind Indicated, with Skin, Fat, and Seasoning"; and the word "meat" is deleted from footnote 2 in both cases.

§ 381.167 [Amended]

16. In § 381.167, Table IV, in the column "Product Name," a footnote designation [3] is added following "(Kind) salad" and the footnote is added at the bottom of the table to read:

[3] The 25 percent standard listed includes poultry meat plus proportions of skin and fat natural to the poultry used.

§ 381.170 [Amended]

17. In § 381.170(a)(1)(iv) the heading is changed from "Roaster," to "Roaster or roasting chicken." and the word "roaster" in the text of this section is changed to "bird of this class." In § 381.170(a)(1)(vi) the heading is changed from "Hen, fowl, or baking, stewing, or roasting chicken" to "Hen, fowl, or baking, or stewing chicken" and the words "or roasting chicken" are added to the text of this section immediately after the word "roaster".

§ 381.179 [Amended]

18. In § 381.179(a), the words "Director, Program Review and Compliance Staff" are changed to "Compliance Staff".

§ 381.187 [Revoked]

19. Section 381.187 is hereby revoked in its entirety, and the Table of Contents of Part 381 is amended to show said revocation.

20. In § 381.190(b), the last two sentences of that section are revised to read as follows:

§ 381.190 Transactions in slaughtered poultry and other poultry products restricted.

* * * * *

(b) * * * The containers of all such products shall bear a label showing: (1) The name of the products; (2) the name and address of the packer or distributor, and, when the name of the distributor is shown, it shall be qualified by such terms as "packed for," "distributed by," or "distributors"; and (3) the official establishment number of the establishment where packed. Such products shall not bear the official inspection legend.

§ 381.198 [Amended]

21. In § 381.198, the words "officer in charge" are changed to "inspector in charge."

§ 381.204 [Amended]

22. In § 381.204, the paragraph designation "(a)" is deleted.

§ 381.205 [Amended]

23. The first sentence of § 381.205(c) is changed to read: "Labels for immediate containers of imported poultry products shall be submitted for approval in sketch form to the Labels and Packaging Staff, Meat and Poultry Inspection, Animal and Plant Health Inspection Service, USDA, Washington, D.C. 20250.

§ 381.222 [Amended]

24. In § 381.222(d)(2), the words "Standards and Services Division" are changed to "Washington, D.C., office of the Labels and Packaging Staff".

25. In § 381.222(d)(3), the words "Washington, D.C., office of the Standards and Services Division, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250" are changed to "Labels and Packaging Staff, Meat and Poultry Inspection, Animal and Plant Health Inspection Service, USDA, Washington, D.C. 20250".

The foregoing amendments were brought to the Department's attention by employees, members of the poultry industry, and others periodically working with these regulations. All the amendments set forth herein correct typographical or printing errors, or clarify information or the intent of the regulations published in 37 FR 9706–9747 and 9 CFR Part 381. It does not appear that further information on any of the amendments would be made available to the Department by publication of a notice and other public rulemaking procedures. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that such rulemaking procedures with respect to these amendments are impracticable and unnecessary, and good cause is found for making the amendments effective less than 30 days after publication hereof in the FEDERAL REGISTER.

Accordingly, the amendments shall become effective February 5, 1974.

Done at Washington, D.C., on January 28, 1974.

G. H. WISE,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc.74–2739 Filed 2–4–74;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airspace Docket No. 73-SW-81]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone and Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter controlled airspace in the Mineral Wells, Tex., terminal area.

On December 17, 1973, a notice of proposed rule making was published in the FEDERAL REGISTER (38 FR 34671), stating the Federal Aviation Administration proposed to alter the Mineral Wells, Tex., control zone and transition area.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., March 28, 1974, as hereinafter set forth.

In § 71.171 (39 FR 354), the Mineral Wells, Tex., control zone is amended to read:

MINERAL WELLS, TEX.

Within a 5-mile radius of Mineral Wells Airport (latitude 32°46'59" N, longitude 98°03'34" W) and within 3 miles each side of the 140° bearing from the Mineral Wells RBN, extending from the 5-mile radius zone to 8 miles SE of the RBN. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date will thereafter be continuously published in the Airman's Information Manual.

In § 71.181 (39 FR 440), the Mineral Wells, Tex., transition area is amended to read:

MINERAL WELLS, TEX.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Mineral Wells Airport (latitude 32°46'59" N, longitude 98°03'34" W) and within 3 miles each side of the 140° bearing from the Mineral Wells RBN, extending from the 5-mile radius area to 8 miles SE of the RBN.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Fort Worth, Tex., on January 24, 1974.

ALBERT H. THURBURN,
Acting Director,
Southwest Region.

[FR Doc.74-2871 Filed 2-4-74;8:45 am]

[Airspace Docket No. 74-SO-6]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Atlanta, Ga., control zone.

The Atlanta control zone is described in § 71.171 (39 FR 354). In the description, a 3-mile radius is predicated on Morris AAF. Since Morris AAF has been permanently closed, the requirement for this portion of the control zone no longer exists. It is necessary to amend the description to reflect this change. Since this amendment lessens the burden on the public, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

In § 71.171 (39 FR 354), the Atlanta, Ga., control zone is amended as follows: "* * * 1.5 miles east of the LOM; within a 3-mile radius of Morris AAF (latitude 33°37'20" N., longitude 84°20'-30" W.) * * *" is deleted and "* * * 1.5 miles east of the LOM." is substituted therefor.

This amendment is made under the authority of sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in East Point, Ga., on January 23, 1974.

DUANE W. FREER,
Acting Director,
Southern Region.

[FR Doc.74-2873 Filed 2-4-74;8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER C—DRUGS

PART 141e—BACITRACIN AND BACITRACIN-CONTAINING DRUGS

Change of Moisture Determination for Zinc Bacitracin-Neomycin-Polymyxin Powder Topical

In a notice of proposed rule making published in the FEDERAL REGISTER of September 17, 1973 (38 FR 26006), the Commissioner of Food and Drugs proposed to change the method for moisture determination for bacitracin- or zinc bacitracin-neomycin-polymyxin powder topical from loss on drying to the method described in § 141.502 (21 CFR 141.502). Interested persons were invited to submit their comments in response to the notice of proposed rule making within 60 days. No comments were received. Accordingly, the Commissioner of Food and Drugs concludes that the antibiotic drug regulations should be amended as set forth below.

Therefore, under provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and under authority delegated to the Commissioner (21 CFR 2.120), Part 141e is amended in § 141e.-430 by revising paragraph (b) to read as follows:

§ 141e.430 Bacitracin - neomycin - polymyxin powder topical; zinc bacitracin-neomycin-polymyxin powder topical.

* * * * *

(b) *Moisture.* Proceed as directed in § 141.502 of this chapter.

* * * * *

Effective date: This order shall become effective on March 7, 1974.

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357.)

Dated: January 30, 1974.

MARY A. MCENIRY,
Assistant to the Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc.74-2890 Filed 2-4-74;8:45 am]

PART 148e—ERYTHROMYCIN

Erythromycin Ethylsuccinate Oral Suspension

The Commissioner of Food and Drugs has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act, as amended, with respect to providing for the certification of an additional potency of erythromycin ethylsuccinate oral suspension, 80 milligrams per milliliter.

The Commissioner has concluded that the data supplied by the manufacturer concerning the subject antibiotic drug product is adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended to provide for the certification of this drug product.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and under authority delegated to the Commissioner (21 CFR 2.120), § 148e.13(a)(1) is revised to read as follows:

§ 148e.13 Erythromycin ethylsuccinate oral suspension.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Erythromycin ethylsuccinate oral suspension is erythromycin ethylsuccinate with suitable and harmless buffer substances, dispersing agents, diluents, colorings, flavorings, and preservatives. Each milliliter contains erythromycin ethylsuccinate equivalent to 40 or 80 milligrams of erythromycin. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of erythromycin that it is represented to contain. Its pH is not less than 6.5 and not more than 8.5. The erythromycin ethylsuccinate used conforms to the standards prescribed by § 148e.7(a)(1).

* * * * *

As the conditions prerequisite to providing for certification of this drug have been complied with and as the matter is noncontroversial in nature, notice

and public procedure and delayed effective date are not prerequisites to this promulgation.

Effective date. This order shall be effective February 5, 1974.

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357.)

Dated: January 30, 1974.

MARY A. MCENIRY,
Assistant to the Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc.74-2891 Filed 2-4-74;8:45 am]

Title 32—National Defense

CHAPTER XIV—RENEGOTIATION BOARD

SUBCHAPTER B—RENEGOTIATION BOARD REGULATIONS UNDER THE 1951 ACT

PART 1466—TERMINATION OF RENEGOTIATION

PART 1472—CONDUCT OF RENEGOTIATION

Miscellaneous Amendments to Chapter

These parts are amended in the following respects:

1. Section 1466.1 *Statutory provision* is amended by deleting "June 30, 1973" in the last sentence of subsection(c)(1) of the statutory provision set forth in the section and inserting in lieu thereof "June 30, 1974."

2. Section 1466.2 *Definition of "termination date"* is amended by deleting "June 30, 1973" and inserting in lieu thereof "June 30, 1974."

3. Section 1472.6(e)(2) *Hours of business* is amended by inserting a period after the word "located" in the second sentence and deleting the remaining language of such paragraph.

(Sec. 109, 65 Stat. 22; 50 U.S.C.A., App. Sec. 1219)

Dated: January 30, 1974.

W. S. WHITEHEAD,
Chairman.

[FR Doc.74-2870 Filed 2-4-74;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 74-59]

PART 0—COMMISSION ORGANIZATION

Delegations of Authority to Chief, Office of Opinions and Review

Order. In the matter of amendment of § 0.371 of the rules and regulations, delegations of authority to the Chief, Office of Opinions and Review.

1. The Commission has determined that the Chief, Office of Opinions and Review, should be authorized to act on petitions for leave to amend applications in hearing status pending before the Commission where no objection is raised as to the acceptance of the amendment. The delegation of this function to the Chief, Office of Opinions and Review, which will not involve any determination as to the effect of such amendments, will contribute to the proper functioning of the Commission and to the prompt and orderly conduct of its business.

2. Authority for this amendment is contained in sections 4 (i) and (j), 5(d), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j), 155(d), and 303(r). Because the amendment relates to matters of procedure and internal organization, the procedural and effective date provisions of section 4 of the Administrative Procedure Act, 5 U.S.C. 553, are inapplicable.

3. *Accordingly, it is ordered,* That effective February 5, 1974, § 0.371 of the rules and regulations is amended as set forth below.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303)

Adopted: January 23, 1974.

Released: January 29, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

In Part O of Chapter I of Title 47 of the Code of Federal Regulations, § 0.371(g) is added, to read as follows:

§ 0.371 Authority delegated.

* * * * *

(g) Petitions for leave to amend applications where no objection is raised to the acceptance of the amendment.

[FR Doc.74-3006 Filed 2-4-74;8:45 am]

[Docket No. 19644; RM-1886, RM-2018]

PART 73—RADIO BROADCAST SERVICES

Table of Assignments, FM Broadcast Stations in Colorado

1. The Commission here considers the notice of proposed rule making and order to show cause, adopted December 6, 1972 (FCC 72-1111; 37 FR 26740), proposing amendment of the FM Table of Assignments (§ 73.202(b) of the Commission's rules and regulations) by substituting Channel 230 for Channel 232A to Colorado Springs, Colorado, as petitioned for by Western Broadcasting Company (Western), licensee of Stations KPIK (AM daytime-only) and KPIK-FM (Channel 232A), there (RM-1886). Western also requested modification of the license of Station KPIK-FM to specify operation on Channel 230. The only change needed to allow the assignment of Channel 230 to Colorado Springs is the deletion of the Channel 232A assignment there. Also before us is the petition of KYSN Broadcasting Company (KYSN), licensee of AM Station KYSN, Colorado Springs, Colorado, to reassign Channel 260 to that city from Pueblo, Colorado (RM-2018), which Report No. 846, dated December 22, 1972 (Public Notice), stated would be treated as a "counterproposal" in this proceeding.

2. Parties filing comments and/or reply comments are: Western; KYSN; Roger P. Brandt (Brandt), licensee of AM Station KDZA (Class IV), Pueblo, Colorado, and now the applicant for Channel 264 there (BPH-8454); and Quixote Broadcasting Co. (Quixote), licensee of AM Station KPUB (daytime-only), Pueblo, Colorado, and applicant for Channel 260 there (BPH-7885).[1] Also before us for consideration is the request of KYSN for leave to file supplemental comments directed at implications of Quixote's amendment to its application for Channel 260 to specify a Cheyenne Mountain transmitter site.

3. Both Western and KYSN place strong reliance on the population and growth of Colorado Springs, the surrounding urban area, and the Colorado Springs Standard Metropolitan Statistical Area (SMSA). Quixote and Brandt—at least as concerns the proposed reassignment of Channel 260 from Pueblo to Colorado Springs—similarly rely on the population and growth potential of Pueblo and its trade area. Both cities are located roughly in the central eastern part of Colorado; Colorado Springs is about 15 miles east of Pikes Peak, about 60 miles south of Denver, and roughly 40 miles north of Pueblo. Colorado Springs, population 135,060,[2] is the seat of El Paso County, population 235,972, which together with Teller County (population 3,316) constitutes the Colorado Springs SMSA. Pueblo, population 97,453, is the seat of Pueblo County (which is the Pueblo SMSA), population 118,238. The aural broadcast situation at the two cities is as follows: Pueblo has six AM stations (three are daytime-only, and one is a Class IV), four FM channel assignments (one occupied and the other three applied for), and one noncommercial educational FM station (KTSC-FM, licensed to Southern Colorado State College). Colorado Springs has six AM stations (two are daytime-only, and two are Class IV), five commercial FM stations, and two noncommercial educational FM stations (KRCC, licensed to Colorado College, and KEPC licensed to El Paso Community College). Originally, the new FM Table of Assignments included three FM channels for Colorado Springs; the other two were added because of demand, increase of population, and other circumstances (see 40 F.C.C. 826, 828 (1964) and 40 F.C.C. 937, 938 (1965)). Other radio stations licensed to serve communities in El Paso County

[1] At the time, Quixote's application specified the transmitter site at KPUB's transmitter, but it has been amended to specify a site on Cheyenne Mountain. Quixote's application originally specified Channel 250; American Radio Corporation has since applied for that channel (BPH-8323). Both American Radio and Brandt propose to operate from the antenna (located eight miles northeast of Pueblo) of Stations KOAA-TV and KTSC-TV, Channels 5 and *8, respectively, assigned to Pueblo and operating with dual city identifications as "Pueblo-Colorado Springs"; see fn. 4 below, as concerns the similar type of operation by the stations on two of Colorado Springs' television channels.

[2] Unless otherwise indicated, all population information is from the 1970 Census.

are KRDI(AM) and KCMS–FM, Channel 274, Manitou Springs (population 4,278), and KWYD, Channel 288A, Security; the latter assignment was also made because of demand based on population growth (32 F.C.C. 2d 308, 312 (1971)).

4. The comments of Western consist of a reaffirmation of its petition for rule making, consent to modification of the license of Station KPIK–FM and a statement that steps will be taken in that respect promptly on authorization by the Commission, and the submission of an engineering statement as to preclusion. The Notice mentioned that Western's petition placed strong reliance on the size and growth factor of Colorado Springs [3] and the aural broadcasting situation there, and that the petition implied that Western could not compete with the four Class C FM stations at Colorado Springs and Station KCMS–FM, Channel 274, Manitou Springs, which also serves Colorado Springs and surrounding areas.[4] Western also suggested that its proposal would comport with Commission policy as to intermixture of the classes of FM assignments. In reply comments, Western also supports the KYSN proposal to assign Channel 260 to Colorado Springs, but if there is to be a choice, it favors assignment of Channel 230. Thus, it is urged, the Commission not only could correct the intermixture situation at Colorado Springs but add a much needed sixth FM channel. Reassignment of Channel 260, Western says, is warranted because only one of the four Class C channels at Pueblo is occupied (Station KVMN(FM), Channel 255), but if deemed appropriate, Channel 296A could be assigned in its place. Western further argues that the assignment of a sixth Class C FM channel to Colorado Springs comports with the population criteria for assignment of commercial FM channels—here four to six channels for a city of 100,000 to 250,000 population.[5] In the latter respect, Western urges that considering the SMSA population ("in excess of 250,000"), expected growth in the near future, and the population guideline of six to ten channels for communities of 250,000 to 1 million, a sixth channel would be well within the population guidelines for FM channel assignments.

5. With its reply comments, Western has submitted updated information about the present and future of the Colorado Springs SMSA. This includes data about the military community [the Air Force Academy, Fort Carson, and Ent Air Force Base—the headquarters of NORAD (aerospace defense system) at Cheyenne Mountain and headquarters of ARAD COM (U.S. Air Defense Command)]; population growth; tourism; banking; a comparative ranking economically; industrial and educational expansion; and details about the cultural, higher educational, and medical facilities. Western has also adduced technical data showing that the assignment of Channels 230 and 260 to Colorado Springs would have little preclusionary effect.

6. KYSN, in support of its proposal and that of Western has adduced data and information like that of Western as to population, social, and economic characteristics of Colorado Springs and El Paso County, and about preclusion. The supporting engineering report properly shows that the antenna site of Channel 260, if assigned to Colorado Springs, must be located at least five miles south of the Colorado Springs reference point to meet the 65-mile spacing to Denver Stations KVOD (Channel 258) and KLIR–FM (Channel 262). In this respect, KYSN proposes operation from Cheyenne Mountain, about seven miles southwest of Colorado Springs, from which location the spacings would be met.[6] As already noted, Cheyenne Mountain is the antenna site location of three of Colorado Springs' Class C FM stations, its two television stations,[7] and Station KCMS–FM (Channel 274), Manitou Springs. KYSN also views the assignment of a sixth FM channel to Colorado Springs as being in accord with the population criteria for FM assignments even if we consider only the 1970 Census data for the Colorado Springs Urbanized Area (204,766) and SMSA (239,288). KYSN, however, also calls attention to 152,735 and 262,030 population figures for Colorado Springs and the SMSA reported by the Colorado Springs Chamber of Commerce as of January 1, 1973, which it urges "are at the uppermost end of the * * * 100,000 to 250,000 scale". KYSN endeavors to distinguish this situation from those where we have specifically rejected SMSA population as a basis for channel assignment (see "Albuquerque," 35 F.C.C. 2d 230 (1972) and "Wilmington," 35 F.C.C. 2d 735 (1972)). It states that in those instances the number of FM channels assigned to the communities already exceeded the number specified under the population criteria while this is not the situation here. KYSN contends that it should have an equal opportunity to apply for Channel 230, if that is the only assignment made here to Colorado Springs.

7. Brandt and Quixote oppose the reassignment of Channel 260 from Pueblo to Colorado Springs. Quixote, the applicant for Channel 260 at Pueblo with a Cheyenne Mountain transmitter site (BPH–7885), alleges Channel 260 is the only one of the three unoccupied FM channels at Pueblo which can provide the entire Pueblo trade area with service. Quixote argues that the reassignment of Channel 260 to Colorado Springs would be "indefensible"; the primary contention is that this would be contrary to the Commission's population criteria both from the viewpoint of adding a "seventh" channel to Colorado Springs (here, Quixote includes Station KCMS, Channel 274, Manitou Springs, described as a Colorado Springs suburb),[8] and an illogical reduction of Pueblo's quota under that standard. Quixote urges that KYSN's proposal to replace Channel 260 with Channel 296A is anomalous in the light of the Commission's policy to avoid intermixing classes of FM assignments especially since the lead proposal under consideration here (RM–1886) is bottomed on the contention that Station KPIK–FM, Channel 232A, is unable to compete with the Class C stations at Colorado Springs. Quixote also adduces data and information to show that Pueblo and Pueblo County are in a period of rapid economic and industrial growth.

8. In the latter respect, we are told that Pueblo is the financial and industrial hub of southern Colorado. It is located in the Front Range Complex of Colorado, which Quixote says is one of the most prolific growth areas in the United States not only as to population but industrially and economically. There are two planned cities for Pueblo County—Pueblo West and Colorado City; other such communities have been rec-

[3] The population of Colorado Springs and El Paso County increased 92.1% and 64.2%, respectively, in the decade between 1960 and 1970. In 1960, the populations of the city and county (SMSA) were 70,470 and 143,742, respectively. At that time, Pueblo and its county had populations of 91,181 and 118,707. The 1960 Census shows earlier populations as follows:

Census	Colorado Springs	El Paso County	Pueblo	Pueblo County
1950	45,472	74,523	63,685	90,188
1940	36,789	----------	52,162	----------
1930	33,237	----------	50,096	----------

[4] KCMS–FM transmits from Cheyenne Mountain. This also is the transmitter site of aural Stations KKFM(FM), KRDO–FM, and KVOR–FM, and television Stations KKTV and KRDO–TV. The latter—on Colorado Springs Channels 11 and 13—are identified dually as Colorado Springs–Pueblo (see fn. 1, above). The application of Quixote for Channel 260 specifies a Cheyenne Mountain transmitter site. It also appears that a station on Pueblo's Channel 264 could operate from there, although Brandt's application specifies another site (see fn. 1).

[5] See Para. 4 of the Further Notice of Proposed Rule Making in Docket No. 14185, adopted July 25, 1962 (FCC 62–867), and incorporated by reference in Para. 25 of the Third Report, Memorandum Opinion and Order (40 F.C.C. 747, 758 (1963)).

[6] KYSN surmises that Stations KVOD and KLIR–FM eventually will change their respective transmitter sites to Lookout Mountain (west of Denver)—the location of most Denver television and FM stations—substantially increasing coverage as compared to present city level sites. As relevant here, such a move would increase the spacing(s) to Cheyenne Mountain by five miles.

[7] As noted in fn. 4, these have dual city identification as do the two Pueblo television stations. Colorado Springs and Pueblo are a single television market.

[8] Brandt also points to the Manitou Springs station as the seventh one in the Colorado Springs urbanized area; Manitou Springs is roughly five miles from Colorado Springs. Channel 288A (Station KWYD) at Security in fact is the seventh channel in the Colorado Springs SMSA; see Para. 3 above.

ommended for Pueblo County. Expansion of industry and other facilities is in progress: CF&I Steel Corporation is engaged in a $50 million plant improvement and expansion program; the Department of Transportation High Speed Ground Transportation and Urban Mass Authority facilities are being expanded; Southern Colorado State College plans to establish graduate programs, expand its student body by one-third (to 10,000) by 1975, and complete the Belmont Campus; and Pueblo Army Depot is located nearby. Other indicia of growth include completion of Aspen Skiwear's new plant at Pueblo West; expansion of Walters Brewery; building of the Comanche Power Plant by the Public Service Company of Colorado; completion of the first phase of construction of the Pueblo Dam; planned construction by Johns Manville Corporation of a plastic pipe manufacturing plant at Pueblo; and Mountain Bell Telephone plans for an electronic call switching system at Pueblo West. The Pueblo Development Commission was established in 1970 to expand local business and industry and attract other business and industry. Brandt refers to these and other developments; e.g., the commencement of operation of the U.S. Government Printing Office Western Automated Distribution Center.

9. As noted earlier, KYSN requested leave to file "supplemental" comments directed at Quixote's amendment to its application proposing a transmitter site on Cheyenne Mountain, which it first learned about from Quixote's reply comments. According to KYSN, this would place Quixote adjacent to Colorado Springs and over 30 miles from Pueblo and thus provide better service to the former than the latter. While Quixote premises the Cheyenne Mountain site as necessary to cover more of the Pueblo trade area, KYSN infers that it is intended as a de facto reallocation or at any rate an attempt to gain advertising support from Colorado Springs. In any event, KYSN draws the conclusion that Channel 260 would more effectively be a Colorado Springs rather than a Pueblo assignment. Accordingly, KYSN says such a result would be better accomplished by reassigning the channel to Colorado Springs thus allowing all interested parties to apply.

10. The common factor here is that both proposals involve a channel assignment to Colorado Springs, and, to that extent, certain background information and data are equally relevant. Additionally, each petitioner supports the other's proposal, although each says that if only one proposal should be adopted it should be its own. Yet, each proposal presents separate issues. The Western proposal (RM–1886) raises questions whether a Class A assignment should be changed to a Class C assignment where the city's other FM assignments are Class C channels; all are occupied. The proposal of KYSN raises questions as to whether Channel 260 should be assigned to Colorado Springs which reassignment requires the deletion of the Channel 260 assignment from Pueblo, Colorado (RM–2018). KYSN proposes the assignment of Channel 296A as a substitute at Pueblo.

11. *RM–1886.* The proposal to substitute Channel 230 for 232A at Colorado Springs apparently was intended to make all stations in that community competitive at least from the viewpoint of class. As stated in the Notice, Western had implied that Station KPIK–FM could not compete with the four Class C FM stations at Colorado Springs and Station KCMS–FM, Channel 274, Manitou Springs. (As previously mentioned, Manitou Springs is a city about five miles west of Colorado Springs.) The Notice was adopted on the basis that this was sufficient reason to consider the possible assignment of Channel 230 to Colorado Springs. The Notice requested that Western provide preclusion studies showing the areas where Channel 230 would preclude other assignments. While Western did not make an adequate showing in this respect, a study by the Commission shows that the areas of preclusion (which occur only on Channels 229, 230, and 231) are very limited. Only five communities with a population of 1,000 or more are precluded: Taos, New Mexico (population 2,475), has a Class IV AM station and a Class A FM assignment; Burlington, Colorado (population 2,828), has a daytime-only AM station; Limon (population 1,814), Fowler (1,241), and Ordway (population 1,017), all in Colorado, have no radio stations and are in eastern Colorado where potential FM assignments are scarce. In sum, the preclusion that would be caused by the assignment of Channel 230 to Colorado Springs is minimal.

12. It is our policy to avoid intermixture of channels, and this is possible here by a simple change of channels without serious preclusionary effect. The result is one that serves the public interest, convenience, and necessity. Accordingly, we are amending the FM Table of Assignments to assign Channel 230 in lieu of Channel 232A at Colorado Springs, Colorado.

13. *RM–2018.* This is the proposal of KYSN to reassign Channel 260 from Pueblo to Colorado Springs and, if deemed appropriate, the substitution of Channel 296A at Pueblo. Preclusion is minimal. Only four communities are affected. One of these has an FM assignment, and assignments may be made to the other three (one of which has a Class IV AM station). As already noted, KYSN and Western favor the proposal principally on the ground that because of the size and importance of Colorado Springs another FM channel assignment should be made to that city. They urge that this comports with the population criteria for FM assignments. In this respect, both point to the tremendous population growth of Colorado Springs, its urban area, and SMSA in the decade between 1960 and 1970 (see para. 3). KYSN also relies on an argument that the site proposed by Quixote in its application for Channel 260 at Cheyenne Mountain demonstrates that Channel 260 is better suited to serve Colorado Springs rather than Pueblo. Quixote and Brandt oppose the proposed reassignment of Channel 260 on the grounds that under the population criteria, Pueblo, whose SMSA is on the "eve" of great population and economic growth, is entitled to its present quota of FM channel assignments and that the proposed substitution of Channel 296A for 260, which would intermix classes of channels at Pueblo, is inappropriate because of service limitations and because this would result in an inconsistency with the principal proposal (RM–1886) which in large part is directed at eliminating an intermixture situation at Colorado Springs.

14. To the extent that strong reliance is placed on population criteria to support the Channel 260 proposal for Colorado Springs, it seems appropriate to discuss its genesis and relationship to the Commission's Rules and Regulations and the Act. The Further Notice in Docket No. 14185 set out "criteria as to community population" to be used for making assignments to a "city" of a certain size. This followed a discussion of "priorities in making assignments in the [FM] Table." Significantly, it was recognized "that there can be no fixed, mechanical application of priorities".[9] The term "community" has its origin in Section 307(b) of the Communications Act of 1934, as amended, which directs the Commission to make a fair, efficient, and equitable distribution of broadcast facilities to States and communities. Section 73.210 of the Commission's Rules and Regulations in discussing the place of license and location of the main studio of an FM station in addition to "community" uses more precise terms such as "city", "town", "village", or other "political subdivision" to denote that embraced are both incorporated and unincorporated communities. The terms "urbanized area" and "standard metropolitan statistical area", on the other hand, respectively are Census and Office of Management and Budget (OMB) definitions: the former is intended to delineate urban and rural population,[10] and the latter is a specifically designated area consisting of a "county (or counties) containing * * * a city (or cities) [generally of at least 50,000 inhabitants, although a city of 25,000 may qualify if certain criteria are met] * * * [and] contiguous counties [which] * * * according

[9] Compare this statement with the then recent holding in "Television Corporation of Michigan, Inc. v. FCC," 294 F. 2d 730 (D.C. Cir. 1961), that the priorities set out in the Sixth Report and Order as to the Television Table of Assignments are not rigid and inflexible standards.

[10] "An urbanized area [for which there are criteria] consists of a central city or cities, and surrounding closely settled territory."

to certain criteria * * * are socially and economically integrated with the central city." [11] Thus, there is a misconception underlying the contention of KYSN and Western that SMSA population is more appropriately to be considered under population criteria. (If arguendo, this were the test, then we would have to include both the channels at Manitou Springs (Channel 274, Station KCMS–FM) and Security (Channel 288A, Station KWYD) with the result that one could say that the Colorado Springs SMSA has its quota of FM assignments under the population criteria.) Under the population criteria, Colorado Springs a city with a current population of 152,735 (Chamber of Commerce as of January 1, 1973; see para. 6) and five channels, appears to have more than its fair apportionment in terms of the four to six scale for a city of 100,000 to 250,000 population.

15. More importantly, however, the population criteria are only one of many considerations to be weighed in making "a fair, efficient, and equitable" distribution of FM assignments under Section 307(b) of the Communications Act of 1934, as amended. As we recently said, they "are a guide and not an immutable standard" ("Fresno," 38 F.C.C. 2d 525, 526 (1972)); [12] in that instance, we deviated from the criteria because of demand for and the general availability of FM channels for assignment in the area.[13] An overriding consideration is the availability of FM channels. Here, in order to assign Channel 260 to Colorado Springs, it would be necessary to delete that channel assignment from Pueblo, Colorado, and substitute Channel 296A. As already noted, Channel 260 is one of four FM channels assigned to Pueblo since the establishment of the new FM Table of Assignments when the official Census population for Pueblo was 91,181 and far in excess of that of Colorado Springs. This accounts for the original assignments to these communities of four and three channels, respectively.[14] While the population increase of Pueblo has been more modest than that of Colorado Springs and the State of Colorado,[15] Pueblo and its SMSA appear to be entering a period of great economic and concomitant population growth. Assignments in the Table originally were based on probable demand for service based on an assumption that population was an appropriate indicator of future needs; on the other hand, as in the case of Colorado Springs, additions have been made based on actual demand and changed circumstances. However, the fact that there may be an acute demand in one place does not mean that we should disturb the long range pattern because actual demand at another has not been fully manifested, especially when there is a paucity of available FM assignments to meet the needs of both places fully complying with all policy criteria.

16. KYSN's contention that Quixote's choice of a Cheyenne Mountain transmitter site from which one could better serve Colorado Springs than Pueblo is unpersuasive. Even assuming arguendo that Quixote is granted a construction permit for Channel 260 and commences operation from Cheyenne Mountain, we do not assume an intention to serve Colorado Springs because it is nearer. While a station has an obligation to serve its entire coverage area, the primary responsibility is to serve the community to which specifically licensed [16] and Quixote's application has not indicated any intention to serve Colorado Springs (see § 73.210 and "Primer on Ascertainment of Community Problems," 27 F.C.C. 2d 650, 658 (1971)). If there is such an intention, then an appropriate dual city identification or assignment should be sought (see and compare "Oak Ridge," 32 F.C.C. 2d 937, 942 (1972)).

17. In view of the foregoing, we conclude that the public interest, convenience, and necessity would not be served by the reassignment of Channel 260 from Pueblo to Colorado Springs.

18. Authority for the action taken herein is contained in Sections 4(i), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended.

19. In accordance with the foregoing, *It is ordered*, That the FM Table of Assignments (§ 73.202(b) of the Commission's rules and regulations) is amended, effective April 1, 1974, as concerns Colorado Springs, Colorado, to read as follows:

City:	*Channel No.*
Colorado Springs, Colo.	225, 230, 236, 243, 270.

20. *It is further ordered*, That Western Broadcasting Company shall amend its application for renewal of the license of Station KPIK–FM, Colorado Springs, Colorado, to specify operation on Channel 230, subject to the following conditions:

(a) The licensee may continue to operate on Channel 232A until it is ready to operate on Channel 230 or the Commission sooner directs.

(b) At least 30 days before it wishes to commence operation on Channel 230, or within 30 days after it receives notification from the Commission if the Commission sooner directs the change as set forth in (a) above, the licensee of Station KPIK–FM shall submit to the Commission the technical information normally required of an applicant for a construction permit on Channel 230 at Colorado Springs, Colorado.

(c) Ten days prior to commencing operation on Channel 230, the licensee shall submit the same measurement data normally required in an application for an FM broadcast station license.

(d) Western Broadcasting Company shall not commence operation on Channel 230 until the Commission specifically authorizes it to do so.

21. *It is further ordered*, That the request of KYSN Broadcasting Company to file supplemental comments IS GRANTED.

22. *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 23, 1974.

Released: January 29, 1974.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] VINCENT J. MULLINS, *Secretary.*

[FR Doc.74–2893 Filed 2–4–74;8:45 am]

[Docket No. 19561; RM–1844, RM–1855, RM–1982]

PART 73—RADIO BROADCAST SERVICES

Table of Assignments, FM Broadcast Stations in Alabama and Florida

1. The Commission here considers the notice of proposed rule making, adopted July 26, 1972 (FCC 72–680; 37 FR 15940), in this docket concerning possible amendment of the FM Table of Assignments (§ 73.202(b) of the Commission's rules and regulations) with respect to Enterprise and Greenville, Alabama, and Bonifay, Chipley, and Pensacola, Florida, and the Request for Supplemental Information, adopted June 21, 1973 (FCC 73–671; 38 FR 17252). The notice was the outgrowth of a petition by Wallace Miller, D.V.M. (Miller), requesting Class C Channel 294 [1] as a second FM

[11] SMSA's are defined by the OMB by applying formal, objective, published criteria to the data of the most recent census. While the criteria have been altered (and the number of SMSAs have increased and some reconstituted), an SMSA is defined in terms of population and geographical groupings rather than political entities to facilitate the analysis of economic and other statistical data common to an area; see "Report and Recommendations of Director's Task Force on Standard Metropolitan Statistical Areas (SMSA's)," dated March 1, 1973 (published in the "Statistical Reporter," April 1973, No. 73–10). SMSA's should not be used in any other way unless a Government department or agency has specifically determined that such areas might be otherwise used to that organization's objectives; see Exhibit N to OMB Circular No. A–46 Revised (May 1973). No such determination has been made by the Commission although revision of the "historic concept" of licensing to a community has been discussed; see "Broadcast Station Indentification Requirements," 10 F.C.C. 2d 399, 401, and dissent at 406 (1967). SMSA had its origin as "Standard Metropolitan Area" in 1949 to replace "metropolitan districts," "metropolitan counties," "industrial areas" and "labor market area," because the different definitions created problems of correlation. See "Standard Metropolitan Statistical Areas," Bureau of the Budget, p. vii (1967).

[12] See and compare the quotation from the further notice in Docket No. 14185 quoted in para. 14 about priorities.

[13] See also "Hattiesburg" and "Parkersburg," 37 F.C.C. 2d 54, 55–6, 58 (1972).

[14] See para. 3 about the addition of the fourth and fifth channels to Colorado Springs and the more recent assignment at Security.

population increase of Pueblo has been more modest than that of Colorado Springs and the State of Colorado,[15]

[15] The increase for the State of Colorado was 25.8% in the decade between 1960 and 1970 Census.

[16] See also fn. 11.

[1] The transmitting antenna must be located at least five miles west of Enterprise.

assignment to Enterprise (RM–1844), and the petitions of Barba Investment Company (Barba) and Roy L. Hess (Hess) requesting further channel assignments at Pensacola (RM's–1855 and 1982). These petitions are considered together because the Notice suggested as possible alternatives to the Enterprise proposal the assignment of Channel 296A to Greenville and to either Chipley or Bonifay (all three of which are communities without FM broadcast service and which would be precluded by the Enterprise proposal) and these alternatives conflicted with Barba's Pensacola proposal. Since each of the alternative communities has less than 10,000 population, for which size community an FM assignment normally is not made unless there is a showing of demand (that is, someone willing to promptly apply for the channel if assigned and to build if the application is granted), the Notice was intended to ascertain whether there is any such interest as to Greenville and Bonifay or Chipley (the latter were mutually exclusive). Sunny Hills of Chipley, Inc. (Sunny Hills), licensee of Class IV AM Station WBGC there, responded as concerns Chipley (population 3,347) and W. J. Williamson did so for Greenville (population 8,033). In the circumstances, Bonifay drops from consideration.

2. Greenville, Enterprise, and Chipley, respectively, lie roughly to the north, northeast, and east of Pensacola, and each is approximately 103 miles from Pensacola. Enterprise is about 56 miles from Greenville and 40 miles from Chipley, while Greenville and Chipley are roughly 95 miles apart. Our proposals with regard to Enterprise, Greenville, and Chipley were as follows:

City	Channel No.	
	Present	Proposed
Enterprise	245	245, 294
or		
Chipley		296A
Greenville		296A

The proposal for Enterprise on the one hand, and for the communities of Chipley and Greenville on the other, were mutually exclusive. In making these proposals, we noted that while under our population criteria [1] Enterprise was possibly entitled to a second channel, consideration should be given to the possibility of assigning channels to Greenville and Chipley in the light of the abundance of service in the area than an Enterprise station would serve. With regard to Pensacola, our proposal was:

City	Channel No.	
	Present	Proposed
Pensacola	231, 264, 268	233, 264, 268, 243 or 297 or 298

[1] Further Notice of Proposed Rule Making, Docket No. 14185, adopted July 25, 1962 (FCC 62–867), and incorporated by reference in para. 25 of the Third Report, Memorandum Opinion and Order, adopted July 25, 1963, 23 R.R. 1859, 1871.

Barba proposed Channel 297. This proposal conflicted with the possible assignment of Channel 296A to Greenville and to Chipley (or Bonifay). Hess proposed Channel 243. In addition, he also proposed changing the Barba proposal from 297 to 298 because this would reduce preclusionary effect. As we mentioned in the Notice, this proposed assignment of 298 to Pensacola eliminated the conflict with the Greenville/Chipley (Bonifay) proposal. We also stated that because of the size of the population of Pensacola we would only consider assigning one additional channel here, absent some compelling reason, although we invited comments with regard to each of the channels—243, 297, and 298.

3. Those commenting with respect to the Enterprise proposal (RM–1844) are: Miller; Sunny Hills; Wiregrass Broadcasting Company, licensee of Stations WIRB–AM (daytime-only) and WIRB–FM at Enterprise (Wiregrass); Williamson; and Jamie Ethridge, the mayor of the city of Greenville. Those commenting with respect to the Pensacola proposals (RM's–1855 and 1982) are: Barba; Hess (the main stockholder in Wonder Corporation, licensee of daytime AM station WVIX, Pensacola); Sound Broadcasting Corporation, licensee of Station WLPR(FM), Channel 241, Mobile, Alabama (Sound); WCOA Radio, Inc., licensee of Stations WCOA–AM and FM, Pensacola (WCOA); and Fredric T. C. Brewer, licensee of Station WMEZ–FM, Channel 231, Pensacola (Brewer). Wiregrass opposes the assignment of another FM channel to Enterprise. Sound primarily opposes the assignment of Channel 243 to Pensacola, while WCOA and Brewer object to any new assignment to that community.

4. The Notice provoked substantial comment, including various counterproposals to resolve the various conflicts. The counterproposals made by Miller, Hess, and Barba were designed to permit the assignment of channels to Enterprise, Greenville, and Chipley. However, there was a lack of careful consideration given to the siting of stations and a failure to consider certain existing stations, which raised questions as to the feasibility of the substitute assignments. For example, both Hess and Barba urged the assignment of Channel 280A to Enterprise (and Channel 232A to either Bonifay or Chipley and 249A or 296A to the other) but later recognized that Channel 280A could not be assigned to Enterprise because it was assigned to Ozark, Alabama.

5. Our June 1973 Request for Supplemental Information was intended to elicit further material to aid us in giving consideration to making as many of the proposed assignments as possible. At the time of its issuance, two alternatives had emerged. One was that of assigning channels to three communities—Greenville (240A), Chipley (296A), Pensacola (298). The other was that of assigning channels to four communities—Greenville (240A), Chipley (249A), Pensacola (297), and Enterprise (294). However, accommodating all four communities required that the Chipley transmitter be located at least 7.5 miles south of that community, and it was to obtain information as to the availability and feasibility of such a site that the Request for Supplemental Information was issued.

6. We first discuss the Enterprise, Greenville, and Chipley portion of this proceeding. As indicated above, although we proposed the assignment of Channel 294 to Enterprise (population 15,591), we also proposed the alternative of assigning Channel 296A to Greenville (population 8,033) and to Chipley (population 3,347) because of the service available to the area that the proposed Enterprise station would serve and because assignment of the proposed channel to Enterprise would have precluded assignment of a channel to the other two communities, neither of which has an FM channel assignment.

7. Wiregrass, the licensee of the only local aural stations in Enterprise [WIRB (daytime-only) and WIRB–FM (Channel 245)], opposes the assignment of another FM channel to Enterprise and supports the assignment of Channel 296A to Greenville and Chipley as being more consistent with Enterprise's economic situation and overall criteria for FM assignments. As to the former, Wiregrass says assignment to Enterprise is unnecessary in view of that community's economic decline which to a large extent relies on nearby Fort Rucker, the Army Aviation Center (for training pilots for helicopter and fixed-wing Army aircraft), the activities of which have decreased with the deescalation of the Vietnam War. In essence, Wiregrass contends that Enterprise has been in a wartime boom and that its economy will revert to that of a small Alabama community dependent upon agricultural revenues. Wiregrass also points out that its stations are not the only broadcast media serving Enterprise and Coffee County (in which Enterprise is located) and that Wiregrass must vie with aural broadcast stations at Dothan, Ozark, and Geneva, and Dothan's television stations.

8. Underlying the objection of Wiregrass is a concern for economic well-being which is relevant if the public interest as opposed to a private interest is affected. "FCC v. Sanders Brothers Radio Station," 309 U.S. 470 (1940); "Carroll Broadcasting Co. v. FCC," 258 F. 2d 440 (D.C. Cir. 1958). As held in the Carroll case, the burden of a party making such a claim is a heavy one, and we have no real basis for rejecting a proposal for another FM channel assignment at Enterprise in this respect. The Wiregrass objections are of a general nature and only hint that the overall public interest might be seriously affected by a competing FM station at Enterprise. We do not view the Wiregrass contentions in this respect as persuasive. Its true concern, it would appear, is its private interest, and, in such circumstances, we may disregard the economic injury argument. See "Hattiesburg," 37 F.C.C. 2d 54, 58 (1972); and "Oak Ridge," 32 F.C.C. 2d 937, 940 (1972).

9. Although we do not find the Wiregrass arguments to be such as to warrant denial of a second FM channel as-

signment in Enterprise, and although Enterprise is eligible for a second assignment under our population criteria, we do not lose sight of the substantial importance of the possible assignment of first FM channels to Greenville and to Chipley. As to Greenville, it appears that a transmitter for Channel 240A could be located in town, while one on Channel 296A would have to be four miles to the southwest. For this reason we believe the former assignment to be the preferable one. With regard to Chipley, Sunny Hills (licensee of the only local aural station in Chipley, Class IV AM Station WBGC), in response to the Request for Supplemental Information, opposed the assignment of Channel 249A because it would require a transmitter site about 7.5 miles south of that community. Sunny Hills stated that a transmitter site so far from Chipley would be burdensome because of limited effective range, the construction of Highway 10 (about four miles south of Chipley which possibly adds problems as to site availability, and the economic burden of operating apart from AM Station WBGC. Miller contends that Sunny Hills' arguments are ones of personal convenience, while Wiregrass supports Sunny Hills' objections on the basis that public interest would be better served by assigning Channel 296A to Chipley rather than Channel 249A because there would be service to 24,172 persons within the 1 mV/m contour—6,750 more (39% greater) than a station with a transmitter 7.5 miles south of Chipley.

10. For reasons mentioned below, we believe that if a channel is assigned to Pensacola it should be Channel 297 rather than 243 or 298. Assignment of Channel 296A to Chipley conflicts with assignment of 297 to Pensacola since the reference points of the two communities are short spaced by about two miles. Assignment of 296A to Chipley also conflicts with assignment of 294 to Enterprise. Thus, the question is whether to make provision for a first FM service at Chipley while denying Enterprise and Pensacola their second and fourth commercial FM channels. Considerations as to Greenville will not affect our decision in this matter since Channel 240A may be assigned to that community regardless of what channels under consideration herein are assigned to the other three communities.

11. We now discuss the questions as to a channel assignment at Pensacola. As stated in the Notice (para. 6), Pensacola (population 59,507), the largest city in Western Florida, is the seat of Escambia County (population 205,334), and the principal city of the Pensacola SMSA which consists of Escambia and Santa Rosa Counties with a total population of 243,075. FM Channels 231, 264, and 268 are presently assigned to Pensacola and are operational as Stations WMEZ, WCOA–FM, and WBOP–FM. Six AM stations provide other aural service—daytime Stations WBOP, WVIX, and WPFA; Class IV Stations WBSR and WNVY; Class III Station WCOA; and noncommercial FM Station WCPS. Of these, WVIX, WMEZ, and the WCOA stations are parties to the proceeding.

12. Despite our having stated in the Notice that under the population criteria (see fn. 2 above) it is the Pensacola population and not the Pensacola SMSA population that is to be considered, and that in the absence of compelling factors only one FM channel assignment would be made to Pensacola,[3] Hess and Barba vigorously urge that both Channels 243 and 298[4] should be assigned to Pensacola, in large measure relying on SMSA population. WCOA and Brewer, on the other hand, maintain that the population criteria should be strictly adhered to especially since the assignment of Channel 243 or 298 would deprive other communities of an FM assignment (see fns. 5 and 7 below). Hess and Barba argued that population criteria are merely guidelines, that SMSA population should be given consideration, that Pensacola is the site of Pensacola Junior College and the University of West Florida, and that there are economic, historical, and growth considerations which serve as a basis for assigning two additional channels to Pensacola.

13. We have today dealt with the SMSA population argument at some length specifically, and our population criteria generally, in deciding Colorado Springs (see Report and Order in Docket No. 19644 adopted January 23, 1974 (FCC 74–70)), F.C.C. 2d. Briefly, we pointed out that population criteria are based on the requirements of Section 307(b) of the Communications Act of 1934, as amended, to make fair and equitable distribution of radio services to communities and that "SMSA" is not a community but rather a statistical concept to facilitate analysis of economic and other data common to an area. (We also pointed out that population concentration in and around a community is deemed important in making assignments but that a more compelling factor is channel availability.[5] In this respect, the proposal to assign Channel 297 to Pensacola conflicted with the proposed assignment of Channel 296A to Greenville and Chipley, and, indeed, this was the basis of being considered together in this proceeding.) As to the argument that Pensacola is the location of two important educational institutions, even assuming that Pensacola Junior College and the University of West Florida are located in Pensacola (the latter actually is located outside the city, in Escambia County), there is no reason to give student population special consideration inasmuch as it was already considered in determining the population of Pensacola (and the area); the 1970 Census states that a college student's "usual place of residence" is "the area in which * * * living while attending college".

14. As contended, the population criteria are merely guidelines and not immutable standards. Indeed, within the bounds of availability and usability we have deviated one way or the other. Thus, we have refrained from making a "quota" assignment where to do so would deprive another community of an FM channel assignment. See "Policy to Govern Requests for Additional FM Assignments", 8 F.C.C. 2d 79 (1967). On the other hand, the quota has been exceeded where the circumstances warranted such action; see, e.g., "Fresno," 38 F.C.C. 2d 525, 526 (1973). And we take such action here by assigning Channel 297 primarily because there is no other place that it might be used (except for a small area around Pensacola) because of the mileage separations to Stations WSJC–FM (Channel 298), Magee, Mississippi; WROA–FM (Channel 296A), Gulfport, Mississippi; and WHYD–FM (Channel 297), Columbus, Georgia; see and compare "Hattiesburg," 37 F.C.C. 2d 54, 55 (1972). In these circumstances, we need only briefly discuss other arguments and we do so only as to those of a general nature.

15. WCOA in part opposes the assignment of another channel to Pensacola because of economic impact. Reliance is placed on Table 20 of the Commission's report as to "AM–FM Broadcast Data—1970" which shows that the Pensacola FM stations reported a loss of over $53,000, and that, in this respect, the Commission has long recognized that in order to provide effective service a station must be economically viable. In reply, Hess says that WCOA's opposition is predicated on operation of stations in past years when there was a stagnant economy without considering the substantial improvement of economic conditions and Pensacola's potential. The short answer is that the same considerations apply here as to the Wiregrass argument in opposition to the assignment of a second channel to Enterprise (see paragraph 8 above). As there, we have no adequate basis for a finding that another channel assignment to Pensacola would have an adverse economic impact. Although Table 20 for 1970 (the year on which WCOA) relies shows total broadcast revenues of approximately

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[3] The guidelines provide for two to four channels for a city of 50,000 to 100,000 population.

[4] Barba, in recognition of the fact that its proposal to assign Channel 297 conflicts with the Commission's counterproposal to assign Channel 296A to Greenville and to Chipley, supports Hess' proposal to assign both Channels 243 and 298 to Pensacola.

[5] Among other things, counterproposals have been made on the basis that the various proposals for Pensacola would bar channel assignments for Valparaiso, population 6,504, and Destin, population 1,536 (unincorporated), both in Okaloosa County, population 88,187. Okaloosa County adjoins the Pensacola SMSA. Radio service there consists of: daytime AM Stations WCNU and WJSB and FM Station WAAZ (Channel 285A), which is affiliated with WJSB, at Crestview (population 7,952); AM Stations WFTM–AM (daytime only) and WNUE and WFTW–FM (Channel 257A) at Fort Walton Beach (population 19,994); and Station WFSH licensed to Valparaiso-Niceville. The population of Niceville is 4,024.

$41,000 for three FM stations in Pensacola, it shows $176,000 for two stations in 1971, and $255,871 for two stations in 1972.

16. Sound, licensee of Station WLPR (FM), Channel 241, Mobile, Alabama, opposes the assignment of Channel 243 to Pensacola. It contends that a transmitter on Channel 243 at Pensacola would have to be located 12 to 13 miles east of the reference point in order to meet mileage spacing to Sound's present FM site[6] and that this would be in an area close to Eglin Air Force Base where an antenna of sufficient height to provide community grade service to Pensacola would cause airspace hazards. Additionally, Sound expresses great concern because the assignment of Channel 243 to Pensacola would limit WLPR from moving its transmitter from its present site in downtown Mobile to the east of that city in the vicinity of the three Mobile-Pensacola television towers. For example, a move to the tower of WKRG-FM-TV—the most westerly of the three towers—would require the Channel 243 transmitter at Pensacola to be about 30 miles east of the reference point, an area where, Sound says, the Federal Aviation Administration is most unlikely to approve an antenna structure of requisite height, because of existing airspace requirements. Sound also indicates that Channel 298 at Pensacola with a transmitter east of Gulf Breeze would face similar airspace hazard problems. (Sound has no objection to the assignment of Channel 297 to Pensacola.)

17. Both Hess and Barba take issue with Sound's contentions about Channels 243 and 298 specifically and generally, and, Sound contests Barba's and Hess' specific arguments. Barba and Hess object to Sound's contentions about WLPR's future expansion on the ground that our rules do not provide for future intentions or ambitions. This objection by Hess and Barba is fundamentally correct, and, in the circumstances, we need not reach issues of whether WLPR would be allowed to operate from the WKRG-TV-FM antenna, whether there would be second harmonic interference if WLPR operated from the WALA-TV (Channel 10) antenna, whether a move to the WEAR-TV antenna would fragment the Mobile market because of inadequate coverage while serving the Pensacola urban area incompletely, whether there would be and the extent of air hazard problems if Channel 243 had to operate at various points farther east of Pensacola, and whether Sound's various arguments are supported by substantial fact (a question raised by Barba). For present purposes, it should be noted that any proposal of Sound to change facilities which would result in a change of coverage area without providing at least the same service to those already served would pose a serious question; see and compare "Hall v. FCC," 237 F. 2d 567 (D.C. Cir. 1956) with "Television Corporation of Michigan v. FCC," 294 F. 2d 730 (D.C. Cir. 1961). However, that issue is not before us. As more pertinent here, we are satisfied that on the basis of the information adduced the available sites for either Channel 243 or 298 at Pensacola appear to be in areas where there would be substantial airspace hazard questions. On the other hand, there are no such problems as concerns the assignment of Channel 297 to Pensacola.

[6] The Notice erroneously stated four miles east of the reference point.

CONCLUSIONS

18. The Notice proposed assigning a channel to Enterprise (294) or, in the alternative, a channel to Greenville (296A) and to Chipley (296A)—the latter proposal being mutually exclusive with the former. It also contained a proposal to assign one channel, out of three possible channels (243, 297, 298) to Pensacola—one (297) of the three being mutually exclusive with the Greenville/Chipley proposal. The record in this proceeding has shown that, in fact, channel assignments may be made to all four of these communities.

19. With regard to Greenville, because it has a population of under 10,000 persons, it was necessary to ascertain whether a demand for a channel there was present. Mr. Williamson stepped forward and indicated his interest in constructing a station there. We are therefore assigning this community of over 8,000 persons its first FM channel, 240A, in view of its size and the demonstrated demand. As previously stated, this channel appears to be preferred to Channel 296A since use of the latter channel would require a transmitter site four miles outside the community. Moreover, selecting this channel for Greenville permits the assignment of Channel 294 to Enterprise, whereas using Channel 296A at Greenville precludes such an assignment. Assigning Channel 240A to Greenville also permits the assignment of Channel 297 to Pensacola, which assignment of 296A to Greenville would have precluded.

20. As to Chipley, also a community of under 10,000, although an interest in a first FM channel for that community was evidenced by Sunny Hills after our Notice proposed assignment of Channel 296A there, the interest waned when our Request for Supplemental Information indicated that the transmitter site for another channel that we might assign there would have to be located at least 7.5 miles south of Chipley. Sunny Hills apparently is only interested if an FM assignment at Chipley is made available which would allow it to locate its FM transmitter at its AM transmitter site. It therefore argues against assigning Channel 249A to Chipley and favors Channel 296A. The existing AM-FM licensee at Enterprise (Wiregrass) also favors the latter assignment at Chipley and points out that an FM station operating on this channel would serve many more persons than would a station operating on Channel 249A. Assigning Channel 296A to Chipley would prevent the assignment of a second channel (294) to Enterprise. Moreover, it would preclude the assignment of Channel 297 to Pensacola. We have already observed that 297 is the only channel that may reasonably be assigned there in view of the airspace hazards attending the use of Channels 243 or 298. As we have also observed, if Channel 297 is not assigned to Pensacola it cannot be used elsewhere.

21. Two choices appear to be open. (a) We may assign Channel 296A to Chipley (population about 3,300) as its first FM assignment, admittedly a high priority in our assignment plan. This would deny Enterprise (population over 15,000) a second FM channel, and Pensacola (population just short of 60,000) a fourth FM channel—a channel which cannot be used elsewhere. (b) We may assign Channel 249A to Chipley which would permit the assignment of a second channel at Enterprise and a fourth at Pensacola. This assignment would serve fewer persons at Chipley than could a Channel 296A assignment there, but it would still bring a first local FM service to that community while accommodating the needs of Enterprise and Pensacola and effecting a most efficient use of a Channel 297 Pensacola assignment. However, such an assignment at Chipley would require a transmitter site outside of town. Sunny Hills has expressed no interest in using the channel because of this, and we do not normally assign channels to communities of this size absent a demand evidenced by an interest in using a channel if it is assigned.

22. On balance, we find that the public interest would be better served by assigning Channel 294 to Enterprise and Channel 297 to Pensacola,[7] and by not at this time considering an assignment of Channel 249A to Chipley in view of the lack of interest in use of that channel there. We also find it in the public interest to assign Channel 240A to Greenville.

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 March 7, 1974, the FM Table of Assignments (§ 73.202(b) of the Commission's rules and regulations) is amended with respect to the cities listed below as follows:

[7] This Pensacola assignment does not foreclose from consideration the possibility of an FM channel assignment at Valparaiso or Destin. Because of their size, and in accordance with general procedure, we would not make such an assignment in the absence of a showing as to an interest for use of an FM channel at either community. There is little point in holding this proceeding open to have information and data adduced in this respect. This would needlessly delay decisions as to outstanding rule makings; moreover, anyone interested in such assignment(s) may petition for rule making and make the requisite showing as to demand for such service and willingness to become a broadcaster.

City:	Channel No.
Enterprise, Ala.	245, 294.
Greenville, Ala.	240A.
Pensacola, Fla.	231, 264, 268, and 297.

25. *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 23, 1974.

Released: January 29, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.74-2894 Filed 2-4-74;8:45 am]

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Clarification of One-Watt Power Reduction Requirement

1. By this order, it is intended to interpret and clarify the requirement of § 83.134(f) of the rules for a capability to reduce carrier power to one watt or less of ship station transmitters using F3 emission in the band 156–162 MHz.

2. In adopting the one-watt or less power reduction requirement, it was our intention not to subject public correspondence transmitters used as equipment ancillary to a ship station otherwise meeting all applicable requirements to the one-watt power reduction requirement.

3. It has been brought to our attention that certain licensees—specifically operating in the Great Lakes—wish to use automated public correspondence VHF equipment to supplement the capabilities of the basic ship station. These transmitters will be operated only in the Great Lakes and used only on VHF duplex public correspondence channels. Under such controlled circumstances, the one-watt power reduction capability is not necessary and need not be required because of the unlikelihood of harmful interference being caused to ship stations of other nationalities.

4. Accordingly, *It is ordered,* That the additional footnote to § 83.134(f) of the rules, which is set forth below, is adopted effective February 5, 1974. The footnote clarifies the intention of the one-watt power reduction requirement to set forth circumstances under which the requirement will not apply.

5. Authority for this amendment appears in sections 4(i) and 303(r) of the Communications Act of 1934, as amended. Because this amendment is primarily editorial in nature and would relieve a requirement otherwise thought to apply, compliance with the public notice and effective date provisions of 5 U.S.C. section 553 does not apply.

(Secs. 4, 303, 48 Stat., as amended 1068, 1082; 47 U.S.C. 154, 303.)

Adopted: January 23, 1974.

Released: January 29, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

Part 83 of 47 CFR Ch. I is amended as follows:

1. Section 83.134(f) is amended by adding footnote 4 as follows:

§ 83.134 **Transmitter power.**

* * * * *

(f) Ship station transmitters using F3 emission in the band 156–162 MHz shall not exceed a carrier power of 25 watts[1][2][3][4] and, additionally, shall include the capability to reduce, readily, the carrier power to one watt[2][4] or less.

* * * * *

[FR Doc.74-2895 Filed 2-4-74;8:45 am]

Title 49—Transportation

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 73-22; Notice 2]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Passenger Car Tire and Rim Tables; Correction

In FR Doc. 74-107, appearing at page 808 in the issue of January 3, 1974, as a correction to FR Doc. 73-20583 (38 FR 30234; November 1, 1973), change correction 1 to read:

1. Footnote No. 1 in Table I-F on page 30238, in Table I-H on page 30239, in Table I-N on page 30241, in Table I-O on page 30241, in Table I-S on page 30242, and in Table I-T on page 30242 should read, "The letter "H", "S", or "V" may be included in any specified tire size designation adjacent to the "R"."

(Secs. 103, 119, 201, and 202, Pub. L. 89-563, 80 Stat. 718, 15 U.S.C. 1392, 1407, 1421, and 1422; delegations of authority at 49 CFR 1.51 and 49 CFR 501.8)

Issued on January 30, 1974.

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

[FR Doc.74-2962 Filed 2-4-74;8:45 am]

[4] An exception to the one-watt requirement exists for full duplex transmitters to be used only on public correspondence duplex channels only as additional equipment to a VHF ship station while operating in the Great Lakes which is equipped with a transmitter that otherwise meets existing rules, statutes and international agreements. Type acceptance will be granted for such transmitters when used in this manner. When such equipment is used, it must be located with the principal ship station to ensure operation in conformity with the rules.

[Docket No. 69-31; Notice 5]

PART 573—DEFECT REPORTS

Defect Information Report and Vehicle Identification Numbers

This notice amends the Defect Reports regulation (49 CFR Part 573) to require manufacturers to submit vehicle identification numbers as part of the information furnished by them to the NHTSA. A notice of proposed rulemaking regarding this subject was published November 7, 1972 (37 FR 23650).

The purpose of including VIN's in defect reports would be to improve the notification of owners of vehicles involved in safety defect notification campaigns. The State Farm Insurance Company had suggested, for example, that insurance companies could use VIN's to identify vehicles which they insure, and to themselves notify owners of record. The Center for Auto Safety also requested the inclusion of VIN's in defect reports, so it could more readily inform persons who inquire whether particular vehicles were subject to campaigns. Other possible uses, it was noted, would be that State and local inspection facilities could determine, as part of inspection programs, whether particular vehicles had been subjected to campaigns, and if so, whether they had been repaired.

The proposal would have required the submission in the "defect information report" (§ 573.4), within five days of the defect determination, of the vehicle identification number for each vehicle potentially affected by the defect. It also proposed to substitute "line" for "model" as one of the identifying classifications describing potentially affected vehicles.

The comments demonstrated that the vehicle identification number is a useful tool for locating second and later owners of vehicles. In a study conducted by the Ford Motor Company and the State Farm Insurance Company, a fairly significant percentage of owners who either had not received or responded to the initial notification mailed by the manufacturer did respond to subsequent letters sent on the basis of the VIN.

As a result of comments received, however, the NHTSA has decided that vehicle identification numbers should only be required to be supplied in the second "quarterly report", approximately six months after a campaign is initiated, rather than in the defect information report as proposed. Only the VIN's for vehicles not repaired by that date are required to be provided. The NHTSA believes this approach will provide the safety benefits to be derived from having publicly available lists of defective vehicle VIN's but will also reduce substantially the burden of compiling and reporting this information.

The NHTSA requests that vehicle identification numbers be submitted in a form suitable for automatic data processing (magnetic tape, discs, punched

cards, etc.) when more than 500 numbers are reported for any single campaign. While not required by this notice, the use of automatic data processing for large campaigns will facilitate the dissemination of the information for the agency. The agency may include specific requirements in this regard at a later time.

The comments argued that the benefits of having VIN's available during the initial stages of a campaign are limited, and that the compilation of identification numbers for every vehicle in a campaign would create significant problems for manufacturers related to conducting campaigns. The NHTSA believes these comments to have merit. It is clear that the chief use of VIN's will be to notify other than first purchasers, i.e., owners of older vehicles, as the names of these owners will not be available to manufacturers. By delaying the furnishing of VIN's until the filing of the second quarterly report, the VIN's reported will represent to a greater degree the names and addresses of second and later owners. The later reporting will also reduce the amount of information to be reported and will also reduce the possibility that first purchasers will receive duplicate notices.

Many comments challenged generally the utility of the VIN in notification campaigns. Other comments complained that insurance companies might abuse the information; for example, by cancelling policies on defective vehicles. Still others believed VIN's to be privileged proprietary information, both taken separately and when combined with other information submitted pursuant to Part 573.

While it is true that the effectiveness of the requirement will depend to an extent upon the voluntary activities of third parties, the NHTSA does not view this as a reason not to issue the requirement. The offers of insurance companies and other groups to participate in notification campaigns appear to be reasonable and properly motivated. There has been no evidence brought to the NHTSA's attention to support the allegations of possible misuse of the information by insurance companies.

The agency also cannot agree that information identifying defective vehicles is or relates to proprietary information. The comments on this point seem to equate what may be embarrassing information with notions of confidentiality. There is no basis under existing statutory definitions of confidentiality for including within the VIN's or other information identifying defective vehicles.

The proposed substitution of "line" for "model" in the descriptive information for vehicles was opposed in one comment because the term "line" is apparently more suited for passenger cars than other vehicle types. The comment indicated that "model" is a more appropriate term for trucks. In light of this comment, the terms are specified as alternatives in the regulation.

In light of the above, Part 573 of 49 CFR, Defect Reports, is amended as follows:

1. In § 573.4, paragraph (c)(2) is amended to read:

§ 573.4 Defect information report.

* * * * *

(c) * * *

(2) Identifying classifications of the vehicles potentially affected by the defect, including make, line or model as appropriate, model year if appropriate, any other data necessary to describe the affected vehicles, and the inclusive dates (month and year) of manufacture.

* * * * *

2. In § 573.5, a new paragraph (c)(9) is added and paragraph (e) is amended, as follows:

§ 573.5 Quarterly reports.

* * * * *

(c) * * *

(9) The vehicle identification number for each vehicle for which corrective measures have not been completed.

* * * * *

(e) The information specified in paragraphs (c)(1) through (c)(8) of this section shall be included in the quarterly reports, with respect to each notification campaign, for six consecutive quarters beginning with the quarter in which the campaign was initiated, or until corrective action has been completed on all defective vehicles involved in the campaign, whichever occurs first. The information specified in paragraph (c)(9) of this section shall be included only in the second quarterly report furnished pursuant to this section.

Effective date: May 6, 1974.

(Secs. 103, 112, 113, and 119, Pub. L. 89-563, 80 Stat. 718; 15 U.S.C. 1392, 1401, 1402, 1407, and the delegation of authority at 49 CFR 1.51 Office of Management and Budget, Approved 04-R5628)

Issued on January 30, 1974.

JAMES B. GREGORY,
Administrator.

[FR Doc.74-2964 Filed 2-4-74;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. 957-A]

PART 1033—CAR SERVICE

Missouri-Kansas-Texas Railroad Co.

At a session of the Interstate Commerce Commission, Division 3, held in Washington, D.C., on the 29th day of January 1974.

Upon further consideration of Service Order No. 957 (29 FR 18062), and good cause appearing therefor:

It is ordered, That:

§ 1033.957 [Reserved]

Service Order No. 957 (Missouri-Kansas-Texas Railroad Company rerouting of traffic—substitute switching service at Mangum and Frederick, Oklahoma) be, and it is hereby, vacated and set aside.

(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 this order shall become effective at 11:59 p.m., January 31, 1974; that copies of this order and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Division 3.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-2938 Filed 2-4-74;8:45 am]

[S.O. 1165; Amdt. 1]

PART 1033—CAR SERVICE

Kansas City Southern Railway Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 29th day of January, 1974.

Upon further consideration of Service Order No. 1165 (39 FR 808), and good cause appearing therefor:

It is ordered, That:

§ 1033.1165 [Amended]

Service Order No. 1165 (The Kansas City Southern Railway Company authorized to operate over certain tracks of Southern Pacific Transportation Company) be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., March 2, 1974, 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, 1974.

(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 a copy 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 amendment 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.74-2937 Filed 2-4-74;8:45 am]

Proposed Rules

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

DEPARTMENT OF THE TREASURY

Customs Service

[19 CFR Part 1]

CUSTOMS FIELD ORGANIZATION

Changes in Customs Region IX

JANUARY 28, 1974.

A survey of the Customs activity at South Haven, Michigan, in the Detroit, Michigan, Customs district (Region IX), indicates that the volume of traffic no longer justifies its continuance as a Customs port of entry.

Accordingly, notice is hereby given that, by virtue of the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR Ch. II), and pursuant to the authority provided by Treasury Department Order No. 190, Rev. 9 (38 FR 17517), it is proposed to revoke the designation of South Haven, Michigan, in the Detroit, Michigan, Customs district (Region IX), as a Customs port of entry.

Prior to the adoption of the foregoing proposal, consideration will be given to any relevant data, views, or arguments which are submitted to the Commissioner of Customs, Attention: Regulations Division, Washington, D.C. 20229, and received on or before March 7, 1974.

Written material or suggestions submitted will be available for public inspection in accordance with § 103.8(b) of the Customs Regulations (19 CFR 103.8(b)), at the Regulations Division, Headquarters, United States Customs Service, Washington, D.C., during regular business hours.

[SEAL] JAMES B. CLAWSON,
Acting Assistant Secretary of the Treasury.

[FR Doc.74-2900 Filed 2-4-74;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 980]

[Amdt. 1]

ONION IMPORTS

Minimum Grade and Size Requirements

This proposal would amend minimum grade and size requirements for imported onions.

Notice is hereby given of a proposed amendment of § 980.112 Onion import regulation (38 FR 19010), applicable to the importation of onions into the United States to become effective March 25, 1974, under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

Under Section 8e of the act (7 U.S.C. 608e–1), whenever two or more marketing orders are concurrently in effect regulating the same agricultural commodity produced in different areas of the United States, the importation of such commodity shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of the order which, as determined by the Secretary of Agriculture, regulates the commodity produced in the area with which the imported commodity is in most direct competition.

Onion import regulation § 980.112 (38 FR 19010), became effective July 20, 1973, and sets forth similar grade, size, quality, and maturity requirements as those in effect for onions handled under Marketing Order No. 958, as amended (7 CFR Part 958) regulating the shipments of onions grown in designated counties in Idaho and Eastern Oregon. Grade, size, quality, and maturity requirements become effective for the period March 11 through May 12, 1974, under Marketing Order No. 959, as amended (7 CFR Part 959), regulating the handling of onions grown in South Texas. It is anticipated that imported onions will be in most direct competition with those regulated under Marketing Order 959 on or about March 25 and the proposed changes will be necessary to bring import regulations into line with domestic regulations covering South Texas onions.

Consideration will be given to any written data, views, or arguments pertaining to the proposed amendment which are filed in quadruplicate with the Hearing Clerk, Room 112–A, United States Department of Agriculture, Washington, D.C. 20250, not later than February 18, 1974. 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 proposed amendment is as follows:

Section 980.112 Onion import regulation (38 FR 19010), is hereby amended to read as follows:

§ 980.112 Onion import regulation.

Pursuant to section 8e of the act (7 U.S.C. 608e–1) and except as otherwise provided herein, during the period beginning March 25, 1974, and continuing through May 12, 1974, the importation of onions is prohibited unless such onions are inspected and meet the requirements of this section.

(a) *Minimum grade and size requirements.*—(1) *Grade.* Not to exceed 20 percent defects of U.S. No. 1 grade. In percentage grade lots, tolerances for serious damage shall not exceed 10 percent including not more than 2 percent decay. Double the lot tolerance shall be permitted in individual packages in percentage grade lots. Applications of tolerances in U.S. Grade Standards shall apply to in-grade lots.

(2) *Size.* White onions—1 inch minimum diameter; all other varieties of onions—1¾ inches minimum diameter.

(b) *Condition.* Due consideration shall be given to the time required for transportation and entry of onions into the United States. Onions with transit time from country of origin to entry into the United States of ten or more days may be entered if they meet an average tolerance for decay of not more than 5 percent, provided they meet the other requirements of this section.

(c) *Minimum quantity.* Any importation which in the aggregate does not exceed 100 pounds in any day, may be imported without regard to the provisions of this section.

(d) *Plant quarantine.* Provisions of this section shall not supersede the restrictions or prohibitions on onions under the Plant Quarantine Act of 1912.

(e) *Designation of governmental inspection service.* The Federal or the Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, and the Fruit and Vegetable Division, Production and Marketing Branch, Canada Department of Agriculture, are designated as governmental inspection services for certifying the grade, size, quality and maturity of onions that are imported into the United States under the provisions of Section 8e of the act.

(f) *Inspection and official inspection certificates.* (1) An official inspection certificate certifying the onions meet the United States import requirements for onions under Section 8e (7 U.S.C. 608e–1), issued by a designated governmental inspection service and applicable to a specific lot is required on all imports of onions.

(2) Inspection and certification by the Federal or Federal-State Inspection Service will be available and performed in accordance with the rules and regulations governing certification of fresh fruits, vegetables and other products (Part 51 of this title). Each lot shall be made available and accessible for inspection as provided therein. Cost of inspection and certification shall be borne by the applicant.

(3) Since inspectors may not be stationed in the immediate vicinity of some

smaller ports of entry, importers of onions should make advance arrangements for inspection by ascertaining whether or not there is an inspector located at their particular port of entry. For all ports of entry where an inspection office is not located, each importer must give the specified advance notice to the applicable office listed below prior to the time the onions will be imported.

Ports	Office	Advance notice
All Texas points...	L. M. Denbo, P.O. Box 107, San Juan, Tex. 78589. Phone 512-787-4091 or 6881.	1 day.
All Arizona points.	B. O. Morgan, P.O. Box 1614, Nogales, Ariz. 85621. Phone 602-287-2902.	Do.
All California points.	D. P. Thompson, 784 South Central Ave., Room 266, Los Angeles, Calif. 90021. Phone 213-622-8756.	3 days.
All Hawaii points.	Stevenson Ching, P.O. Box 5425, Pawaa Substation, 1428 South King St., Honolulu, Hawaii 96814. Phone 808-941-3071.	1 day.
All Puerto Rico points.	Darrell McNeal, P.O. Box 10163, Santurce, P.R. 00908. Phone 809-783-2230 or 4116.	2 days.
New York City...	Frank J. McNeal, Room 28A, Hunts Point Market, Bronx, N.Y. 10474. Phone 212-991-7669 or 7668.	1 day.
New Orleans.....	Pascal J. Lamarca, 5027 Federal Office Bldg., 701 Loyola Ave., New Orleans, La. 70113. Phone 504-527-6741 or 6742.	Do.
All Florida points.	Hubert S. Flynt, P.O. Box 20194, Orlando, Fla. 32814. Phone 305-894-9511.	Do.
All other points...	D. S. Matheson, Fruit and Vegetable Division, AMS, Washington, D.C. 20250. Phone 202-447-5870.	3 days.

(4) Inspection certificates shall cover only the quantity of onions that is being imported at a particular port of entry by a particular importer.

(5) Each inspection certificate issued with respect to any onions to be imported into the United States shall set forth, among other things:

(i) The date and place of inspection;

(ii) The name of the shipper or applicant;

(iii) The commodity inspected;

(iv) The quantity of the commodity covered by the certificate;

(v) The principal identifying marks on the containers;

(vi) The railroad car initials and number, the truck and trailer license number, the name of the vessel, or other identification of the shipment; and

(vii) The following statement, if the facts warrant: Meets import requirements of 7 U.S.C. 608e-1.

(g) *Reconditioning prior to importation.* Nothing contained in this part shall be deemed to preclude any importer from reconditioning prior to importation any shipment of onions for the purpose of making it eligible for importation.

(h) It is hereby determined that imports of onions, during the effective time of this section, are in most direct competition with onions grown in South Texas. The requirements set forth in this section are the same as those applicable to grade, size, quality and maturity being made effective for onions grown in South Texas.

(i) *Definitions.* For the purpose of this section, "Onions" means all (except red) varieties of Allium cepa marketed dry, except dehydrated, canned and frozen onion, onion sets, green onions, and pickling onions. Onions commonly referred to as "braided," that is, with tops, may be imported if they meet the grade and size requirements except for top length. The term "U.S. No. 1" shall have the same meaning as set forth in the United States Standards for Grades of Bermuda-Granex-Grano Type Onions (§§ 51.3195–51.3209 of this title), United States Standards for Grades of Creole Onions (§§ 51.3955–51.3970 of this title), or in the United States Standards for Grades of Onions Other Than Bermuda-Granex-Grano and Creole Types (§§ 51.2830–51.2854 of this title), whichever is applicable to the particular variety. Tolerances for size shall be those in the applicable United States Standards. The requirements of Canada No. 1 grade are deemed comparable to the requirements of U.S. No. 1 grade. "Importation" means release from custody of the United States Bureau of Customs.

Dated: January 30, 1974.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.74-2926 Filed 2-4-74;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 73-NE-19]

ADDITIONAL CONTROL AND TRANSITION AREAS

Proposed Alteration

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would expand the Bangor, Maine, Transition Area to include more airspace in the southeastern part of Maine; redefine the Portland, Maine, Transition Area to eliminate reference to Warning Area W-103; and enlarge the Brunswick Additional Control Area to include airspace above 5,500 feet MSL adjacent to the southern Maine portion of the U.S. shoreline.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, New England Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 12 New England Executive Park, Burlington, Mass. 01803.

All communications received on or before March 7, 1974, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue, SW., Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

As part of this proposal relates to the navigable airspace outside the United States, this notice is submitted in consonance with the ICAO International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of and Annex 11 to the Convention on International Civil Aviation, which pertain to the establishment of air navigation facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to insure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices to civil aircraft in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The proposed amendment would:

1. Alter the description of the Bangor, Maine, Transition Area to include the airspace extending upward from 1,200 feet above the surface bounded by a line beginning at latitude 44°20'10" N., longitude 67°56'00" W., and extending to latitude 44°50'00" N., longitude 67°56'00" W.; to latitude 44°50'00" N., longitude 67°30'00" W.; to latitude 45°07'00" N., longitude 67°30'00" W.; to latitude 45°09'00" N., longitude

67°23'00"W.; thence via the United States/Canadian border to latitude 44°47'45" N., longitude 66°53'00" W.; thence by a line 3-nautical miles from and parallel to the U.S. shoreline to the point of beginning.

2. Alter the description of the Portland, Maine, Transition Area by defining its southeast boundary using geographical coordinates coincident with the north and west boundaries of Warning Area W-103.

3. Alter the description of the Brunswick Additional Control Area by defining it as that airspace extending upward from 2,000 feet MSL W of longitude 69°30'00" W., and from 5,500 feet MSL E of longitude 69°30'00" W., bounded on the W and N by the Portland, Maine, and the Bangor, Maine, Transition Areas; on the E by the W boundary of the Moncton Flight Information Region; on the S by the N boundary of Control 1141; and on the SW between latitude 42°40'10" N., longitude 70°30'00" W., and latitude 42°45'00' N., longitude 70°37'00" W., by a line 3-nautical miles from and parallel to the U.S. shoreline.

The actions proposed in this notice would establish controlled airspace in southeastern Maine and between Maine and the presently defined Brunswick Additional Control Area thereby increasing the capability for providing air traffic control service in the area.

This amendment is proposed under the authority of sec. 307(a) and 1110 of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1510), Executive Order 10854 (24 F.R. 9565) and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on January 29, 1974.

CHARLES H. NEWPOL,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.74-2874 Filed 2-4-74;8:45 am]

ATOMIC ENERGY COMMISSION

[10 CFR Parts 2, 50]

LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

Pre-Construction Activities

Section 50.10(c) of the Atomic Energy Commission regulations in 10 CFR Part 50 presently prohibits commencement of construction of a nuclear power reactor until a construction permit has been issued. "Commencement of construction" is defined to include any clearing of land, excavation or other substantial action that would adversely affect the natural environment of a site and construction of non-nuclear facilities (such as turbogenerators and turbine buildings), but does not include (1) changes desirable for the temporary use of the land for public recreational uses, necessary borings to determine foundation conditions, or other pre-construction monitoring to establish background information related to the suitability of the site or to the protection of environmental values; or (2) procurement or manufacture of components of the facility.

The Commission under its present regulations has retained the authority to grant exemptions from these requirements of § 50.10(c) on a case-by-case basis and thereby permit the conduct of certain on-site activities prior to issuance of a construction permit. Under § 50.12(a) the Commission may grant such exemptions where it determines that this would be authorized by law and will not endanger life or property or the common defense and security, and would otherwise be in the public interest, after considering and balancing specified factors relating to environmental impact, redress of any adverse environmental impact, foreclosure of alternatives, and effect of delay in commencement of construction on the public interest, including power needs.

The Commisison has under consideration amendments of Parts 2 and 50 which would provide for a different procedure whereby in certain circumstances site excavation and preparation and certain other on-site activities could be undertaken prior to issuance of a construction permit for a power reactor. The proposed procedure would differ from the present procedure under § 50.12(a) in several important respects. First, the scope of activities permitted would be defined and limited. Second, the activities could be conducted only after the National Environmental Policy Act of 1969 (NEPA) review by the Commission's Regulatory staff had been completed. Third, there would be full participation in the NEPA decision-making process since a public hearing would be required on the NEPA findings required to be made pursuant to the Commission's NEPA regulations before the activities could be authorized.

Under the proposed amendments, the activities that could be authorized under the new procedure would include but could not extend beyond site exploration, preparation of the site for construction of the facility, excavation, the driving of piles, measures to protect the excavation which may include installation of foundations and walls, and construction of roadways, railroad spurs, and transmission lines, and such other on-site activities as are not directly related to radiological safety matters. The Director of Regulation would be authorized to grant authorization to conduct one or more of the above activities after completion of the Regulatory staff's final environmental impact statement if the presiding officer (usually an atomic safety and licensing board) had, after appropriate hearing, made all the findings required for issuance of a construction permit with respect to the NEPA aspects of the construction permit proceeding. The required NEPA findings include (1) a finding that the requirements of sections 102(2) (A), (C), and (D) of NEPA and the Commission's policy and procedures for implementing NEPA in 10 CFR Part 51[1] have been complied with; (2) a finding, after independent consideration of the final NEPA balance among conflicting factors, and after weighing the environmental, economic, technical, and other benefits against environmental costs and considering available alternatives, that with respect to NEPA matters, the construction permit should be issued; (3) findings favorable to issuance of a construction permit on all matters in controversy within the scope of NEPA and 10 CFR Part 51; and (4) a finding, in uncontested cases, that the NEPA review conducted by the Commission's Regulatory staff has been adequate.

Any activities undertaken would be entirely at the risk of the applicant and the issuance of the authorization would not prejudice resolution of any outstanding issues in the proceeding with respect to the requirements of the Atomic Energy Act of 1954, as amended, or rules, regulations or orders promulgated by the Commission pursuant thereto. A full hearing on all such issues would still be required before issuance of any construction permit.

Part 2 would be amended so as to provide specifically for separate hearings and initial decisions on NEPA issues,[2] and to provide for docketing of power reactor construction permit applications where the applicant's environmental report is submitted earlier or later than the rest of the material to accompany or to be included in the application. Section 50.12 would also be amended so that prior to any initial decisions on NEPA issues no applicant could be granted any exemption from the requirements of § 50.10(c) to authorize the conduct of activities prior to issuance of a construction permit that exceed in scope the activities that could be authorized under the new procedure that would be provided by the proposed amendments.

The amendments set out below are intended to provide a more uniform basis for determining the extent to which limited site activities should be permitted prior to the issuance of a construction permit for a power reactor. They are designed to facilitate public participation in that process, to assure appropriate consideration of NEPA matters and to provide for timely decision-making. The proposed amendments which follow should be used for interim guidance.

Pursuant to the Atomic Energy Act of 1954, as amended, NEPA, and Section 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendments of 10 CFR Parts 2 and 50 are contemplated. All interested persons who desire to submit

[1] Reference is to the proposed amendments to 10 CFR Parts 2, 30, 40, 50, and 70 and addition of new Part 51, published in the FEDERAL REGISTER on November 1, 1973 (38 FR 30203).

[2] The Commission's rules in 10 CFR Parts 2 and 50 presently authorize but do not require the holding of separate hearings and issuance of separate initial decisions on NEPA issues.

written comments or suggestions for consideration in connection with the proposed amendments should send them to the Secretary of the Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff, by March 7, 1974. Copies of comments received may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

1. Paragraph 2.101(a) of 10 CFR Part 2 is amended by adding the following at the end thereof:

§ 2.101 Filing of application.

(a) * * * An applicant for a construction permit for a nuclear power reactor subject to § 51.5(a)[1] of this chapter may submit the information required of applicants by Part 50 of this chapter in two parts. One part shall be accompanied by the information required by § 50.30(f) of this chapter, and the other part shall include or be accompanied by any information required by §§ 50.33a, 50.34(a), and 50.34a of this chapter. One part may precede or follow the other by no longer than six (6) months. The Regulatory staff may return the later information to the applicant, informing it in what respects the information is incomplete, if the information is not complete or in conformance with the requirements of this chapter. Such a determination of completeness will generally be made within a period of thirty (30) days. Whichever part is filed first shall also include the fee required by §§ 50.33(e) and 170.21 of this chapter and the information required by § 50.37 of this chapter. The Commission will accept for docketing an application for a construction permit for a nuclear power reactor subject to § 51.5(a) of this chapter where one part of the application as described above is complete and conforms to the requirements of Part 50 of this chapter.

2. A new § 2.761a is added to 10 CFR Part 2 to read as follows:

§ 2.761a Separate hearings and decisions.

In a proceeding on an application for a construction permit for a nuclear power reactor subject to § 51.5(a) of this chapter, the presiding officer shall schedule a separate hearing on issues covered by Part 51 of this chapter as soon as practicable after issuance by the Regulatory staff of its final environmental impact statement, and issue an initial decision on such matters. Prehearing matters regarding issues covered by Part 51 of the chapter, including any discovery and special prehearing conferences and prehearing conferences as provided in §§ 2.740, 2.740a, 2.740b, 2.741, 2.742, 2.751a, and 2.752, shall be scheduled accordingly. The provisions of §§ 2.754, 2.760, 2.762, and 2.764(a) shall apply to any proceeding conducted and any initial decision rendered in accordance with this section. Paragraph 2.764(b) shall not apply to any partial initial decision rendered in accordance with this section.

3. Paragraph I(c) of Appendix A to 10 CFR Part 2 is amended by adding the following at the end thereof: "In a proceeding relating to the issuance of a construction permit for a nuclear power reactor subject to the environmental impact statement requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, and Part 51 of this chapter, separate hearings and decisions on National Environmental Policy Act issues are held as provided by § 2.761a.

4. In § 50.10, the prefatory language in paragraph (c) is amended and a new paragraph (e) is added to read as follows:

§ 50.10 License required.

* * * * *

(c) Notwithstanding the provisions of paragraph (b) of this section, and subject to paragraphs (d) and (e) of this section, no person shall effect commencement of construction of a production or utilization facility subject to the provisions of § 51.5(a) of this chapter on a site on which the facility is to be operated until a construction permit has been issued. As used in this paragraph, the term "commencement of construction" means any clearing of land, excavation or other substantial action that would adversely affect the natural environment of a site and construction of non-nuclear facilities (such as turbogenerators and turbine buildings) for use in connection with the facility, but does not mean:

* * * * *

(e)(1) The Director of Regulation may, except for good cause, authorize an applicant for a construction permit for a nuclear power reactor to conduct the following activities: site exploration, preparation of the site for construction of the facility, excavation, the driving of piles, measures to protect the excavation which may include installation of foundations and walls, and construction of roadways, railroad spurs, and transmission lines, and such other on-site activities as are not directly related to radiological safety matters. No such authorization shall be granted unless the Regulatory staff has completed a final environmental impact statement on the issuance of the construction permit as required by Part 51 of this chapter.

(2) Such an authorization shall be granted only after the presiding officer in the proceeding on the construction permit application has made all the findings required for issuance of the construction permit for the nuclear power reactor pursuant to § 51.52 of this chapter.

(3) Any activities undertaken pursuant to an authorization granted under this paragraph shall be entirely at the risk of the applicant and the grant of the authorization shall have no bearing on the issuance of a construction permit with respect to the requirements of the Act, and rules, regulations, or orders promulgated pursuant thereto.

5. In § 50.12, a new paragraph (c) is added to read as follows:

§ 50.12 Specific exemption.

* * * * *

(c) No person will, prior to issuance of any initial decision as provided by § 2.761a. of this chapter, be granted an exemption from the requirements of § 50.10(c) pursuant to this section to authorize the conduct of activities prior to the issuance of a construction permit that exceed in scope the activities described in § 50.10(e)(1).

(Sec. 102, Pub. Law 91-190, 83 Stat. 853; Secs. 101, 161, 185, Pub. Law 83-703, 68 Stat. 936, 945, 955, as amended (42 U.S.C. 2131, 2201, 2235, 4332).)

Dated at Germantown, Maryland, this 30th day of January 1974.

For the U.S. Atomic Energy Commission.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.74-2987 Filed 2-4-74;8:45 am]

[1] Reference is to the proposed amendments to 10 CFR Parts 2, 30, 40, 50, and 70 and addition of new Part 51, published in the FEDERAL REGISTER on November 1, 1973 (38 FR 30203).

[10 CFR Parts 31, 32]

BYPRODUCT MATERIAL CONTAINED IN CERTAIN DEVICES

Proposed Revision of General License

The Atomic Energy Commission is considering changes in its regulations pertaining to the use of byproduct material in certain gauges and similar devices. The proposed changes, among other things, would require the user to register with the Commission prior to receiving byproduct material for use under the general license in § 31.5 of the Commission's regulation, 10 CFR Part 31, "General Licenses for Byproduct Material." Related changes would be made in the requirements imposed on persons specifically licensed under 10 CFR 32.51 to distribute byproduct material in devices for use under the general license.

The Commission's regulations in 10 CFR 31.5 provide a general license for the use of byproduct material contained in certain measuring, gauging or controlling devices. Under the conditions of that general license, any person may receive and use byproduct material when contained in devices designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere, if the device has been manufactured in accordance with the specifications contained in a specific license issued by the Commission or by an Agreement State. Such a specific license may be issued upon a determination by the Commission or the Agreement State of the adequacy of the safety features of the device and the instructions for safe operation. The user of the device (i.e., the general licensee) is required to comply with the safety instructions contained in or referenced in labels on the device and to have testing or servicing of the device performed by the supplier or other spe-

cific licensee authorized to manufacture, install or service such devices.

At present, a specific licensee authorized pursuant to 10 CFR 32.51 to distribute devices to persons for use under the general license in 10 CFR 31.5 is required by 10 CFR 32.52 to submit reports to the Commission which identify the persons to whom he transferred devices during the preceding calendar quarter. Under the proposed revision, in lieu of requiring the distributor of devices to report the names and addresses of persons to whom he distributes devices, the person intending to possess the device would be required to register with the Commission prior to receipt of the device. Registration is expected to provide a more direct means of communication between the user and the Commission and thus offers greater assurance that the general licensee will be informed of his regulatory responsibilities.

At present 10 CFR 31.6 provides a general license to certain persons in Agreement States to install and service devices used under 10 CFR 31.5. Among the conditions of the general license provided in 10 CFR 31.6 are requirements that the general licensee report to the Commission the names and addresses of persons to whom he has transferred devices and that he supply to each of his transferees a copy of the general license contained in § 31.5. Under the proposed registration program the applicant for registration would identify himself to the Commission, which in turn would supply directly to the registrant a copy of the general license. Accordingly, under the proposed amendments, the above described requirements would be deleted from the general license provided in 10 CFR 31.6.

Experience in administering the general license provided in 10 CFR 31.5 indicates that for certain devices, an absolute prohibition against testing and servicing by the general licensee may be unduly restrictive. The proposed revision of 10 CFR 32.51 would contain a performance standard so that the Commission staff may determine, on a case-by-case basis, how and by whom a device should be tested and serviced. For example, general licensees could be authorized to use leak test kits or to clean gas chromatography sources in accordance with instructions provided by the label on the device.

Under the present general license in § 31.5, anyone, including an individual homeowner, may be a general licensee. Under the proposed revision, the general license would be restricted to commercial and industrial firms, research, educational and medical institutions, and governmental agencies.

The Commission has decided that an environmental impact statement need not be prepared in connection with the proposed amendments because they are principally administrative and will not significantly affect the quality of the human environment. An environmental impact appraisal of the proposed amendments, which sets forth the basis for this decision, is available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

Pursuant to the Atomic Energy Act of 1954, as amended, and Section 553 to Title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Parts 31 and 32 is contemplated. All interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed amendments should send them to the Secretary of the Commission, United States Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff by March 18, 1974. Copies of comments on the proposed amendments may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

1. Section 31.5 of 10 CFR Part 31 is revised to read as follows:

§ 31.5 Certain measuring, gauging or controlling devices.[2]

(a) A general license is hereby issued to commercial and industrial firms and research, educational and medical institutions, and federal, state or local government agencies to acquire, receive, possess, use, or transfer, in accordance with the provisions of paragraphs (b), (c), (d) and (e) of this section, byproduct material contained in devices used or designed and manufactured to be used for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere.

(b) No person shall acquire, receive, possess, or use byproduct material contained in devices under the general license is paragraph (a) of this section until he has filed Form AEC____, "Registration Certificate—Use of Byproduct Material Under 10 CFR 31.5 General License" with the Director of Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545, and received from the Commission a validated copy of the Form AEC ____ with registration number assigned. The registrant shall furnish on Form AEC ____ the following information and such other information as may be required by that form:

(1) Name and address of the applicant for registration;

(2) Identification of the device by manufacturer's name and model number, estimated number of devices to be received, and the name of the licensed installer if installation of the device by a specifically licensed installer is required;

(3) Name and/or title, address, and telephone number of the individual who will supervise the use of the device; and

(4) Address at which the device usually will be possessed or used.

The registrant possessing or using byproduct material under the general license in paragraph (a) of this section shall report in triplicate to the Director of Licensing any changes in the information furnished by the registrant. The report shall include the registration number and shall be submitted within 30 days after the effective date of such change.

(c) The general license in paragraph (a) of this section applies only to byproduct material contained in devices which have been manufactured or imported and labeled in accordance with the specifications contained in a specific license issued by the Commission pursuant to § 32.51 of this chapter or in accordance with the specifications contained in a specific license issued by an Agreement State which authorizes distribution of the devices to persons generally licensed by the Agreement State.

(d) Any person who acquires, receives, possesses, uses or transfers byproduct material in a device pursuant to the general license in paragraph (a) of this section:

(1) Shall comply with the provisions of §§ 20.402 and 20.403 in Part 20 of this chapter, but shall be exempt from the other requirements of Parts 19 and 20 of this chapter;

(2) Shall assure that all labels affixed to the device at the time of receipt and bearing a statement that removal of the label is prohibited are maintained thereon and shall comply with all instructions and precautions contained in such labels;

(3) Shall assure that the device is tested for leakage of radioactive material at no longer than six-month intervals or at such other intervals as are specified in the label; Provided, that devices containing only krypton, tritium, or not more than 100 microcuries of other beta and/or gamma emitting material or 10 microcuries of alpha emitting material need not be tested for leakage of radioactive material;

(4) Shall assure that the tests required by paragraph (d)(3) of this section and other testing, installation, servicing, and removal from installation involving the radioactive material, its shielding or containment, are performed:

(i) In accordance with the instructions provided by the label; or

(ii) By a person holding a specific license from the Commission or an Agreement State to perform such activities;

(5) Shall maintain records showing the dates and results of required tests, the performance of required servicing, and names of the persons conducting the tests or servicing;

(6) Upon the detection of 0.005 microcurie or more removable radioactive material or upon any other indication of possible failure of or damage to the containment or shielding of the radioactive material, shall immediately suspend operation of the device until it has been repaired by the manufacturer or other

[2] Persons possessing byproduct material in devices under the general license in § 31.5 before (the effective date of the amendments) may continue to possess, use, or transfer that material in accordance with the requirements of § 31.5 in effect on (the day preceding the effective date of the amendments).

person holding a specific license from the Commission or an Agreement State to repair such devices, or disposed of by transfer to a person authorized to receive the byproduct material contained in the device and, within 30 days, furnish to the Director of the appropriate Atomic Energy Commission Regulatory Operations Regional Office listed in Appendix D of Part 20 of this chapter, a report containing a brief description of the event and the remedial action taken;

(7) Shall not abandon the device containing byproduct material, and

(8) Shall transfer or dispose of the device containing byproduct material only by:

(i) export as authorized pursuant to the regulations in Part 36 of this chapter; or

(ii) transfer to a licensee of the Commission or of an Agreement State whose specific or general license authorizes him to receive such material; or

(iii) transfer to any person exempt from the regulations of this chapter to the extent permitted under such exemption;

and within 30 days after any such export, transfer or disposal, shall report in writing to the Director of Licensing. The report shall include the registration number of the person submitting the report, identification of the device by manufacturer's name and model number, and the name and address of the person receiving the device.

(e) The general license in paragraph (a) of this section does not authorize the manufacture or import of devices containing byproduct material.

§ 31.6 [Amended]

2. Paragraphs (a) and (d) of § 31.6 are deleted.

3. Section 32.51 of 10 CFR Part 32 is revised to read as follows:

§ 32.51 Byproduct material contained in devices for use under § 31.5: requirements for license to manufacture, import or distribute.

(a) An application for a specific license to manufacture, import, or distribute devices containing byproduct material to persons generally licensed under § 31.5 of this chapter or equivalent regulations of an Agreement State will be approved if:

(1) The applicant satisfies the general requirements of § 30.33 of this chapter;

(2) The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels proposed uses installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

(i) The device can be safely operated by persons not having training in radiological protection;

(ii) Under ordinary conditions of handling, storage and use of the device, the byproduct material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that any person will receive in any period of one calendar quarter a dose in excess of 10 percent of the limits specified in the table in § 20.101(a) of this chapter; and

(iii) Under accident conditions (such as fire and explosion) associated with handling, storage and use of the device, it is unlikely that any person would receive an external radiation dose or dose commitment in excess of the dose to the appropriate organ as specified in Column IV of the table in § 32.24.

(3) Each device bears a durable, legible, clearly visible label or labels approved by the Commission which contain in a clearly identified and separate statement:

(i) Instructions and precautions necessary to assure safe installation, operation, and servicing of the device (documents such as operating and service manuals may be identified in the label and used to provide this information);

(ii) The requirement, or lack of requirement, for leak testing, including the maximum interval for such testing, and the identification of radioactive material by isotope, quantity of radioactivity, and date of determination of the quantity; and

(iii) The information called for in the following statement in the same or substantially similar form:

The receipt, possession, use, and transfer of this device Model ____[1] ____, Serial No. ____ ____, are subject to a general license or the equivalent and the regulations of the U.S. AEC or of a State with which the AEC has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION—RADIOACTIVE MATERIAL

(Name of manufacturer, importer, or distributor)[1]

(b) (1) In the event the applicant desires that the device be required to be tested for leakage of radioactive material at intervals longer than six months, he shall include in his application sufficient information to demonstrate that such longer interval is justified by performance characteristics of the device or similar devices, and by design features which have a significant bearing on the probability or consequences of leakage of radioactive material from the device.

(2) In determining the acceptable interval for test of leakage of radioactive material, the Commission will consider information which includes, but is not limited to:

(i) Primary containment (source capsule);

(ii) Protection of primary containment;

(iii) Method of sealing containment;

(iv) Containment construction materials;

(v) Form of contained radioactive material;

(vi) Maximum temperature withstood during prototype tests;

(vii) Maximum pressure withstood during prototype tests;

(viii) Maximum quantity of contained radioactive material;

(ix) Radiotoxicity of contained radioactive material; and

(x) Operating experience with identical devices or similarly designed and constructed devices.

(c) In the event the applicant desires that the general licensee under § 31.5 of this chapter, or under equivalent regulations of an Agreement State, be authorized to install the device, perform tests for leakage of radioactive material or other servicing of the device, or remove the device from installation, he shall include in his application sufficient information to demonstrate that such activity can be performed by persons untrained in radiological protection without exceeding the dose limits set forth in § 32.51(a)(2)(ii). The submitted information shall include written instructions to be followed by such persons, estimated doses associated with each activity and the basis for such estimates, and the total quarterly dose which a person is likely to acquire from all such activities and other handling, storage and use of devices under the general license in § 31.5 of this chapter.

4. A new § 32.51a is added to read as follows:

§ 32.51a Same: Material transfer records.

Each person licensed under § 32.51 shall keep records showing the name, address, and registration number of each person to whom he transfers byproduct material in devices for use pursuant to the general license provided in § 31.5 of this chapter or equivalent regulations of an Agreement State. The records also shall show the date of each transfer and the isotope and quantity of radioactivity in each device transferred.

5. Paragraph (b) of § 32.52 is revoked. The remainder of § 32.52 is amended to read as follows:

§ 32.52 Same: Material transfer reports.

Each licensee authorized under § 32.51 to distribute devices to generally licensed persons shall report to the Director of Licensing, U.S. Atomic Energy Commission, Washington, D.C., 20545, all transfers of such devices to persons generally licensed under § 31.5 of this chapter made prior to _____

(the effective date of this amendment)

Such report shall identify each general licensee by name and address, the type of device transferred, and the quantity and type of byproduct material contained in the device. The report shall be submitted within 30 days after the end of each calendar quarter in which such

[1] The model, serial number, and name of the manufacturer, importer, or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

a device is transferred to generally licensed persons. Reports of transfers required by this section need not be submitted for transfers made on or subsequent to _____

_____
(the effective date of this amendment)

(Secs. 81, 82, 161, 69 Stat. 935, 948, as amended (42 U.S.C. 2111, 2112, 2201).)

Dated at Germantown, Md. this 28th day of January 1974.

For the Atomic Energy Commission.

GORDON M. GRANT,
Acting Secretary
of the Commission.

[FR Doc.74-2824 Filed 2-4-74;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 19928; RM-1971, 2161, 2203, 2244]

Table of Assignments, FM Broadcast Stations in Illinois and Indiana

1. Notice is hereby given of the institution of this proceeding to consider the conflicting proposals to amend the FM Table of Assignments as concerns the above-listed communities which are advanced in the following petitions for rule making:

a. *RM-1971.* Petition of David Steinhart, filed February 28, 1972, requesting the assignment of Class B Channel 241 to Hoopeston, Illinois, for a first FM assignment by substituting Channel 252A for Channel 240A (unused) at Fowler, Indiana.

b. *RM-2161.* Petition of Radio Lafayette, Incorporated, filed March 15, 1973, requesting the assignment of Class B Channel 243 to Lafayette, Indiana, for a second Class B (third FM) assignment by deleting Channel 244A from Lafayette, occupied by Station WAZY-FM, licensed to Radio Lafayette, and by also replacing Channel 240A with Channel 252A at Fowler, Indiana.

c. *RM-2203.* Petition of Vermilion Broadcasting Corporation, filed May 23, 1973, requesting the assignment of Class B Channel 241 to Danville, Illinois, for a third Class B assignment by substituting Channel 252A for Channel 240A at Fowler.

d. *RM-2244.* Petition of Citizens Broadcasting Company, filed August 15, 1973, requesting the assignment of either Class B Channel 242 or Class B Channel 243 to Terre Haute, Indiana, for a fifth Class B assignment.

2. In light of our mileage separation requirements for Class B FM assignments (150 miles for co-channel assignments; 105 miles for first adjacent channel assignments; and 40 miles for second adjacent channel assignments) and the relative locations of the communities involved, the FM assignment proposals of the above petitioners are mutually exclusive with one or more of the other proposals, i.e., the Hoopeston and Danville 241 proposal, the Terre Haute Channel 242 proposal and the Lafayette Channel 243 proposal are mutually exclusive, as is the Lafayette Channel 243 proposal with each of the alternative Terre Haute Channel 242 and Channel 243 proposals. They are therefore considered together.

3. The required 150-mile co-channel spacing could not be met for Channel 241 assignments at both Hoopeston and Danville since Hoopeston is only about 22 miles north of Danville, and the antenna sites for Hoopeston and Danville Channel 241 stations would have to be located even closer to each other to meet spacing requirements to existing Channel 241 assignments at Owensboro, Kentucky (WSTO) and Clinton, Iowa (KROS-FM). A Hoopeston Channel 241 station would have to be located at least 11 miles south of Hoopeston, and a Danville Channel 241 station would have to be located at least six miles northwest of Danville and in the same general area as required for a Hoopeston Channel 241 site. The required 40-mile second adjacent channel spacing could not be met for a Channel 241 assignment at either Hoopeston or Danville and a Channel 243 assignment at Lafayette, since, while Lafayette is approximately 42 miles from Hoopeston and 40 miles from Danville, the transmitter site for a Lafayette Channel 243 station would have to be located at least 14 miles west southwest of Lafayette to meet spacing requirements to Channel 242A (WBBM-FM) at Chicago, Illinois, and to Channel 243 (WQMS) at Hamilton, Ohio. Thus, the distance between the required antenna sites for a Hoopeston Channel 241 operation and for a Lafayette Channel 243 operation would be only about 27 miles, and between those for a Danville Channel 241 operation and a Lafayette Channel 243 operation, only about 30 miles. The required 105-mile first adjacent channel spacing could not be met for a Channel 241 assignment at either Hoopeston or Danville or for a Channel 243 assignment at Lafayette and a Channel 242 assignment at Terre Haute. Terre Haute is only about 70 miles southwest of Hoopeston, 50 miles southeast of Danville, and 75 miles southwest of Lafayette and the distance would be even less because of antenna site limitations. As mentioned, the required Hoopeston Channel 241 site would be at least 11 miles south of Hoopeston; for a Danville Channel 241 site, at least six miles northwest of Danville; and for a Lafayette Channel 243 site, at least 14 miles west southwest of Lafayette. The antenna for a Terre Haute Channel 242 operation would have to be located approximately 18 miles north from the center of the city to meet the required spacing to Channel 241 (WSTO) at Owensboro, Kentucky. Co-channel mileage separation requirements (150 miles) could also not be met for Channel 243 assignments at both Terre Haute and Lafayette because of their distance from each other and antenna site limitations. The antenna for a Terre Haute Channel 243 operation would have to be located approximately 16 miles northwest of Terre Haute and four miles east of Paris, Illinois, in a very small area to meet spacing requirements to Channel 244A (WAOV-FM) at Vincennes, Channel 244A (WAZY-FM) at Lafayette, Indiana, and to Channel 245 (WLBH-FM) at Mattoon, Illinois.

4. Except for the conflicts with other of the pending proposals discussed above, however, each of the proposals, discussed at greater length hereafter, appears technically feasible insofar as minimum spacing requirements are concerned and is supported by a showing, which, while not sufficient to enable us to reach a decision on its public interest value, is sufficient we feel, to warrant its further consideration in rule making, individually and jointly with the other pending proposals. This proceeding is, therefore, instituted to consider each and all of them, together with all alternative assignment possibilities, including those suggested by some of the proponents of the pending proposals, which would permit the making of such assignments as might be warranted to as many of the communities involved as possible without regard to conflicts which otherwise would exist with other of these pending proposals. This action should not be construed, however, as the expression of a view, even tentatively, that any or all of the proposals or proposed alternatives to resolve conflicts with other of the pending proposals should be adopted as proposed or at all.

5. The pertinent population data concerning the communities involved and their respective counties, based on 1970 U.S. Census figures, are, as follows:

City	Population	Percent change since 1960	County	Population	Percent change since 1960
Hoopeston, Ill.	6,461	−2.2	Vermilion	97,047	0.9
Fowler, Ind.	2,643	6.1	Benton	11,262	−5.5
Lafayette, Ind.	44,955	6.2	Tippecanoe	109,378	22.7
West Lafayette, Ind.	19,157	51.1	do.	109,378	22.7
Danville, Ill.	42,570	1.7	Vermilion	97,047	0.9
Terre Haute, Ind.	70,286	−3.1	Vigo	114,528	5.6
West Terre Haute, Ind.	2,704	−10.0	do.	114,528	5.6

Lafayette is the central city of the Layayette-West Lafayette Standard Metropolitan Statistical Area (SMSA), consisting only of Tippecanoe County, with a total population of 109,378, representing a 22.7% increase over the total 1960 SMSA population. Terre Haute is the central city of the Terre Haute Standard Metropolitan Statistical Area, consisting of its county (Vigo), and Clay, Sullivan and Vermilion Counties, all in Indiana, with a total population of 175,143, which represents a 1.8% increase over the total 1960 SMSA population.

6. *Hoopeston (Fowler, Ind.), Illinois (RM-1971).* The petitioner, David Steinhart, proposes the assignment of Class B Channel 241 to Hoopeston for a first as-

signment for which he can apply by substituting Channel 252A for the unoccupied Channel 240A assignment at Fowler, Indiana. As pointed out in paragraph 3, supra, Channel 241 would be technically feasible for a Hoopeston assignment without changing any existing assignment other than the Fowler Channel 240A assignment if used at an antenna site at least 11 miles south of Hoopeston to meet spacing requirements to the occupied Channel 241 assignment at Owensboro, Kentucky, and Clinton, Iowa. The Hoopeston Channel 241 proposal conflicts, however, with others under consideration herein, i.e., the Danville Channel 241 proposal, the Lafayette Channel 243 proposal, and the Terre Haute Channel 242 proposal.[1] The conflict with all of the proposals could be resolved, as other of the petitioners herein propose, by assigning Channel 265A instead of Channel 241 to Hoopeston.

7. Hoopeston has no local broadcast outlet. The nearest aural broadcast stations, and the only ones in Vermilion County in which it is located, are the four at Danville (two unlimited time AM stations and two Class B FM stations), the county seat, some 23 miles south of Hoopeston. Steinhart urges that Hoopeston has a need for a first local FM outlet, pointing out that Hoopeston is a heavily industrialized area, with manufacturing and retailing important parts of its economy; that Hoopeston manufacturing firms employ some 1,600 people; that its industries are closely identified with food processing (food canners, food machinery, can production); that the retail sales trend in Hoopeston has been upward, averaging 4.4 percent annually, with 1969 taxable retail sales totalling 15.4 million dollars; and that, with its strategic location on the eastern Illinois border and available good four-way transportation and access to large markets in all directions, continued economic growth of the area is expected.

8. The Steinhart technical exhibit, as supplemented by a requested May 1, 1972, submission shows that the assignment of Channel 241 to Hoopeston would foreclose future assignments on Channels 240A, 241 and 242 in very limited areas. The communities located within or near the precluded areas where a channel could be assigned and of a size to possibly warrant a Class B FM assignment have FM assignments and do not appear to warrant an additional assignment. The Danville RM–2203 petition, however, raises the question of whether Danville, which is near the precluded area for the proposed Hoopeston Channel 241 assignment and to which the channel could also be assigned by changing the Fowler 240A assignment, would warrant Channel 241 for a third assignment over Hoopeston for a first assignment.

9. Based on Roanoke Rapids-Goldsboro criteria which we have approved for use,[2] Steinhart calculates that a Hoopeston Channel 241 station with maximum facilities would provide a first FM service to 130 persons residing in an unserved area of 363 square miles and a second FM service to 21,069 persons residing in an underserved area of 363 square miles. He also shows that a Hoopeston Channel 241 station would serve a total area of 3,421 square miles, encompassing a population of 253,227 persons, which represents an area 4.84 times the area and 11.34 times the population that a Hoopeston Class A facility would serve. Being of the view that he erred in including unoccupied Fowler Channel 240A assignment in making his calculations, Steinhart on July 13, 1973, submitted a revised showing, based on calculations excluding the Fowler assignment. However, his prior showing, taking the unused Fowler assignment into account, is in accord with the Roanoke Rapids-Goldsboro approved procedure, and the desired one.

10. Danville (Fowler, Ind.), Illinois (RM–2203). The petitioner, Vermilion Broadcasting Corporation (Vermilion), licensee of AM Station WITY, Danville, Illinois, also requests Channel 241 for a third Class B assignment to Danville by substituting Channel 252A for Channel 240A at Fowler, Indiana. Oppositions to the Vermilion petition were filed by Kickapoo Broadcasting Co., licensee of FM Station WIAI, which operates on Channel 256 at Danville, to which Vermilion filed a reply; Radio Lafayette, Incorporated, the proponent of the conflicting Lafayette proposal in RM–2161; and by Citizens Broadcasting Company, the proponent of the conflicting Terre Haute Channel 242 proposal in RM–2244. As discussed in paragraph 3, supra, a Danville Channel 241 assignment would be technically feasible without changing any existing assignment other than the Fowler Channel 240A assignment if used at an antenna site at least six miles northwest of Danville to meet spacing requirements to the occupied Channel 241 assignments at Owensboro, Kentucky, and Clinton, Iowa. The proposal, however, conflicts with other pending proposals under consideration herein, i.e., the Hoopeston Channel 241 proposal, the Lafayette Channel 243 proposal, and the Terre Haute Channel 242 proposal.

11. Danville, the seat of Vermilion County and its largest city, has the only aural broadcast outlets in the county, two unlimited time AM stations (WITY and WDAN), and two Class B FM stations which occupy its only FM assignments, Channel 256 (WIAI) and Channel 271 (WDAN–FM). Vermilion describes Danville as industrial in character, with over one-third of all those employed (16,856 persons, according to 1970 Census figures) engaged in manufacturing and only 109 persons in agriculture, forestry and fisheries. Pointing out that Danville had a population increase of 12.4 percent over the 1950–1970 period, Vermilion urges that the growth of Danville and its market area indicate a need for a third FM local outlet to meet its present and future needs. If the requested FM assignment is made to Danville, Vermilion states that it will promptly apply for its use. It avers that while Class A channels are available which could instead be assigned to Danville, adding a Class A assignment there would create an intermixed Class A and Class B assignment situation which the Commission endeavors to avoid in making assignments because of the obvious market disadvantage to the Class A station and which, it believes, with two existing, established Class B stations at Danville, would put a new Class A station there at a severe disadvantage. The requested Channel 241 assignment, Vermilion believes, is the last possible Class B assignment which can be made to Danville. It further believes that Danville is the obvious choice for a Channel 241 assignment since it is the only city of any significant size to which the channel can be assigned. Hoopeston, the one other possibility for a Channel 241 assignment, it states, is but a small community which had a 2.2 percent population decline over the 1960–1970 decade, and one which it considers to be well served for a city of its size, since it is within the 1.0 mV/m contours of the two Danville FM stations and WGFA–FM in Watseka, Illinois, and is also served by the two Danville AM stations.

12. The Vermilion preclusion study, while containing some errors, is essentially the same as that of Steinhart's for a Hoopeston Channel 241 assignment. The communities located within the precluded areas of a size to possibly warrant a Class B assignment have FM assignments and do not appear to warrant an additional assignment. The Steinhart petition (RM–1971), however, raises the question of whether Hoopeston, which is near the Channel 241 precluded area for a Danville Channel 241 assignment, and to which the channel could instead be assigned, would warrant Channel 241 for a first assignment over Danville for a third assignment. While stating that a Danville Channel 241 station would serve minor areas without FM service or only one FM service, since these areas could also be served by minor increases in the facilities of existing area FM stations, Vermilion makes no claim in this regard.

13. In its opposing comments, Kickapoo Broadcasting contends that the Vermilion petition makes no prima facie showing of need for a third Class B assignment at Danville and that it would be inconsistent with Commission policy to assign a third Class B channel to a city the size of Danville, particularly since it would preclude requested use of Channel 241 in a community (Hoopeston) which has no broadcast outlet or FM assign-

[1] The untimely opposition to the Steinhart petition, filed August 15, 1973, by Citizens Broadcasting Company, the proponent of the Terre Haute proposal, is accepted since it merely advises of the pendency of the conflicting Danville, Lafayette and Terre Haute proposals and requests their joint consideration in rule making.

[2] See "In re Roanoke Rapids-Goldsboro, N.C.," 9 F.C.C. 2d 672 (1967).

ment. Kickapoo submits that the need for a third Class B assignment at Danville is not shown by Vermilion in pointing out that Danville had a 12.4 percent population increase over the 1950–1970 period, since 1970 Census figures indicate that Danville had a population increase of but 1.7 percent (from 41,856 to 42,570 in population) over the last ten years of that period (1960–1970) which, in its view, indicates that the population growth of Danville since 1960 has, for all practical purposes, stopped. Kickapoo also claims that Danville is well served by media mass communications, service being available from eight AM stations (2 Danville, 1 Paris, 1 Champaign, 4 Chicago stations); six FM stations (2 Danville, 1 Watseka, 1 Terre Haute, 1 Paris, and 1 Champaign stations); four TV stations (1 Danville, 1 Champaign, 1 Decatur and 1 Urbana stations); two local cable TV stations, and one local newspaper. In reply, Vermilion avers that a Class A assignment is more appropriate than a Class B assignment for Hoopeston in view of its size; that Channel 265A can be assigned to Hoopeston; and that the assignment of Channel 265A to Hoopeston and of Channel 241 to Danville (by substituting Channel 252A for Channel 240A at Fowler) would make it possible to also assign Channel 243 to Terre Haute for a new FM service. Vermilion also states that Station WDAN–FM is the only local FM station now providing a balanced radio service to Danville; that Station WIAI, Kickapoo Broadcasting's station, does not provide a rounded radio service but one which the August 21, 1973, WIAI renewal application describes as "an FM stereo playing exclusively Country and Western music". It avers that if another FM channel is assigned to Danville, and it should be authorized to operate on the channel, it would also provide a varied service.

14. Citizens Broadcasting Company and Radio Lafayette basically oppose the Danville Channel 241 proposal because it is mutually exclusive with their conflicting Terre Haute Channel 242 (RM–2244) and Lafayette Channel 243 (RM–2161) FM assignment proposals. Radio Lafayette urges that maximum utilization, as well as equitable distribution, of FM channel assignments, dictates that its Lafayette Channel 243 proposal prevail over the Danville Channel 241 proposal considering that Lafayette and the Lafayette metropolitan area, which includes the city of Lafayette and the contiguous community of West Lafayette, exceed Danville in population and in rate of growth. The 1970 population of the Lafayette metropolitan area, it points out, totaled 64,112 (Lafayette, 44,955; West Lafayette 19,157), representing an increase of 16.5 percent over its 1960 population of 55,010, or an average yearly growth rate of 1.65 percent; whereas, in contrast, Danville had a 1970 population of 42,570, representing an increase of only 1.7 percent over its 1960 population of 41,856, or an average yearly growth rate of only 0.17 percent. Radio Lafayette also believes it significant that, while Danville is smaller than Lafayette, Danville has two full-time commercial AM stations and two Class B stations, whereas Lafayette has but one full-time commercial AM station and one Class B FM station, plus one daytime-only commercial AM station and two Class A FM stations. (Lafayette also has an FM educational station, and West Lafayette, a full-time AM educational station.) Another consideration, Radio Lafayette states, is that, while Vermilion makes no claim that Channel 241 at Danville would serve any areas without FM service or only one FM service, a Lafayette Channel 243 station would provide a first FM service to an area of approximately 161 square miles encompassing 7,448 persons, and a second service to an area of approximately 493 square miles and 13,275 persons, all in Indiana.[3] In addition, Radio Lafayette points out that while Class A channels could also be assigned to Danville, there are no Class A or Class B channels, other than proposed Channel 243, which could be assigned to Lafayette.

15. *Lafayette (Fowler, Ind.), Indiana (RM–2161).* The petitioner, Radio Lafayette, Incorporated, licensee of AM Station WAZY, a daytime-only operation, and Station WAZY–FM, which operates on Channel 244A, at Lafayette, Indiana, proposes the assignment of Channel 243 to Lafayette for a second Class B assignment by deleting Channel 244A, occupied by its FM station, and by changing the unused Fowler, Indiana, assignment from 240A to 252A. Oppositions to the Radio Lafayette petition and proposal were filed by Tiprad Broadcasting Co., Inc. (Tiprad), licensee of FM Station WXUS, which operates on Channel 224A at Lafayette; by Vermilion Broadcasting Corporation (Vermilion), the proponent of the conflicting Danville Channel 241 proposal in RM–2203, and by Citizens Broadcasting Company, proponent of the conflicting Terre Haute alternate Channel 242 and Channel 243 proposals in RM–2244. Radio Lafayette filed replies to the Tiprad and Vermilion oppositions. Radio Lafayette, also, on November 8, 1973, filed supplemental comments, which, although untimely, we are disposed to accept, since they are offered merely to suggest and demonstrate a means of resolving the conflict between its Lafayette Channel 243 proposal and the Danville Channel 241 proposal in RM–2203.

16. As before discussed (paragraph 3, supra), a Lafayette Channel 243 assignment would be technically feasible without changing any existing assignment other than deleting the occupied Lafayette Channel 244A assignment and changing the Fowler Channel 240A assignment, as proposed, if used at an antenna site at least 14 miles west southwest of Lafayette to meet spacing requirements to the occupied Chicago Channel 242A and Hamilton, Ohio, Channel 243 assignments. The proposal, however, conflicts with other pending proposals under consideration herein, i.e., the Hoopeston Channel 241 proposal, the Danville Channel 241 proposal, and the alternative Terre Haute Channel 242 and Channel 243 proposals. Radio Lafayette suggests that Channel 265A instead of proposed Channel 241 be assigned to Hoopeston to resolve the conflict with its Lafayette Channel 243 proposal. In its supplemental comments, it suggests and demonstrates that the conflict between its Lafayette Channel 243 proposal and the Danville Channel 241 proposal could also be satisfactorily resolved to permit both assignments by conditioning future use of the unoccupied Channel 240A assignment at Clinton, Illinois, at an antenna site at least four miles west of Clinton, use of Channel 241 at Danville at a site at least 11 miles northwest of Danville, and use of Channel 243 at Lafayette at a site at least 10 miles west of Lafayette.

17. Lafayette, the seat of Tippecanoe County, and the central city in the Lafayette-West Lafayette standard metropolitan area (1970 population, 64,112), which includes both Lafayette and the adjoining smaller city of West Lafayette (1970 population, 19,157), has two commercial AM stations, one of which is an unlimited-time operation (WASK) and the other, a daytime-only operation (WAZY); three commercial FM stations, one of which, Station WASK–FM, operates on Channel 287, the only Class B channel assigned, and the other two, Station WAZY–FM (Channel 244A) and Station WXUS (Channel 224A), operate on the two Lafayette Class A channel assignments. Lafayette also has an educational FM station (WJJE), which operates on Channel 220A. While without an FM assignment or outlet, West Lafayette has an AM broadcast outlet, an unlimited-time AM educational station (WBAA), licensed to Purdue University.

18. Radio Lafayette urges that the assignment of a second Class B channel to Lafayette is warranted both by its size and that of the Standard Metropolitan Statistical Area in which it is located, as well as by their future growth potential, and that, inasmuch as Lafayette has an existing occupied Class B assignment, it would be consistent with Commission policies to provide it with a second such assignment in place of one of its two Class A assignments. Its showing indicates that Lafayette and West Lafayette are centrally located in a growing area in north central Indiana, classified by the state as Economic Region Four for planning and development purposes, and made up of Tippecanoe County and contiguous White, Carroll, Clinton, Montgomery, Fountain, Warren, and Benton counties; that this region had an overall 10.1 percent growth in population from 1960 to 1970 that Tippecanoe County, wherein 43.6 percent of the people in this region reside, grew 22.7

[3] Vermilion's unserved and underserved area service claims for a Lafayette FM Channel 243 station are not, however, substantiated by a showing made in accord with the Roanoke Rapids-Goldsboro approved procedure, as discussed in paragraph 20.

percent in total population during the same period; that Lafayette grew 6.2 percent and West Lafayette 51.1 percent; and that the projections are for increased growth both within Lafayette and West Lafayette and in the adjacent urbanized areas. Radio Lafayette states that area planners are of the belief that the figure of 165,000 people, used by the Tippecanoe County Area Plan Commission as the projected Tippecanoe County population by 1990, will be realized long before then, and that the Area Planning Department of the county projects a population of 61,500 for Lafayette, and of 21,312 for West Lafayette, by 1980. Radio Lafayette states that Lafayette and West Lafayette serve as the center of Region Four in employment, medical facilities, retail outlets, transportation, educational facilities, news media, and cultural outlets; that Purdue University, with a 1970–1971 school year enrollment of 25,582 students, and a total of 6,365 employees in 1971, is the largest single employer in the region; and that agriculture is of prime importance to the economy of this region, with the 1969 gross income of farmers in Tippecanoe County alone totalling an estimated twenty-three million dollars.

19. Radio Lafayette also claims, in seeking substitution of a Class B channel for Channel 244A, upon which its FM station (WAZY–FM) operates at Lafayette, that, because the center of Lafayette lies in a valley, and the WAZY–FM antenna site is located four miles south of the center of the city, its station has considerable problems in serving downtown Lafayette; that its signal to the far north, northeast and northwest is scarcely adequate to encompass the needs of these areas; and that the problem is accentuated by the current and anticipated future growth of the overall area. While it would appear that, if a site overlooking Lafayette were to be used, Station WAZY–FM's coverage problems could be rectified, Radio Lafayette furnishes no information as to whether it has made any determination in this regard.

20. The Radio Lafayette preclusion study indicates that the proposed Lafayette Channel 243 assignment would foreclose future assignments on Channels 243 and 244A. However, it failed to indicate the communities that would be located in the precluded areas and whether any other available channels could be assigned to the communities in these areas. Such information should be supplied. In addition, since Radio Lafayette is seeking to improve its facility, a showing, based on the Roanoke Rapids and Goldsboro criteria, should be submitted of the area and population, if any, that would receive a first or second FM service from the proposed Lafayette Channel 243 station. While it is noted that Radio Lafayette, in its oppositions to the Danville and Terre Haute petitions, claims that its Lafayette Channel 243 proposal would provide a first and second service to substantial areas and persons, examination of its exhibits indicate that, although it used the operating values of existing stations based on the Roanoke Rapids and Goldsboro criteria, in addition to failing to consider the occupied Rensselaer, Indiana, 249A assignment (WJCK), it failed to consider the unoccupied Class A assignments at Fowler (Channel 240A) and at Rockville (Channel 285A), Indiana, as also required for proper and meaningful evaluation of the potential use of the proposed substitute Class B assignment at Lafayette. If these assignments are considered, it appears that no area would receive a first FM service and that the areas receiving a second FM service from the proposed Lafayette Class B station would be substantially less than Radio Lafayette claims.

21. Radio Lafayette also argues that the public interest would be better served by adopting its Lafayette Channel 243 proposal than the conflicting Hoopeston Channel 241 proposal in view of the size of both communities, and especially since a Class A channel, which is designed to meet the more limited coverage requirements of small communities, such as Hoopeston, may be assigned to Hoopeston. Its showing indicates that Channel 265A would be technically feasible for a Hoopeston assignment without affecting any existing FM assignment and could be used there without any restriction in the selection of an antenna site in the area in or near Hoopeston, as a Hoopeston Channel 241 assignment would require.

22. In its opposition, Tiprad, the other Lafayette Class A licensee (WXUS), contends that, as between the conflicting Hoopeston Channel 241 Lafayette Channel 243 proposals, the mandate of Section 307(b) of the Communications Act requires that Hoopeston be allowed its first broadcast outlet over Lafayette for a new assignment to upgrade one of its existing FM assignments. It argues that the FM reception services Hoopeston receives from stations elsewhere are no substitute for a local outlet of its own; that even though the Hoopeston Channel 241 proposal requires an antenna site about 11 miles from Hoopeston, coverage requirements for serving Hoopeston could be met; and that, since the Hoopeston Channel 241 proposal would provide a first or second service to large areas (see paragraph 9, supra), it is also preferable to the Lafayette Channel 243 proposal. In addition, without any legal substantiation, Tiprad takes the position that, if Channel 243 should be assigned to Lafayette as a result of our determination that the public interest would thereby be served, even though such action would necessarily require the deletion of the Lafayette Channel 244A assignment, occupied by Station WAZY–FM, the station's license could not be modified at the same time to specify operation on Channel 243 instead of Channel 244 without application therefore by the licensee, and subject to competing applications. We are of the view, however, that Section 316 of the Communications Act provides the Commission with authority to require modification of a permit or license in any manner and to any extent found appropriate and necessary in the public interest without application therefore by the permittee or licensee. In its reply, Radio Lafayette urges that its Lafayette Channel 243 proposal should be preferred to the Hoopeston Channel 241 proposal since Class B channels are ordinarily assigned to sizeable communities, such as Lafayette, and Class A channels to the smaller communities, such as Hoopeston; and since its showing indicates that Channel 265A is technically feasible for a Hoopston assignment and that its Lafayette Class B proposal would serve greater unserved and underserved areas than the Hoopston Class B proposal. This last claim, however, as pointed out in paragraph 20, is not based on a showing made in conformity with the Roanoke Rapids-Goldsboro criteria and, if so made, would not appear to have validity.

23. In their oppositions Vermilion and Citizens Broadcasting oppose the Lafayette Channel 243 proposal principally because it is mutually exclusive with their Danville Channel 241 and Terre Haute alternative Channel 242 and Channel 243 proposals. As before discussed in paragraph 16, the conflict between the Lafayette Channel 243 and Danville Channel 241 proposals would be removed if these proposed assignments for Lafayette and Danville and the vacant Clinton, Illinois, Channel 240A assignment were conditioned, as pointed out by Vermilion, to require operation from antenna sites meeting spacing requirements in the areas it mentions. While most of the arguments raised for and against the Lafayette Channel 243 and Danville Channel 241 proposals in the Vermillion opposition and in Radio Lafayette's reply were also raised in RM–2203 and have been adequately discussed, two others advanced by Vermilion should be mentioned.

24. One of these is that the optimum solution to Radio Lafayette's stated problem of serving Lafayette and the surrounding area effectively lies not in substituting a Class B channel for Channel 244A at Lafayette but in relocating the antenna site of Radio Lafayette's Channel 244A station. Vermilion contends that if the antenna of the Class A station is moved to within the city of Lafayette proper, the Class A station would be able to provide a stronger signal and a better service to the city area than a Lafayette Class B Channel 243 station could provide from a site some 15 miles distant from the city and that it would also be more practical economically. While it is true that, under these circumstances, the Class A signal would be stronger in the city area than the Class B signal, a Class B station, located as proposed by Radio Lafayette, would, as it has demonstrated, provide the requisite 70 dBu signal over Lafayette. The other Vermilion contention is that the method used by Radio Lafayette for calculating distances is not in accord with Commission rules. The "great circle" distance method, corrected

for the spheroidal shape of the earth, used by Radio Lafayette, is actually a more accurate method for determining distance that Section 73.208(c) of the rules requires. Considering the distances involved, the degree of accuracy obtained by using the "right angle triangle" is sufficient, however, so that it could have been used, but the method used by Radio Lafayette is also an accepted method of calculating distances.

25. *Terre Haute, Indiana (RM–2244).* In its petition, Citizens Broadcasting Company (Citizens), licensee of AM Station WAAC, a daytime-only operation, at Terre Haute, proposes the assignment of either Channel 242 or Channel 243 to Terre Haute for a fifth Class B assignment. Citizens also proposes the assignment of Channel 265A to Hoopeston, Illinois, in place of Channel 241, proposed for a first Hoopeston assignment in RM–1971. Oppositions thereto were filed by Eastern Broadcasting Corporation (Eastern), licensee of an unlimited time AM station (WBOW) and Station WBOW–FM (now WBOQ) (Channel 298) at Terre Haute; Raftis Broadcasting Company (Raftis), licensee of Station WVTS–FM (Channel 264), Terre Haute, and by Radio Lafayette, proponent of the conflicting Lafayette Channel 243 proposal in RM–2161. Reply comments were filed by Citizens in which it requests, along with its alternative Terre Haute Channel 243 proposal, that Channel 241 be assigned to Danville, Illinois, by substituting Channel 252A for Channel 240A at Fowler, Indiana, as proposed in RM–2203, and that Channel 265A be assigned to Hoopeston.[4]

26. As before discussed in paragraph 3, supra, a Terre Haute Channel 242 assignment would be technically feasible without changing any existing assignment if used at an antenna site approximately 18 miles north from the center of the city to meet the required separation from the Owensboro, Kentucky, Channel 241 station (WSTO). A Terre Haute Channel 243 assignment would also be technically feasible without changing any existing assignment if used at a site in a very small area, approximately 16 miles northwest of Terre Haute and four miles east of Paris, Illinois, which would meet the required spacing from the Lafayette (WAZY–FM) and Vincennes (WAOV–FM), Indiana, Channel 244A stations, and from the Mattoon, Illinois, Channel 245 station (WLBH–FM). The Terre Haute Channel 242 proposal, however, conflicts with the Hoopeston and Danville Channel 241 proposals and with the Lafayette Channel 242 proposal under consideration herein. The conflict with the Hoopeston Channel 241 proposal could be resolved, as Citizens proposes, by assigning Channel 265A to Hoopeston instead of proposed Channel 241. Citizens' Terre Haute Channel 243 proposal conflicts only with the Lafayette Channel 243 proposal.

27. Terre Haute, the seat of Vigo County and the central city of the Terre Haute Standard Metropolitan Statistical Area, which encompasses Vigo, Clay, Sullivan and Vermilion counties in Indiana, has seven commercial aural broadcast outlets, three of which are AM stations (WTHI and WBOW, both unlimited time operations, and WAAC, a daytime-only operation) and four of which are Class B FM stations, operating on the only FM channels assigned: Channel 250 (WTHI–FM), Channel 264 (WVTS), Channel 274 (WPFR–FM) and Channel 298 (WBOW–FM). There is also a Class A FM station (WWVR, Channel 288A) in the neighboring community of West Terre Haute. A Terre Haute FM educational station (WISU), licensed to the trustees of Indiana State University (WISU), operates on Channel 209.

28. In support of its proposal, Citizens states that it operates the only AM station at Terre Haute limited to daytime-only operation and the only one without a companion FM station and that, if another Class B FM channel is assigned to Terre Haute, it will apply for its use, specifying maximum permissible facilities of 50 kW at 500 feet with circular polarization. Only one of the four existing Terre Haute FM stations, it observes, now operates with maximum facilities. Citizens also states that Terre Haute is relatively remote from larger metropolitan areas, being some 70 miles west of Indianapolis, Indiana, 100 miles north of Evansville, Indiana, 120 miles east of Springfield, Illinois, and 160 miles south of Chicago, with the closest cities of significant size, Bloomington, Indiana (1970 pop. 42,890), 50 miles to the southeast, and Danville, Illinois, some 47 miles to the north; that because of Terre Haute's remoteness from larger metropolitan areas, its size, educational, cultural and social institutions, and its business and civic leaders, it is the business, cultural and social center of west central Indiana and east central Illinois, as well as the central city of the West Central Indiana Economic Development District (Clay, Parke, Sullivan, Vermilion and Vigo counties), financed by local and federal funds. Citizens further avers that agriculture is the principal industry in the Terre Haute area, particularly to the west, north and east; that Terre Haute's industry is well diversified, as its given examples show, and includes a total of 138 manufacturing plants; and that Terre Haute educational institutions include Indiana State University, Rose-Hulman Institute of Technology and St. Mary-of-the-Woods College.

29. Citizens urges that Hoopeston should not be preferred to Terre Haute for a Class B channel since a Class A assignment to Hoopeston would be more appropriate in view of its size, and Channel 265A may be assigned to Hoopeston. As between Terre Haute and Danville, it contends that Terre Haute should be preferred for an additional Class B assignment because of its size, its remoteness from any large population center, and its importance to the west central Indiana and east central Illinois region. Of significance, it believes, is the proximity of Danville to the contiguous cities of Urbana and Champaign, Illinois, with a combined total population of 89,332, 32 miles to the west of Danville. Citizens also believes that Terre Haute should be preferred to Lafayette for an additional Class B assignment in light of our policy of avoiding intermixture of Class A and B channels in the same community when possible and the likelihood of economic hardship to the remaining Lafayette Class A station if the other Lafayette Class A station is replaced with a Class B station.

30. Citizens' preclusion study shows that a Terre Haute Channel 242 or Channel 243 assignment would foreclose future assignments only on Channels 240A, 242 and 243. The Channel 240A preclusion area would be limited to in and near Terre Haute where the only community without a broadcast facility is Clinton, Indiana (population, 5,340), located some 13 miles north of Terre Haute. The Channel 242 preclusion area, a narrow strip 35 miles long and one to five miles wide, is located some 18 miles north of Terre Haute, and there are no communities in or near this area which would warrant a Class B assignment. The small Channel 243 preclusion area is located some 16 miles northwest of Terre Haute and four miles east of Paris, Illinois (population 9,971). Although Channel 243 could be assigned to Paris, it has one Class B assignment (WACF–FM, Channel 253) and does not appear to warrant a second.

31. While Citizens claims that its Terre Haute Channel 242 proposal would serve 315,830 persons and its Channel 243 proposal, 267,081 persons, it submitted no information as to the area and population, if any, which would be provided with a first and a second FM service by either. To permit proper evaluation of the need for additional service in the Terre Haute area, Citizens should submit such information, based on the Roanoke Rapids-Goldsboro criteria, which requires consideration of unoccupied FM assignments, as well as existing stations. This is stressed since we note that Radio Lafayette, in comparing the service potential of its Lafayette Channel 243 proposal with Citizens' Terre Haute Channel 243 proposal in its opposition, bases its claim that the Terre Haute Channel 243 proposal would provide a first FM service to 492 persons in an area of 30.2 square miles on consideration of existing stations only and that it did not take the unoccupied Rockville, Indiana, Channel 285A assignment into consideration. As before mentioned, Radio Lafayette's "unserved" and "underserved" service claims for its Lafayette Channel 243 proposal are also

[4] Radio Lafayette also on November 8, 1973, filed herein the same untimely supplemental comments which it filed in RM–2161. They are also accepted herein since they merely inform that its Lafayette Channel 243 proposal in RM–2161 (mutually exclusive with the Terre Haute alternative Channel 242 and Channel 243 proposals) would also permit the assignment of Channel 241 to Danville (by changing the Fowler 240A assignment) by the means proposed and discussed in paragraph 16, *supra*. A letter supporting Citizens' petition was also received from Michael Ditto of Terre Haute.

based on consideration of existing stations only, and it also should submit information as to the service potential of its proposal based on consideration of unoccupied assignments also.

32. Eastern and Raftis contend that there is no justification for a fifth Terre Haute FM assignment because of any need for an additional FM service since, in addition to service from its four FM and three AM local stations, Terre Haute is served by the West Terre Haute Class A station (WWVR), and there is also a Class B station (WACF–FM) at Paris, Illinois, 16 miles to the west of Terre Haute and a Class A station at Brazil, Indiana (WWCM), 16 miles to the east of Terre Haute, where an unoccupied Class A channel is also assigned. They also argue that an additional Terre Haute FM assignment is not warranted since Terre Haute now has the full complement of FM assignments to which a city of its size (70,286 pop.) is entitled under our population guidelines for FM assignments[5]; and since Terre Haute had a three percent decrease in population between 1960–1970 and the declining population growth trend is expected to continue over the 1970–1980 decade. They further raise the question of whether an additional FM assignment would have an adverse economic impact upon radio broadcasting in the Terre Haute market, pointing out that our AM–FM Market Financial Data reports show that radio stations in the market had aggregate losses, before taxes, for 1969, 1970 and 1971 (also 1972), and that while Terre Haute ranks by SMSA population as the 174th ranking market, it has lower radio broadcast revenues than all but three of the 19 next smaller markets included in our annual FCC financial data reports and that the 1971 aggregate loss of $100,647 by Terre Haute stations[6] exceeded almost three times that of any of the 19 next smaller markets, only two of which had any loss at all. They both urge that the Hoopeston, Lafayette, and Danville proposals herein should take precedence over Citizens' proposal. Radio Lafayette also contends that Lafayette has a far greater need for a second Class B assignment than Terre Haute for a fifth Class B assignment, considering the number of existing FM services each community has and the expanding growth trend of Lafayette and West Lafayette in contrast to the declining growth trend of Terre Haute and West Terre Haute. Radio Lafayette also contends that if one of the conflicting Terre Haute alternative proposals cannot prevail over its Lafayette proposal on its own merits, it cannot prevail either by combining it with the Danville proposal.

33. Raftis also claims that the antenna site for either a Terre Haute Channel 242 or Channel 243 station would be required to be at such a distance from the city to meet spacing requirements that it would have difficulty in obtaining a line-of-sight over it, due to the hills and higher terrain around Terre Haute, as well as the tall buildings in its northern section, and that, consequently, it would not be able to provide the required 3.16 mV/m signal over the city. However, since the Raftis engineering statement contains no exhibits showing the degree of shadowing that would occur or the extent of signal attenuation that would be expected because of obstacles in the radial paths, this claim is difficult to weigh. Such a showing would be helpful.

34. In addition, Raftis claims that, since Stations WTHI–FM and WISU (FM) at Terre Haute operate from sites in the downtown area, the blanketing effects of their signals would prevent the reception of a weak signal emanating from a distantly located Terre Haute Channel 242 or Channel 243 station. However, since Station WISU (Channel 209) would be at least 33 channels removed (6.6 mHz) from Channel 242, and Station WTHI–FM (Channel 260), 17 channels removed (3.4 mHz) from Channel 243, it is hard to perceive that they would prevent the reception of a station which would provide at least the required 3.26 mV/m signal over the city.[7]

35. Citizens, in its reply, besides adverting to the lack of substance in the Raftis technical claims against its Terre Haute proposals, contends that the Raftis and Eastern oppositions represent but attempts to avoid competition and that of Radio Lafayette is advanced solely because its Terre Haute Class B proposals conflict with its Lafayette Class B proposal. Citizens also argues that no substance can attach to Eastern's objection to its proposal on economic grounds since it furnished no showing on whether Eastern's own Terre Haute AM and FM stations were operating at a profit or with losses or any data which would establish a threshold showing of economic injury or potential economic injury.

DISCUSSION

36. These Class B assignment proposals of the proponents for Hoopeston, Danville, Lafayette and Terre Haute present cases where the FM assignments requested would not conform with our FM assignment criteria and policy and would not normally be made in the absence of a compelling, overriding public interest reason or reasons for, nevertheless, making them. Absent such a showing, we would not assign the requested Class B channel to Hoopeston, especially when it appears that an available Class A channel may be assigned, since Class A channels are designed to serve the needs of relatively small communities of its size. Nor, since the requested third Danville Class B assignment would exceed our criterion of two channels for cities of less than 50,000 in populations, and the requested fifth Terre Haute Class B assignment would exceed our criterion of two to four channels for cities between 50,000 and 100,000 in population, would we ordinarily conclude that either community is entitled to an additional assignment. Also, since as a matter of policy we believe it serves the public interest to avoid intermixing Class A and Class B assignments in the same community insofar as possible and feasible in order that all local stations may have comparable facilities for service and competition, we would ordinarily be adverse to changing the mixture of classes of assignments already existing in Lafayette, as requested by Radio Lafayette, from one Class B and two Class A assignments (all occupied) to two Class B and one Class A assignments, absent a strong showing that the public interest gains to be had by the change would not be offset by its adverse effect upon the remaining local Class A station.

37. The showings thus far made by the proponents on these Class B proposals for Hoopeston, Danville, Lafayette and Terre Haute, and on the alternatives proposed to remove conflicts between all but the Terre Haute and Lafayette proposals, do not entirely convince us that there is a sufficient basis to warrant favorable action on any of them, except possibly the alternative Class A proposal for Hoopeston, upon which Steinhart, the proponent of the Hoopeston Class B proposal has not commented. Before reaching any decision on the proposals or on the substance of the arguments advanced for and against them in the petitions and related pleadings, however, we believe it will be helpful to consider them in rule making in light of the additional requested information on the proposals supplied by the proponents and any further comments which they or other interested parties may submit.

38. In view of the foregoing, and pursuant to authority found in Sections 4 (i), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's rules, we propose to con-

[5] Under these guidelines, 2 to 4 FM channels may be assigned to communities with populations ranging from 50,000 to 100,000. Further Notice of Proposed Rule Making, adopted July 25, 1962 (FCC 62–867), and incorporated by reference in paragraph 25 of the Third Report Memorandum Opinion and Order in Docket No. 14185 (40 F.C.C. 747) (1963).

[6] This given loss figure represents the aggregate reported 1971 loss of but 4 Terre Haute SMSA radio stations (3 AM and 1 FM), shown in Table 22 of our "AM–FM Broadcast Financial Data, 1971," report, released December 15, 1972 (Mimeo 92704). The financial data for the four Terre Haute SMSA FM stations reporting separately is given in Table 20, and it shows that they reported an aggregate 1971 loss of $13,235, making the total aggregate 1971 loss of Terre Haute SMSA stations, $113,882, instead of $100,647.

The "AM–FM Broadcast Financial Data, 1972," report released December 21, 1973 (Mimeo 12803) shows a 1972 loss of $68,241 for the four AM and AM–FM Terre Haute SMSA stations reporting in Table 19 page 11, and a 1972 loss of $22,847 for the four Terre Haute FM stations reporting separately (Table 20), makng the total aggregate 1972 loss of Terre Haute SMSA radio broadcast stations, $91,088.

[7] Section 73.317(a)(14) of the rules requires any emission of signal from FM stations more than three channels removed from the station in question to be 80 decibels below the level of the unmodulated carrier.

sider the following six alternative proposals of the Hoopeston, Danville, Lafayette and Terre Haute proponents for amending the FM Table of Assignments, § 73.202(b) of the Commission's rules, with respect to the communities named.

	City	Add	Delete
I.	Hoopeston, Ill	[1] 241	
	Fowler, Ind	252A	240A
II.	Hoopeston, Ill	265A	
	Danville, Ill	[2] 241	
	Fowler, Ind	252A	204A
III.	Hoopeston, Ill	265A	
	Fowler, Ind	252A	240A
	Lafayette, Ind	[3] 243	244A
IV.	Hoopeston, Ill	265A	
	Terre Haute, Ind	[4] 242	
V.	Danville, Ill	[5] 241	
	Hoopeston, Ill	265A	
	Fowler, Ind	252A	240A
	Terre Haute, Ind	[6] 243	
VI.	Danville, Ill	[7] 241	
	Hoopeston, Ill	265A	
	Fowler, Ind	252A	240A
	Lafayette, Ind	[7] 243	244A

[1] To meet minimum spacing requirements of the rules, a transmitter site at least 11 miles south of Hoopeston would be required.

[2] To meet spacing requirements, a site at least 6 miles northwest of Danville would be required.

[3] To meet spacing requirements, a site at least 14 miles west southwest of Lafayette would be required.

[4] To meet spacing requirements, a site approximately 18 miles north from the center of Terre Haute would be required.

[5] To meet spacing requirements, a site at least 6 miles northwest of Danville would be required.

[6] To meet spacing requirements, a site approximately 16 miles northwest of Terre Haute and 4 miles east of Paris, Ill., would be required.

[7] To meet spacing requirements, this alternative would require that the Clinton, Ill., Channel 240A assignment, presently unoccupied, be used at an antenna site at least 4 miles west of Clinton; that the site for a Danville Channel 241 station be approximately 11 miles northwest of Danville; and that the site for a Lafayette Channel 243 station be approximately 10 miles west of Lafayette.

39. *Showings required.* Comments are invited upon the various alternative proposals discussed and listed above. As indicated, the Commission has reservations and questions concerning the proposals, and proponents of the proposed assignments will be expected to answer whatever questions are raised and to supply whatever information is requested in the Notice, and also to answer other questions that may be presented in initial comments directed to their proposals. The proponents are expected to file comments even if they only resubmit or incorporate by reference their former pleading. They should also restate their present intention to apply for the channel if it is assigned and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

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

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

(b) With respect to petitions for rule making which conflict with 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 in this docket.

41. Pursuant to applicable procedures set out in Section 1.415 of the Commission's Rules and Regulations, interested parties may file comments on or before March 6, 1974, and reply comments on or before March 18, 1974. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings.

42. In accordance with the provisions of section 1.419 of the Commission's Rules and Regulations, an original and fourteen copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

43. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C. (1919 M Street, N.W.).

Adopted: January 25, 1974.

Released: January 31, 1974.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARTIN I. LEVY,
Acting Chief,
Broadcast Bureau.

[FR Doc.74-2896 Filed 2-4-74;8:45 am]

[47 CFR Part 73]

[Docket No. 19816, RM-1851, 1874]

EDUCATIONAL BROADCAST LICENSES

Order Extending Time for Filing Comments and Reply Comments

In the Matter of Ascertainment of Community Problems by Educational Broadcast Applicants; Amendment of Section IV (Statement of Program Service) of FCC Broadcast Application Forms 340 and 342 (Noncommercial Educational Broadcast Applications); and Formulation of Rules and Policies Relating to the Renewal of Educational Broadcast Licenses.

1. On September 6, 1973, the Commission adopted a notice of inquiry and notice of proposed rule making in the above-entitled proceeding. Publication was given in the FEDERAL REGISTER on September 19, 1973, 38 FR 26212. The dates for filing comments and reply comments are presently February 1, and March 1, 1974, respectively.

2. On January 24, 1974, counsel for Public Broadcasting Service (PBS) requested that the time for filing comments and reply comments be extended to February 22 and March 22, 1974, respectively. Counsel states that the additional time is needed to analyze the results of a poll it conducted, to finish its comments, and to permit consultation between staff, the membership of PBS and counsel concerning those comments.

3. We are of the view that the public interest would be served by extending the time in this proceeding. *Accordingly, It is ordered,* That the dates for filing comments and reply comments are extended to and including February 22 and March 22, 1974, respectively.

4. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules.

Adopted: January 28, 1974.

Released: January 29, 1974.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.74-2897 Filed 2-4-74;8:45 am]

FEDERAL ENERGY OFFICE

[10 CFR Part 211]

MANDATORY PETROLEUM ALLOCATION REGULATIONS

Certain Allocations of Distillate Fuels

The Federal Energy Office hereby gives notice of a proposal to amend Title 10 of the Code of Federal Regulations, Part 211, Subpart G concerning certain allocations of No. 2 distillate fuels to principal suppliers in PAD District I (PAD–I).

Recent dramatic increases in the prices for imported No. 2 heating oil have caused serious imbalances in the pricing structure of the heating oil industry in PAD–I which relies heavily on imports of No. 2 distillate to meet the demands of the region. These imbalances are of such a magnitude as to warrant action by FEO to equalize allocations of domestically produced and imported distillates (up to 1973 sales levels) in order to foster maintenance of a diversified heating oil industry in PAD–I.

The proposed rule would result in allocation of an amount of distillate fuels not greater than the total amount of fuels sold in 1973 periods, under a new § 211.124. The amount of domestic product to be allocated would be an amount represented by the ratio which available domestic distillate fuels (up to 1973 sales levels) bears to the amounts sold during 1973. A similar ratio would be calculated for imported No. 2 distillate fuels. By the requirements to sell distillate under this proposed method, all suppliers would receive a quantity of product in the same proportion which the amount of the product sold in 1973 bears to all 1973 period sales of No. 2 distillate fuels. If total available supply of distillate product is less than 1973 sales, the quantities would be reduced accordingly.

Requirements for buying and selling distillate fuels in PAD–I would be established and announced by FEO, in a manner similar to the buy-sell publications for crude oil. Time periods for transactions under the distillate buy-sell rules would also be similar. The program would operate on a calendar quarter basis beginning March 1, 1974, and the allocation ratios would be calculated each quarter allowing for quarterly review of the pro-

gram. No base period relationships are used in determining sales under this allocation program, since the focus is to provide current equitable distribution up to amounts of fuel sold in 1973.

Price rules proposed to apply under this program would require the sale of domestic distillate either at cost or at the lowest selling price to the class of purchaser. Imported product would be sold under the allocation system at a price not greater than the seller's landed cost. Prices for both types of product would be determined at the seller's point of sale nearest to the buyer.

Interested persons are invited to participate in the rulemaking by submitting written data, views or arguments with respect to the proposed regulation set forth in this notice to the Executive Secretariat, Federal Energy Office, Washington, D.C.

Comments should be identified on the outside envelope and on the document submitted to the Federal Energy Office Executive Secretariat with the designation "Proposed PAD–I Distillate Allocation." Ten copies should be submitted. All comments received by February 10, 1974, will be considered by the Federal Energy Office before final action is taken on the proposed regulation.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159, E.O. 11748, 38 FR 33575; Economic Stabilization Act of 1970, as amended, Pub. L. 92–210, 85 Stat. 743; Pub. L. 93–28, 87 Stat. 27; E.O. 11730, 38 FR 19345; Cost of Living Council Order No. 47, 39 FR 24)

In consideration of the foregoing, it is proposed to amend Part 211 of Chapter II, Title 10 of the Code of Federal Regulations as set forth below.

Issued in Washington, D.C., February 1, 1974.

JOHN C. SAWHILL,
Deputy Administrator,
Federal Energy Office.

1. Sections 211.124, 125 and 126 are renumbered §§ 211.125, 126 and 127 respectively.

2. Section 211.124 is added to read as follows:

§ 211.124 Principal Supplier Program.

(a) *Scope.* This section describes the method of determining the allocation of No. 2 distillate fuels between and among principal suppliers in PAD District I. The requirements imposed by this section must be met prior to the provisions of §§ 211.125 and 211.126.

(b) *Definitions.* For purposes of this section—

"Allocation quarter" means a consecutive three-month calendar period commencing March 1, 1974.

"Domestic allocable amount" means, with respect to a principal supplier, the lesser of the sum of the amount of domestic No. 2 distillate fuels estimated to become available in PAD–I for an allocation quarter plus the amount of domestic No. 2 distillate fuel in inventory for PAD–I on the first day of the month preceding the allocation quarter, or the in PA–I during a corresponding three total amount of domestic No. 2 distillate fuel sold in PAD–I during a corresponding three-month period in 1973.

"Domestic allocation fraction" means, for an allocation quarter, the ratio which the total of the domestic allocable amounts for all principal suppliers bears to the total amount of No. 2 distillate fuels sold in PAD–I during a corresponding three-month period in 1973.

"Imported allocable amount" means, with respect to a principal supplier, the lesser of the sum of the amount of imported No. 2 distillate fuels estimated to become available in PAD–I for an allocation quarter plus the amount of imported No. 2 distillate fuel in inventory for PAD–I on the first day of the month preceding the allocation quarter, or the total amount of imported No. 2 distillate fuel sold in PAD–I during a corresponding quarter of 1973.

"Import allocation fraction" means, for an allocation quarter, the ratio which the total of the imported allocable amounts for all principal suppliers bears to the total amount of No. 2 distillate fuels sold in PAD–I during a corresponding three month period of 1973.

"No. 2 distillate fuels" means No. 2 heating oil and No. 2–D diesel fuel.

"Principal suppliers" means all refiners which produce, and any person which imports, for sale in PAD District I, any No. 2 distillate fuels.

"Principal supplier's domestic allocation" means the amount of domestic No. 2 distillate fuel which will be allocated to a particular principal supplier in an allocation quarter under this section, equal to the product of the principal supplier's total No. 2 distillate sales during a corresponding three month period in 1973, multiplied by the domestic allocation fraction for that allocation quarter.

"Principal supplier's import allocation" means the amount of imported No. 2 distillate fuel which will be allocated to a particular principal supplier in an allocation quarter under this section, equal to the product of the principal supplier's total No. 2 distillate sales during a corresponding three month period in 1973, multiplied by the import allocation fraction for that allocation quarter.

(c) *Reports by principal suppliers.* (1) Within 7 days of the effective date of this section, each principal supplier shall report to the FEO the following information for the allocation quarter commencing March 1, 1974:

(i) The amounts of imported and the amounts of domestic No. 2 distillate fuels sold in PAD–I during the period March 1, 1973 through May 31, 1973;

(ii) The amounts of imported and the amounts of domestic No. 2 distillate fuels estimated to be produced or to become available in PAD–I to that principal supplier for the allocation quarter commencing March 1, 1974;

(iii) The amounts of imported and the amounts of domestic No. 2 distillate fuel in ventory in PAD–I as of February 1, 1974 and the amounts of these fuels estimated to be in inventory as of March 1, 1974; and

(iv) The domestic allocable amount and the imported allocable amount for the allocation quarter commencing March 1, 1974.

(2) Within 5 days after the start of each month preceding the first month of each succeeding allocation quarter, each principal supplier shall report to the FEO the following information for that allocation quarter:

(i) The amounts of imported and the amounts of domestic No. 2 distillate fuels sold in PAD–I during the corresponding three month period in 1973;

(ii) The amounts of imported and the amounts o fdomestic No. 2 distillate fuels estimated to be produced or to become available in PAD–I to that principal supplier in the allocation quarter concerned;

(iii) The amounts of imported and the amounts of domestic No. 2 distillate fuel in inventory in PAD–I as of the first day of the month preceding the first month of the allocation quarter concerned and the amounts of these fuels estimated to be in inventory as of the first day of the month of the allocation quarter concerned;

(iv) The domestic allocable amount and the imported allocable amount for the allocation quarter concerned; and

(v) Any adjustment to the amounts and estimates reported during the prior quarter necessary to reflect actual amounts and transactions during that quarter.

(d) *FEO action.* (1) Following receipt of the reports required in paragraph (c) of this section, the FEO will calculate the following information:

(i) The total of all imported allocable amounts for PAD–I;

(ii) The total of all domestic allocable amounts for PAD–I;

(iii) The total amount of No. 2 distillate fuel sold during the corresponding three month period of 1973 in PAD–I;

(iv) The domestic allocation fraction for PAD–I;

(v) The import allocation fraction for PAD–I; and

(vi) Each principal supplier's domestic allocation and each principal supplier's import allocation.

(2) Within 7 days of receipt by FEO of the report required in paragraph (c) (1) of this section and within 10 days of receipt by FEO of the report required in paragraph (c) (2) of this section, the FEO, based on the calculations described in paragraph (d) (1) of this section, will publish a list of buying opportunities and selling obligations for each principal supplier for PAD–I for the allocation quarter. The amount of domestic No. 2 distillate fuel required to be bought or sold by a particular principal supplier shall be determined by calculating the difference between the principal supplier's domestic allocation and its domestic allocable amount. The amount of imported No. 2 distillate fuel required to be bought or sold by a particular principal supplier shall be determined by calculating the difference between the

principal supplier's import allocation and its imported allocable amount.

(3) Based upon the list published under paragraph (2) of this section, principal suppliers listed to sell No. 2 distillate fuels must offer for sale and sell to principal suppliers listed as eligible to purchase such fuels, amounts of distillate fuels as specified in the list.

(e) *Transaction time.* Principal suppliers required to sell, and principal suppliers permitted to buy under this section shall complete necessary transactions within 15 days of the publication of the buy-sell list. If principal suppliers are unable to complete transactions within the required time period, they must so notify FEO immediately, which may then order required sales.

(f) *Price.* Notwithstanding the provisions of Part 212 of this chapter, a supplier making a sale of No. 2 distillate fuel under this section shall establish the price as follows:

(i) The price for domestic No. 2 distillate fuels shall be the lesser of the actual cost of such fuel to the seller or the lowest price at or above which at least 10 percent of such fuel was priced in transactions with the class of purchaser concerned during May, 1973, calculated at the sellers bulk plant or sales terminal located nearest to the buyer.

(ii) The price for imported No. 2 distillate fuels shall be the seller's landed cost of such distillate fuel, calculated at the seller's point of landing located nearest to the buyer.

[FR Doc.74-3048 Filed 2-1-74;3:52 pm]

FEDERAL HOME LOAN BANK BOARD

[12 CFR Part 545]

[No. 74-47]

FEDERAL SAVINGS AND LOAN SYSTEM

Service Corporations; Correction

JANUARY 30, 1974.

The Federal Home Loan Bank Board hereby corrects FEDERAL REGISTER Document No. 73-1827 (Board Resolution No. 73-1827) which proposed to amend § 545.9-1 of the rules and regulations for the Federal Savings and Loan System (12 CFR 545.9-1), and which was published in the issue dated January 22, 1973, at 39 FR 2496, by changing the phrase "In the case of unsecured debt" at the beginning of § 545.9-1(b)(3)(i)(b) of the proposed regulation to read "In the case of secured debt".

By the Federal Home Loan Bank Board.

[SEAL] EUGENE M. HERRIN,
Assistant Secretary.

[FR Doc.74-2910 Filed 2-4-74;8:45 am]

[12 CFR Part 563b]

[No. 74-48]

FEDERAL SAVINGS AND LOAN INSURANCE CORP.

Proposed Amendment Relating to Acquisition of Control of Newly Converted Stock Insured Institutions

JANUARY 30, 1974.

On November 28, 1973, the Federal Home Loan Bank Board, in Resolution No. 73-1769, proposed to amend the Rules and Regulations for Insurance of Accounts (12 CFR Chapter V, Subchapter D) by adding thereto a new Part 563b, governing conversions of mutual insured institutions to the stock form of organization. Notice of such proposed rulemaking was duly published in the FEDERAL REGISTER of December 10, 1973 (38 FR 34060), with an invitation for interested persons to submit written comments by January 31, 1974.

Having considered a number of such comments, the Board considers it advisable to propose an additional provision relating to acquisition of control of newly converted insured institutions by companies significantly engaged in business activities not closely related to the activities of insured institutions. Accordingly, the Board hereby proposes to amend its outstanding proposal to add a new Part 563b by adding a new paragraph (i) to § 563b.3 thereof, to read as set forth below.

Subparagraph (1) of the new § 563b.3 (i) contains findings by the Board to the effect that newly converted stock insured institutions, because of the new infusion of capital, would be specially vulnerable to takeover attempts and that acquisition of control of such converted insured institutions by companies significantly engaged in unrelated business activities is inconsistent with economical home financing. The term "inconsistent with economical home financing" is found in section 403(c) of the National Housing Act and is a purpose of that Act which the Corporation is authorized to carry out by the adoption of regulations pursuant to section 402(a) of the Act.

Subparagraph (2) provides for a required agreement between the converted insured institution and the Federal Savings and Loan Insurance Corporation providing that no company significantly engaged, directly or through an affiliate, in an unrelated business activity (defined as any business activity not permitted for multiple savings and loan holding companies) could acquire control of the converted insured institution. A company would be significantly engaged in an unrelated business activity if such activity would represent more than 15 percent of the company's consolidated net worth or consolidated net income. Since the agreement would be mandatory, it would be limited to a 3-year period following conversion, during which time the converted insured institution could effectively invest its new capital. Section 407(e)(1) of the National Housing Act expressly recognizes the authority of the Corporation to impose conditions and require agreements in connection with the approval of applications.

Subparagraph (3) provides for an optional charter provision containing the same restriction, which may be adopted by a converted insured institution if State law permits. Since the charter provision is intended to enable a converted insured institution to protect itself from undesirable acquisition on a longer-term basis, the charter provision would be optional and could be amended by a vote of the shareholders. The charter provision could require that up to 75 percent of the total outstanding votes be cast for an amendment of that provision. If the converted insured institution elects to adopt the optional charter provision, the Corporation would impose, as a condition of the approval of the conversion, a requirement that the converted insured institution fully enforce the charter provision.

Interested persons are invited to submit written data, views and arguments to the Office of the Secretary, Federal Home Loan Bank Board, 101 Indiana Avenue NW., Washington, D.C. 20552, by February 20, 1974, as to whether this proposal should be adopted, rejected, or modified. Written material submitted will be available for public inspection at the above address unless confidential treatment is requested or the material would not be made available to the public or otherwise disclosed under § 505.6 of the General Regulations of the Federal Home Loan Bank Board (12 CFR 505.6).

§ 563b.3 General principles for conversions.

* * * * *

(i) *Acquisition of converted insured institutions.*

(1) *General.* The Board finds that the new capital to be received by converted insured institutions upon the sale of capital stock will cause such insured institutions, during an initial period following conversion, to be specially vulnerable to attempts by other companies to acquire control of such insured institutions. The Board further finds that acquisition of control of such insured institutions by companies significantly engaged in unrelated business activities is inconsistent with the provision of economical home financing by such insured institutions. Accordingly, the provisions of this paragraph are designed to prevent such acquisitions of newly converted insured institutions for a limited period of time following conversion sufficient to reduce or eliminate their special vulnerability and the adverse impact on the provision of economical home financing.

(2) *Required agreement.* No conversion shall be approved by the Corporation unless the plan of conversion provides that the converted insured institution shall enter into an agreement with the Corporation, in form satisfactory to the Corporation, which shall provide that for a period of three years following the conversion any company significantly engaged in an unrelated business activity, either directly or through an affiliate thereof, shall not be permitted, regardless of the form of the transaction, to acquire control of the converted insured institution.

(3) *Optional charter provision.* To the extent permitted by applicable State law, a plan of conversion may provide for a provision in the charter of the converted insured institution containing, in substance, the restriction set forth in subparagraph (2) of this paragraph. There may also be included a restriction providing that such charter provision may be amended only by a vote of up to 75 percent of the votes eligible to be cast at a regular or special meeting of shareholders of the converted insured institu-

tion. If the converted insured institution elects to adopt the foregoing optional charter provision, the Corporation will impose, as a condition to its approval of the conversion, a requirement that the converted institution fully enforce such charter provision.

(4) *Definitions.* As used in this paragraph—

(i) The term "affiliate" means any person or company which controls, is controlled by, or is under common control with, a specified company.

(ii) The term "control" shall have the meaning given to it by section 408(a)(2) of the National Housing Act, as amended.

(iii) A company shall be deemed to be "significantly engaged" in an unrelated business activity if its unrelated business activities would represent, on either an actual or a pro forma basis, more than 15 percent of its consolidated net worth at the close of its preceding fiscal year or of its consolidated net earnings for such fiscal year.

(iv) The term "unrelated business activity" means any business activity not authorized for a multiple savings and loan holding company under section 408(c)(2) of the National Housing Act, as amended, or under regulations adopted pursuant thereto.

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260 as amended; 12 U.S.C. 1725, 1726, 1730; sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

[SEAL] EUGENE M. HERRIN,
Assistant Secretary.

[FR Doc.74-2911 Filed 2-4-74;8:45 am]

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF STATE

[Public Notice CM–108]

STUDY GROUP 1 OF THE U.S. NATIONAL COMMITTEE FOR THE INTERNATIONAL TELEGRAPH AND TELEPHONE CONSULTATIVE COMMITTEE

Notice of Meeting

The Department of State announces a scheduled meeting of the United States Study Group on U.S. Government Regulatory Problems concerned with preparation for meetings of Study Groups of the International Telegraph and Telephone Consultative Committee of the International Telecommunication Union. The meeting will take place on Wednesday, February 13, 1974, at 10 a.m. in Room 847 of the Federal Communications Commission, 1919 M Street NW., Washington, D.C.

The agenda of this second preparatory meeting following the meeting of CCITT Study Group III, "General tariff principles; lease of telecommunications circuits," held in Geneva, Switzerland January 7–11, 1974 will, in the light of happenings at that meeting as well as the views developed in four previous preparatory meetings held between August and December, 1973, and one on January 31, 1974, look to the development of U.S. Contributions on questions assigned for study during the 1973–1976 study period and the development of U.S. positions on questions where it is decided not to submit U.S. Contributions. In particular, attention will be given to preparation of possible U.S. Contributions and of U.S. positions where it is decided not to submit Contributions, for a meeting of a Working Party of Study Group III to be devoted to possible revision of CCITT Recommendations D.1, D.2, and D.3 scheduled to be held June 10–14, 1974.

Members of the general public who desire to attend the meeting on February 13 will be admitted up to the limit of the capacity of the meeting room.

Dated: January 31, 1974.

RICHARD T. BLACK,
Chairman,
U.S. National Committee.

[FR Doc.74–2998 Filed 2–4–74;8:45 am]

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept. Circular, Public Debt Series No. 3–74, Amdt.]

7½ PERCENT TREASURY BONDS OF 1988–93

Seven and One Half Percent Treasury Bonds of 1988–93; Dated August 15, 1973, With Interest From February 28, 1974; Due August 15, 1993; Redeemable at the Option of the United States at Par and Accrued Interest on and After August 15, 1988

FEBRUARY 1, 1974.

Department Circular No. 3–74, is hereby amended by inserting in section IV, thereof, following the first sentence, the following sentence: "When payment is made in Treasury notes or bonds maturing on February 15, 1974, the accrued interest payment for the period from February 15 to February 28 on the bonds to be issued will not be collected."

[SEAL] JOHN K. CARLOCK,
Fiscal Assistant Secretary.

[FR Doc.74–3021 Filed 2–4–74;8:45 am]

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

STATE PLANNING AGENCY GRANTS

Notice of Availability

JANUARY 29, 1974.

Notice is hereby given that on December 10, 1973 the Law Enforcement Assistance Administration issued the manual "State Planning Agency Grants". These are the guidelines for Program 16.500 Law Enforcement Assistance—Comprehensive Planning Grants and 16.502 Law Enforcement Assistance—Part C Block Grants and Part E Grants distributed in block grant fashion. The objectives of the Planning Grant Program is to provide matching grants to States for the operation of State Law Enforcement Planning Agencies which develop and administer comprehensive State law enforcement improvement plans. The Block Grant Program provides matching grants to implement the State's comprehensive law enforcement program. Copies of this manual are available and may be obtained from the Regional office in any of the following cities:

LEAA—U.S. Department of Justice
147 Milk Street, Suite 800
Boston, Massauchusetts 02109

LEAA—U.S. Department of Justice
26 Federal Plaza, Room 1351
Federal Office Building
New York, New York 10007

LEAA—U.S. Department of Justice
325 Chestnut Street
Philadelphia, Pennsylvania 19106

LEAA—U.S. Department of Justice
730 Peachtree Street, N.E. Rm. 985
Atlanta, Georgia 30308

LEAA—U.S. Department of Justice
O'Hare Office Center, Rm. 121
3166 Des Plaines Avenue
Des Plaines, Illinois 60018

LEAA—U.S. Department of Justice
500 S. Ervay Street, Suite 313–C
Dallas, Texas 75201

LEAA—U.S. Department of Justice
436 State Avenue
Kansas City, Kansas 66101

LEAA—U.S. Department of Justice
Federal Building, Rm. 6519
Denver, Colorado 80202

LEAA—U.S. Department of Justice
1860 El Camino Real, 3rd Floor
Burlingame, California 94010

LEAA—U.S. Department of Justice
130 Andover Building
Seattle, Washington 98188

DONALD E. SANTARELLI,
Administrator.

[FR Doc.74–2875 Filed 2–4–74;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

OREGON STATE MULTIPLE USE ADVISORY BOARD

Notice of Meeting

Notice is hereby given that the Bureau of Land Management's Oregon State Multiple Use Advisory Board will meet on February 28, 1974, commencing at 8:30 a.m., in the Oregon State Office conference room, 729 NE Oregon Street, Portland, Oregon. The agenda for the meeting includes election of chairman, vice-chairman, and livestock and wildlife representatives to the National Advisory Board Council; restructuring of state and district advisory boards; status of

legislative proposals affecting BLM; recreation management in the Deschutes River, Steens Mountain, Owyhee River, and proposed primitive areas; wild horse management; land exchanges with the State of Oregon; status of a lawsuit brought by the Natural Resources Defense Council, et al; rangeland watershed management; management of energy minerals; and assignment of topics for further study by committees of the Oregon State Multiple Use Advisory Board.

The meeting will be open to the public. It is to be held in a room accommodating 100 people. In addition to discussion of agenda topics by board members, there will be opportunity for brief statements by non-members. Persons wishing to make oral statements should so advise the chairman or co-chairman prior to the meeting, to aid in scheduling the time available. Any person may file a written statement about an agenda topic for consideration by the board by sending it to the chairman, in care of the co-chairman: Oregon State Director, Bureau of Land Management, P.O. Box 2965, Portland, OR 97208.

ARCHIE D. CRAFT,
Oregon State Director.

JANUARY 25, 1974.

[FR Doc.74-2877 Filed 2-4-74;8:45 am]

National Park Service

[Order 77, Amdt. 2]

REGIONAL DIRECTORS

Delegation of Authority

Order No. 77, approved February 27, 1973, and published in the FEDERAL REGISTER of March 22, 1973 (38 FR 7478); and Amendment No. 1, approved June 18, 1973, and published in the FEDERAL REGISTER of June 26, 1973 (38 FR 16789) are hereby amended to change the designation references from Directors of National Park Service Regions to Regional Directors. Also section 2, paragraph (2) is hereby amended to read as follows:

SEC. 2. *Redelegation.* * * * (2) In the regional offices, procurement and contracting authority in excess of $2,000 may only be redelegated to the Associate Director, Administration, and the Chief, Division of Contracting and Property Management. Authority to contract for supplies, equipment, and services, including construction, may be redelegated by the Regional Directors to Superintendents as follows: Superintendents, Grade GS-12 and below not to exceed $2,000; Superintendents, Grade GS-13 not to exceed $50,000; Superintendents, Grade GS-14 not to exceed $100,000; Superintendents, Grade GS-15 not to exceed $200,000. Authority to contract for supplies, equipment, and services, including construction, may be redelegated by the Regional Director, Pacific Northwest Region to the State Director, Alaska and by the Regional Director, Western Region to the State Director, Hawaii not to exceed $100,000. The limitations in this subsection (2) of section 2 apply only to open market or nonmandatory sources of supply. Employees and officers who are otherwise authorized may continue to issue orders to GSA centers and sources under established Federal supply schedules of contracts in amounts exceeding $2,000.

(205 DM, as amended; 245 DM, as amended; sec. 2 of Reorganization Plan No. 3 of 1950.)

Dated: January 29, 1974.

RUSSELL E. DICKENSON,
Acting Director,
National Park Service.

[FR Doc.74-2908 Filed 2-4-74;8:45 am]

[Order No. 1]

PROCUREMENT AND PROPERTY MANAGEMENT SPECIALIST

Delegation of Authority

Delegation of Authority Regarding Execution of Contracts for Supplies, Equipment or Services.

SECTION 1. The Procurement and Property Management Specialist may execute and approve contracts not in excess of $10,000 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds. The authorities stated herein are applicable to the Southern Arizona Group in its entire jurisdiction.

SEC. 2. Redelegation. The authority delegated in Section 1 above may not be redelegated.

(National Park Service Order No. 77 (38 FR 7478), as amended; Western Region Order No. 7 (37 FR 6326) dated March 28, 1972)

Dated: December 20, 1973.

JOHN H. CLAY,
General Superintendent,
Southern Arizona Group.

[FR Doc.74-2909 Filed 2-4-74;8:45 am]

Office of the Secretary

[INT FES 74-8]

CROW CEDED AREA COAL LEASE WESTMORELAND RESOURCES MINING PROPOSAL

Availability of Final Environmental Statement

Pursuant to section 102(2)(c) of the National Environmental Policy Act, the Department of the Interior has prepared a Final Environmental Statement for the Crow Ceded Area Coal Lease-Westmoreland Resources Mining Proposal, Big Horn County, Montana.

The Environmental Statement considers human and physical environmental affects associated with the approval of a mining plan submitted by Westmoreland Resources for the strip mining of approximately 1,180 acres of land on which the coal rights belonging to the Crow Indians have been leased.

Copies are available for inspection at the following locations:

Office of Communications
Room 7200 Interior Building
Washington, D.C. 20240
Telephone (202)343-3171

Planning Support Group
Bureau of Indian Affairs
316 North 26th Street
Billings, Montana 59101
Telephone (406) 245-6321

Crow Agency Superintendent
Bureau of Indian Affairs
Crow Agency, Montana 59022
Telephone (406) 638-2671

Montana State Clearinghouse
Capitol Station
Helena, Montana 59601

Single copies of the Final Environmental Statement may be obtained from the Planning Support Group, Bureau of Indian Affairs, 316 North 26th Street, Billings, Montana 59101. Additional copies needed may be obtained by writing the National Technical Information Service, Department of Commerce, Springfield, Virginia 22151.

Dated: January 29, 1974.

WILLIAM A. VOGELY,
Acting Deputy Assistant
Secretary of the Interior.

[FR Doc.74-2876 Filed 2-4-74;8:45 am]

DEPARTMENT OF AGRICULTURE

Forest Service

MT. HOOD, ROGUE RIVER, WILLAMETTE NATIONAL FORESTS, OREGON

Vegetation Management Using Selective Herbicides; Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for vegetation management using selective herbicides on the Mt. Hood, Rogue River and Willamette National Forests, Oregon, for the period January 1, 1974 through June 30, 1975. USDA-FS-DES-(Adm)-74-72.

The environmental statement concerns a proposed use of selective herbicides for vegetation management on three National Forests located in the Cascade Mountains of Oregon. The proposed uses are for conifer crop tree release, site preparation prior to planting, utility and road right-of-way maintenance, range improvement, noxious weed control, and poison plant control.

This draft environmental statement was filed with CEQ on January 22, 1974.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
South Agriculture Bldg., Room 3231
12th St. & Independence Ave., S.W.
Washington, D.C. 20250

USDA, Forest Service
Pacific Northwest Region
319 S.W. Pine Street
Portland, Oregon 97204

Mt. Hood National Forest
340 N.E. 122nd Avenue
Portland, Oregon 97216

Willamette National Forest
210 E. 11th Avenue
Eugene, Oregon 97401

Rogue River National Forest
Federal Building
Medford, Oregon 97501

A limited number of single copies are available upon request to Regional Forester T. A. Schlapfer, Pacific Northwest Region, P.O. Box 3623, Portland, Oregon 97208.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, state, and local agencies as outlined in the CEQ guidelines.

Comments are invited from the public, and from state and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Regional Forester T. A. Schlapfer, USDA, Forest Service, Region 6, P.O. Box 3623, Portland, Oregon 97208. Comments must be received by March 22, 1974 in order to be considered in the preparation of the final environmental statement.

ADRIAN M. GILBERT,
Acting Deputy Chief,
Forest Service.

JANUARY 22, 1974.

[FR Doc.74-2886 Filed 2-4-74;8:45 am]

MOGOLLON RIM; PROPOSED LAND USE PLAN

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for a Proposed Mogollon Rim Land Use Plan, Coconino, Sitgreaves, and Tonto National Forests, USDA-FS-DES (Adm) 74-71.

The environmental statement considers probable environmental effects of the proposed land use plan.

The draft environmental statement was filed with CEQ on January 22, 1974.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
South Agriculture Bldg., Room 3230
12th St. & Independence Ave., SW
Washington, D.C. 20250

USDA, Forest Service
Southwestern Region
517 Gold Avenue, SW
Albuquerque, New Mexico 87102

Coconino National Forest
114 No. San Francisco Street
Flagstaff, Arizona 86001

Sitgreaves National Forest
203 West Hopi Drive
Holbrook, Arizona 86025

Tonto National Forest
102 South 28th Street
Phoenix, Arizona 85034

A limited number of single copies are available upon request to William D. Hurst, Regional Forester, Southwestern Region, U.S. Forest Service, 517 Gold Avenue SW, Albuquerque, New Mexico 87102.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151; and from the Colorado Plateau Environmental Advisory Council, P.O. Box 1389, Flagstaff, Arizona 86001. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

Comments are invited from the public, State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to the Forest Supervisor, Tonto National Forest, 102 South 28th Street, Phoenix, Arizona 85034. Comments must be received within 45 days after filing with CEQ in order to be considered in the preparation of the final environmental statement.

PHILIP L. THORNTON,
Deputy Chief, Forest Service.

JANUARY 22, 1974.

[FR Doc.74-2888 Filed 2-4-74;8:45 am]

SOLDIER MOUNTAIN SKI AREA EXPANSION AND DEVELOPMENT

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for Soldier Mountain Ski Area Expansion and Development in Idaho. Report number USDA-FS-DES (Adm) 74-70.

The environmental statement applies to National Forest land administered by the Intermountain Region, Forest Service, USDA, in Idaho. It covers the expansion and development of the Soldier Mountain Ski Area on the Sawtooth National Forest in Camas County, Idaho, from 235 acres to 1,240 acres, and to construct new developments consisting of five chair lifts and support facilities. Ultimate area capacity will be 1,500 skiers per day.

This draft environmental statement was filed with CEQ on January 21, 1974.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service
South Agriculture Bldg., Room 3230
12th Street & Independence Ave., SW.
Washington, D.C. 20250

USDA Forest Service
Sawtooth National Forest
1525 Addison Avenue East
Twin Falls, Idaho 83301

USDA, Forest Service
Federal Bldg., Room 5002
324-25th Street
Ogden, Utah 84401

USDA, Forest Service
Fairfield Ranger District
Sawtooth National Forest
Fairfield, Idaho 83327

A limited number of single copies are available upon request to Forest Supervisor E. A. Fournier, Sawtooth National Forest, 1525 Addison Avenue East, Twin Falls, Idaho 83301.

Copies are also available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151. Please refer to the name and number of the environmental statement above when ordering.

Copies of the environmental statement have been sent to various Federal, state, and local agencies as outlined in the Council on Environmental Quality guidelines.

Comments are invited from the public and from state and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Forest Supervisor E. A. Fournier, Sawtooth National Forest, 1525 Addison Avenue East, Twin Falls, Idaho 83301. Comments must be received by March 21, 1974, in order to be considered in the preparation of the final environmental statement.

ADRIAN M. GILBERT,
Acting Deputy Chief,
Forest Service.

[FR Doc.74-2887 Filed 2-4-74;8:45 am]

DEPARTMENT OF COMMERCE

Office of the Secretary

EXPORTERS' TEXTILE ADVISORY COMMITTEE

Notice of Public Meeting

The Exporters' Textile Advisory Committee will meet at 10 a.m. on February 12, 1974, in Room 4833, Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

The Committee, which is comprised of 21 members representing exporting firms and three trade associations, advises Department officials concerning ways of increasing U.S. exports of textile and apparel products.

The agenda for the meeting is as follows:

1. Review of Export Data.
2. Report on Conditions in Export Markets.
3. Discussion of East-West Trade Prospects.
4. Arrangement Regarding International Trade in Textiles.
5. EC Standards Directives for Textiles.
6. Ocean Freight Rate Changes.
7. Other Business.

A limited number of seats will be available to the public. The public will be per-

mitted to file written statements with the Committee before or after the meeting. To the extent time is available at the end of the meeting, the presentation of oral statements will be allowed.

Further information concerning the Committee may be obtained from Arthur Garel, Director, Office of Textiles, Main Commerce Building, U.S. Department of Commerce, Washington, D.C. 20230.

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance.

[FR Doc.74-3060 Filed 2-4-74;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-74-263]

ACTING AREA DIRECTOR

Designation

The listed officials are designated to serve as Acting Area Director, Seattle Area Office, in the order named, with all the powers, functions, and duties redelegated or assigned to the Area Director: *Provided*, That no official here listed is authorized to serve as Acting Area Director unless and until all the officials listed before him in this designation are unable to act by reason of absence:

1. David W. Peyton, Deputy Regional Administrator.
2. Deputy Director, Seattle Area Office.
3. Director, Operations Division, Seattle Area Office.
4. Area Counsel, Seattle Area Office.

(The authority for this designation is set forth in 36 FR 3389, February 23, 1971, sec. B.1; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535 (d))

Effective date. This designation is effective January 2, 1974.

OSCAR P. PEDERSON,
Regional Administrator, Seattle Regional Office.

[FR Doc.74-2902 Filed 2-4-74;8:45 am]

ATOMIC ENERGY COMMISSION

[Docket No. 50-286]

CONSOLIDATED EDISON CO.

Notice of Reconstitution of Board

In the matter of Consolidated Edison Company (Indian Point Nuclear Generating Station, Unit 3).

Dr. John C. Geyer was the environmental scientist member of the Atomic Safety and Licensing Board established to consider the above application. Because of a schedule conflict, Dr. Geyer is unable to continue in his duties as a member of this Board.

Accordingly, Dr. Franklin C. Daiber, whose address is College of Marine Studies, University of Delaware, Newark, Delaware 19711, is appointed a member of the Board.

Reconstitution of the Board in this manner is in accordance with § 2.721 of the rules of practice, as amended.

Dated at Washington, D.C., this 30th day of January 1974.

NATHANIEL H. GOODRICH,
Chairman, Atomic Safety and Licensing Board Panel.

[FR Doc.74-2884 Filed 2-4-74;8:45 am]

[Docket Nos. 50-354; 50-355]

PUBLIC SERVICE ELECTRIC AND GAS CO.

Notice of Reconstitution of Board

In the matter of Public Service Electric and Gas Company (Hope Creek Units 1 and 2).

The Atomic Safety and Licensing Board that was established previously to consider the above application, because of a schedule conflict, will be unable to continue to serve in this proceeding.

Accordingly, the following Board is hereby established:

Edward Luton, Esq., Chairman.
Ernest E. Hill, Member.
Dr. John R. Lyman, Member.

Mr. Luton's address is Atomic Safety and Licensing Board Panel, U.S. Atomic Energy Commission, Washington, D.C. 20545. Dr. Hill's address is Lawrence Livermore Laboratory, University of California, P.O. Box 808, L-123, Livermore, California 94550. Dr. Lyman's address is 404 Clayton Road, Chapel Hill, North Carolina 27514.

Reconstitution of the Board in this manner is in accordance with § 2.721 of the rules of practice, as amended.

Dated at Washington, D.C., this 30th day of January 1974.

NATHANIEL H. GOODRICH,
Chairman, Atomic Safety, and Licensing Board Panel.

[FR Doc.74-2883 Filed 2-4-74;8:45 am]

BIOMEDICAL APPLICATIONS SUBCOMMITTEE OF THE U.S. NUCLEAR DATA COMMITTEE

Notice of Meeting

FEBRUARY 1, 1974.

The Biomedical Applications Subcommittee of the Atomic Energy Commission's U.S. Nuclear Data Committee (USNDC) will hold a meeting at the Mayo Clinic, Mayo Building, 19th Seminar Room, Rochester, Minnesota, on February 19, 1974. The meeting will begin at 10:00 a.m. and end at approximately 5:00 p.m., and will be open to the public.

The preliminary agenda for the meeting is as follows:

TUESDAY, FEBRUARY 19, 1974

10 a.m.-12 noon—Terms of Reference
1:30-3 p.m.—Subcommittee Report
3-5 p.m.—Nuclear Data of Biomedical Interest

Practical consideration may dictate alterations in the above agenda or schedule.

The Chairman is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business.

With respect to public participation in agenda items listed above, the following requirements shall apply:

(a) Persons wishing to submit written statements on those agenda items may do so by mailing 25 copies thereof, postmarked, if possible, no later than February 13, 1974, to the Chairman, Biomedical Applications Subcommittee, USNDC (Dr. J. E. Robertson), Nuclear Medicine Division, Mayo Clinic Rochester, Minnesota 55901. Minutes of the meeting will be kept open for 30 days for the receipt of written statements for the record.

(b) Those persons submitting a written statement in accordance with paragraph (a) above may request an opportunity to make oral statements concerning the written statement. Such requests shall accompany the written statement, and shall set forth reasons justifying the need for such oral statement and its usefulness to the Committee. To the extent that the time available for the meeting permits, the Committee will receive oral statements during a period of not more than 30 minutes at an appropriate time, chosen by the Chairman, between the hours of 2:00 p.m. and 3:00 p.m. on February 19, 1974.

(c) Requests for the opportunity to make oral statements shall be ruled on by the Chairman of this Subcommittee, who is empowered to apportion the time available among those selected by him to make oral statements.

(d) Information as to the Chairman's ruling on requests for the opportunity to present oral statements, and the time alloted, can be obtained by a prepaid telephone call to the office of the Chairman of the Biomedical Applications Subcommittee (Dr. Robertson), telephone: 507-282-2511, extension 3301.

(e) Questions may be asked only by members of the Subcommittee and its consultants.

(f) Seating for the public will be available on a first-come, first-served basis.

(g) Copies of minutes of public sessions will be made available for copying, in accordance with the Federal Advisory Committee Act, on or after March 25, 1974, at the Atomic Energy Commission's Public Document Room, 1717 H Street, NW, Washington, D.C., upon payment of all charges required by law.

JOHN C. RYAN,
Advisory Committee Management Officer.

[FR Doc.74-3012 Filed 2-4-74;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket 26257, et al.; Order 74-1-155]

AIRLIFT INTERNATIONAL, INC. ET AL.

Order of Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 30th day of January, 1974.

In the matter of increased freight rates proposed by Airlift International, Inc., The Flying Tiger Line Inc., and Trans World Airlines, Inc. and the Domestic Air Freight Rate Investigation.

By tariff revisions[1] bearing the posting date of December 21, 1973, and marked to become effective January 31, 1974, Airlift International, Inc. (Airlift)

[1] Revisions to Airline Tariff Publishers, Inc., Agent, Tariffs C.A.B. 96, 131, and 169.

proposes to raise its domestic air freight rates as indicated below:

1. Segments of 1—800 miles—increase all domestic bulk and container rates by 15 percent.

2. Segments of 801—1,000 miles—increase by 13.5 percent.

3. Segments of 1,001 miles or more:

a. Eastbound and northbound rates—increase by 15 percent, but not to exceed rates in opposite direction in same market.

b. Westbound, southbound, and nondirectional rates—increase by 10 percent.

4. Increase bulk and container rates to/from San Juan by 12.5 percent.

5. No increase in minimum charges.

By tariff revisions[2] variously posted and marked to become effective January 31, 1974, The Flying Tiger Line Inc. (Tiger) proposes to increase its domestic air freight rates as follows:

1. Increase all bulk and container rates and charges, including minimum charges, by 7.5 percent.

2. Increase the bulk minimum chargeable weight per cubic foot to 8.9 pounds (194 cubic inches per pound) from 6.9 pounds (250 cubic inches) for general freight and 6.5 pounds (266 cubic inches) for cut flowers and nursery stock.

By tariff revisions bearing the posting date of January 4 and marked to become effective February 18, Trans World Airlines, Inc. (TWA) proposes to increase all of its bulk and container rates.[3] The bulk rates in each market are to be increased by 6 percent of the westbound 100-pound rate, with the resulting dollar increase applied to all weight breaks for both eastbound and westbound bulk and container rates. Minimum charges for bulk shipments are to be increased by $1.00 per shipment.

Complaints requesting suspension and investigation have been filed by the Society of American Florists (SAF) against Tiger's proposal and by the Western Growers Association (WGA) against the general increases by both Tiger and TWA.[4] SAF's complaint is directed entirely at the proposed "cube rule" change for florist products, while WGA's complaints object to the general rate increases for western produce shipments.

SAF's complaint alleges, inter alia, that (1) Tiger is "jumping the gun" by changing the cube rule while the Domestic Air Freight Rate Investigation is pending and has not reached final decision and is thus prejudging the outcome of the investigation; (2) the proposed change, resulting in a 37 percent increase in air freight charges for florist products will have an extremely damaging effect upon the florist industry, which has required a cube rule below general freight; (3) the current fuel crisis, which has resulted in a severe reduction of air freight capacity, is a temporary condition that should not be permitted to change such a fundamental ratemaking factor of such long standing; (4) the existence of an international weight rule of 8.9 pounds per cubic foot does not justify a change in the long-established domestic rule, for there is little or no similarity between domestic and international commerce; (5) the proposal is clearly discriminatory against the floral industry in that the densities of its products cannot be further improved without completely disrupting present market distribution practices; and (6) a combination of spiralling air freight costs and low market values has seriously jeopardized the floral industry's ability to continue utilizing air freight service on a nationwide basis.

WGA's complaints against the general rate increases of both carriers assert, inter alia, that (1) present air freight rates are at a maximum reasonable level on perishable commodities such as strawberries; (2) freight charges constitute a large percentage of the delivered price of perishable commodities and the increases proposed (especially by TWA) cannot be absorbed by the growers and will have to be passed on, in large part, to consumers; (3) if price increases lead to buyer resistance, the increase could cause the carriers a substantial loss of traffic and revenue; and (4) should the Board ultimately decide that rate increases are warranted, the complainant urges that, with respect to Tiger's proposal, a maximum increase be imposed which will protect the competitive relationships now existing between shippers from the West and those from southern origins, and with respect to TWA's proposal, that any increases permitted be by the same proportion.

In support of its proposal, Airlift asserts, inter alia, that (1) it would incur an operating loss of $3.1 million in 1974 without the proposed increases, and a loss of $1.3 million if the increases were obtained; and (2) the proposal reflects larger percentage increases in short-haul and directional (eastbound and northbound) markets, in accordance with known cost data.

In support of its proposal and in answer to the complaints, Tiger contends, among other things, that (1) rapidly escalating fuel costs are of such magnitude that they cannot be absorbed without a serious adverse effect on carrier profitability; (2) based on operations for the 12 months ended June 30, 1973, fuel cost increases would amount to $3.7 million added cost, the same amount as the revenues to be obtained by the proposed general increases (3) strawberries and other perishables already move at rates significantly below those applicable to other commodities; thus, exempting these products from the instant tariff adjustment would further increase that differential; (4) growers have not submitted any valid reason why the commodities shipped should not bear their share of increased transportation costs; and (5) growers have made no effort to specify what percentage of the transportation cost increases will be passed on to the consumer or the effect this would have on retail costs.

With regard to the cube-rule increase, Tiger states that this proposal is justified because (1) in view of the fuel shortage and the resulting restrictions on capacity, it is in the national interest that the rate structure should encourage more efficient packaging in terms of density; (2) the average density of domestic freight is 8.69 pounds and the design density of Tiger's DC–8–63F's is 10 pounds per cubic foot, both figures justifying the proposal; (3) the average increase for florist products will be zero for containers to 9.5 percent for bulk freight; and (4) the proposal will standardize the domestic cube rule with that for international freight.

In support of its proposal, TWA points to accelerating fuel expenses and to the necessity of reducing continued freighter operating losses. The carrier asserts that the increased revenue from its proposal would have yielded $4.8 million at 1973 traffic volume levels, of which $2.4 million would have applied to freight carried on cargo aircraft, but that freight services would still have been operated at a significant loss in 1973.[5]

The proposed rates and charges come within the scope of the "Domestic Air Freight Rate Investigation," Docket 22859, and their lawfulness will be determined in that proceeding. The issue now before the Board is whether to suspend the proposals or to permit them to become effective pending investigation.

We believe that the carriers have made persuasive showings of needs for higher revenues. The Board has been aware of the unprecedented spiralling costs of fuel in recent months and believes that some adjustment in rates and charges is warranted to offset these increased costs. In permitting certain of the increases proposed, we are considering only experienced increases or those to be shortly effected pursuant to existing contracts.[6]

Upon consideration of all relevant factors, however, the Board finds that the

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[2] Ibid.

[3] Ibid.

[4] The National Small Shipment Traffic Conference and the Drug and Toilet Preparation Traffic Conference filed a joint complaint requesting suspension and investigation of the proposed cube-rule change. However, the complaint was received in telegram form, was filed late, and did not conform with the filing requirements of the Board's Economic Regulations. Consequently, it is not accepted.

[5] The carrier contends that, even with the proposed rate increase, it would have incurred an operating loss of $9.9 million without considering any fuel cost increases, and $13.4 million with the inclusion of $3.5 million additional fuel expenses above 1972 levels.

[6] Tiger, in its support, claims that it has, through November 1, 1973, experienced cost increases over the middle of 1973 of 29 percent and presents data purporting to show that the contract price of fuel at one of its largest fueling points effective January 1, 1974, was 20.43 cents per gallon, 84 percent above the price of 11.11 cents during January 1973. TWA asserts that its current fuel prices are approximately 75 percent above the 1972 annual average price of 11.26 cents per gallon for its domestic system. Furthermore, it has received price commitments at several stations as of January 1, 1974 (which are purportedly representative of its system for the first quarter of 1974), averaging 21.00 cents, 80 percent above the average price for these stations for the year 1972.

proposals, to the extent that they apply to westbound general commodity rates and charges for both bulk and container shipments in markets involving lengths of haul of 1,800 miles and over, should be suspended. Although, as indicated, the carriers present justifications indicating their need for additional revenues, they make no showing that the rates proposed for various lengths of haul are in line with their costs. The proposed westbound general commodity bulk and container rates and charges for shipments of 1,800 miles or more appear excessive in relation to costs as indicated by data available to the Board.[7] As stated, no cost support has been provided by any of the carriers for increases in these longer haul markets. The remaining portions of the proposals, including general commodity rates and charges for less than 1,800 miles, the increases in eastbound general commodity rates at all distances, the increases in specific commodity rates and the cancellation of westbound specific commodity rates, and the change in cube rule appear sufficiently related to costs that the Board will permit them to become effective. The complaints, to the extent they request suspension thereof, will be dismissed.

As indicated, WGA requests that, if the Board permits Tiger's increases, it should maintain the competitive relationships between western and southern shippers. It should be noted, however, that Tiger does not serve southern origins, and thus its rates cannot themselves determine the differentials between western and southern origins. WGA also requests that, if the Board allows any increase proposed by TWA, they should be by the same proportion for all shipments (which method WGA opposes for Tiger). TWA's increases result in higher percentage increases for larger shipments, especially for eastbound specifics, as high as 18 percent. While we oppose excessive increases at one time, it should be noted that the current yields for the eastbound specifics, which would incur the largest percentage increase, are relative low. Thus, for 5,000-pound shipments of strawberries, which would incur the 18 percent increase mentioned above, the current yield is 8.9 cents per ton-mile and the yield for TWA's proposed rate is 10.5 cents. In the foregoing circumstances, the Board concludes that the carriers' proposals, with respect to the rates complained of by WGA, should not be suspended.

Increase in cube rule. The basic principle underlying this rule is that low-density freight (low weight per cubic content or displacement) should not be transported at actual weight, but instead at its "dimensional" or "volume" weight, because an aircraft is space-limited, as well as weight-limited. Stated in another way, in the absence of a dimensional rule, light density traffic would not pay its fair share of the costs of air transportation at the same rate per pound as dense traffic because rates are based on avoirdupois weight of the traffic.

The most efficient density of cargo, from the standpoint of aircraft operating economy, is that which would utilize both the maximum weight capacity and lift capacity of an aircraft. The current rule of 6.9 pounds per cubic foot (for all commodities except florist products) dates back to the days of the DC–3 and DC–4 type aircraft, which had a design density in that amount. Currently, the average design density of domestc all-cargo aircraft is approximately 11.6 pounds per cubic foot. On the other hand, the average stowed density is much less, 8.83 pounds per cubic foot.

In view of the foregoing, we believe that Tiger's proposal of 8.9 pounds per cubic foot for all commodities[8] represents an acceptable approach to the problem, subject to final solution in the "Domestic Air Freight Rate Investigation," Docket 22859. Stated otherwise, the Board does not find, from the facts before it, that this proposal warrants suspension pending the investigation in Docket 22859. Moreover, this proposal would achieve uniformity for all cargo, both domestic and international, by making all types of cargo subject to the same cube rule.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 1002 thereof,

It is ordered, That:

1. Pending hearing and decision by the Board, the increased rates, charges, and provisions described in Appendix A hereto[9] are suspended and their use deferred to and including April 30, 1974, for Airlift International, Inc. and The Flying Tiger Line Inc., and May 18, 1974 for Trans World Airlines, Inc., unless otherwise ordered by the Board and that no change be made therein during the period of suspension except by order or special permission of the Board;

2. Except to the extent granted herein, the complaints of the Society of American Florists in Docket 26270 and of the Western Growers Association in Docket 26257 and 26320 are dismissed; and

3. Copies of this order shall be filed with the tariff and served upon Airlift International, Inc., The Flying Tiger Line Inc., Trans World Airlines, Inc., and Society of American Florists, and upon the Western Growers Association, which is hereby made a party to Docket 22859.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.74–2923 Filed 2–4–74;8:45 am]

[Docket 25692; 25742; Order 74–1–153]

CONTINENTAL AIR LINES, INC. ET AL.

Application for Approval of Equipment Interchange Agreement

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 30th day of January, 1974.

Application of Continental Air Lines, Inc. and Western Air Lines, Inc. for approval of equipment interchange agreement. Application of Alaska Airlines, Inc. and Braniff Airways, Inc. for approval of equipment interchange agreement.

By motion filed January 14, 1974, the Bureau of Operating Rights seeks action by the Board directing the administrative law judge to certify the record to it for decision (5 U.S.C. 557(b) and Rule 22(d) of our Rules of Practice), and finding that due and timely execution of our functions imperatively and unavoidably requires omission of a tentative decision herein (5 U.S.C. 557(b)(2) and Rule 29 (b)). The administrative law judge has referred the motion to us for decision (Rule 18(e)).

The principal reason underlying both applications is the anticipated need for expedited air service for the increased passenger and cargo traffic between Alaska and the Southwest expected to result from the recently authorized construction of the Alaska Pipeline and the further oil exploration and production it is expected to spur. Construction of the pipeline is scheduled to begin on April 1, 1974.

Six answers to the motion have been filed. Fairbanks and Houston support the motion; the Alaska/Braniff applicants and Wien, respectively, support, and do not oppose the motion if provision is made for briefs and oral argument to the Board. Northwest opposes.

In their answer filed January 18, the Continental/Western applicants, voicing some misgiving of the practical effect, support the motion, but on January 22 they filed a motion for leave to file an otherwise unauthorized document,[1] which they designate as a reply to the answers to the Bureau's motion. Actually more of an amended answer, it reflects a further considered position that although the Bureau's proposal is legally sound, the practical chances of an opponent's obtaining a stay of our order (in the event of approval) would be enhanced thereby. Moreover, they argue, the initial-decision procedure can be made to be as fast, or almost so, as that sought by the Bureau. They ask that the Bureau's motion be denied, but, if it is granted, that oral argument be denied.

Although time is clearly of the essence

[7] Order 70–5–2, dated May 1, 1970.

[8] While flower charges would be increased to a maximum of 37 percent, Tiger claims that the average shipment increase would be much less, because the average dock density of flowers is 8.125 pounds per cubic foot.

SAF contends that the resulting higher charges would in effect result in a diversion of flower shipments from air transport. The Board, however, has found that previous increases in rates have not been a substantial cause for reduction in air traffic volume (Order 72–11–68). SAF has presented no additional data of significance that persuade us that the proposed increases will have material effect upon the movement of traffic.

[9] Appendix A filed as part of the original document.

[1] Hereby granted.

in these cases,[2] we are not persuaded that final decision in this case will be expedited by grant of the Bureau's motion.

Accordingly, it is ordered, That:

The subject motion be, and it is hereby denied.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.74-2920 Filed 2-4-74;8:45 am]

[Docket 25280; Order 74-1-131; Agreement C.A.B. 24112]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Relating to Specific Commodity Rates

Issued under delegated authority January 25, 1974.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers and other carriers, embodied in the resolutions of the Joint Conferences of the International Air Transport Association (IATA). The agreement which was adopted at the 16th meeting of the Joint Specific Commodity Rates Board held in Miami on October 29, 1973–November 1, 1973 has been assigned the above C.A.B. agreement number.

The agreement, inter alia, proposes revisions to the specific commodity rates structure applicable to/from U.S. points and points in Africa over the North Atlantic.[1] These revisions, insofar as they would affect air transportation, are outlined in the attachments hereto, and reflect reductions from the otherwise applicable rates.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14, it is not found that those portions of Agreement C.A.B. 24112 listed in Attachments A and B hereto are adverse to the public interest or in violation of the Act provided that approval is subject to the conditions hereinafter ordered.

Accordingly, *it is ordered,* That:

1. Those portions of Agreement C.A.B. 24112 listed in Attachments A and B[2] be and hereby are approved provided that approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publication; provided further that tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing; and

2. Action be and hereby is deferred with respect to that portion of Agreement C.A.B. 24112 pertaining to specific commodity rates proposed to/from U.S.-Europe/Middle East points over the North Atlantic.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.74-2922 Filed 2-4-74;8:45 am]

[Docket 25280; Order 74-1-152; Agreement C.A.B. 24178]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Agreement Relating to Increased Fuel Costs

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 30th day of January 1974.

An agreement has been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA). The agreement, adopted by mail vote for expedited February 1, 1974 effectiveness, has been assigned the above-designated C.A.B. agreement number.

The agreement would amend existing IATA Resolution 005ee relating to increases in North Atlantic cargo rates to compensate for increased fuel costs. The earlier agreement, which was approved by the Board in Order 73-12-77 (December 19, 1973), would have increased all North Atlantic cargo rates by a fixed amount equal to four percent of the 45 kilogram general cargo rate between New York and the various European points. However, that agreement was disapproved by certain other governments due to the fact that this method of application would have had the effect of increasing the lower rates in the structure (container rates, specific commodity rates, and general cargo rates at weightbreaks of 100–500 kilograms) by greater percentage amounts depending on the degree of discount from the 45-kilogram general cargo rate. As a result, the IATA carriers convened a policy meeting in New York during January 1974 and issued a mail vote, now adopted and filed as an agreement, to increase all New York-Europe rates by a flat six percent.

In our earlier order approving a worldwide increase in passenger fares and cargo rates to account for higher fuel costs, the Board found that the resulting revenue improvement would approximate the carriers' actual increased outlay for fuel, and could not be considered excessive. The situation with respect to fuel prices has not improved since December 1973, and accordingly we will approve the subject increase in North Atlantic cargo rates for effect February 1.

The Board, acting pursuant to sections 102, 204(a), 412 and 1002 of the Act, does not find that Resolution JT12 (Mail 829) 005ee, incorporated in Agreement C.A.B. 24178, is adverse to the public interest or in violation of the Act.

Accordingly, it is ordered, That:

1. Agreement C.A.B. 24178 be and hereby is approved;

2. The carriers are hereby authorized to file tariffs implementing the approved agreement on not less than one day's notice for effectiveness not earlier than February 1, 1974. The short-notice authority granted in this paragraph expires with February 28, 1974; and

3. Tariffs implementing the agreement shall be marked to expire not later than September 30, 1975.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.74-2921 Filed 2-4-74;8:45 am]

[Docket 25280; Order 74-1-130; Agreement C.A.B. 24099, 24112, 24113]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Agreements on Specific Commodity Rates

Agreements have been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers and other carriers, embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA). The agreements were adopted at the 35th Meeting of the TC1 Specific Commodity Rates Board, at the 16th Meeting of the Joint Specific Commodity Rates Board, and at the 10th Meeting of the TC3 Specific Commodity Rates Board all held in Miami on October 25, 29 and 26 respectively.

With respect to air transportation as defined by the Act, the agreements propose revisions to the specific commodity rate structures applicable in the Western Hemisphere, the South Pacific, North and Mid Atlantic,[1] and Asia/Australasia/Pacific areas. These revisions are outlined in the attachments[2] hereto, and reflect reductions from otherwise applicable general cargo rates.

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[2] In Order 73-11-25, consolidating these cases and setting them for hearing, we "recognize[d] the urgency and priority in the prompt disposition of these two applications * * *."

[1] Action with respect to co-rates proposed to/from U.S.-Europe/Middle East points over the North Atlantic will be deferred. Those portions of Agreement 24112 dealing with areas other than the North Atlantic were acted upon in Order 74-1-130.

[2] Attachments A and B filed as part of the original document.

[1] That portion of Agreement C.A.B. 24112 dealing with North Atlantic co-rates will be dealt with in a separate order.

[2] Attachments filed as part of original document.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14, it is not found that Agreements C.A.B. 24099 and 24113, and those portions of Agreement C.A.B. 24112 which do not pertain to North Atlantic specific commodity rates are adverse to the public interest or in violation of the Act, provided that approval is subject to the conditions hereinafter ordered.

Accordingly, IT IS ORDERED, That:

1. Agreements C.A.B. 24099 and 24113 and those portions of Agreement C.A.B. 24112 not pertaining to North Atlantic specific commodity rates be and hereby are approved, provided that approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publication; provided further that tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing; and

2. Action be and hereby is deferred with respect to that portion of Agreement C.A.B. 24112 pertaining to North Atlantic specific commodity rates.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.74-2919 Filed 2-4-74;8:45 a.m.]

[Docket No. 25315]

AIRPORT SECURITY CHARGES PROPOSED BY VARIOUS SCHEDULED AIR CARRIERS

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 March 5, 1974, commencing at 10 a.m. (eastern daylight saving time) in Room 911, 1825 Conn. Ave. NW., Washington, D.C., before Administrative Law Judge E. Robert Seaver.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the prehearing conference report served on October 23, 1973, 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 31, 1974.

[SEAL] E. ROBERT SEAVER,
Administrative Law Judge.

[FR Doc.74-2917 Filed 2-4-74;8:45 am]

[Docket No. 25002]

KUONI TRAVEL, INC.

Notice of Cancellation of Hearing

In the matter of Kuoni Travel Limited (Switzerland), d/b/a Kuoni Travel, Inc., amendment of Foreign Air Carrier permit, travel group charters.

Notice is hereby given that the hearing in the above-entitled matter scheduled to be held on February 19, 1974 (38 FR 34010, December 10, 1973) is hereby canceled.

Dated at Washington, D.C., January 30, 1974.

[SEAL] JOSEPH L. FITZMAURICE,
Administrative Law Judge.

[FR Doc.74-2918 Filed 2-4-74;8:45 am]

[Order 74-1-34; Dockets Nos. 26057 and 26075; Agreement CAB 24141]

PAN AMERICAN WORLD AIRWAYS, INC. ET AL.

Order Provisionally Approving Agreement; Correction

JANUARY 4, 1974.

In the matter of Joint application of Pan American World Airways, Inc., Trans World Airlines, Inc., British Caledonian Airways, Inc., and British Overseas Airways Corporation.

Ordering paragraph 2, line "f." of Order 74-1-34, the word "shortage" should have read "saving".

[SEAL] EDWIN Z. HOLLAND,
Secretary.

JANUARY 23, 1974.

[FR Doc.74-2916 Filed 2-4-74;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

McCULLOCH CORP.

Notice of Hearing Regarding Certain Mini-Mac Chain Saws

The staff of the Consumer Product Safety Commission, on the basis of material that includes a consumer complaint of gasoline leakage involving the use of a McCulloch chain saw, an exchange of correspondence with the company, and the staff's investigation, is of the opinion that the chain saws in question create a substantial product hazard.

Although a consumer complaint and tests performed by the manufacturer indicate some gasoline leakage, the manufacturer of the product is of the opinion that due to the minimal amount of gasoline leakage involved, use of the product does not involve substantial risk of injury to the public and therefore no substantial product hazard exists.

Section 15 of the Consumer Product Safety Act (Public Law 92-573, sec. 15, 86 Stat. 1221; 15 U.S.C. 2064) provides that if the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing in accordance with section 554 of Title 5, United States Code) that the manufacturer's product contains a substantial product hazard, the Commission may order the manufacturer to appropriately notify the public, manufacturers, distributors, retailers, and known purchasers of the defect. In addition, section 15 provides that if it is in the public interest, the Commission may, after an opportunity for hearing, order the manufacturer, distributor, or retailer to repair, replace, or refund the purchase price of the product.

Therefore, the Commission has determined that a hearing, in accordance with section 554 of Title 5, U.S.C., shall be held to determine:

1. If the current leakage from McCulloch chain saw 14, "Mini-Mac" series, model numbers 1, 1A, 6, and 6A, present a substantial product hazard.

2. If notification in accordance with section 15(c) of the act is required in order to adequately protect the public from such substantial product hazard.

3. If it is in the public interest to order the manufacturer to repair the defect, replace the product, or refund the purchase price of the product.

In view of the above, a prehearing conference will be held on March 1, 1974, at 10 a.m., in room 6705, Department of Commerce, 14th and E Streets NW., Washington, D.C. The presiding officer will be Administrative Law Judge Paul N. Pfeiffer, who was assigned to this case by the Civil Service Commission. The Administrative Law Judge is directed to expedite the hearing to the extent possible and upon completion of the hearing to issue an initial decision and certify the record to the Commission.

Since the Commission has not issued rules of procedures, the Administrative Law Judge will determine the rules of procedures to be followed.

Any person, other than the respondent, who desires to become a party to the proceedings, participate in the prehearing conference, or testify at the hearing, may request to do so by writing to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

Dated: January 31, 1974.

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

[FR Doc.74-2914 Filed 2-4-74;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF RECEIPT OF APPLICATIONS FOR PESTICIDE REGISTRATION; DATA TO BE CONSIDERED IN SUPPORT OF APPLICATIONS

On November 19, 1973, the Environmental Protection Agency published in the FEDERAL REGISTER (38 FR 31862) its interim policy with respect to the administration of section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 979), and its procedures for implementation. This policy provides that EPA will, upon receipt of every application, publish in the FEDERAL REGISTER a

notice containing the information shown below. The labeling furnished by the applicant will be available for examination at the Environmental Protection Agency, Room EB–37, East Tower, 401 M Street, SW., Washington, D.C. 20460.

On or before April 8, 1974, any person who (a) is or has been an applicant, (b) desires to assert a claim for compensation under section 3(c)(1)(D) against another applicant proposing to use supportive data previously submitted and approved, and (c) wishes to preserve his opportunity for determination of reasonable compensation by the Administrator must notify the Administrator and the applicant named in the FEDERAL REGISTER of his claim by certified mail. Every such claimant must include, at a minimum, the information listed in this interim policy published on November 19, 1973.

Applications submitted under 2(a) or 2(b) of the interim policy in regard to usage of existing supportive data for registration will be processed in accordance with existing procedures. Applications submitted under 2(c) will be held for the 60-day period before commencing processing. If claims are not received, the application will be processed in normal procedure. However, if claims are received within 60 days, the applicants against whom the particular claims are asserted will be advised of the alternatives available under the Act. No claims will be accepted for possible EPA adjudication which are received after this 60-day period.

APPLICATIONS RECEIVED

EPA Reg. No. 264–105. Amchem Products, Inc., Brookside Avenue, Ambler, Pennsylvania 19002. *Amchem Butyrac 118*. Active Ingredients: 4-(2,4-Dichlorophenoxy) Butyric acid, dimethylamine salt 26.0%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 475–RIA. Boyle-Midway Inc., South Avenue & Hale Street, Cranford, New Jersey 07016. *Liquid Sani-Flush Formula "H"*. Active Ingredients: Hydrogen Chloride 2.890%; Oxalic Acid 3.000%; n-Alkyl (60% C14, 30% C16, 5% C18, 5% C12) dimethyl benzyl ammonium chlorides; n-Alkyl (68% C12, 32% C14) dimethyl ethyl benzyl ammonium chlorides 0.625%. Method of Support: Application proceeds under 2(c) of interim policy.

EPA File Symbol 5813–RL. Clorox Company, 7901 Oakport Street, Oakland, California 94621. *409 Disinfectant Bathroom Cleaner II*. Active Ingredients: Tetrasodium ethylenediamine tetracetate 1.06%; Alkyl (60% C14, 30% C16, 5% C12, 5% C18) Dimethyl Benzyl Ammonium Chloride 0.09%; Alkyl (68% C12, 32% C14) Dimethyl Ethyl Benzyl Ammonium Chloride 0.09%; Essential Oils 0.18%. Method of Support: Application proceeds under 2(a) of interim policy.

EPA File Symbol 5813–RU. Clorox Company, 7901 Oakport Street, Oakland, California 94621. *409 Disinfectant Bathroom Cleaner I*. Active Ingredients: Tetrasodium ethylenediamine tetraacetate 1.06%; Alkyl (60% C14, 30% C16, 5% C12, 5% C18) Dimethyl Benzyl Ammonium Chloride 0.09%; Alkyl (68% C12, 32% C14) Dimethyl Ethyl Benzyl Ammonium Chloride 0.09%; Essential Oils 0.19%. Method of Support: Application proceeds under 2(a) of interim policy.

EPA File Symbol 506–RGL. O. E. Linck Co., Div. Walco-Linck Corp., Routes 3 and 46, Clifton, New Jersey 07015. *TAT Fly & Mosquito Killer*. Active Ingredients: Pyrethrins 0.075%; Piperonyl Butoxide, Technical 0.375%; Petroleum distillate 96.550%. Method of support: Application proceeds under 2(c) of interim policy.

Dated: January 29, 1974.

JOHN B. RITCH, Jr.,
Director, Registration Division.

[FR Doc.74–2868 Filed 2–4–74;8:45 am]

NEVADA AIR QUALITY IMPLEMENTATION PLAN

Notice of Postponement of Public Hearing

On December 10, 1973 (38 FR 34020) notice was given that a public hearing under section 110(f) of the Clean Air Act would be held on February 19, 1974, in Reno, Nevada, to consider the postponement of applicable requirements of the Air Quality Implementation Plan for the State of Nevada as applied to the copper smelter located at McGill, Nevada, owned and operated by the Nevada Mines Division of Kennecott Copper Corporation. Notice is hereby given that the hearing has been postponed and will be held on March 12, 1974, beginning at 9:30 a.m. local time at the County Courthouse in Ely, Nevada.

Dated: January 30, 1974.

ALAN G. KIRK,
Assistant Administrator for Enforcement and General Counsel.

[FR Doc.74–2965 Filed 2–4–74;8:45 am]

FARM CREDIT ADMINISTRATION

[Order 769]

DEPUTY GOVERNOR ET AL.

Delegation of Authority

FEBRUARY 1, 1974.

1. In the event that the Governor of the Farm Credit Administration is absent or is not able to perform the duties of his office for any other reason, the officer of the Farm Credit Administration who is the highest on the following list and who is available to act is hereby authorized to exercise and perform all functions, powers, authority, and duties pertaining to the office of Governor of the Farm Credit Administration:

(1) Deputy Governor and Director, Operations and Finance Service;
(2) Deputy Governor and Director, Credit Service;
(3) General Counsel;
(4) Chief Examiner;
(5) Director, Accounting, Budget and Data Management Division;
(6) Any other officer of the Farm Credit Administration designated by the Governor.

2. This order shall be effective on the above written date, and supersedes Farm Credit Administration Order No. 751, dated April 12, 1972 (37 FR 7646).

E. A. JAENKE,
Governor,
Farm Credit Administration.

[FR Doc.74–2915 Filed 2–4–74;8:45 am]

FEDERAL MARITIME COMMISSION

[Docket No. 74–5; Agreement No. 10066]

PRUDENTIAL-GRACE LINES, INC., AND FLOTA MERCANTE GRANCOLOMBIANA S.A.

Cooperative Working Arrangement; Order of Investigation and Hearing

Agreement No. 10066, between Prudential-Grace Lines, Inc. (PG Lines) and Flota Mercante Grancolombiana S.A. (Flota) has been filed for approval under Section 15 of the Shipping Act, 1916. Basically, this arrangement permits PG Lines to become an associate of Flota under the Colombian Government's cargo preference laws in the trade between U.S. West and East Coast ports and Colombian ports; permits the two lines to coordinate their services; permits PG Lines free access to all Colombian cargoes, export or import; and provides that either line will endeavor to have cargo which they cannot accommodate routed aboard vessels of the other.

Agreement No. 10066 was protested by Westfal-Larsen Line. Westfal-Larsen opposes the approval of Agreement No. 10066 on the grounds that it is "* * * the foundation for the total exclusion from the trade of third-flag carriers such as Westfal-Larsen, * * *" In requesting a full investigation and hearing of the matter, Westfal-Larsen also questions whether the subject agreement is the full and complete agreement between the parties. Since the protest by Westfal-Larsen appears to have merit and raises justiciable issues, an investigation and hearing is deemed necessary.

It is therefore ordered, That pursuant to sections 15 and 22 of the Shipping Act, 1916, a proceeding is hereby instituted to determine whether Agreement No. 10066 is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, detrimental to the commerce of the United States, contrary to the public interest, or is in violation of the Shipping Act, 1916, and therefore, whether it should be approved, disapproved or modified;

It is further ordered, That Flota Mercante Grancolombiana, S.A. and Prudential-Grace Lines, Inc. are hereby made respondents in this proceeding.

It is further ordered, That Westfal-Larsen Line, through its counsel whose name and address is shown in the Appendix hereto, is hereby made a petitioner in this proceeding.

It is further ordered, That a public hearing be held in this proceeding and that the matter be assigned for hearing and decision by an Administrative Law Judge at a date and place to be hereafter determined and announced by the presiding Administrative Law Judge.

It is further ordered, That notice of this order be published in the FEDERAL REGISTER, and that a copy thereof and notice of hearing be served upon respondents and petitioner, as shown in the Appendix.

It is further ordered, That any person other than respondents and petitioner,

having an interest and desiring to participate in this proceeding, shall file a petition for leave to intervene in accordance with Rule 5(1) (46 CFR § 502.72) of the Commission's rules of practice and procedure.

It is further ordered, That all future notices, orders and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or pre-hearing conference, shall be mailed directly to all parties of record.

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

APPENDIX

Flota Mercante Grancolombiana, S.A.
One World Trade Center, Suite 1603
New York, New York 10048

Prudential-Grace Lines, Inc.
One New York Plaza
New York, New York 10004

Westfal-Larsen Line
c/o Lillick, McHose, Wheat, Adams & Charles
311 California Street
San Francisco, California 94104

[FR Doc.74-2912 Filed 2-4-74;8:45 am]

PENINSULAR AND ORIENTAL STEAM NAVIGATION CO.

Order of Revocation

Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation No. P-37 and Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages No. C-1,034.

WHEREAS, The Peninsular and Oriental Steam Navigation Company (P & O Lines), c/o P & O Lines (North America) Inc., 155 Post Street, San Francisco, California 94108, has ceased to operate the passenger vessel, CHUSAN.

It is ordered, That Certificate (Performance) No. P-37 and Certificate (Casualty) No. C-1,034 applying only to the CHUSAN be, and are hereby revoked effective January 30, 1974.

It is further ordered, That a copy of this order be published in the FEDERAL REGISTER and served on the Certificant.

By the Commission.

FRANCIS C. HURNEY, *Secretary.*

[FR Doc.74-2913 Filed 2-4-74;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. E-8550 et al]

APPALACHIAN POWER CO. ET AL.

Order Accepting for Filing and Suspending Proposed Rate Schedules, etc.

JANUARY 28, 1974.

In the matter of Appalachian Power Co., Virginia Electric and Power Co., Wheeling Electric Co., Monongahela Power Co., The Potomac Edison Co., West Penn Power Co., Ohio Power Co., Dayton Power and Light Co., Columbus and Southern Ohio Electric Co., Indiana and Michigan Electric Co., Consumers Power Co., The Detroit Edison Co.; docket Nos. E-8550, E-8565, E-8567, E-8591.

SUMMARY

On December 26, 1973 (Docket No. E-8565), American Electric Power Service Corp. (AEP) submitted on behalf of Appalachian Power Co. (Appalachian) an amendment to an interconnection agreement between Appalachian and Virginia Electric and Power Co. (VEPCO). The amendment provides for a new service schedule for Fuel Conservation Power and Energy, and for modifications in the Short-Term Power and Limited Term Power Service Schedules.

On December 26, 1973 (Docket No. E-8567), Allegheny Power Service Corp. (Allegheny) submitted on behalf of Monongahela Power Co., the Potomac Edison Co., and West Penn Power Co., an amendment to an interconnection agreement among those companies and VEPCO, which provides for a Fuel Conservation Power and Energy Service Schedule and for modifications in the Short-Term Power and Limited Term Power Service Schedules.

On January 10, 1974, (Docket No. E-8591), AEP submitted on behalf of Ohio Power Co. (Ohio) an amendment to an interconnection agreement with the Dayton Power and Light Co. (Dayton), which is virtually identical to the above-mentioned amendments, and an amendment to an interconnection agreement with Columbus and Southern Ohio Electric Co. (Columbus), providing for a Fuel Conservation Power and Energy service schedule. The filing also included a submittal on behalf of Indiana and Michigan Electric Co. (Indiana) of an amendment to an interconnection agreement among Indiana, Consumers Power Co. (Consumers), and The Detroit Edison Co. (Detroit), providing for a Fuel Conservation Power and Energy service schedule.

The filings submitted in all three dockets [1] provide for new service schedules for Fuel Conservation Power and Energy which are virtually identical. The new service schedule is designed to permit any party that is in a favorable position with respect to fuels, to transfer fuel "by wire" to another party and to interconnected third parties. In addition to the new service schedule, submittals in Docket Nos. E-8565 and E-8567, and AEP's submittal of the amendment to the agreement between Ohio and Dayton in Docket No. E-8591, provide for an increase in the demand charge for Short Term Power from 40¢ per kW/week to 45¢ per kW/week, and an increase in the demand charge for Limited Term Power from $2.15 per kW/month to $2.50 per kW/month.

THE PROPOSED CHANGES

SHORT TERM POWER

The submittal in Docket No. E-8591 of the amendment to the agreement between Ohio and Dayton, and the submittals in Docket Nos. E-8565 and E-8567, propose to increase the demand change for Short Term Power from 40¢ per kW/week to 45¢ per kW/week. AEP's comparison of actual and proposed charges for transactions between Appalachian and VEPCO for the last 12 months indicates a total increase in revenues of $7,500. Allegheny's submittal of short-term power transactions for the past 12 months shows that revenues to VEPCO under the proposed rate would increase by $47,500, and revenues to the Allegheny System (Monongahela Power Co., Potomac Edison Co. and West Penn Power Co.) would increase by $358,750. AEP states that Ohio and Dayton had no short-term power transactions on which to base a comparison of revenues for the last 12 months. No revenue date for short-term power transactions for the next 12 months were submitted by any of the companies because of the alleged uncertainty of such transactions.

LIMITED TERM POWER

The submittal in Docket No. E-8591 of the amendment to the agreement between Ohio and Dayton, and the submittals in Docket Nos. E-8565 and E-8567, propose to increase the demand charge for Limited Term Power from $2.15 per kW/month to $2.50 per kW/month. There were no limited term power transactions among the parties during the past 12 months and thus no comparison of revenues for that period is possible. No revenue data for limited term power for the next 12 months were submitted because of the alleged uncertainty of such transactions.

FUEL CONSERVATION POWER AND ENERGY

All three instant submittals propose the addition of a service schedule for the sale of Fuel Conservation Power and Energy. Under such service schedule any party may reserve Fuel Conservation Power for periods of one or more weeks. The charge for Fuel Conservation Capacity that is provided from the supplying party's own system is 20¢ per reserved kW/week for 72 hours of service, plus 110 percent of the out-of-pocket cost of supplying such capacity; the Fuel Conservation Energy that is provided by the supply party's own system is 110 percent of the out-of-pocket replacement cost. For each hour that it becomes necessary for the supplying party to reduce the amount of Fuel Conservation Capacity delivered, the 20¢ per reserved kW/week capacity charge is reduced by 1/72 per kW of reduction.

When the supplying party obtains Fuel Conservation Capacity from a third party, the demand charge is 20¢ per reserved kW/week (plus or minus any excess or deficiency), plus 12.5¢ per kW/week; plus 115 percent of the out-of-pocket cost of supplying such capacity; the charge for Fuel Conservation Energy obtained from a third party is 115 percent of the out-of-pocket cost. When it becomes necessary to reduce the amount of capacity delivered, the 12.5¢ portion of the capacity charge is reduced by 1/72 per kW for each hour such capacity is not received.

[1] Designations are shown on the appendix.

Notices of the filings in Docket Nos. E–8565, E–8567, and E–8591 were published on January 11, January 10, and January 25, 1974, respectively. To date, no comments have been received.

In our order issued January 11, 1974, in Docket No. E–8550, which dealt with similar issues, we commended our Staff in its efforts:

> to expedite the resolution of any rate-making or other questions which may be occasioned by * * * fuel conservation and electric transfers and which are not capable of resolution through less formal procedures as are used in the day to day work of electric utilities and Power Pools. As stated in Order No. 496, the Commission seeks "* * * the scheduling of inter-system and interregional power transfers consistent with reliability and continuity of service considerations * * *".
>
> We believe that in a number of instances such transfers will be effected without the need for a formal Commission proceeding such as the instant case. We encourage that result.

However, our review of the instant filings indicates that they, like the filings in Docket No. E–8550, "present unresovled economic or rate issues * * *". The instant filings have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, the instant filings shall be accepted for filing, suspended for a period of one day and set for hearing. Moreover, the fact that certain issues of law and fact in this proceeding are similar in Docket No. E–8550, makes it appropriate that the instant filings be consolidated with the proceedings in Docket No. E–8550.

We note further that Dayton, Columbus, Consumers, Detroit and VEPCO have not filed certificates of concurrence in their respective filings. Accordingly, we shall require those parties to file such certificates within 15 days of the date of issuance of this order.

The Commission further finds:

It is in the public interest, there is good cause, and it is necessary and appropriate for the purposes of the Federal Power Act, 16 U.S.C. 791(a) et seq., the Commission's rules of practice and procedure and the Commission's Regulations under the Federal Power Act, and to aid in the enforcement of the above, that:

(a) The instant rate schedule filings be accepted for filing, suspended, and the use thereof deferred as hereinafter provided;

(b) The Commission enter upon a hearing concerning the lawfulness of the instant rate schedule filings;

(c) The relevant provisions of Part 35 of the Commission's regulations under the Federal Power Act be waived to the extent necessary to facilitate acceptance of the rate schedules as referred to in paragraph (a) above.

The Commission orders:

(A) Pursuant to the authority of the Federal Power Act 16 U.S.C. 791(a) et seq., particularly 16 U.S.C. 824 d, e, h, 825f, 825h, the Commission Rules of Practice and Procedure and the Commission Regulations under the Federal Power Act, a public hearing shall be held in a hearing room of the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, concerning the lawfulness of the aforementioned rate schedule submittals which schedules have not been fully justified by the filing public utilities and those schedules may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful under the Federal Power Act.

(B) Docket Nos. E–8565, E–8567 and E–8591 are hereby consolidated with Docket No. E–8550 for purposes and hearing and decision; *Provided, however,* That these consolidated proceedings shall be governed by the procedures set forth in our order issued January 11, 1974, in Docket No. E–8550.

(C) Pending hearing and final decision in this proceeding, the rate schedules as referred to in paragraph (A) above are hereby suspended and the use thereof deferred until January 29, 1974; *Provided, however,* That the filing public utilities shall be permitted to seek an earlier effective date upon condition that they agree to adjust any charges back to such dates to reflect such final order as the Commission may issue upon the merits herein.

(D) The relevant provisions of Part 35 of the Commission's regulations under the Federal Power Act are hereby waived to the extent necessary to facilitate acceptance of the rate schedules as referred to in paragraph (A) above.

(E) Within 15 days of the date of issuance of this order, Dayton, Consumers, Columbus, Detroit and VEPCO shall file certificates of concurrence in their respective filings.

(F) The Secretary of the Commission shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

APPENDIX—DESIGNATIONS

Designation	Filing date	Effective date	Instrument	Description
Appalachian Power Co., Supplement No. 9 to rate schedule FPC No. 16.	Dec. 26, 1973	Jan. 26, 1974	Modification No. 8 to interconnection agreement between Appalachian Power Co. and Virginia Electric & Power Co.	Fuel Conservation Power and Energy Service Schedule. Modifications of limited term power and short-term power service schedules.
Monongahela Power Co., Supplement No. 2 to rate schedule FPC No. 32.	Dec. 26, 1974	do	Amendment No. 2 to agreement among Monongahela Power Co., The Potomac Edison Co., West Penn Power Co., and Virginia Electric & Power Co.	Do.
The Potomac Edison Co., Supplement No. 2 to rate schedule FPC No. 33.	do	do	do	Do.
West Penn Power Co., Supplement No. 2 to rate schedule FPC No. 31.	do	do	do	Do.
Ohio Power Co., Supplement No. 16 to rate schedule FPC No. 36.	Jan. 10, 1974	Feb. 10, 1974	Modification No. 3 to facilities and operating agreement between the Dayton Power & Light Co. and Ohio Power Co.	Do.
Ohio Power Co., Supplement No. 4 to rate schedule FPC No. 32.	do	do	Modification No. 6 to interconnection agreement between Ohio Power Co., and Columbus & Southern Ohio Electric Co.	Fuel Conservation Power and Energy Service Schedule.
Indiana & Michigan Electric Co., Supplement No. 4 to rate schedule FPC No. 68.	do	do	Amendment No. 6 to operating agreement among Consumers Power Co., The Detroit Edison Co., and Indiana & Michigan Electric Co.	Do.

[FR Doc.74–2834 Filed 2–4–74;8:45 am]

[Docket No. G–4073, et al.]

CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

Applications, Abandonment of Service and Petitions To Amend [1]

JANUARY 25, 1974.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments 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 22, 1974, file with the Federal Power Commission, 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

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

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 or the authorization for the proposed abandonment 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.

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. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G–4073 D 1–11–74	Amoco Production Co., P.O. Box 3092, Houston, Tex. 77001.	Tennessee Gas Pipeline Co., a division of Tenneco Inc., Alamo Field, Hidalgo County, Tex.	Depleted	
G–6083 C 1–14–74	Mesa Petroleum Co., P.O. Box 2009, Amarillo, Tex. 79105.	El Paso Natural Gas Co., Pictured Cliffs Field, San Juan County, N. Mex.	[1] 24.48	15.025
G–11922 D 1–14–74	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Panhandle Eastern Pipe Line Co., Taloga Field, Morton County, Kans.	[2]	
CI63–708 C 1–10–74	CRA, Inc., P.O. Box 7305, Kansas City, Mo. 64116	Northern Natural Gas Co., Mertzon Plant,[3] Irion County, Tex.	[4] 31.0	14.65
CI66–1106 C1–14–74	do	do	[4] 31.0	14.65
CI67–1632 E 12–10–73	John T. Palmer (successor to Afton Thrash), P.O. Box 3104, Longview, Tex. 75601.	Lone Star Gas Co., North Henderson Field, Rusk County, Tex.	21.08	14.65
CI73–617 C 1–4–74 [6]	Pioneer Production Corp., P.O. Box 2542, Amarillo, Tex. 79105.	Northern Natural Gas Co., McQuiddy No. 2 Well, Hemphill County, Tex.	[1] 21.5	14.65
CI74–352 A 12–18–73	Champlin Petroleum Co., P.O. Box 9365, Fort Worth, Tex. 76107.	Southern Natural Gas Co., Unknown Pass Field, Orleans Parish, La.	[1] 30.1	15.025
CI74–354 A 12–18–73	Anadarko Production Co., P.O. Box 9317, Fort Worth, Tex. 76107.	Panhandle Eastern Pipe Line Co., Panoma Council Grove Field, Stevens County, Kans.	18.513125	14.65
CI74–356 (CS66–114) B 12–18–73	Southland Royalty Co., 1600 First National Bldg., Fort Worth, Tex. 76102.	Natural Gas Pipeline Co. of America, Elms Field, Live Oak County, Tex.	Depleted	
CI74–358 (G–3901) B 12–17–73	Puenticitas Oil Co., agent (Operator) et al., P.O. Box 466, Robstown, Tex. 78380	Tennessee Gas Pipeline Co., a division of Tenneco Inc., Aqua Dulce and Brayton Fields, Nueces County, Tex.	Depleted	
CI74–360 12–26–73 [7]	Gulf Oil Corp., P.O. Box 1589, Tulsa, Okla. 74102.	Champlin Petroleum Co., Peavine Field, Oklahoma County, Okla.	20.0	14.65
CI74–363 (G–3461) F 12–27–73	H & S Gas Transmission Co. (successor to Phillips Petroleum Co.), P.O. Box 1527, Shreveport, La. 71165.	Southern Natural Gas Co., Spider Field, De Soto Parish, La.	[8] 22.475	15.025
CI74–368 (CS71–317) B 1–7–74	George H. Coates et al., 1610 Milam Bldg., San Antonio, Tex. 78205.	South Texas Natural Gas Gathering Co., Kelsey Area, Brooks County, Tex.	Depleted	
CI74–369 (G–6311) F 1–9–74	Penrose Production Co. (successor to Amerada Hess Corp.), 1605 Commerce Bldg., Fort Worth, Tex. 76102.	Northern Natural Gas Co., Eunice Field, Lea County, N. Mex.	15.67	14.65
CI74–370 (CS71–833) F 1–11–74	Columbia Gas Development Corp. (successor to W.W.F. Oil Corp.), P.O. Box 1350, Houston, Tex. 77001.	Columbia Gas Transmission Corp., St. Paul Bayou Field, Terrebonne Parish, La.	[9] 17.5	15.025
CI74–371 A 1–11–74	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Columbia Gas Transmission Corp., Grand Isle Block 16 Field, offshore Louisiana.	[9 10] 50.0	15.025
CI74–375 A 1–14–74	AGM Corp., P.O. Box 631, Amarillo, Tex. 79173.	South Texas Natural Gas Gathering Co., Cage Ranch Field, Brooks County, Tex.	[1] 25.0	14.65
CI74–376 A 1–15–74	The Superior Oil Co., P.O. Box 1521, Houston, Tex. 77001.	Michigan Wisconsin Pipe Line Co., Block 71 Field, West Cameron Area, offshore Louisiana.	[1] 32.0	15.025
CI74–378 (CI69–48) F 1–16–74	Petro-Lewis Funds, Inc. (successor to Forest Oil Corp.), 1600 Broadway, Denver, Colo. 80202.	United Fuel Gas Co., Northeast Bourg Field, Lafourche Parish, La.	[9] 23.25	15.025

[1] Subject to upward and downward Btu adjustment.
[2] Acreage was inadvertently included in gas purchase agreement.
[3] Production from the Dove Creek Field, Irion County, Tex.
[4] Subject to upward Btu adjustment; estimated adjustment is 1.7 cents per Mcf.
[5] Production from the West Mertzon and Mertzon (Sixty-Seven Canyon) Fields, Irion County, Tex.
[6] Amendment to a pending application.
[7] Application for a certificate authorizing the sale of gas formerly covered by a percentage-type contract.
[8] Subject to a deduction for compression by buyer.
[9] Subject to downward Btu adjustment.
[10] Applicant is willing to accept a certificate conditioned in accordance with Commission Opinion No. 598.

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.

[FR Doc.74–2776 Filed 2–4–74;8:45 am]

[Docket Nos. G–10460, G–19530, CP70–216]

EAST TENNESSEE NATURAL GAS CO.

Petition To Amend

JANUARY 25, 1974.

Take notice that on January 8, 1974, East Tennessee Natural Gas Company (Petitioner), P.O. Box 10245, Knoxville, Tennessee 37919, filed in Docket Nos. G–10460, G–19530, and CP70–216 a petition to amend the orders issuing certificates of public convenience and necessity in said dockets on August 13, 1956, June 30, 1960, and April 27, 1973, respectively, pursuant to section 7(c) of the Natural Gas Act by authorizing Petitioner to sell and deliver natural gas under a Rate Schedule CR–1 in lieu of presently effective rate schedules to the Middle Tennessee Utility District of Cannon, Cumberland, De Kalb, Putnam, Rhea, Rutherford, Smith, Warren, White and Wilson Counties, Tennessee (Middle Tennessee), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner proposes to sell and deliver presently certificated volumes of natural gas to Middle Tennessee under Rate Schedule CR–1 and to merge under a single gas sales contract deliveries at four of Middle Tennessee's present purchase stations, the Alto, Red Bank, Carthage and Monterey Service Areas, as shown below:

Service area	Certificated service (per day)	Rate schedule: Present service	Rate schedule: Proposed service
Alto Service Area (coextensive with Warren County, Tenn.)	Docket No. G–10406, 3,546 Mcf.[1]	SG–1	CR–1
Red Bank Service Area (area located in Hamilton County, Tenn.).	Docket No. G–10460, 4,046 Mcf.	SG–1	CR–1
Carthage Service Area (coextensive with Smith, De Kalb, Cannon, and areas in Wilson and Rutherford Counties, Tenn.).	Docket No. G–19530, 4,046 Mcf.	SG–1	CR–1
Monterey Service Area (coextensive with Cumberland, White, and area in Overton Counties, Tenn.).	Docket No. G–19530, 4,546 Mcf.[1]	SG–1	CR–1

[1] By an order issued Apr. 27, 1973, in Docket No. CP70–216, Petitioner was authorized to reallocate 500 Mcf per day to the Monterey Service Area from the Alto Service Area for a period ending Oct. 31, 1974.

Petitioner states that Middle Tennessee has requested consolidation of its certificated contract quantities under one contract to be sold and delivered under Rate Schedule CR–1 in order to enhance Middle Tennessee's ability to meet the peak day requirements of its customers in the service areas of Alto, Red Bank, Carthage, and Monterey. The proposed change to Rate Schedule CR–1 will enable Middle Tennessee to shift volumes on a daily basis, as needed, from one service area to another without the construction of peak shaving facilities at each of these service areas at a cost of approximately $400,000 which would otherwise be necessary.

Middle Tennessee states that it will most probably shift deliveries from the Alto and Red Bank Service Areas to the Carthage and Monterey Service areas since the weather is normally colder in the latter service areas. The petition states that such shifts will not have any adverse effect on the area from which the volumes are being shifted and Middle Tennessee estimates its cost of gas will be reduced approximately $8,500 per year under Rate Schedule CR–1.

Petitioner states that the change in rate schedules proposed herein will not require additional facilities.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 15, 1974, 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74–2777 Filed 2–4–74;8:45 am]

[Docket Nos. RI74–139, et al.]

RATE CHANGES

Order Providing for Hearing and Suspension [1]

JANUARY 25, 1974.

Respondents have filed proposed changes in rates and charges for jurisdictional sales of natural gas, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders: (A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR, Chapter I), and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column. Each of these supplements shall become effective, subject to refund, as of the expiration of the suspension period without any further action by the Respondent or by the Commission. Each Respondent shall comply with the refunding procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder.

(C) Unless otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period, whichever is earlier.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[1] Does not consolidate for hearing or dispose of the several matters herein.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf* Rate in effect	Cents per Mcf* Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI74–139	Continental Oil Co	2[7]	[1] 16	Southern Union Gathering Co. (Blanco Field, San Juan County, N. Mex.) (Rocky Mountain Area).		12–26–73	1–26–74	(12)			
	do		17	do	[7] $1,060,731	12–26–73	1–26–74	(12)	15.3004	[3] [6] 26.1797	
						12–26–73		(13)	15.3004	[3] [8] 28.5	
RI74–140	Beta Development Co	1	17	El Paso Natural Gas Co. (San Juan Basin, San Juan and Rio Arriba Counties, N. Mex.) (Rocky Mountain Area).	[2] 53,230	1–2–74		7–2–74	[3] [6] 26.14	[3] [6] 26.64	
					[5] 3,300	1–2–74		7–2–74	[3] [8] 28.0	[3] [8] 28.5	RI73–67
RI74–141	McCulloch Gas Processing Corporation.	[5] 3	[5] 6	McCulloch Interstate Gas Corp. (Powder River Basin, Campbell County, Wyo.) (Montana-Wyoming sub area; Rocky Mountain Area).		1–7–74	2–7–74	(12)			
	do		7	do	700,000	1–7–74		3–10–74	[11] 22.18	[9] [10] [11] 26.97	

* Unless otherwise stated, the pressure base is 15.025 lb/in² a.
[1] Contract amendment dated Dec. 18, 1973.
[2] Applies to gas produced from wells completed prior to June 1, 1970.
[3] Applies to gas produced from wells completed subsequent to June 1, 1970.
[4] Subject to Btu adjustment down from 1,000 Btu and up from 1,050 Btu.
[5] Subject to Btu adjustment up and down from 1,000 Btu.
[6] Inclusive of tax.
[7] Unknown.
[8] Contract amendment dated Jan. 3, 1974.
[9] Basic contract is dated after Oct. 1, 1968.
[10] Base rate of 23.87 cents per M ft³ plus upward Btu adjustment of 3.10 cents per M ft³ based on 1,130 Btu gas.
[11] The pressure base is 14.65 lb/in² a.
[12] Accepted as of the date shown in the "Effective Date Unless Suspended" column.
[13] The proposed rate increase is accepted as of Jan. 26, 1974, insofar as it does not exceed the Opinion No. 658 ceiling and is suspended until June 26, 1974, insofar as it exceeds the Opinion No. 658 ceiling rate.

The proposed rate increases which exceed the applicable ceiling and the proposed rate increases which exceed the applicable area rate established by Opinion No. 658 are suspended for five months ceiling rate in Order No. 435 are suspended for one day.

[FR Doc.74–2782 Filed 2–4–74;8:45 am]

CITIES SERVICE GAS CO.

[Docket No. CP74–186]

Notice of Application

JANUARY 30, 1974.

Take notice that on January 14, 1974, Cities Service Gas Company (Applicant), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP74–186 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities and service on its transmission system in Montgomery County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to abandon by reclaiming measuring the regulating facilities and approximately 4.6 miles of 12-inch, 16-inch, and 18-inch pipeline in Applicant's State Line 16-inch pipeline in Montgomery County; and to abandon by reclaiming measuring and regulating facilities and approximately 12.69 miles of 18-inch pipeline in its Cotton Valley-Grabham 18-inch pipeline also in Montgomery County.

Applicant also requests authorization to discontinue gas deliveries to Union Gas System, Inc., for resale to 15 rural domestic consumers along the State Line pipeline and to one direct sale customer presently served from the Cotton Valley-Grabham pipeline. Applicant states that service to said parties would be terminated 90 days after the date of the Commission order approving the requested abandonment. As no alternate source of natural gas appears to be available to them, Applicant proposes to reimburse said consumers $300 each to cover the cost of conversion to liquified petroleum gas or alternative fuels.

Applicant states that it is presently experiencing excessive leakage on the State Line and Cotton Valley-Grabham pipelines and that, due to their age and deteriorated condition, such pipelines are no longer economical to operate or maintain and are operationally obsolete. Applicant states further that due to relocation of certain facilities the capacity of such pipelines proposed to be abandoned herein is no longer needed to meet Applicant's transmission system demands.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 22, 1974, file with the Federal Power Commission, Washington, D.C. 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.74–2940 Filed 2–4–74;8:45 am]

[Project No. 2230]

CITY AND BOROUGH OF SITKA, ALASKA

Notice of Application for Emergency Waiver of License Article

JANUARY 29, 1974.

Public notice is hereby given that application was filed January 17, 1974, under the Federal Power Act (16 U.S.C. 791a–825r) by the City and Borough of Sitka, Alaska (Correspondence to: Mr. Fermin Gutierrez, Administrator, City and Borough of Sitka, P.O. Box 79, Sitka, Alaska 99835) for emergency waiver of license Article 28 for its constructed Blue Lake Project No. 2230, located on the Medvetcha River on Baranof Island, First Judicial Division of Alaska, within a 100 mile radius of Juneau, Alaska. The project affects lands of the United States within the Tongass National Forest.

Article 28 of the license as amended for Project No. 2230 requires applicant to maintain a minimum flow of 50 cfs at all times in Medvetcha River to sustain the existing downstream fishery resources. According to the application, abnormally low snow pack and rainfall have reduced the level in Blue Lake, the project reservoir, to a point where under current conditions, hydroelectric generation will cease April 23, 1974. The Commission on December 20, 1973, approved Applicant's request to reduce flow to 15 cfs through March, 1974, in order to use more of the available water for power generation. By request filed January 7, 1974, Applicant asked that this approval be extended until June 1, 1974; before the Commission could act on that request, Applicant submitted this filing.

Applicant now requests complete suspension of Article 28 for a period of five years, during which time no flow whatsoever to maintain fishery resources would be required. If granted this temporary waiver, applicant states that the five-year period would be used to construct additional hydroelectric generating capacity and conserve water in the reservoir.

Any person desiring to be heard or to make protest with reference to said application should on or before February 28, 1974, file with the Federal Power Commission, 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 a proceeding. Persons wishing to become parties to a proceeding or participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74–2939 Filed 2–4–74;8:45 am]

[Docket No. RI74–138]

CONTINENTAL OIL CO.

Notice of Petition for Special Relief

JANUARY 29, 1974.

Take notice that on January 21, 1974, Continental Oil Company (Petitioner), P.O. Box 2197, Houston, Texas 77001, filed a petition for special relief in Docket No. RI74–138. Petitioner is seeking a price of 40.0 cents per Mcf at 14.65 psia, escalating 1.0 cent per Mcf each year thereafter, so that it may pursue a proposed development program on certain acreage in the West Panhandle Field, Carson County, Texas.

Any gas found as a result of Continental's development program will be sold under its FPC Gas Rate Schedule No. 301 to Cities Service Gas Company.

Petitioner states that it could not economically explore and develop this acreage at the current gas contract rate of 14.5 cents per Mcf, which is also the applicable area ceiling under Opinion No. 586.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 12, 1974, 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). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74–2941 Filed 2–4–74;8:45 am]

[Docket No. E-8606]

EMPIRE DISTRICT ELECTRIC CO.

Notice of Supplementary Agreement

JANUARY 29, 1974.

Take notice that on January 23, 1974 Empire District Electric Company (Empire) tendered for filing a Supplementary Agreement amending three wholesale power contracts which provide for sales of electric power from Empire to the Cities of Monett and Mt. Vernon, Missouri and Chetopa, Kansas (collectively "Cities"). Empire states that Supplementary Agreement is designed to provide an automatic "Fuel Cost Adjustment" for future sales to the Cities. Empire further states that the Supplementary Agreement was executed after council action by Monett, Missouri on November 15, 1973; by Mt. Vernon, Missouri on December 28, 1973; and by Chetopa, Kansas on November 20, 1973.

Empire describes the Fuel Cost Adjustment clause as being based upon 12-month-ending averages for plant efficiencies, fuel costs and system losses. Empire states that a neutral zone of 27.0 to 29.0¢/MBTU is specified for the base fuel cost and that purchased energy for on-system use is reflected in the formula in such a way as to treat such energy as having no related fuel cost.

Empire requests that the Supplementary Agreement be approved for filing at the earliest possible date and that the Commission's 30 day filing requirement be waived on the ground that the average cost is expected to surpass the agreement's neutral zone in the immediate future.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 12, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-2942 Filed 2-4-74;8:45 am]

[Docket No. E-7679]

FLORIDA POWER CORP.

Notice of Certification of Proposed Settlement

JANUARY 29, 1974.

Take notice that on January 14, 1974, the Presiding Administrative Law Judge in the above case certified to the Commission a settlement proposal entitled "Settlement Agreement Between Florida Power Corporation and Municipal Customers". A proposed settlement agreement between Florida Power and nine rural electric cooperative customers was previously certified to the Commission on March 2, 1973.

Volume 26 of the transcript and Exhibit No. 133 supporting the transmission and partial requirements rate schedules contained in the proposed settlement agreement were attached to the proposed settlement agreement upon certification.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 25, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-2943 Filed 2-4-74;8:45 am]

[Docket No. ID-1676]

GRIFFIN, JAMES E.

Notice of Application

JANUARY 29, 1974.

Take notice that on January 23, 1974, James E. Griffin (Applicant), filed a supplemental application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

President, Vermont Yankee Nuclear Power Corporation, public utility.

Director, Connecticut Yankee Atomic Power Company, public utility.

By Commission order dated June 13, 1973, Applicant was authorized to hold the following positions:

President and Chief Executive Officer and Director, Central Vermont Public Service Corporation, public utility.

President and Chief Executive Officer and Director, Vermont Electric Power Company, Inc., public utility.

President and Chief Executive Officer and Director, Connecticut Valley Electric Company, Inc., public utility.

Executive Vice President and Director, Vermont Yankee Nuclear Power Corporation, public utility.

Director, Maine Yankee Atomic Power Corporation, public utility.

Director, Yankee Atomic Electric Company, public utility.

Vermont Yankee Nuclear Power Corporation is a single unit generating company which has constructed, owns and operates a nuclear-power generating plant with an expected capacity of approximately 540,000 KW (net) and sells its capacity and output to its 10 sponsoring companies, who, in turn, deliver and sell to other utility companies, and to their own customers the electricity secured from Vermont Yankee.

The Connecticut Yankee Atomic Power Company is the owner of a nuclear power plant in Haddam Neck, Connecticut which sells its entire net electrical output to its utility stockholders.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 22, 1974, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests to intervene 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. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-2944 Filed 2-4-74;8:45 am]

[Docket No. E-8600]

GULF STATES UTILITIES CO.

Notice of Interconnection Agreement

JANUARY 29, 1974.

Take notice that on January 21, 1974, Gulf States Utilities Company (Applicant) filed with the Federal Power Commission, pursuant to Section 35.12 of the Regulations under the Federal Power Act, an Interconnection Agreement, dated January 8, 1974, between Applicant and the City of Lafayette, Louisiana (City). Concurrently the parties filed a letter agreement stipulating that certain quantities of power were to be sold by City to Applicant for the years 1976-1977. Furthermore, the parties filed a "Release and Covenant Not to Sue" among themselves. The filing states that the service under the Agreement is expected to commence on May 1, 1975.

The Interconnection Agreement and associated service schedules cover provision of emergency energy, replacement energy, economy energy supply, surplus power service, and transmission service. Applicant will install facilities consisting of approximately one mile of double circuit steel H frame line operating initially at 138 Kv but insulated for later 230 Kv service. City will install the substation at their power station site.

Any person desiring to be heard or to make any protest with reference to said application, should on or before February 14, 1974, file with the Federal Power Commission, Washington, D.C. 20426, protests or petitions to intervene 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 con-

sidered 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. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-2945 Filed 2-4-74;8:45 am]

[Docket No. E-8602]

INDIANA & MICHIGAN ELECTRIC CO. AND PUBLIC SERVICE COMPANY OF INDIANA, INC.

Notice of Changes in Rates and Charges

JANUARY 30, 1974.

American Electric Power Service Corporation (AEP) on January 21, 1974, tendered for filing on behalf of its affiliate, Indiana & Michigan Electric Company (I&M) Modification No. 2 dated December 1, 1973 to its Interconnection Agreement dated February 21, 1964 with Public Service Company of Indiana, Inc. (Service Company), designated as I&M's Rate Schedule FPC No. 24. Applicant requests that the filing be permitted to become effective as of December 15, 1973.

Section 3 of Modification No. 2 provides for a new Service Schedule I—Fuel Conservation Power and Energy. In support of the new schedule Applicant states that the terms and conditions of this service are substantially the same as the filing on December 12, 1973, by AEP on behalf of Appalachian Power Company and other affiliates (Docket No. E-8550). Applicant requests waiver of any requirements not already complied with under §§ 35.12 and 35.13 of the Commission's regulations under the Federal Power Act.

In addition to adding the new schedule referred to above, Modification No. 2 between I&M and Service Company, in section 1, increases the Demand Charge for Short Term Power from $0.40 to $0.45 per kilowatt per week and section 2 increases the Demand Charge for Limited Term Power from $2.15 to $2.50 per kilowatt per month. Applicant states that the terms and conditions of these services are substantially the same as those contained in I&M's filing on December 4, 1973 (Docket No. E-8538) applicable to its Agreement dated March 1, 1966 among I&M, Consumers Power Company, and The Detroit Edison Company.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 13, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-2946 Filed 2-4-74;8:45 am]

[Docket Nos. CP74-23 and CP70-258]

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC. AND CITIES SERVICE GAS CO.

Notice of Extension of Time

JANUARY 28, 1974.

On January 17, 1974, The State Corporation Commission of the State of Kansas filed a motion to reschedule the procedural dates fixed by order issued January 7, 1974. The motion states that Central Kansas Power Company concurs with the motion. Kansas-Nebraska Natural Gas Company filed an answer to the above motion on January 17, 1974, stating that it had no objection to the Kansas Commission's filing its testimony on January 31, 1974, but did object to the postponement of the hearing.

Upon consideration, notice is hereby given that the time for filing testimony by the interveners is postponed to January 31, 1974. The hearing scheduled for February 13, 1974, remains unchanged.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-2947 Filed 2-4-74;8:45 am]

[Docket No. E-8585]

KENTUCKY UTILITIES CO.

Notice of Superseding Agreement and Amendments

JANUARY 29, 1974.

Kentucky Utilities Company (Utilities) on January 7, 1974, tendered for filing an Agreement dated January 13, 1970, between Utilities and East Kentucky Rural Electric Cooperative Corporation (Coop), superseding Agreement between the parties dated August 7, 1963, designated Utilities Rate Schedule FPC No. 73. Also included in the filing on January 7, 1974, are two amendments to the January 13, 1970 Agreement, dated July 7, 1971, and August 8, 1971, respectively. Utilities requests that the Agreement and the two amendments be permitted to become effective on February 1, 1974.

Utilities states that it and Coop are now members of the Kentucky-Indiana Pool according to an agreement on file with the Commission. In the Amendment dated July 7, 1971, the two parties agreed to suspend portions of the January 13, 1970, Agreement which conflict with the Kentucky-Indiana Pool Agreement, so long as either is a member of the Pool. (Utilities does not state what the January 13, 1970 Agreement provides.) By the amendment dated August 25, 1971, certain amendments to the January 13, 1970, Agreement were made. (Utilities' filing does not state what the latter amendments involve.)

In support of the filing, Utilities states that no power transactions are made under the 1970 Agreement on any of the Rate Schedules and that the only monetary transactions are for wheeling for which the charges are the same as in the superseded agreement. Otherwise than for the suspension of the portions of the Agreement mentioned above and for metering, other changes are minor.

(No statement of service of copies of the filing, pursuant to §§ 35.13(a) and 1.17(b) of the Commission's regulations under the Federal Power Act and no proposed notice for publication in the FEDERAL REGISTER, pursuant to § 1.19(c)(3) of the Commission's rules of practice and procedure, were included in Utilities' filing.)

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20425, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 20, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-2948 Filed 2-4-74;8:45 am]

[Docket No. CI74-173]

O. G. McCLAIN

Order Establishing Date for Hearing and Granting Petition To Intervene; Correction

JANUARY 17, 1974.

In the Order Establishing Date For Hearing And Granting Petition To Intervene, issued December 26, 1973 and published in the FEDERAL REGISTER January 7, 1974, 39 FR 1322, on page 1323, paragraph (A), line 7, please change "February 4" to "February 26".

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-2952 Filed 2-4-74;8:45 am]

[Docket No. CI74-373]

MITCHELL ENERGY & DEVELOPMENT CORP.

Notice of Petition for a Declaratory Order or, in the Alternative, for Permission and Approval To Abandon

JANUARY 30, 1974.

Take notice that on January 14, 1974, Mitchell Energy & Development Corporation (Petitioner), 3900 One Shell Plaza, Houston, Texas 77002, filed in Docket No. CI74-373 a petition for a declaratory

order pursuant to § 1.7(c) of the Commission's rules of practice and procedure (18 CFR 1.7(c)) determining that, in fact, there were no facilities installed for the sale to or volumes of natural gas actually delivered to El Paso Natural Gas Company (El Paso) which required a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act or, in the alternative, if no such relief is granted, for permission and approval to abandon the aforesaid sale and facilities pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioner states that it acquired, as successor in interest to Trans Delta Oil & Gas Co. Inc. (Trans Delta), an interest in specific leases contained in the non-participating portion of the Rosa Unit in Rio Arriba County, New Mexico. Petitioner states that sales from the Rosa Unit were subject to a gas sales contract dated June 28, 1962, between El Paso and Irving Pasternak, a predecessor in interest to Trans Delta. Said contract was designated as Pasternak Rate Schedule No. 4 and sales thereunder were authorized to be made under a certificate of public convenience and necessity issued in Docket No. CI63–165. That contract, according to Petitioner, permitted withdrawal from the agreement of any lease, which, in the seller's opinion was incapable of economic development and operation.

Petitioner alleges that the volumes of gas delivered to El Paso for approximately 60 days under the certificate in Docket No. CI63–165 were repayment volumes for gas loaned by El Paso to Pasternak for the development of the Rosa Unit, and; therefore, production from certain leases was dedicated to the interstate market. Thereafter, according to Petitioner, the temporary surface line through which the deliveries were made was removed at the insistence of the U.S. Department of Agriculture and since that time no facilities have existed through which sales or deliveries of gas could be made. Upon these allegations Petitioner requests that the Commission issue a declaratory order finding that there were never sales of gas from and/or facilities at particular portions of the Rosa Unit there were jurisdictional. Applicant also submits that since no production has occurred from the particular portion of the Rosa Unit for over ten years, the sale should be determined to have been constructively abandoned by El Paso.

In the alternative, Petitioner requests permission and approval to abandon the sale and related facilities at the Rosa Unit which is no longer producing natural gas and can be properly withdrawn from the contract as uneconomical. Moreover, Petitioner states that it intends to attempt redevelopment of the subject acreage and to dedicate new natural gas supplies to the interstate market.

Petitioner, lastly indicates that El Paso has not indicated its concurrence in the proposed abandonment.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 22, 1974, 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). 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 petition if no petition to intervene is within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are 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 Petitioner to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74–2949 Filed 2–4–74;8:45 am]

[Docket No. CP74–187]

MONTANA POWER CO.

Notice of Application

JANUARY 30, 1974.

Take notice that on January 15, 1974, The Montana Power Company (Applicant), 40 East Broadway, Butte, Montana 59701, filed in Docket No. CP74–187 an application pursuant to section 3 of the Natural Gas Act for an order of the Commission authorizing Applicant to import natural gas from Canada when Applicant's present import authorization expires on May 14, 1974, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The application states that pursuant to a permit issued in Docket No. G–1717 on February 2, 1952, Applicant was authorized to construct that portion of a 16-inch pipeline, approximately 52.3 miles in length extending from near Cut Bank, Montana, to the Canadian border, which is located at the International boundary between the United States and Canada (Whitlash import point) for the importation of natural gas into the United States. Said facilities are presently being operated and maintained pursuant to a superseding Permit issued in Docket Nos. G–1717 and G–2806, dated May 18, 1955. Applicant states that gas is currently being imported at this import point pursuant to authorization issued in Docket No. G–2805 (14 FPC 227 and 242) on May 19, 1955.

By the order issued in Docket No. G–2805, Applicant was authorized to import volumes of natural gas not to exceed 97,759 Mcf in any one day nor more than 19,551,800 Mcf on any consecutive twelve-month period for a term ending May 14, 1974.

Applicant requests authorization to continue to import volumes of natural gas at the Whitlash import point effective as of May 14, 1974, for a period ending December 31, 1992. Pursuant to an agreement between Applicant and Canadian-Montana Pipe Line Company (Pipe Line Company) dated January 1, 1974, Pipe Line Company will sell and deliver to Applicant import volumes of gas not to exceed 99,460 Mcf in any one day nor more than 19,892,000 Mcf in any consecutive twelve-month period. The application states that the base price under the agreement is 32¾ cents per Mcf, which base price shall escalate ½ cent per Mcf yearly commencing July 1, 1974. The base price will be adjusted for Btu content as provided in the gas purchase agreement between Pipe Line Company and Canadian-Montana Gas Company Limited (Gas Company) dated July 1, 1973.

Applicant states that gas which Applicant proposes to import will be produced or purchased by its wholly-owned subsidiary, Gas Company, from fields in the southeastern portion of the Province of Alberta. Applicant cites a study of reserves in these fields which indicates 282,277,000 Mcf of marketable proven natural gas reserves in said fields as of June 30, 1973.

Applicant states that Pipe Line Company is currently removing gas from the Province of Alberta for sale to Applicant at the Whitlash import point pursuant to Canadian Permit No. CM54–1, dated May 14, 1954, as amended by Amendment of Permit dated March 15, 1961, and Permit No. 61–2, dated March 14, 1961. Permit No. CM54–1, as amended, will expire on May 14, 1974.

Applicant states that Pipe Line Company, by application dated July 31, 1972, recommended for approval by the Energy Resources Conservation Board of the Province of Alberta and now pending before the Lieutenant Governor in Council, has requested that said permits be consolidated into a single permit with a term commencing January 1, 1973, and ending December 31, 1992, as well as an order including certain areas thereunder.

Applicant states that approximately 70 percent of the imported gas will be purchased from its subsidiary and the remainder from other producers in the southeastern Alberta fields. Applicant estimates that it will purchase approximately 18,000,000 Mcf of gas from Pipe Line Company in the first contract year.

Applicant states that approximately 84 percent of its total annual gas supply comes from Canada with approximately 28 percent of this supply coming through the subject Whitlash import point from production in southeastern Albert. Applicant states further that if the importation of gas at the Whitlash import point is terminated, Applicant will have no choice but to terminate gas service to some customers and to curtail others. Applicant states that it knows of no gas available from any source which could be substitute for the gas proposed to be imported.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 22, 1974, 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). 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 part in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-2950 Filed 2-4-74;8:45 am]

[Docket No. CP74-188]

MONTANA POWER CO.

Notice of Application for Permit

JANUARY 30, 1974.

Take notice that on January 15, 1974, The Montana Power Company (Applicant), 40 East Broadway, Butte, Montana 59701, filed in Docket No. CP74-188 an application pursuant to Executive Order No. 10485 requesting a permit for the continued operation and maintenance of existing natural gas facilities at the international boundary between the United States and Canada near Whitlash, Montana, for the purpose of continuing importation of natural gas into the United States, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a permit issued in Docket No. G-1717 on February 2, 1952, The Montana Power Company was authorized to construct that portion of a 16-inch pipeline, approximately 52.3 miles in length extending from near Cut Bank, Montana, to the Canadian border, which is located at the international boundary between the United States and Canada for the importation of natural gas into the United States. Said facilities are presently being operated and maintained pursuant to a superseding Permit issued in Docket Nos. G-1717 and G-2806, dated May 18, 1955. Applicant states that gas is currently being imported at this import point pursuant to authorization issued in Docket No. G-2805 (14 FPC 227 and 242) on May 19, 1955.

By the order issued in Docket No. G-2805, Applicant was authorized to import volumes of natural gas not to exceed 97,759 Mcf in any one day nor more than 19,551,800 Mcf in any consecutive twelve-month period for a term ending May 14, 1974. In an application filed concurrently herewith in Docket No. CP74-187 Applicant is requesting authorization pursuant to Section 3 of the Natural Gas Act to continue to import natural gas from Canada through the subject facilities effective as of May 14, 1974, for a period ending December 31, 1992.

Applicant states that gas which Applicant proposes to import will be produced or purchased by its wholly-owned subsidiary, Canadian-Montana Gas Company Limited from fields in the southeastern portion of the Province of Alberta. Applicant cites a study of reserves in these fields which indicates 282,277,000 Mcf of marketable proven natural gas reserves in said fields as of June 30, 1973.

Applicant states in its application in Docket No. CP74-187 that Canadian-Montana Pipe Line Company is currently removing gas from the Province of Alberta for sale to the Applicant at the Whitlash import point pursuant to Canadian Permit No. CM54-1, dated May 14, 1954, as amended by Amendment of Permit dated March 15, 1961, and Permit No. 61-2, dated March 14, 1961. Permit No. CM54-1, as amended, will expire on May 14, 1974.

Applicant states that Canadian-Montana Pipe Line Company by application dated July 31, 1972, recommended for approval by the Energy Resources Conservation Board of the Province of Alberta and now pending before the Lieutenant Governor in Council, has requested that said permits be consolidated into a single permit with a term commencing January 1, 1973, and ending December 31, 1992, as well as an order including certain areas thereunder.

Applicant states that approximately 70 percent of the imported gas will be purchased from its subsidiary, the remainder from other producers in southeastern Alberta fields. The application states that the current price for gas under contract is 32¾ cents per Mcf, escalating ½ cent per Mcf per year commencing July 1, 1974.

Applicant states further that approximately 84 percent of its total annual gas supply comes from Canada with approximately 28 percent of this supply coming through the subject Whitlash import point from the southeastern Alberta fields. The application states the facilities which are the subject of this application have been constructed and that no additional facilities or connections at the International Boundary for the importation of natural gas are proposed.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 22, 1974, 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). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-2951 Filed 2-4-74;8:45 am]

[Docket No. RP73-108]

PANHANDLE EASTERN PIPELINE CO.

Notice of Further Extension of Time and Postponement of Prehearing Conference and Hearing

JANUARY 29, 1974.

On January 10, 1974, Staff Counsel filed a motion for an extension of the procedural dates fixed by notice issued November 12, 1973, in the above-designated matter. On January 15, 1974, a notice was issued deferring the procedural dates pending action on the above motion.

Upon consideration, notice is hereby given that the procedural dates in the above matter are further modified as follows:

Staff serve direct case, March 8, 1974.
Prehearing Conference, March 14, 1974 (10 a.m., e.d.t.).
Interveners serve Direct Case, March 29, 1974.
Panhandle serve Rebuttal, April 19, 1974.
Cross-Examination, April 30, 1974 (10 a.m., e.d.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-2955 Filed 2-4-74;8:45 am]

[Docket No. RP71-119]

PANHANDLE EASTERN PIPE LINE CO.

Notice of Motion for Commission Order Requiring the Filing of Tariff Sheets Containing a Proposed Emergency Allocation Plan

JANUARY 30, 1974.

Take notice that on January 23, 1973, General Motors Corporation (General Motors), General Motors Building, 3044 West Grand Boulevard, Detroit, Michigan 48202, filed in Docket No. RP71-119 pursuant to § 1.12 of the Commission's rules of practice and procedure (18 CFR 1.12) a motion requesting the Commission to issue an order requiring Panhandle Eastern Pipe Line Company (Panhandle) to file tariff sheets reflecting an emergency natural gas allocation plan for Panhandle's system as proposed by General Motors, all as more fully set forth in the motion which is on file with the Commission and open to public inspection.

In Docket No. RP71-119, Panhandle has proposed a curtailment plan for the

allocation of gas which is in scarce quantities among its customers. General Motors asserts that the instant proceeding on Panhandle's proposed plan is based upon the unrealistic premise that alternative fuels are available in sufficient quantities to meet the needs of curtailed consumers. General Motors contends that at this point in time alternative fuels are unavailable to curtailed consumers; and therefore, Panhandle should allocate its gas in the following manner:

(In descending order of priority)

1. 85 percent of residential requirements, 100 percent of commercial and industrial plant protection requirements, and 100 percent of pipeline customer storage injection requirements;

2. All requirements not specified in Priorities (1), (3) and (4);

3. 15 percent of residential, 15 percent of commercial and 15 percent of industrial requirements (other than plant protection) not included in Priority (4); and

4. Requirements for electric generating plants with generating capacities of 50,000 Kw or more which have alternate fuels available.[1]

General Motors proposes that this plan for Panhandle only operate when there is an acute shortage of alternative fuels used by industrial and commercial consumers of natural gas during periods of curtailment. General Motors further proposed that this plan be operative for 90 days or until the Commission declares that an emergency no longer exists, whichever occurs first. An extension of this emergency allocation plan would require a new declaration by the Commission that a fuel supply emergency exists on Panhandle's pipeline system.

General Motors requests that the Commission order Panhandle to file tariff sheets reflecting the implementation of General Motor's proposed emergency natural gas allocation plan.

It appears reasonable and consistent in the public interest in this case to prescribe a short period for filing protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said should on or before February 21, 1974, 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). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-2954 Filed 2-4-74;8:45 am]

[1] Should an electric generating plant of 50,000 Kw or more be found by the Federal Energy Office to have no adequate supplies of alternate fuel available and be found to be unable to obtain such supplies in time to avoid a significant decrease in reliable electric service, that plant should be placed in Priority 2 or 3 category, as applicable.

[Docket E-8608]

PUBLIC SERVICE COMPANY OF OKLAHOMA

Notice of Filing of Rate Schedule

JANUARY 30, 1974.

Take notice that on January 24, 1974, Public Service Company of Oklahoma (Company) tendered for filing basic information concerning its request for a change in rates of the Markham Ferry Coordinating Agreement, Rate Schedule FPC No. 162. Company states that under the terms of this agreement between Company and Grand River Dam Authority, provision is made for changing the rates set out in the agreement when certain specific costs are above or below the costs of the base year and that the proposed rates are in accordance with the agreement's rate change provision. According to Company, more than two-thirds of the entire increase in operating costs for 1973 over 1972 is the cost of fuel for steam power stations.

Company requests waiver of the Commission's notice requirments under § 35.11 of the Commission's regulations so that the proposed rate schedule can become effective as of January 1, 1974. Also, Company contends that even though the agreement involved in this filing is of a complex nature, the fact that this filing has been made in the same form since 1964 makes it a routine filing and justifies its being reclassified as a nominal rate scheduling filing.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 14, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74-2953 Filed 2-4-74;8:45 am]

[Docket No. RP74-51]

SOUTHWEST GAS CORP.

Order Accepting for Filing and Suspending Proposed Changes in Rates and Providing for Hearing

JANUARY 30, 1974.

On December 27, 1973, Southwest Gas Corporation (Southwest) tendered for filing, as part of its FPC Gas Tariff, Original Volume No. 1, Sixth Revised Sheet No. 3-A constituting Original PGA and Seventh Revised Sheet No. 10-A canceling Rate Schedule No. 1-3, to increase its rates effective January 31, 1974. According to Southwest, the increased rates would provide an annual increase of $356,057 in jurisdictional revenues.

In support of the proposed rates, Southwest cites increases in the cost of labor, materials and supplies, taxes, and capital. Southwest proposes a rate of return of 9.77 percent which would yield, according to Southwest, a 16.00 percent return on common equity.

The filing was noticed on January 11, 1974, with protests and petitions to intervene due on or before January 21, 1974. No such protests or petitions to intervene have been filed to date.

Our review of the filing indicates that the proposed rates may result in excess revenues and that the proposed increases have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. We shall, therefore, accept the proffered tariff sheets for filing, order that the rates be suspended for the full statutory period, until June 30, 1974, and set the matter for hearing.

We note that Southwest is using an unmodified "Seaboard" formula in its cost allocation. In Opinion No. 671, "United Gas Pipe Line Company"[1] we stated that in future cases it may be necessary to establish pipeline rates for resale for industrial use more in line with the costs of competitive fuel. In the hearing ordered herein, the parties should address themselves to the propriety of reflecting in the commodity rate levels the inclusion of less than 75 per cent of *Seaboard* fixed costs as prescribed in the cost formula enunciated in the *United* opinion.

Southwest also proposes to eliminate Rate Schedule I-3, interruptible service, and to alter its four block rate to include only three blocks. According to Southwest, this would permit the Company to recover its incremental growth at a rate nearer the average cost.

Southwest's block type rate form has the effect of encouraging or rewarding large volume consumption via lower unit charges. Due to the national energy shortage, we believe that such a rate form may not be in the public interest. Accordingly, the parties in their evidentiary presentations should direct their attention toward the possible elimination of such rate form and the establishment of a rate design more consonant with sound gas conservation practice.

The Commission finds:

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of

[1] Docket No. RP72-75 (Phase II), issued October 31, 1973.

the rates and charges contained in Southwest's revised tariff sheets proposed in this docket, and that the tendered sheets be suspended as hereinafter provided.

(2) The disposition of this proceeding should be expedited in accordance with the procedure set forth below.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 5 thereof, the Commission rules of practice and procedure, and the regulations under the Natural Gas Act, a public hearing shall be held, commencing with a prehearing conference on May 23, 1974, at 10 a.m., in a hearing room of the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, concerning the lawfulness of the rates, charges, classifications and services contained in Southwest's revised tariff sheets proposed herein.

(B) At the prehearing conference on May 23, 1974, Southwest's prepared testimony and exhibits together with its entire rate filing shall be admitted to the record as its complete case-in-chief subject to appropriate motions, if any, by parties to the proceeding. All parties will be expected to come to this conference prepared to effectuate the provisions of § 1.11 of the Commission's rules of practice.

(C) On or before April 12, 1974, the Commission Staff shall serve its prepared testimony and exhibits. Any prepared testimony and exhibits of parties which may be permitted intervention by further order in this docket shall be served on or before May 1, 1974. Any rebuttal evidence by Southwest shall be served on or before May 17, 1974. The public hearing herein ordered shall commence on May 28, 1974, at 10 a.m.

(D) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (see Delegation of Authority, 18 CFR 3.5 (d)), shall preside at the hearing in this proceeding, shall prescribe relevant procedural matters not herein provided, and shall control the proceeding accordance with the policies expressed in the Commission's rules of practice and procedure.

(E) Pending hearing and final decision in this proceeding, Southwest's revised tariff sheets tendered on December 27, 1973, are suspended and the use thereof deferred until June 30, 1974, five months after the proposed effective date.

(F) The Secretary of the Commission shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.74-2956 Filed 2-4-74;8:45 am]

[Docket Nos. CI74-82, CI74-132, and CI74-244]

TEXACO INC. ET AL.

Order Consolidating Proceedings and Setting Date for Hearing

JANUARY 29, 1974.

On November 1, 1973, an order was issued consolidating the applications of Texaco Inc. (Texaco) and Tenneco Oil Company (Tenneco) for hearing and disposition. Both applications involved offshore Louisiana sales at a proposed rate of 47.0 cents per Mcf from Eugene Island Block 338 to Tennessee Gas Pipeline Company (Tennessee). Interventions were granted in the Texaco docket to Tennessee, and the American Public Gas Association (APGA). Tennessee also intervened in the Tenneco case along with Coumbia Gas Transmission Corporation (Columbia) and Associated Gas Distributors (AGD). A notice of intervention was filed in each proceeding by the Public Service Commission of New York (New York). On December 21, 1973, a notice was issued postponing the hearing from January 22, 1974 to February 12, 1974.

On December 26, 1973, an order was issued setting for hearing on February 12, 1974, an application by Pennzoil Producing Company (Pennzoil) for sales from Ship Shoal Block 186, offshore Lousiana at a proposed initial rate of 47.0 cents per Mcf to United Gas Pipeline Company (United). Interventions were granted to United, APGA, and AGD. New York filed a notice of intervention.

On January 10, 1974, Pennzoil filed a motion to consolidate the three applications for hearing on February 12, 1974. In support of its motion Pennzoil noted that all of the sales were from the offshore domain, the leased acreage was not far apart, all of the applications were filed under Section 2.75 of the Commission's General Policy and Interpretations, Pennzoil's "cost" evidence would closely resemble that to be presented in the Texaco-Tenneco case, Pennzoil would adopt certain testimony to be proffered in the Texaco-Tenneco proceeding, the issues arising from the three applications were the same, and consolidation would not harm any party, including intervenors. Pennzoil stated that no party to each of the proceedings objected to the granting of the motion.

On January 18, 1974, Staff filed a reply to the Pennzoil motion agreeing, for the convenience of the witnesses, to consolidate the proceedings for hearing but not for disposition because different sellers and buyers were involved. Staff also requested that the testimony of its witness Engel, already served on all parties in the Texaco-Tenneco proceeding, be deemed to have been served in the Pennzoil case, if consolidated. In addition, Staff counsel stated that all parties had agreed to postpone the hearing from February 12, 1974 to February 20, 1974.

For the reasons advanced in the Pennzoil motion the three applications filed by Texaco, Tenneco, and Pennzoil, respectively, will be consolidated for hearings to commence February 20, 1974. While it is true that there are different producers and different purchasers involved in the Texaco-Tenneco and Pennzoil cases, there does not appear at this time to be any substantive issue that distinguishes one application from another, but should such an issue arise, in the opinion of the presiding administrative law judge, we place the further procedural steps to be followed by the parties within his discretion.

Since it would serve no purpose for witness Engel's testimony to be served twice upon the same parties, such testimony is deemed to be properly served as of the date of this order upon all the parties in the Pennzoil case. Staff's request to hold the hearing on February 20, 1974 will be approved.

The Commission finds:

(1) The motions of Pennzoil and Staff for consolidation of the above docketed proceedings are granted as modified.

(2) The portions of Staff's motion relating to the postponement of the hearing date and the service of Staff testimony are granted.

The Commission orders:

(A) The above docketed proceedings are hereby consolidated for hearing, subject to a finding by the presiding administrative law judge that good cause exists for severance of the Pennzoil application for disposition from those of Texaco and Tenneco.

(B) The public hearing scheduled for February 12, 1974, will convene instead on February 20, 1974, in a hearing room to be designated at the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

(C) The testimony of Staff witness Engel duly served upon all parties in the Texaco-Tenneco proceeding is hereby deemed properly served upon all parties in the Pennzoil case on the date of the issuance of this order.

(D) The Administrative Law Judge's decision shall be rendered on or before March 19, 1974. All briefs on exceptions shall be filed on or before April 9, 1974, and all replies thereto shall be due on or before April 23, 1974.

(E) Any provision of the orders of November 1, 1973 and December 26, 1973, not modified or revoked by this order remain in full force and effect.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.74-2957 Filed 2-4-74;8:45 am]

[Docket No. RP74-60]

TRUNKLINE GAS CO.

Notice of Filing of Revised Tariff Sheet

JANUARY 29, 1974.

Take notice that on January 18, 1974, Trunkline Gas Company (Company)

tendered for filing Fifth Revised Sheet No. 37 and Fifth Revised Sheet No. 104 of Trunkline Gas Company's FPC Gas Tariff, Original Volume No. 2. Company states that Fifth Revised Sheet No. 37 reflects a redetermination of the price to be paid under Rate Schedule No. F–2 and Fifth Revised Sheet No. 104 reflects a redetermination of the price to be paid under Rate Schedule No. F–5. According to Company, both price redeterminations reflect the upward adjustment of 0.5 cents as prescribed by the Federal Power Commission in Opinion No. 598, effective October 21, 1973.

Company requests waiver of section 154 of the Commission's regulations in order to make these tariff sheets effective October 1, 1973.

Company further states that a copy of Fifth Revised Sheet No. 37 has been furnished to Tennessee Gas Transmission Company, and a copy of Fifth Revised Sheet No. 104 has been furnished to United Fuel Gas Company.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 12, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.74–2958 Filed 2–4–74;8:45 am]

[Docket No. RP74–20]

UNITED GAS PIPE LINE CO.

Order Accepting Proposed Tariff Sheets for Filing, Suspending Rate Increase, Setting Matter for Hearing and Permitting Intervention; Clarification

In the Order Accepting Proposed Tariff Sheets For Filing, Suspending Rate Increase, Setting Matter For Hearing And Permitting Intervention, issued November 6, 1973, and published in the FEDERAL REGISTER November 12, 1973, 38 FR 31208 and 31209.

Please delete paragraphs 3 thru 10 and substitute the following.

KENNETH F. PLUMB,
Secretary.

United gives as its principal reasons for the proposed rate increase; (1) increased working capital requirements; (2) the need for an increased rate of return of 10.25%; and (3) increased taxes, including income taxes associated with the increased return.

Other changes proposed by United in the Tariff include modification of the definition of billing demand in Rate Schedules PL–C, PL–J, DG–N and DG–S, deletion of a provision in PL schedules relating to a limitation upon variation in daily takes by pipeline companies, modification of the definition of Maximum Daily Quantity in the T–3 rate schedule providing for transportation service for Southern Natural Gas Company and a change in transportation rate, deletions of certain references to the Northwest Mississippi Rate Zone, and minor revisions of certain tariff sheets and the elimination of others that provide for determinations of quantity.

The proposed effective date of the increased rates and charges is November 6, 1973.

The filing was noticed on October 2, 1973, with petitions to intervene and protests due on or before October 19, 1973. Timely petitions to intervene were received from: Algonquin Gas Transmission Company; Arkansas Louisiana Gas Company; Consolidated Gas Supply Corporation; Florida Gas Transmission Company; Laclede Gas Company; Memphis Light, Gas and Water Division, City of Memphis, Tennessee; Mississippi River Transmission Corporation; Natural Gas Pipeline Company of America; New Orleans Public Service Incorporated; Philadelphia Gas Works; Public Service Electric and Gas Company; Southern Natural Gas Company; United Gas, Incorporated; United Municipal Distributors Group; Willmut Gas and Oil Company; Mississippi Valley Gas Company and Mobile Gas Service Corporation; Texas Eastern Transmission Corporation; Texas Gas Transmission Corporation. Timely notices of intervention were filed by the Public Service Commission of the State of New York; The State of Louisiana, Louisiana Public Service Commission, Louisiana Municipal Association, and St. James Parish Utilities.

Our review of United's filing indicates that it raises certain issues which may require development in an evidentiary hearing. We shall therefore suspend the proposed rate increase for the full statutory period and direct that a hearing be held on the justness and reasonableness of the rates proposed therein.

The Commission finds:

(1) The rates proposed by United have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful.

(2) It is necessary and proper in the public interest and in carrying out the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the rates and charges contained in United's FPC Gas Tariff as proposed to be amended in this docket, and that the revised tariff sheets filed herein be suspended, and the use thereof deferred as hereinafter ordered.

(3) Good cause exists to permit the above mentioned petitioners to intervene in this proceeding.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 5 thereof, and the Commission's rules and regulations, a public hearing shall be held, commencing with a prehearing conference on March 19, 1974, at 10:00 A.M., e.s.t., in a hearing room of the Federal Power Commission, Washington, D.C. 20426, concerning the lawfulness of the rates, charges, classifications, and services contained in United's FPC Gas Tariff, as proposed to be amended herein.

(B) Pending such hearing and decision thereon, the proposed tariff sheets in United's First Revised Volume No. 1 of its FPC Gas Tariffs are suspended and the use thereof deferred until April 6, 1974, and until such time as they are made effective in the manner provided in the Natural Gas Act.

[FR Doc.74–2959 Filed 2–4–74;8:45 am]

FEDERAL RESERVE SYSTEM

FIRST AT ORLANDO CORP.

Order Approving Acquisition of Banks

First at Orlando Corporation, Orlando, Florida, a bank holding company within the meaning of the Bank Holding Company Act, has applied, in separate applications, for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of Wilton Manors National Bank ("Wilton Bank"), and Lauderdale Beach Bank ("Lauderdale Bank"), both of Fort Lauderdale, Florida ("Subject Banks").

Notice of the applications affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and none has been timely received. The Board has considered the applications in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls 35 banks with aggregate deposits of $1.4 billion, representing 6.5 percent of total deposits held by commercial banks in Florida and is the third largest banking organization in the State. (All banking data are as of June 30, 1973 and reflect holding company formations and acquisitions approved by the Board through December 31, 1973.) The acquisitions of Wilton Bank (deposits of $44 million) and Lauderdale Bank (deposits of $33 million) would increase Applicant's share of Florida deposits by four-tenths of one percentage point; Applicant's rank among State banking organizations would remain unchanged, and concentration of State banking resources would not increase significantly.

Subject banks are located in the North Broward banking market,[1] and their ac-

[1] The North Broward banking market is approximated by that portion of Broward County north of Fort Lauderdale, to and including Deerfield Beach, Florida.

quisition would represent Applicant's initial entry into the area. Wilton Bank and Lauderdale Bank hold 3.1 percent and 2.3 percent of total market deposits and rank eleventh and fifteenth, respectively, among 39 banks represented in the market. Nine multibank holding companies and three banking groups are represented in the market, and the four largest banking organizations in the market control almost 65 percent of total market deposits. Although Wilton Bank and Lauderdale Bank are only four miles apart, they do not actively compete with each other due to the fact that both are under common ownership and management.[2] It does not appear that, in the absence of consummation of the proposed acquisitions, this existing affiliation would terminate in the foreseeable future. Accordingly, it appears that no present or future competition between the banks to be acquired would be eliminated by consummation of this proposal. On the contrary, consummation herein would result in the termination of the affiliation of Peoples Bank with subject banks and thus represents the entry of an additional competitor into the market.

Applicant's closest subsidiary banking office is located 26 miles north of subject banks and there is no existing competition between them; it appears that there is little likelihood of the development of such future competition due to the densely populated intervening areas, the distances involved, and Florida's restrictive branching laws. Consequently, competitive considerations are consistent with approval of the applications.

The financial condition and managerial resources of Applicant, its banking subsidiaries, and subject banks are regarded as generally satisfactory in view of Applicant's commitment to inject equity capital in those subsidiaries having low to moderately low capital bases. There is no evidence in the record that the banks in the relevant market are failing to meet the banking needs of the area, but affiliation with Applicant should provide subject banks with the ability to become more aggressive lenders and to compete for larger commercial and real estate loans. In addition, Applicant will assist subject banks in providing trust, computer, and investment advisory services. Accordingly, considerations relating to the convenience and needs of the communities to be served are consistent with and lend weight toward approval of the applications. It is the Board's judgment that consummation of the proposed acquisitions would be in the public interest and that the applications should be approved.

On the basis of the record, the applications are approved for the reasons summarized above. The transactions shall not be made (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[3] effective January 28, 1974.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.74-2881 Filed 2-4-74;8:45 am]

[2] The Board also notes that the affiliate relationship described above includes a third bank, Peoples Bank of Broward County, Fort Lauderdale, Florida ("Peoples Bank"), which has five directors and officers in common with subject banks. In order to eliminate any possibility that approval of the within applications would result in a violation of the Board's Regulation L, Applicant has made a commitment to the Board that all directors or officers of subject banks who are also directors or officers of Peoples Bank will resign their respective positions in Peoples Bank within one year after consummation of the proposals herein.

FIRST TENNESSEE NATIONAL CORP.

Acquisition of Bank

First Tennessee National Corporation, Memphis, Tennessee, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting shares of Bank of Mt. Juliet, Mt. Juliet, Tennessee. 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)).

First Tennessee National Corporation, is also engaged in the following nonbank activities: acting as reinsurer for underwriters of credit life insurance and as a mortgage broker which manages real estate for others and develops real estate. In addition to the factors considered under section 3 of the Act (banking factors), the Board will consider the proposal in the light of the company's nonbanking activities and the provisions and prohibitions in section 4 of the Act (12 U.S.C. 1843).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 25, 1974.

Board of Governors of the Federal Reserve System, January 28, 1974.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.74-2878 Filed 2-4-74;8:45 am]

FIRST WISCONSIN BANKSHARES CORP.

Order Approving Acquisition of Bank

First Wisconsin Bankshares Corporation, Milwaukee, Wisconsin, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire all of the voting shares of First Wisconsin Bank of West Green Bay, Ashwaubenon, Wisconsin ("Bank"), a proposed new bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls 18 banks, which hold approximately $1.9 billion in deposits and thereby ranks as the largest bank holding company in the State of Wisconsin, holding approximately 16 per cent of the total deposits held in commercial banks in the State. (All banking data are as of December 31, 1972 and reflect acquisitions and formations approved by the Board through November 30, 1973.) Bank is a proposed new bank and its acquisition by Applicant would neither eliminate existing competition nor immediately increase the concentration of banking resources in Wisconsin.

Bank, which will be opened only if this application is approved, would be located in Ashwaubenon (approximate population 10,000 in 1970) just west of Green Bay. Ashwaubenon is on the western side of the market approximated by the Green Bay SMSA. Applicant has a subsidiary operating in Green Bay less than six miles from the proposed site of Bank. Measured by total deposits in commercial banks in the market, Applicant controls about 10 per cent of the market, while the largest three banking organizations control, in the aggregate, about 70 per cent of deposits in commercial banks.

Objections to the proposed acquisition of Bank have been raised by financial institutions in the area. The main thrust of the objections is that there is no present requirement for a bank in Ashwaubenon and that Applicant is seeking to dominate the market and stifle economic growth of the institutions already in the area.

Applicant's proposal to establish a new bank in Ashwaubenon would eliminate no present or future competition between any of Applicant's subsidiaries and Bank, and there would be no immediate increase in banking concentration in the area. The Board is aware of the possibility that a holding company may, by the acquisition of a new bank, be seeking to strengthen a competitive hold on a market at the direct expense of a smaller competitor, unduly raise the barriers to entry, or pre-empt a site. In this case, particularly in view of the expanding Green Bay market, and the fact that Applicant is by no means dominant in Green Bay, the Board is satisfied that such undesirable anticompetitive considerations are not present. Based on the record, the Board finds that consummation of the proposal would have no signif-

[3] Voting for this action: Chairman Burns and Governors Daane, Brimmer, Sheehan, Bucher, and Holland. Absent and not voting: Governor Mitchell.

icantly adverse effects on competition in any relevant area.

The financial condition of Applicant and its subsidiary bank are considered to be generally satisfactory, especially in view of Applicant's plan for the capital augmentation of its subsidiary banks. The managerial resources of Applicant and its group of banks are also considered to be generally satisfactory and prospects for the group appear favorable. Bank, as a proposed new bank, has no operating history but projected earnings and growth for the new bank under Applicant's control appear favorable. Bank would serve as a more convenient source of banking for the residents of Ashwaubenon, which appears to be relatively underbanked in view of the population growth (278 per cent) and the deposit growth (461 per cent) that Ashwaubenon has experienced in the last ten years. Considerations relating to the convenience and needs of the communities to be served lend some support toward approval of the application.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be made (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after that date, and (c) First Wisconsin Bank of West Green Bay, Ashwaubenon, Wisconsin, shall be opened for business not later than six months after the effective date of this Order. Each of the periods described in (b) and (c) may be extended for good cause by the Board, or by the Federal Reserve Bank of Chicago pursuant to delegated authority.

By order of the Board of Governors,[1] effective January 28, 1974.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.74-2882 Filed 2-4-74;8:45 am]

WORCESTER BANCORP, INC.

Order Approving Application To Engage De Novo in Certain Insurance Agency Activities

Worcester Bancorp, Inc., Worcester, Massachusetts, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 4(c)(8) of the Act and § 225.4(b)(1) of the Board's Regulation Y, to engage de novo in certain insurance agency activities at 34 locations in Massachusetts at which Applicant or its subsidiaries are otherwise engaged in business, through a wholly-owned subsidiary, Wornat Insurance Agency, Inc., Worcester, Massachusetts ("Wornat"). Applicant proposes through Wornat to act as insurance agent or broker with respect to credit life insurance, credit accident and health insurance, and mortgage redemption insurance, all directly related to extensions of credit by Applicant's banking and nonbanking subsidiaries. Such activities have been determined by the Board to be closely related to banking.

Notice of the application was published in the communities to be served in accordance with § 225.4(b)(1) of the Board's Regulation Y. The National Association of Life Underwriters ("NALU"), the Massachusetts Association of Life Underwriters ("MALU"), and the National Association of Mutual Insurance Agents ("NAMIA") sought and were granted intervention in the proceeding and also requested a hearing be held on the application.

By order of March 6, 1973, the Board directed that a hearing be held on the subject application before a designated Administrative Law Judge (38 FR 6441). The hearing was held on July 16, 1973, and it and related proceedings have been conducted in accordance with the Board's Rules for Formal Proceedings (12 CFR 263). Briefs and reply briefs were filed by the parties after the hearing. The Law Judge submitted his Recommended Decision to the Board wherein he recommended approval of the application subject to certain conditions. Exceptions and supporting briefs were subsequently filed by the parties.

The Recommended Decision found that the Applicant had sustained the burden of showing that its proposed activities were so closely related to banking as to be a proper incident thereto and that these activities could reasonably be expected to produce benefits to the public such as greater convenience, increased competition and gains in efficiency, and, further, that there was no established proof of undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices that would result from approval of the application.

The Law Judge recommended approval of the application subject to three conditions: (1) That individual sales of credit life, credit accident and health, and mortgage redemption insurance in amounts or for terms in excess of $10,000 and ten years be sold only through employees duly licensed as insurance agents; (2) That Applicant be required to include on its insurance forms a statement that the purchase of such insurance was not a condition to the granting of any loan and should not be considered as an inducement therefore (with respect to mortgage redemption insurance the recommendation was that language be included indicating that similar insurance not naming the lending institution as beneficiary could be attained from independent agents or, in lieu thereof, existing insurance owned by the borrower could be assigned to the bank); and, (3) That sales of insurance to borrowers from Applicant's nonbanking subsidiaries be limited to an amount no greater than 5 per cent of the aggregate insurance premium income of Applicant.

Exceptions to this Recommended Decision were filed by Applicant, NALU, and MALU with the latter organizations filing a joint exception. The Board has considered the entire record of the hearing including the transcript, exhibits, exceptions, rulings, all briefs and memoranda filed in connection with the hearing, comments received regarding this application, and the Recommended Decision of the Law Judge. The Board remanded the case to the Law Judge for the limited purpose of clarifying certain portions of the Recommended Decision and the Law Judge responded thereto. The Board's findings and conclusions with respect to the application are set forth hereafter. Additional facts relating to the application are contained in the Law Judge's Recommended Decision and to the extent not inconsistent with this Statement, the findings of fact by the Law Judge are hereby adopted.

Applicant controls two banking subsidiaries with aggregate deposits of $417 million (all banking data are as of December 31, 1972); Applicant also has several nonbanking subsidiaries which include Wornat Leasing Corporation, a corporation engaged in full payout financial leasing of all types of capital equipment; Wornat Development Corporation, which engages in making real estate construction and permanent mortgage loans; the Empire Group, Inc., which engages in granting second mortgage loans on residential property;[1] and Worcester Capital Corporation, a federally licensed small business investment company.

Applicant proposes to acquire Wornat, a de novo corporation, with an initial capitalization of $50,000. Applicant projects that during its first year of operation, Wornat will have approximately $484,000 in gross premium income. Of this amount, Applicant estimates that Wornat would receive about $450,000 in gross premiums through the sale of $51.6 million of credit life insurance, an additional $29,000 from the sale of $3.1 million of credit accident and health insurance and $5,000 in gross premium income from the sale of $950,000 of mortgage redemption insurance.[2] These projections are based on Applicant's present sales of credit life and credit accident and health insurance (sold through its group policy referred to in footnote 2), and its present volume of loans on real estate.

[1] Voting for this action: Chairman Burns and Governors Daane, Brimmer, Sheehan, Bucher, and Holland. Absent and not voting: Governor Mitchell.

[1] Applicant received Board approval effective May 24, 1973, to acquire Empire Group, Inc., Natick, Massachusetts, and its wholly-owned subsidiaries, but no separate application (including published notice) has been made with regard to Empire Group, Inc. engaging in insurance activities at any location. Accordingly, although there was some discussion of proposed insurance agency activities of Empire in the present hearing, Board action on the subject proposal at hand is not applicable to the offices of Empire Group in Massachusetts or elsewhere.

[2] Applicant presently sells credit life and credit accident and health insurance related to extensions of credit by its two banking subsidiaries through a group policy obtained from an independent agent some years ago. However, Applicant does not sell mortgage redemption insurance under this group policy.

The Law Judge concludes that the sale as agent or broker of credit life, credit accident and health and mortgage redemption insurance is closely related to banking or managing or controlling banks and the Board affirms his finding and conclusion in this regard:

> The business of selling accident, health and declining balance terms life insurance directly related in amount to extensions of credit by a bank or bank-related company is so closely related to banking as to be a proper incident thereto within the meaning of Section 225.4(a)(9) of Regulation Y. (P. 12)

The above finding and conclusion of the Law Judge is amply supported by the record and was not controverted by Intervenors. Moreover, the sale of credit life, credit accident and health and mortgage redemption insurance has long been regarded as closely related to banking. In fact, the Senate Report on the Bank Holding Company Act of 1956 expressly states that:

> * * * the operation of a credit life-insurance program in connection with bank loans is clearly within the scope of banking operations as presently conducted. So is the operation of an insurance program under which insurance proceeds retire the outstanding balances of the mortgage upon the death of the mortgagor in cases where the bank holds the mortgage.[3]

Similarly, the legislative history of the 1970 Amendments to the Act indicates that the sale of such insurance is closely related to banking.[4] There is nothing in this record which would indicate that the sale of credit life, credit accident and health and mortgage redemption insurance by Applicant, in connection with extensions of credit granted by its banking or nonbanking subsidiaries, would not be closely related to banking.

The Law Judge also concluded that the sale of credit life and credit accident and health insurance by Applicant could reasonably be expected to produce public benefits such as greater convenience, increased competition, or gains in efficiency; the Board affirms this finding and conclusion.

> Most credit life, accident and health insurance is sold in connection with loans in amounts of less than $10,000 and for an average term of approximately 30 months. When sold on a group basis accompanying an extension of credit to an individual without the requirement of a medical examination and by means of a simple form as part of the loan application, the service is convenient, the rates are comparatively low, and there is minimal need for such sales to be executed by licensed insurance agents. (P. 12–13)

> Since Bancorp is, at the present time, selling credit life, health and accident insurance under a master policy formerly negotiated by an independent agent, the proposed authority will not add a service which is not presently being offered. However, few, if any, insurance agents are interested in selling group insurance to the public because of the minimal rates and commissions involved, although some are interested in negotiating master policies for institutions such as applicant. (P. 14)
>
> To permit Bancorp or Wornat Insurance to negotiate such coverage directly with underwriters would place Wornat in fair competiton with the few agents interested in the same field and also increase competition between the applicant and those mutual savings banks, Federal savings and loan associations and State chartered commercial banks which presently offer such insurance to the public in the State of Massachusetts. On the other hand, to withhold such authority from Bancorp/Wornat and thereby in effect require them to utilize the services of an outside insurance agent earning commissions from the underwriter would reduce the possibility of passing some of the commission income and expense savings capable of being derived from the combined bank/insurance operation on to borrowers—at least in the form of competitively lower interest rates. On balance, the public interest favors the increased inter-bank and bank v. insurance agent competition that approval of this aspect of the application would encourage, particularly in view of the fact that the impact upon the insurance agents in this narrow field appears minimal. (P. 14–15)

The Law Judge found that the sale of mortgage redemption insurance by Applicant could also be reasonably expected to be in the public interest and the Board affirms his finding and conclusion.

> In view of the foregoing it is concluded that, competition between Bancorp/Wornat and independent insurance agents will be in the public interest by affording the consumer the opportunity of making an intelligent choice between the services offered. While it is not expected that Bancorp's penetration of the mortgage redemption insurance market will be limited to the $5,000 gross premium income forecast for the first year of operation; neither is it probable that the volume of this operation will expand speedily to such an extent as to severely impair the ability of a substantial number of independent insurance agents to continue in business. (P. 17)

Applicant's banking subsidiaries have about $10–$15 million in residential mortgages and contemplate writing only about 35 mortgage redemption policies in the first year of operation. This indicates that Wornat is not expected to be a large factor in the sale of mortgage redemption insurance. However, as the Law Judge found, Wornat's entry would increase competition in the sale of mortgage redemption insurance by providing an alternative source for such insurance. Moreover, where a mortgage loan is less than $10,000 in amount and ten years in time, Wornat could apparently sell mortgage redemption insurance related to such loans on a group basis in conformity with Massachusetts law. Thus, irrespective of the face value of the mortgage redemption policy, all such sales will conform with State law and Applicant's limited engagement in this activity is likely to be procompetitive. This constitutes a public benefit that would result from Wornat's sale of mortgage redemption insurance.

The Law Judge concluded that there was no established proof in the record that the sale of credit life, credit accident and health and mortgage redemption insurance by Wornat would result in an undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices, and the Board adopts this finding and conclusion. Intervenors stressed what they felt would be the coercive tying effects resulting from the ability of Applicant to make both loans and sell the specified types of insurance in connection with such loans. However, for several years Applicant, under a group policy, has been selling credit life and credit accident and health insurance, and the Intervenors were unable to cite any specific instances of a tying arrangement imposed, or sought to be imposed, by Applicant during that period. Moreover, Intervenors concede the absence of any evidence to show that Massachusetts mutual savings banks, which are able to sell various types of insurance, have tied the sale of insurance to extensions of credit.

The Law Judge recommended in his decision, and the Board so orders, that language in bold type be inserted in the application forms for insurance that informs the prospective purchaser he need not purchase such insurance in order to obtain an extension of credit from any of Applicant's subsidiaries. Applicant has indicated its willingness to comply with this condition. The use of such language will assist Applicant in those internal operations that are used to reduce the potentiality for tying arrangements which the Congress prohibited when it enacted § 106 of the Bank Holding Company Act. In the absence of specific instances of attempted tying of insurance sales and credit extensions by Applicant and in the presence of appropriate language in the insurance form, the Board concludes that the generalized fear of tying effects is not sufficient to require a denial of all or part of Applicant's application. The condition herein imposed is applicable to each of the various forms of insurance Applicant seeks Board approval to sell as agent or broker—specifically, credit life, credit accident and health, and mortgage redemption insurance.

The Law Judge also recommended as a condition of approval of this application that sales of any individual policies in amounts of over $10,000 and ten years in time be made by a licensed insurance agent; Applicant has agreed to this condition. In this connection, NALU and MALU have requested that the Board condition approval of this application on on the additional requirement that the sale of group policies in excess of $10,000 and ten years in time by Applicant be made only by licensed insurance agents. However, Massachusetts law presently prohibits a bank holding company from selling group policies in excess of $10,000. and ten years. The Board expects that

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[3] S. Report No. 1095, 84th Cong. 2d Sess. (1956).

[4] For example, H.R. 6778 as passed by the House during the 1st session of 91st Congress did not include the sale of insurance on the "negative laundry list" where the insurance is limited to insuring the life of a debtor pursuant to or in connection with a specific credit transaction, or providing indemnity for payments coming due on a specific loan or other credit transactions while the debtor is disabled, * * *" H.R. 6778, 91st Cong., 1st Sess. as passed by the House on November 5, 1969.

Applicant will observe applicable State law and Applicant has stated its intention to do so.

In addition, the Law Judge recommended that language be placed in application forms for mortgage redemption insurance to inform the prospective borrower that similar insurance is available from other sources wherein the beneficiary could be someone other than the lender. However, it is clear from the record in this case that the solicitation for mortgage redemption policies occurs after an extension of credit has been granted and that the borrower is afforded ample opportunity to consider alternative sources. Thus, no coercive element would appear to be present in such sales. The Board has not required this specific conditon heretofore and finds the evidence in this record to be insufficient to demonstrate a public need for such a requirement.

The Law Judge recommended a third condition which would require that the amount of insurance premium from the sale of insurance related to extensions of credit by Applicant's nonbanking subsidiaries not exceed 5 percent of the total insurance premium income by all of Applicant's subsidiaries. This recommendation was apparently based on an assumption that sales of insurance by Applicant's nonbanking subsidiaries are not as closely related to banking as such sales by Applicant's banking subsidiaries and that the former sales thus must come under § 225.4(a)(9)(ii)(c) as "convenience" sales. However, sales of insurance by Applicant's banking and nonbanking subsidiaries are in each instance related to an extension of credit and are, therefore, closely related to banking. Thus, the Board declines to adopt this recommended condition of the Law Judge.

Based on the foregoing and other considerations reflected in the record, the Board has determined that the balance of the public interest factors the Board is required to considered under section 4(c)(8) is favorable. Accordingly, the application is hereby approved subject to the conditions set out above. Further, this determination is subject to conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder or to prevent evasion thereof.

The transaction shall be executed not later than three months after the effective date of this Order unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Boston pursuant to delegated authority.

By order of the Board of Governors,[5] effective January 28, 1974.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.74-2880 Filed 2-4-74;8:45 am]

INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

MARY E. COAL CO., INC., ET AL.

Opportunity for Public Hearing

Correction

In FR Doc. 74-2176 appearing at page 3597, in the issue for Monday, January 28, 1974, in the third line of the sixth docket listing, "Mine ID No. 26 01163 0," should read "Mine ID No. 36 01163 0,".

NATIONAL SCIENCE FOUNDATION

ADVISORY PANEL FOR BIOPHYSICS

Notice of Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Advisory Panel for Biophysics to be held at 9 a.m. on February 22 and 23, 1974, in Room 321 at 1800 G Street, NW., Washington, D.C. 20550.

The purpose of this Panel is to provide advice and recommendations as part of the review and evaluation process for specific proposals and projects. The agenda will be devoted to the review and evaluation of research proposals.

This meeting is concerned with matters which are within the exemptions of 5 U.S.C. 552(b) and will not be open to the public in accordance with the determination by the Director of the National Science Foundation dated December 17, 1973, pursuant to the provisions of section 10(d) of P.L. 92-463.

For further information concerning this Panel, contact Dr. Eloise E. Clark, Acting Program Director, Biophysics Program, Room 329, 1800 G Street, NW., Washington, D.C. 20550.

T. E. JENKINS,
Assistant Director for Administration.

JANUARY 21, 1974.

[FR Doc.74-2892 Filed 2-4-74;8:45 am]

COST OF LIVING COUNCIL

FOOD INDUSTRY WAGE AND SALARY COMMITTEE

Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given that the Food Industry Wage and Salary Committee, established under the authority of section 212(f) of the Economic Stabilization Act, as amended, section 4(a)(iv) of Executive Order 11695, and Cost of Living Council Order No. 14, will meet on February 7, 1974.

The meeting will begin at 10 a.m., in Conference Room 8202, 2025 M Street NW., Washington, D.C. The agenda will be divided into two subjects. The first part of the agenda will consist exclusively of discussions of a specific document which I have determined falls within exemption (5) of 5 U.S.C. 552(b). The document is a Cost of Living Council staff paper containing opinions and recommendations with respect to future decontrol of the food industry. The second segment, consisting of discussions of food industry wage cases, will be open to the public on a first-come, first-served basis beginning at approximately 1 p.m.

Since the first part of this meeting will consist of discussions of a document which falls within exemption (5) of 5 U.S.C. 552(b), pursuant to authority granted me by Cost of Living Council Order 25, I have determined that this portion of the meeting, lasting approximately two hours, itself falls within exemption (5) of 5 U.S.C. 552(b) and it is essential to close this part of the meeting to protect the free exchange of internal views and to avoid interference with the operation of the Committee.

Issued in Washington, D.C., on February 4, 1974.

HENRY H. PERRITT, Jr.,
Executive Secretary, Cost of Living Council.

[FR Doc.74-3111 Filed 1-4-74;12:22 pm]

INTERSTATE COMMERCE COMMISSION

[Notice No. 437]

ASSIGNMENT OF HEARINGS

JANUARY 31, 1974.

Cases assigned for hearing, postponement, cancellation or oral argument apepar 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. No amendments will be entertained after February 5, 1974.

[5] Voting for this action: Vice Chairman Mitchell and Governors Brimmer, Sheehan, Bucher and Holland. Absent and not voting: Chairman Burns and Governor Daane.

MC 26396 Sub 83, Popelka Trucking Co., dba The Waggoners, now assigned February 6, 1974, at Billings, Mont., is cancelled and application dismissed.

MC 139134, Kennedy Motors, Inc., now being assigned hearing March 25, 1974 (1 week), at San Francisco, Calif., in a hearing room to be later designated.

MC-F-11919, Morrison Motor Freight, Inc.—Purchase—All Industrial Cartage Co., & MC-59728 Sub 25, Morrison Motor Freight, Inc., now assigned March 11, 1974, will be held in Room 3, Public Utilities Comm. of Ohio, 111 N. High St., Columbus, Ohio.

MC-133318 Sub 6, Van De Hogen Cartage Limited, now assigned March 6, 1974, will be held on 7th Floor Court Room, U.S. Courthouse, 28 Court Street, Buffalo, N.Y.

MC-C-8116, L. C. Waller, DBA L.C.W. Trucking Co., Glenn Elliott, Harvey W. Jones, Summersgill Enterprises, Inc., And Nola Forwarding Co., Inc.—Investigation of Operations—now assigned March 5, 1974, at Baton Rouge, La., is postponed to March 14, 1974, 5th Floor Conference Room, State Library, Riverside Mall, Baton Rouge, La.

MC-138871 Sub 1, Padelford Trucking Corp., now assigned March 4, 1974, will be held on the 7th Floor Court Room, U.S. Courthouse, 28 Court Street, Buffalo, New York.

MC-F-11936, Pinto Trucking Service, Inc.—Purchase (Portion)—S. S. Bertz & Sons, Inc., MC 128383 Sub 33, Pinto Trucking Service, Inc., and MC-C-8095, Kerek Air Freight Corporation, Et Al.-V-S. S. Bertz & Sons, Inc., Et Al., now assigned March 11, 1974, at Philadelphia, Pa., will be held in Room 3240, William J. Green, Jr., Federal Bldg., 600 Arch Street.

MCC 8216, All Points, Inc., Angelo J. Picciolo and Tempo Drivers, Inc.—Investigation of Operations, now being assigned March 19, 1974 (2 days), at Miami, Fla., in a hearing room to be later designated.

MCC 8225, American Truck Rentals, Inc. and Amdell Personnel, Inc.—Investigation of Operations, now being assigned March 21, 1974 (2 days), at Miami, Fla., in a hearing room to be later designated.

MC 126034 Subs 1, 3, 4, Bucks County Construction Co., now assigned March 5, 1974, will be held in Room 3240, William J. Green, Jr., Federal Bldg., 600 Arch Street, Philadelphia, Pa.

MC 127238 Sub 8, Dorothy R. Zummo, dba Air Delivery Service, now assigned March 7, 1974, will be held in Room 3240, William J. Green, Jr., Federal Bldg., 600 Arch Street, Philadelphia, Pa.

MC-C-8087, Larsen Motor Lines, Inc.—Investigation and Revocation of Certificate—now assigned March 12, 1974, at New Orleans, La., cancelled and reassigned to March 12, 1974 (2 days), in the 5th Floor Conference Room, State Library, Riverside Mall, Baton Rouge, Louisiana.

MC-135647, Robert Emanuel and Margaret Emanuel, DBA Emanuel's Express, now assigned March 18, 1974, will be held in Room 3240, William J. Green, Jr., Federal Bldg., 600 Arch St., Philadelphia, Pa.

MC 116763 Sub 261, Carl Subler Trucking, Inc., now being assigned hearing March 25, 1974 (1 week), at Orlando, Fla., in a hearing room to be later designated.

MC 125335 Sub-3, Good-Way, Inc., now being assigned March 18, 1974, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 30844 Sub-479, Kroblin Refrigerated Xpress, Inc., now being assigned March 19, 1974, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 124004 Sub-27, Richard Dahn, Inc., now being assigned March 26, 1974, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 126542 Sub-3, B. R. Williams Trucking Inc., now being assigned March 26, 1974, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 139141, Atlas Herbert Brown, DBA Brown's Car Transporting, now being assigned March 27, 1974, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-136183 Sub 2, Joe Costa, DBA Trinidad Freight Service, now assigned March 25, 1974, at Albuquerque, N. Mex., is postponed indefinitely.

MC-F-11963, Churchill Truck Lines, Inc.—Purchase (Portion)—Stevens Express, Inc., now assigned March 25, 1974, at Kansas City, Mo., is cancelled and transferred to Modified Procedure.

I&S No. 8875, Increased Fares, Port Authority Trans-Hudson Corp., now assigned February 14, 1974, at Newark, N.J., will be held in Room 614, Essex County, New Courts Bldg., 50 West Market Street, Newark, N.J., instead of the Tax Court, Room No. 730, Federal Office Bldg., 970 Broad St.

I&S M 27317, Textile Products, Between Southern and Central States, now assigned February 20, 1974, at Washington, D.C., is postponed to March 12, 1974, at the Offices of the Interstate Commerce Commission, Washington, D.C.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74-2936 Filed 2-4-74;8:45 am]

[Rev. Car Distribution Order 1002; Rev. Car Distribution Direction 93, Amdt. 1]

ATLANTA AND WEST POINT RAIL ROAD CO. ET AL.

Car Distribution

To: Atlanta and West Point Rail Road Company, Carolina, Clinchfield and Ohio Railway, Georgia Rail Road & Banking Company, Louisville and Nashville Railroad Company, Seaboard Coast Line Railroad Company, and The Western Railway of Alabama.

Upon further consideration of Car Distribution Direction No. 93 and good cause appearing therefor:

It is ordered, That:

Car Distribution Direction No. 93 be, and it is hereby, amended by substituting the following paragraph (f) for paragraph (f) thereof:

(f) *Expiration date.* This direction shall expire at 11:59 p.m., February 28, 1974, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., January 31, 1974, and that 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 it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., January 24, 1974.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.74-2929 Filed 2-4-74;8:45 am]

[Rev. S.O. 994; I.C.C. Order 63, Amdt. 6]

LOUISVILLE AND NASHVILLE RAILROAD CO. AND BIRMINGHAM SOUTHERN RAILROAD CO.

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 63 and good cause appearing therefor:

It is ordered, That:

I.C.C. Order No. 63 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., January 31, 1975, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., January 31, 1974 and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., January 25, 1974.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.74-2932 Filed 2-4-74;8:45 am]

[Notice 17]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before February 25, 1974. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-74009. By order of January 30, 1974, the Motor Carrier Board approved the transfer to Everett G. Roehl Inc., Marshfield, Wis., of the operating rights in Certificate No. MC-133657 (Sub-No. 2) issued September 25, 1969, to H. Monroe, Inc., Adams, Wis., authorizing the transportation of various commodities from and to specified points and areas in Wisconsin, Illinois, Indiana, Iowa, Michigan, and Minnesota.

Nancy J. Johnson, 4506 Regent St., Madison, Wis. 53705, attorney for applicants.

No. MC–FC–74800. By order of January 30, 1974, the Motor Carrier Board approved the transfer to Robert Vanderheiden and Ronald Vanderheiden, a partnership, doing business as R. & R. Trucking, Platte, S. Dak., of the operating rights in Certificate No. MC–108383 issued October 14, 1959, to Carl Tank, doing business as Carl Tank Trucking Service, Geddes, S. Dak., authorizing the transportation of emigrant movables, between Geddes, on the one hand, and, on the other, points in Iowa and Nebraska; feed, seeds, farm machinery and parts, lumber, fence materials, wooden and composition roofing and siding, cement, lime, plaster, cement blocks, and tile, clay building materials, and steel tanks, from Sioux City, Iowa, to Geddes, S. Dak., and points within 25 miles thereof; livestock, farm machinery and twine, between Geddes and points within 25 miles thereof, on the one hand, and, on the other, Sioux City, Iowa, and livestock, feed, farm machinery and parts, and building materials, from Sioux City, Iowa to points in South Dakota within 20 miles of Geddes (except certain named points). Don A. Bierle, 322 Walnut Street, Yankton, S. Dak. 57078, attorney for applicants.

No. MC–FC–74904. By order of January 29, 1974, the Motor Carrier Board approved the transfer to W. J. Heinz and Juanita Heinz, doing business as Heinz Trucking, Dodge City, Kansas, of Certificate No. MC–52351 issued December 3, 1969, to Bertie Stinson, doing business as Stinson Transfer Company, Kinsley, Kansas, authorizing the transportation of livestock and new and used farm machinery and implements and parts therefor from and to points in described parts of Kansas and Kansas City, Mo. Mr. D. Allen Frame, Attorney at Law, 221 E. 6th Street, Kinsley, Kansas 67547.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.74–2935 Filed 2–4–74;8:45 am]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 30, 1974.

The following are notices of filing of application, except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application, for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC–67, (49 CFR 1131) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 82841 (Sub-No. 134 TA), filed January 22, 1974. Applicant: HUNT TRANSPORTATION, INC., 10770 I Street, Omaha, Nebr. 68127. Applicant's representative: Marshall D. Becker, Suite 530 Univac Building, 7100 West Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Handling and processing equipment, and attachments*, from Lincoln, Nebr., to points in the United States (except Alaska and Hawaii), for 180 days. SUPPORTING SHIPPER: McKee Bros. Limited, George A. Rode, Traffic Manager, No. 54 Oriole Pkwy, Elmira, Ontario, Canada. SEND PROTESTS TO: Carroll Russell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Suite 620, Union Pacific Plaza Building, 110 North 14th Street, Omaha, Nebr. 68102.

No. MC 102616 (Sub-No. 887 TA) (CORRECTION), filed December 27, 1973, published in the FEDERAL REGISTER issue of January 14, 1974, and republished as corrected this issue. Applicant: COASTAL TANK LINES, INC., 215 East Waterloo Road, P.O. Box 7211, Akron, Ohio 44319. Applicant's representative: James Annand (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Diesel fuel*, in bulk, in tank vehicles, between Huron, Ohio, on the one hand, and, on the other, Atlanta, Ga.; Charleston, W. Va.; Dallas, Tex.; Detroit, Mich.; Fort Wayne, Ind.; Grand Rapids, Mich.; Houston, Tex.; Indianapolis, Ind.; Little Rock, Ark.; Louisville, Ky.; Memphis, Tenn.; Nashville, Tenn.; Peoria, Ill.; Roanoke, Va.; and St. Louis, Mo., for 180 days. SUPPORTING SHIPPER: The Kroger Co., 1014 Vine Street, Cincinnati, Ohio 45201. SEND PROTESTS TO: Franklin D. Bail, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 181 Federal Office Bldg., 1240 East Ninth Street, Cleveland, Ohio 44199.

NOTE.—The purpose of this republication is to add the phrase "on the one hand, and, on the other", which was omitted in previous publication.

No. MC 105375 (Sub-No. 47 TA), filed January 21, 1974. Applicant: DAHLEN TRANSPORT OF IOWA, INC., 1680 Fourth Avenue, Newport, Minn. 55055. Applicant's representative: Joseph A. Eschenbacher, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid protein supplement*, in bulk, in tank vehicles, from Peru, Ill., to points in Iowa, for 180 days. SUPPORTING SHIPPER: Land O'Lakes, Inc., 2827 8th Ave. S., Ft. Dodge, Iowa 50501. SEND PROTESTS TO: District Supervisor Raymond T. Jones, Interstate Commerce Commission, Bureau of Operations, 448 Federal Bldg. & U.S. Court House, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 115904 (Sub-No. 34 TA), filed January 21, 1974. Applicant: LOUIS GROVER, 1710 West Broadway, Idaho Falls, Idaho 83401. Applicant's representative: Irene Warr, 430 Judge Bldg., Salt Lake City, Utah 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crushed auto bodies, scrap auto engines, and transmissions*, from points in Colorado, to points in Utah, for 180 days. SUPPORTING SHIPPER: Auto Recyclers, Corp., P.O. Box 6701, Denver, Colo. 80206. SEND PROTESTS TO: C. W. Campbell, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 550 W. Fort Street, Box 07, Boise, Idaho 83724.

No. MC 120646 (Sub-No. 14 TA), filed January 23, 1974. Applicant: BRADLEY FREIGHT LINES, INC., P.O. Box 5875, 35 Garfield Street, Asheville, N.C. 28803. Applicant's representative: Walter Harwood, P.O. Box 15214, Nashville, Tenn. 37215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper, paper products, and commodities* distributed by wholesalers of paper and paper products, from points in North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas and points in states east thereof, including the District of Columbia, to the warehouse and storage facilities of Piedmont Paper Company, Inc., at Asheville, N.C., for 180 days. SUPPORTING SHIPPER: Piedmont Paper Co., Incorporated, 85 Thompson St., Asheville, N.C. 28803. SEND PROTESTS TO: District Supervisor Terrell Price, Interstate Commerce Commission, Bureau of Operations, 800 Briar Creek Road—CC516, Charlotte, N.C. 28205.

No. MC 125035 (Sub-No. 29 TA), filed January 23, 1974. Applicant: RAY E. BROWN TRUCKING, INC., Post Office Box 84, Off: 1266 Stuart St. NW., Massillon, Ohio 44646. Applicant's representative: James E. Davis, 611 West Market Street, Akron, Ohio 44303. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Ice cream, ice cream confections, frozen desserts, ice confections, and ice water confections*, in vehicles equipped with mechanical refrigeration, and other items incidental to the manufacture; *wooden sticks* used therein and *empty shipping containers* from, to, or between Toledo, Ohio, on the one hand, and, on the other, Montgomery, Ala.; Hartford, East Windsor, Norwalk, and Stamford, Conn.; Dover, Del.; Jacksonville, Fla.; Atlanta, Ga.; Fort Wayne,

Indianapolis, Plymouth, Kendallville, and Huntington, Ind.; Des Moines, Iowa; Peoria, Chicago, East Moline, and Palatine, Ill.; Louisville, Ky.; Detroit, Livonia, Grand Rapids, Lansing, Flint, and Pontiac, Mich.; Baltimore, Md.; Maple Plain, Minn.; Kansas City and St. Louis, Mo.; Framingham, Mass.; South Portland, Maine; Rochester, Buffalo, New York, Syracuse, and Latham, N.Y.; Omaha, Nebr.; Charlotte and Winston-Salem, N.C.; Philadelphia, Sharpsville, New Castle, Sharon, and Duncannon, Pa.; Charleston, S.C.; Memphis and Nashville, Tenn.; Richmond, Va.; Green Bay and Milwaukee, Wis.; Asheville and Charleston, W. Va.; and Washington, D.C., for 180 days.

NOTE.—Applicant intends to tack with MC 125035.

SUPPORTING SHIPPER: Vroman Foods, Inc., 4117 Fitch Road, Toledo, Ohio 43613. SEND PROTESTS TO: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 220 Federal Building & U.S. Courthouse, 85 Marconi Boulevard, Columbus, Ohio 43215.

No. MC 134477 (Sub-No. 48 TA), filed January 22, 1974. Applicant: SCHANNO TRANSPORTATION, INC., P.O. Box 3496, St. Paul, Minn. 55118. Applicant's representative: Thomas Fischbach, 5 West Mendota Road, West St. Paul, Minn. 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), from Huron, S. Dak., to Salem, Oreg., and Seattle and Tacoma, Wash., for 180 days. SUPPORTING SHIPPER: Armour Food Company, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: A. N. Spath, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building and U.S. Court House, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 135364 (Sub-No. 11 TA), filed January 16, 1974. Applicant: MORWALL TRUCKING, INC., RD #3—Box 76–C, Moscow, Pa. 18444. Applicant's representative: Kenneth R. Davis, 999 Union Street, Taylor, Pa. 18517. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Data processing paper punchings as waste paper*, in van trailers, requiring special blower type equipment to load and special vacuum type equipment to unload, from Honesdale, Pa., to Fitchburg, Mass., for 150 days. SUPPORTING SHIPPER: Fitchburg Paper Company, Division Litton Business Systems, Inc., Fitchburg, Mass. SEND PROTESTS TO: Paul J. Kenworthy, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 309 U.S. Post Office Building, Scranton, Pa. 18503.

No. MC 134631 (Sub-No. 20 TA), filed January 22, 1974. Applicant: SCHULTZ TRANSIT, INC., P.O. Box 406, 323 Bridge Street, Winona, Minn. 55987. Applicant's representative: Val M. Higgins, 1000 First National Bank Bldg., Minneapolis, Minn. 55402. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Radio, phonograph, television, and stereo cabinets, record changer bases, and speaker boxes*, with or without mechanisms, from Winona, Minn., to Atlanta, Ga., Dallas, Tex., and Miami and Tampa, Fla., for 180 days. SUPPORTING SHIPPER: Winona Industrial Sales Corporation, 602 East Front Street, Winona, Minn. 55987. SEND PROTESTS TO: A. N. Spath, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building and U.S. Court House, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 136500 (Sub-No. 4 TA), filed January 22, 1974. Applicant: HARRY D. DIEPHOLZ, doing business as DIEPHOLZ TRUCKING, 3453 Western Avenue, Mattoon, Ill. 61938. Applicant's representative: Robert T. Lawley, 300 Reisch Building, Springfield, Ill. 62701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Food and foodstuffs* (except in bulk), for the account of Kraft Foods Division, Kraftco Corporation, from the plantsite of Kraft Foods Division, Kraftco Corporation at Champaign, Ill., to Billings, Butte, Great Falls, Helena, and Harve, Mont., for 180 days. SUPPORTING SHIPPER: Jack L. Noffsinger, Traffic Manager, Kraft Foods Division, Kraftco Corporation, 1701 West Bradley Street, Champaign, Ill. 61820. SEND PROTESTS TO: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Leland Office Building, 527 East Capitol Avenue, Room 414, Springfield, Ill. 62701.

No. MC 139113 (Sub-No. 3 TA), filed January 22, 1974. Applicant: BRUNDIDGE TRANSPORTATION, INC., P.O. Box 187, Brundidge, Ala. 36010. Applicant's representative: William P. Jackson, Jr., 919 Eighteenth Street NW., Suite 425, Washington, D.C. 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Mayonnaise, salad dressing and salad dressing products, mustard, ketsup, jelly, tartar sauce, gelatin and gelatin products*, from the facilities of Brundidge Foods, Inc. at St. Augustine, Fla., to the facilities of Brundidge Foods, Inc., at Brundidge, Ala., and (2) *Materials, equipment, and supplies* used in the manufacture and distribution of items named in (1) above, from the facilities of Brundidge Foods, Inc., at Brundidge, Ala., to the facilities of Brundidge Foods, Inc., at St. Augustine, Fla., for 180 days. RESTRICTIONS: (A) Restricted to the transportation of traffic under a continuing contract or contracts with Brundidge Foods, Inc.; (B) Restricted to the transportation of shipments originating at or destined to the facilities of named shipper; and (C) Restricted against the transportation of shipments in vehicles equipped with mechanical refrigeration. SUPPORTING SHIPPER: Brundidge Foods, Inc., Brundidge, Ala. 36010. SEND PROTESTS TO: Clifford W. White, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 814, 2121 Building, Birmingham, Ala. 35203.

By The Commission.

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

[FR Doc.74-2933 Filed 2-4-74;8:45 am]

[Notice 17]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 31, 1974.

The following are notices of filing of application, except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application, for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC–67, (49 CFR 1131) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 50307 (Sub-No. 72 TA), filed January 22, 1974. Applicant: INTERSTATE DRESS CARRIERS, INC., 247 West 35th Street, New York, N.Y. 10001. Applicant's representative: Arthur Liberstein, One World Trade Center, New York, N.Y. 10048. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wearing apparel and materials, supplies, and equipment* used in the manufacture thereof, between Front Royal and Woodstock, Va.; Carlisle and York, Pa.; Martinsburg, W. Va.; and the New York, N.Y., Commercial Zone, for 150 days. SUPPORTING SHIPPER: Perfect Garment Co., Box 888, Martinsburg, W. Va. SEND PROTESTS TO: Paul W. Assenza, District Supervisor, Interstate

Commerce Commission, Bureau of Operations, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 82841 (Sub-No. 135 TA), filed January 22, 1974. Applicant: HUNT TRANSPORTATION, INC., 10770 I Street, Omaha, Nebr. 68127. Applicant's representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron or steel pipe or tubing*, from Middletown (Butler County), Ohio, to points in Iowa, Nebraska, and South Dakota, for 180 days. SUPPORTING SHIPPER: Armco Steel Corporation, C. W. Hall, Director-Transportation, 703 Curtis Street, Middletown, Ohio 45042. SEND PROTESTS TO: Carroll Russell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 110 North 14th Street, Suite 620, Union Pacific Plaza Building, Omaho, Nebr. 68102.

No. MC 106497 (Sub-No. 92 TA), filed January 22, 1974. Applicant: PARKHILL TRUCK COMPANY, a Corporation, Mail: P.O. Box 912, Off: Bus. Loop I–44, East Joplin, Mo. 64801. Applicant's representative: A. N. Jacobs, P.O. Box 113, Joplin, Mo. 64801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Building materials* and (2) *materials, equipment, and supplies* used in the manufacturing, distribution, installation, and application of commodities in (1) above (except commodities in bulk), from New Orleans, La., and Mobile, Ala., to points in Arkansas, Kentucky, Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Maryland, Massachusetts, Missouri, Michigan, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Texas, West Virginia, Wisconsin, and the District of Columbia, restricted to traffic originating at the plant sites and storage facilities of National Gypsum Company at or near the named origin points, for 180 days. SUPPORTING SHIPPER: Gold Bond Building Products Division, National Gypsum Company, 325 Delaware Avenue, Buffalo, N.Y. 14202. SEND PROTESTS TO: John V. Barry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 600 Federal Office Building, 911 Walnut Street, Kansas City, Mo. 64106.

No. MC 115180 (Sub-No. 90 TA), filed January 22, 1974. Applicant: ONLEY REFRIGERATED TRANSPORTATION, INC., 265 West 14th Street, New York, N.Y. 10014. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, and meat by-products and articles distributed by meat packinghouses* (except hides and commodities in bulk) as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from Sunflower Beef Packers, Inc., York, Nebr., to Chicago, Ill.; points in Ohio, Pennsylvania, Maine, Massachusetts, Vermont, New Hampshire, New York, New Jersey, Rhode Island, Connecticut, Delaware, Maryland, West Virginia, Virginia, North Carolina, South Carolina, Kentucky, Michigan, and the District of Columbia, restricted to shipments originating at the above plant sites and destined to the above destination territory, for 180 days. SUPPORTING SHIPPER: Sunflower Beef Packers, Inc., P.O. Box 355, York, Nebr. 68467. SEND PROTESTS TO: Paul W. Assenza, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 115322 (Sub-No. 98 TA), filed January 15, 1974. Applicant: REDWING REFRIGERATED, INC., Mlg: P.O. Box 10177, Off: Highway 527, Taft, Fla. 32809. Applicant's representative: James E. Wilson, 1032 Pennsylvania Building, Pennsylvania Ave. & 13th St. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foodstuffs*, from Salisbury, Md., to Erie, Pa., and points in New York, for 180 days. SUPPORTING SHIPPER: Campbell Soup Company, Campbell Place, Camden, N.J. 08101. SEND PROTESTS TO: G. H. Fauss, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 W. Bay St., Jacksonville, Fla. 32202.

No. MC 123194 (Sub-No. 5 TA), filed January 22, 1974. Applicant: SPRAGUE, INC., 7300 W. 15th Avenue, Gary, Ind. 46406. Applicant's representative: Michael E. Kibler (same address as above). Authority sought to operate a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from the plantsite of Continental Freezers located in Chicago, Ill., to points in Indiana, Michigan, and Ohio, for 180 days. SUPPORTING SHIPPER: Continental Freezers of Illinois, 4220 S. Kildare, Chicago, Ill. SEND PROTESTS TO: J. H. Gray, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 345 W. Wayne St., Room 204, Ft. Wayne, Ind. 46802.

No. MC 138014 (Sub-No. 3 TA), filed January 23, 1974. Applicant: BLUE HEN DELIVERY CO., INC., 50 Greenhill Avenue, Dover, Del. 19901. Applicant's representative: Charles E. Creager, P.O. Box 1417, Hagerstown, Md. 21740. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Electrical appliances*, including *radios, phonographs, recorders, and televisions*, from Cornwells Heights, Pa., to points in Sussex, New Castle, and Kent Counties, Del., under a contract with F. W. Woolworth Co., Woolco Department Stores, Dover, Del., for 180 days. SUPPORTING SHIPPER: Mr. Roger J. Vesey, Regional Traffic Manager, F. W. Woolworth Co., Woolco Department Stores, 162 W. Chelten, Philadelphia, Pa. 19144. SEND PROTESTS TO: William L. Hughes, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 814–B Federal Building, Baltimore, Md. 21201.

No. MC 138878 (Sub-No. 1 TA), filed January 23, 1974. Applicant: JOHN S. WATSON, doing business as JOHN S. WATSON TRUCKING COMPANY, Route 19 So., Box 94, Weston, W. Va. 20452. Applicant's representative: John M. Friedman, 2930 Putnam Avenue, Hurricane, W. Va. 25526. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Timber, cants, and railroad ties*, from the plant sites of United Wood Preserving Company, at or near Sutton, W. Va., to points in Ohio, Pennsylvania, Kentucky, Virginia, and New York for 180 days. SUPPORTING SHIPPER: United Wood Preserving Company, Sutton, W. Va. 26601, Attention: Ronald F. Parsons, Transportation Mgr. SEND PROTESTS TO: H. R. White, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 3108 Federal Office Bldg., 500 Quarrier St., Charleston, W. Va. 25301.

No. MC 139448 TA, filed January 22, 1974. Applicant: WESTERN KRAFT CORPORATION, 5800 SW. Western Avenue, Beaverton, Oreg. 97005. Applicant's representative: Kent Wishart (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Sugar and salt*, from Crockett and Newark, Calif., to Salem, Oreg., for 180 days. SUPPORTING SHIPPER: West Coast Grocery Co., P.O. Box 2359, Salem, Oreg. 97038. SEND PROTESTS TO: District Supervisor A. E. Odoms, Interstate Commerce Commission, Bureau of Operations, 555 SW. Yamhill Street, 114 Pioneer Courthouse, Portland, Oreg. 97204.

No. MC 139449 TA, filed January 21, 1974. Applicant: ROBERT F. MOCK, 2018 Evergreen Drive, Albany, Ga. 31707. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Structural steel, beams, columns, plates, rebars* (bent and straight) which are put inside of concrete for reinforcement, *wire mesh and expanded materials*, from Albany, Ga., throughout the state of Florida, under continuing contract with Joe Brashears Steel, Inc., Albany, Ga., for 180 days. SUPPORTING SHIPPER: Joe Brashears Steel, Inc., P.O. Box 3227, Albany, Ga. 31706. SEND PROTESTS TO: District Supervisor G. H. Fauss, Jr., Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 W. Bay Street, Jacksonville, Fla. 32202.

By the Commission.

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

[FR Doc.74–2934 Filed 2–4–74;8:45 am]

[Ex Parte 241; Rule 19, Exemption 62]

PENN CENTRAL TRANSPORTATION CO.

Exemption Under Mandatory Car Service Rules

It appearing, that there are substantial movements of imported cocoa beans

moving in plain boxcars, originating at Pier 55, Pier 84 South, Pier 98, the Tioga Terminal and at the Packer Avenue Terminal, all located in Philadelphia, Pennsylvania, and served by the Penn Central Transportation Company, George P. Baker, Richard C. Bond and Jervis Langdon, Jr., (PC) Trustees, and destined to various points throughout the eastern portion of the United States; and that the PC is unable to furnish sufficient system and foreign cars of suitable ownership to remove this freight from the piers and terminals as rapidly as they are discharged from the inbound ships, thereby creating serious congestion at the port.

It is ordered, That, pursuant to the authority vested in me by Car Service Rule 19, the PC be, and it is hereby, authorized to place for loading and accept from shippers located at Pier 55, Pier 84 South, Pier 98, the Tioga Terminal or the Packer Avenue Terminal, all located in Philadephia, Pennsylvania, not to exceed two hundred (200) plain boxcars of any size, described in the Official Railway Equipment Register, I.C.C. RER No. 389, issued by W. J. Trezise, as having mechanical designation XM, regardless of the provisions of Car Service Rule 2.

It is further ordered, That this exemption does not supersede the provisions of any Car Relocation Direction issued by the Car Service Division, Association of American Railroads, except to the extent authorized by that Association.

Effective January 26, 1974.

Expires February 4, 1974.

Issued at Washington, D.C., January 25, 1974.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.74-2931 Filed 2-4-74;8:45 am]

[Rev. S. O. 994; I.C.C. Order 117]

NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CO.

Rerouting or Diversion of Traffic

In the opinion of R. D. Pfahler, Agent, the New York, Susquehanna and Western Railroad Company is unable to transport traffic between Sparta, New Jersey, and Stockholm, New Jersey, because of a bridge out of service.

It is ordered, That:

(a) *Rerouting traffic.* The New York, Susquehanna, and Western Railroad Company, being unable to transport traffic between Sparta, New Jersey, and Stockholm, New Jersey, because of a bridge out of service, that carrier and its connections are hereby authorized to reroute or divert such traffic over any available route to expedite the movement. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad desiring to divert or reroute traffic under this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order shall notify each shipper at the time each car is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic by said Agent is deemed to be due to carrier's disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic; divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 11:59 p.m., January 23, 1974.

(g) *Expiration date.* This order shall expire at 11:59 p.m., July 31, 1974, unless otherwise modified, changed, or suspended.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as Agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement; and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., January 23, 1974.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.74-2930 Filed 2-4-74;8:45 am]

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TUESDAY, FEBRUARY 5, 1974

WASHINGTON, D.C.

Volume 39 ■ Number 25

PART II

ENVIRONMENTAL PROTECTION AGENCY

■

TEXTILE INDUSTRY POINT SOURCE CATEGORY

Proposed Effluent Limitations Guidelines

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 410]

TEXTILE INDUSTRY POINT SOURCE CATEGORY

Proposed Effluent Limitation Guidelines

Notice is hereby given that effluent limitations guidelines for existing sources and standards of performance and pretreatment standards for new sources set forth in tentative form below are proposed by the Environmental Protection Agency ("EPA") for the textile manufacturing category of point sources pursuant to sections 301, 304 (b) and (c), 306(b) and 307(c) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316(b) and 1317(c); 86 Stat. 816 et seq.; Pub. L. 92-500) (the "Act").

(a) Legal authority—(1) *Existing point sources.* Section 301(b) of the Act requires the achievement by not later than July 1, 1977, of effluent limitations for point sources, other than publicly owned treatment works, which require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 304(b) of the Act. Section 301(b) also requires the achievement by not later than July 1, 1983, of effluent limitations for point sources, other than publicly owned treatment works, which require the application of best available technology economically achievable which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 304(b) to the Act.

Section 304(b) of the Act requires the Administrator to publish regulations providing guidelines for effluent limitations setting forth the degree of effluent reduction attainable through the application of the best practicable control technology currently available and the degree of effluent reduction attainable through the application of the best control measures and practices achievable including treatment techniques, process and procedure innovations, operating methods and other alternatives. The regulations proposed herein set forth effluent limitations guidelines, pursuant to section 304(b) of the Act, for the textile manufacturing category.

(2) *New sources.* Section 306 of the Act requires the achievement by new sources of a Federal standard of performance providing for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the Administrator determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

Section 306(b)(1)(B) of the Act requires the Administrator to propose regulations establishing Federal standards of performance for categories of new sources included in a list published pursuant to section 306(b)(1)(A) of the Act. The Administrator published in the FEDERAL REGISTER of January 16, 1973 (38 FR 1624), a list of 27 source categories, including the textile manufacturing category. The regulations proposed herein set forth the standards of performance applicable to new sources for the textile manufacturing category.

Section 307(c) of the Act requires the Administrator to promulgate pretreatment standards for new sources at the same time that standards of performance for new sources are promulgated pursuant to section 306. Sections 410.15, 410.25, 410.35, 410.45, 410.55, 410.65, and 410.75, proposed below provide pretreatment standards for new sources within the textile manufacturing industry category.

Section 304(c) of the Act requires the Administrator to issue to the States and appropriate water pollution control agencies information on the processes, procedures or operating methods which result in the elimination or reduction of the discharge of pollutants to implement standards of performance under section 306 of the Act. The Development Document referred to below provides, pursuant to section 304(c) of the Act, information on such processes, procedures or operating methods.

(b) Summary and basis of proposed effluent limitations guidelines for existing sources and standards of performance and pretreatment standards for new sources.

(1) *General methodology.* The effluent limitations guidelines and standards of performance proposed herein were developed in the following manner. The point source category was first studied for the purpose of determining whether separate limitations and standards are appropriate for different segments within the category. This analysis included a determination of whether differences in raw material used, product produced manufacturing process employed, age, size, waste water constituents and other factors require development of separate limitations and standards for different segments of the point source category. The raw waste characteristics for each such segment were then identified. This included an analysis of (1) the source, flow and volume of water used in the process employed and the sources of waste and waste waters in the operation; and (2) the constituents of all waste water. The constituents of the waste waters which should be subject to effluent limitations guidelines and standards of performance were identified.

The control and treatment technologies existing within each segment were identified. This included an identification of each distinct control and treatment technology, including both in-plant and end-of-process technologies, which are existent or capable of being designed for each segment. It also included an identification of, in terms of the amount of constituents and the chemical, physical, and biological characteristics of pollutants, the effluent level resulting from the application of each of the technologies. The problems, limitations and reliability of each treatment and control technology were also identified. In addition, the non-water quality environmental impact, such as the effects of the application of such technologies upon other pollution problems, including air, solid waste, noise and radiation, was identified. The energy requirements of each control and treatment technology were determined as well as the cost of the application of such technologies.

The information, as outlined above, was then evaluated in order to determine what levels of technology constitute the "best practicable control technology currently available," "best available technology economically achievable" and the "best available demonstrated control technology, processes, operating methods, or other alternatives." In identifying such technologies, various factors were considered. These included the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application, the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements) and other factors.

The data upon which the above analysis was performed included EPA permit applications, EPA sampling and inspections, consultant reports, and industry submissions.

The pretreatment standards proposed herein are intended to be complementary to the pretreatment standards proposed for existing sources under Part 128 of 40 CFR. The basis for such standards is set forth in the FEDERAL REGISTER of July 19, 1973, 38 FR 19236. The provisions of Part 128 are equally applicable to sources which would constitute "new sources," under section 306 if they were to discharge pollutants directly to navigable waters, except for § 128.133. That section provides a pretreatment standard for "incompatible pollutants" which requires application of the "best practicable control technology currently available," subject to an adjustment for amounts of pollutants removed by the publicly owned treatment works. Since the pretreatment standards proposed herein apply to new sources, §§ 410.15, 410.25, 410.35, 410.45, 410.55, 410.65, and 410.75 below amend § 128.133 to require application of the standard of performance for new sources rather than the "best practicable" standard applicable to existing sources under sections 301 and 304(b) of the Act.

(2) Summary of conclusions with respect to the textile manufacturing industry category of point sources.

(i) *Categorization.* For the purpose of studying waste treatment and effluent limitations, the textile manufacturing category was divided into discrete subcategories which coincide with a breakdown of the category according to the flow of materials as outlined in the De-

velopment Document for the textile manufacturing category.

The textile manufacturing industry has been divided into seven subcategories for the purpose of establishing effluent limitations guidelines and standards of performance. An exception within the subcategorization was also required because of unequal economic impacts caused by diseconomies of scale. The seven subcategories are comprised of a number of mill types which have been determined to have sufficiently dissimilar plant processes and waste characteristics to group them separately as subcategories.

(1) *Subpart A—Wool Scouring Subcategory.* Wool scouring and topmaking is the term used to describe the initial washing and cleaning of wool. This process generates a wide variety of organic and inorganic products in the waste effluents such as suint, dirt, and grease along with oils, such as lanolin.

(2) *Subpart B—Wool Finishing Subcategory.* Wool finishing involves the rinsing, bleaching, dyeing and finishing of wool. Specialized dyes peculiar to this fiber often result in the presence of chrominum in the waste effluent. In addition, phenols occur from dyeing polyester blends. The remaining wastes are similar to those in knit fabric finishing.

(3) *Subpart C—Greige Subcategory.* Greige mill processes include the spinning and texturizing of yarns which require a lubricating oil, similar to mineral oil. In addition, the yarns are often coated with a sizing material to give the yarn both lubrication and strength. This subcategory has mostly dry processes and very small industrial water usage.

(4) *Subpart D—Woven Fabric Finishing Subcategory.* Woven fabric finishing and integrated woven fabric finishing may involve many of the following operations: Sizing applications, desizing, bleaching, mercerizing, washing, dyeing, and rinsing, followed by the application of finishes such as soil repellants and anti-statics.

(5) *Subpart E—Knit Fabric Finishing Subcategory.* Knit fabric finishing involves the same processes that take place in woven fabric finishing and integrated woven fabric finishing without the sizing/desizing and little or no mercerizing operations.

(6) *Subpart F—Carpet Subcategory.* Carpet mills often include similar processes of the knit finishing subcategory with the addition of the latex backing to the carpets creating a special effluent problem.

(7) *Subpart G—Stock and Yarn Dyeing and Finishing Subcategory.* Stock and yarn dyeing and finishing involves many of the following: Mercerizing, bleaching, dyeing, and rinsing of stock and/or yarns. This operation differs from woven fabric finishing because there is no sizing and desizing operation.

(ii) *Waste characteristics.* The known significant pollutant characteristics of waste waters resulting from the textile manufacturing industry include: biochemical oxygen demand (BOD5), chemical oxygen demand (COD), total suspended nonfilterable solids (TSS), oils and grease, pH and fecal coliforms.

Ammonia and nitrate nitrogen, phenols, phosphates, dissolved solids, color, alkalinity, temperature, sulfides, chromium, and heavy metals are other waste water pollutants that are considered to be of lesser importance because available data has indicated these pollutants are normally removed when BOD5 or TSS are removed or they occur in insignificant quantities.

Three constituents of the waste water from plants within the textile industry have been found which would interfere with, pass through, or otherwise be incompatible with a well designed and operated publicly owned activated sludge or trickling filter waste water treatment plant. Waste water constituents include grease from wool scouring operations, latex from carpet mills and heavy metals such as chromium used in dyes. Adequate control methods can and should be used to keep significant quantites of these materials out of the waste water. Dye substitutes are available for many dyes containing heavy metals.

(iii) *Treatment and control technology.* In-plant procedures to control pollution include strict management control over housekeeping and water use practices and minimization of the intake of water by reuse and recirculation of waste waters.

"End of process" waste water treatment processes include preliminary screening, primary sedimentation, biological treatment and advanced treatment such as multi-media filtration or activated carbon.

Waste water treatment and control technologies have been studied for each subcategory of the industry to determine what is: (a) The best practicable control technology currently available; (b) the best available technology economically achievable; and (c) the best demonstrated control technology, processes, operating methods or other alternatives.

Best practicable control technology currently available for the wool scouring and finishing subcategories, greige mills subcategory, woven and knit fabric finishing subcategories, carpet subcategory and stock and yarn dyeing and finishing subcategory includes preliminary screening, biological treatment and chlorination. Best practicable technology also includes primary sedimentation of process waste water for grease removal at wool scouring plants (subcategory 1) and acid coagulation for latex removal at carpet mills (subcategory 6).

The specified level of technology is practicable because it is being practiced by textile mills representing a wide range of plant sizes and types. Eighteen exemplary biological treatment systems have been utilized to develop the effluent limitations. These systems treat textile waste waters from knit fabric finishing, dyeing and finishing of broadwoven cotton and cotton-synthetic blends, carpet manufacturing, and stock and yarn dyeing and finishing. The effluent limitations established for each of these subcategories have been developed by averaging the effluent discharges from exemplary biological systems treating the appropriate subcategory waste water. The average BOD5 removal efficiency of these systems is greater than 95 percent; this efficiency has been utilized to develop limitations in subcategories without exemplary treatment operations. In these subcategories there are treatment systems that have demonstrated that high levels of effluent reduction for BOD5 and TSS are attainable. Most of these systems should be capable of meeting these limitations with some modification in operation or perhaps the presence of a knowledgeable operator. In general, only minor plant design changes along with cooperation from management and plant personnel will be required.

Best available control technology economically achievable for the seven textile subcategories includes the best practicable control technology currently available along with advanced treatment such as multimedia filtration or activated carbon adsorption. In some plants where large quantities of dispersed dyes or materials with poor adsorptive capacities are discharged, both activated carbon adsorption and multimedia filtration may be needed.

The specified level of technology is achievable. Biological treatment is practiced throughout the textile industry and activated carbon adsorption is practiced in at least four textile mills. The use of activated carbon to treat textile wastes was pioneered at a Pennsylvania carpet mill and at least one synthetic knit goods plant (Mill HH) is installing activated carbon. Multi-media filtration has been used effectively in various EPA applications including Lebanon, Ohio, and Washington, D.C. Filtration is also used as pretreatment before carbon adsorption at a Virginia textile mill.

Treatment required to achieve the best available demonstrated control technology, processes, operating methods or other alternatives for new sources is the same as for best available control technology economically achievable.

(iv) *Economic impact analysis.* A significant portion of the industry has already instituted some of the waste management alternatives, particularly biological treatment systems. A few have installed advanced systems, particularly activated carbon adsorption.

The capital investment costs of meeting the best practicable level of effluent reduction through the use of biological systems such as extended aeration are estimated to range from $10,200 to $336,000 for model plants within the seven textile subcategories. The annual treatment costs range from $3,900 to $88,000.

The capital investment costs of meeting the best available level of effluent reduction by the use of advanced treatment systems range from $10,000 to $140,000 for multi-media filtration units and range from $385,000 to $1,050,000 for activated carbon adsorption systems. The annual costs for multi-media filtration at model plants within the seven textile subcategories range from $3,000 to $41,300; the annual costs for activated car-

bon adsorption range from $113,100 to $404,800.

The estimated increases in final product costs for the best practicable control technology currently available (biological treatment) are economically feasible for small and large plants in all seven textile subcategories. The estimated final product cost increases range from 0.1 to 0.8 cents per kilogram of product for various subcategories. The average increase is less than 0.4 cents per kilogram.

The best available level of effluent reduction for the seven textile subcategories includes biological treatment along with advanced treatment such as multimedia filtration or activated carbon adsorption.

The estimated increases in final product costs for multimedia filtration are significantly less than costs for biological treatment. These costs are not excessive and should be economically achievable for all plant sizes in each subcategory. The maximum cost for any industry model plant is less than 0.4 cents per kilogram of product.

The price increases attributable to activated carbon adsorption appear to create an unequal economic impact. Variations in unit costs for small industry plants as compared with medium sized plants are reflected in an average price increase for a small plant of 4.2 cents per kilogram of product as compared with an average price increase for medium sized plants of 2.3 cents per kilogram. The diseconomy of scale with the associated unequal economic impact resulted in the establishment of different effluent limitations for small plants than for medium or large sized plants in six subcategories. Because of raw waste characteristics, carbon adsorption is not needed by greige mills. Thus, best available technology economically achievable is multi-media filtration for small textile mills in six subcategories and all greige mills and activated carbon adsorption for the remainder of the seven textile subcategories. Small mills in six subcategories are defined by final product capacity as follows: Wool scouring plants with capacity less than 6,500 kg/day; wool finishing mills with capacity less than 900 kg/day; woven fabric finishing mills with capacity less than 1000 kg/day; knit fabric finishing mills with capacity less than 3,450 kg/day; carpet mills with capacity less than 3,450 kg/day; and stock and yarn dyeing and finishing mills with capacity less than 3,100 kg/day.

The additional price increases for the best available technology economically achievable are estimated to range from 0.05 to 0.4 cents per kilogram of product processed by model small plants in six subcategories and all greige mills. For larger plants in the six subcategories the price increases range from 0.4 cents per kilogram to a high of 2.0 cents per kilogram. The overall costs of best practicable and best available technology are estimated to range between 0.3 and 1.1 cents per kilogram (0.6 and 2.5 cents per pound) produced by small plants and between 0.5 and 2.5 cents per kilogram (1.0 and 5.4 cents per pound) of product from larger plants.

Non-water quality impacts of the pollution control systems were analyzed and found to be of little consequence. Energy requirements of the industry are relatively low: Power required to operate the more refined mechanically aerated biological systems will increase consumption by considerably less than 10 percent. Solid wastes from treatment sludges and some odor from treatment systems are encountered, but no substantial impact can be identified.

It should be noted that a precise study of economic impact is difficult due to numerous other economic forces at work within an industry, and because of the great variability experienced from plant-to-plant in such factors as pollution control costs, profitability, and return on investment. In an economic study such as this, it is difficult to deal with these factors on an individual plant basis.

It is not expected that any significant economic impact would result from imposing the best practicable effluent limitations on all segments of this category by 1977.

Also, it is not expected that any significant economic impact would result from imposing the best available effluent limitations on industry segments by 1983. Because of this conclusion, we judge that the proposed guidelines for 1977, 1983 and new sources are economically achievable.

The report entitled "Development Document for Proposed Effluent Limitations Guidelines and New Source Performance Standards for the Textile Industry Point Source Category" details the analysis undertaken in support of the regulations being proposed herein and is available for inspection in the EPA Information Center, Room 227, West Tower, Waterside Mall, Washington, D.C., at all EPA regional offices, and at State water pollution control offices. A supplementary analysis prepared for EPA of the possible economic effects of the proposed regulations is also available for inspection at these locations. Copies of both of these documents are being sent to persons or institutions affected by the proposed regulations, or who have placed themselves on a mailing list for this purpose (see EPA's Advance Notice of Public Review Procedures, 38 FR 21202, August 6, 1973). An additional limited number of copies of both reports are available. Persons wishing to obtain a copy may write the EPA Information Center, Environmental Protection Agency, Washington, D.C. 20460, Attention: Mr. Philip B. Wisman.

(c) *Environmental explanation.* On June 14, 1973, the Agency published procedures designed to insure that, when certain major standards, regulations, and guidelines are proposed, an explanation of their basis, purpose and environmental effects is made available to the public. (38 FR 15653) The procedures are applicable to major standards, regulations and guidelines which are proposed on or after December 31, 1973 and which prescribe national standards of environmental quality or require national emission, effluent or performance standards and limitations.

The Agency determined to implement these procedures in order to insure that the public was apprised of the environmental effects of its major standards setting actions and was provided with detailed background information to assist it in commenting on the merits of a proposed action. In brief, the procedures call for the Agency to make public the information available to it delineating the major nonenvironmental factors affecting the decision, and to explain the viable options available to it and the reasons for the option selected.

The procedures contemplate publication of this information in the FEDERAL REGISTER, where this is practicable. They provide, however that where, because of the length of these materials, such publication is impracticable, the material may be made available in an alternate format.

The report entitled "Development Document for Proposed Effluent Limitations Guidelines and New Source Performance Standards for the Textile Industry Point Source Category" contains information available to the Agency concerning the major environmental effects of the regulation proposed below, including:

(1) The pollutants presently discharged into the Nation's waterways by manufacturers of textiles and the degree of pollution reduction obtainable from implementation of the proposed guidelines and standards (see particularly Sections IV, V, VI, IX, X, and XI);

(2) The anticipated effects of the proposed regulation on other aspects of the environment including air, subsurface waters, solid waste disposal and land use, and noise (see particularly Section VIII); and

(3) Options available to the Agency in developing the proposed regulatory system and the reasons for its selecting the particular levels of effluent reduction which are proposed (see particularly Sections VI, VII, and VIII).

The supplementary report entitled "Economic Analysis of Proposed Effluent Guidelines TEXTILES INDUSTRY" contains an estimate of the cost of pollution control requirements and an analysis of the possible effects of the proposed regulations on prices, production levels, employment, communities in which textile manufacturing plants are located, and international trade. In addition, the above described Development Document describes, in Section VIII, the cost and energy consumption implications of the proposed regulations.

The two reports described above in the aggregate exceed 200 pages in length and contain a substantial number of charts, diagrams, and tables. It is clearly impracticable to publish the material contained in these documents in the FEDERAL REGISTER. To the extent possible, significant aspects of the material have been presented in summary form in foregoing

portions of this preamble. Additional discussion is contained in the following analysis of comments received and the Agency's response to them. As has been indicated, both documents are available for inspection at the Agency's Washington, D.C. and regional offices and at State water pollution control agency offices. Copies of each have been distributed to persons and institutions affected by the proposed regulations or who have placed themselves on a mailing list for this purpose. Finally, so long as the supply remains available, additional copies may be obtained from the Agency as described above.

When regulations for the textile industry are promulgated in final form, revised copies of the Development Document will be available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Copies of the Economic Analysis will be available through the National Technical Information Service, Springfield, Virginia 22151.

(d) *Summary of public participation.* Prior to this publication, the agencies and groups listed below were consulted and given an opportunity to participate in the development of effluent limitations guidelines and standards proposed for the textile manufacturing category. All participating agencies have been informed of project developments. An initial draft of the Development Document was sent to all participants and comments were solicited on that report. The following are the principal agencies and groups consulted: (1) Effluent Standards and Water Quality Information Advisory Committee (established under section 515 of the Act); (2) American Institute of Chemical Engineers; (3) American Society of Civil Engineers; (4) American Society of Mechanical Engineers; (5) American Textile Manufacturers Institute; (6) Carpet and Rug Institute; (7) Northern Textile Association; (8) Hudson River Sloop Restoration, Inc.; (9) Conservation Foundation; (10) Businessmen for the Public Interest; (11) Environmental Defense Fund, Inc.; (12) Natural Resources Defense Council; (13) National Wildlife Federation; (14) Water Pollution Control Federation; (15) Ohio River Valley Sanitation Commission; (16) New England Interstate Water Pollution Control Commission; (17) Delaware River Basin Commission; (18) U.S. Department of Health, Education, and Welfare; (19) U.S. Department of Commerce; (20) U.S. Department of Agriculture; (21) Water Resources Council; (22) U.S. Department of the Interior; and (23) All State and U.S. Territory Pollution Control Agencies.

The following organizations responded with comments: American Textile Manufacturers Institute; Carpet and Rug Institute; Northern Textile Association; Woolrich Inc.; PVO International Inc.; Chas T. Main, Inc.; Department of Agriculture; Department of Commerce; Department of Treasury; U.S. Water Resources Council; Effluent Standards and Water Quality Information Advisory Committee; also the states of: Michigan, New York and South Carolina.

The comments were highly variable, ranging from full approval to rejection. It must be clearly understood that the treatment technologies used to develop the effluent limitations are alternative systems that have operated satisfactorily.

The primary issues raised in the development of the proposed effluent limitations guidelines and standards of performance and the treatment of these issues herein are as follows:

(1) Some comments were to the effect that the best available effluent limitations were too stringent. As outlined in the Development Document, the best available control technology economically achievable is the best practicable control technology plus multimedia filtration or activated carbon adsorption. The cost effectiveness of multiple-effect evaporation and incineration was evaluated and these technologies were determined to be less desirable than filtration or adsorption. Accordingly, best available effluent limitations have been developed based on filtration or carbon treatment.

(2) A number of commentors took the position that the cost and energy requirements of the best available effluent limitations were excessive. As mentioned above, the cost effectiveness of evaporation and incineration were determined to be less desirable than filtration or adsorption. Furthermore, economic analyses indicate that the diseconomies of scale resulting from activated carbon adsorption would create a more severe economic impact on many small textile mills than on the rest of the industry. Thus, exceptions have been made within six subcategories that provide for different limitations for small mills.

(3) Both the technical and economic studies have had to make important decisions on very limited information. Effluent limitations for wool subcategories are supported by only a limited data base. The more severe economic impacts for small mills are based on very limited information. Interested persons are invited to submit comments on any aspect of the proposed guidelines, particularly as they effect the small textile mill whether the discharge is to surface waters or a municipal treatment system. Information on alternative treatment technologies to meet the guidelines and the associated costs are specifically requested. The number, size, and locations of plants affected by the guidelines have been estimated by EPA. Any external estimates by industry are invited. On the basis of the information available, EPA will further evaluate segmentation on the basis of size in the final regulation.

Interested persons may participate in this rulemaking by submitting written comments to the EPA Information Center, Environmental Protection Agency, Washington, D.C. 20460, Attention: Mr. Philip B. Wisman. Comments on all aspects of the proposed regulations are solicited. In the event comments are in the nature of criticisms as to the adequacy of data which is available, or which may be relied upon by the Agency, comments should identify and, if possible, provide any additional data which may be available and should indicate why such data is essential to the development of the regulations. In the event comments address the approach taken by the Agency in establishing an effluent limitation guideline or standard of performance, EPA solicits suggestions as to what alternative approach should be taken and why and how this alternative better satisfies the detailed requirements of sections 301, 304(b), 306, and 307 of the Act.

A copy of all public comments will be available for inspection and copying at the EPA Information Center, Room 227, West Tower, Waterside Mall, 401 M Street SW., Washington, D.C. A copy of preliminary draft contractor reports, the Development Document and economic study referred to above, and certain supplementary materials supporting the study of the industry concerned will also be maintained at this location for public review and copying. The EPA information regulation, 40 CFR Part 2, provides that a reasonable fee may be charged for copying.

All comments received on or before March 7, 1974, will be considered. Steps previously taken by the Environmental Protection Agency to facilitate public response within this time period are outlined in the advance notice concerning public review procedures published on August 6, 1973 (38 FR 21202).

Dated January 23, 1974.

JOHN QUARLES,
Acting Administrator.

PART 410—EFFLUENT LIMITATIONS GUIDELINES FOR EXISTING SOURCES AND STANDARDS OF PERFORMANCE AND PRETREATMENT STANDARDS FOR NEW SOURCES FOR THE TEXTILE INDUSTRY POINT SOURCE CATEGORY

Subpart A—Wool Scouring Subcategory

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410.10 Applicability; description of wool scouring subcategory.
410.11 Specialized definitions.
410.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
410.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by application of the best available technology economically achievable.
410.14 Standards of performance for new sources.
410.15 Pretreatment standards for new sources.

Subpart B—Wool Finishing Subcategory

410.20 Applicability; description of wool finishing subcategory.
410.21 Specialized definitions.
410.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

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410.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
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410.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
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Subpart D—Woven Fabric Finishing Subcategory

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Subpart E—Knit Fabric Finishing Subcategory

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410.63 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
410.64 Standards of performance for new sources.
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Subpart G—Stock and Yarn Dyeing and Finishing Subcategory

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410.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
410.73 Effluent limitations guidelines representing the degree of effluent reduction attainable by application of the best available technology economically achievable.
410.74 Standards of performance for new sources.
410.75 Pretreatment standards for new sources.

AUTHORITY: Secs. 301, 304 (b) and (c), 306(b) and 307(c) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316(b) and 1317(c); 86 Stat. 1816 et seq. Pub. L. 92-500) (the "Act").

Subpart A—Wool Scouring Subcategory

§ 410.10 Applicability; description of wool scouring subcategory.

The provisions of this subpart are applicable to discharges resulting from the following types of textile mills: Wool scouring, topmaking, and general cleaning of raw wool.

§ 410.11 Specialized definitions.

For the purposes of this subpart:

(a) The term "wool" shall mean the dry raw wool as it is received by the wool scouring mill;

(b) The terms "fecal coliform" and "oil and grease" shall be measured by the procedure presented in "Standard Methods for the Examination of Water and Wastewater", 13th Edition, 1971.

(c) The following abbreviations shall have the following meanings: (1) "kg" shall mean kilograms(s); (2) "kkg" shall mean 1,000 kilograms; (3) "lb" shall mean pound(s); (4) "ml" shall mean milliliter; (5) "TSS" shall mean total suspended nonfilterable solids; (6) "BOD5" shall mean five day biochemical oxygen demand; (7) "COD" shall mean the chemical oxygen demand.

§ 410.12 Effluent limitations guidelines representing the degree of effluent reduction obtainable by the application of the best practicable control technology currently available.

(a) The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of best practicable control technology currently available by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any 1 day: 7.4 kg/kkg wool (7.4 lb/1,000 lb wool). Maximum average of daily values for any period of 30 consecutive days: 3.7 kg/kkg wool (3.7 lb/1,000 lb wool).
COD	Maximum for any 1 day: 48 kg/kkg wool (48 lb/1,000 lb wool). Maximum average of daily values for any period of 30 consecutive days: 24 kg/kkg wool (24 lb/1,000 lb wool).
TSS	Maximum for any 1 day: 7.4 kg/kkg wool (7.4 lb/1,000 lb wool). Maximum average of daily values for any period of 30 consecutive days: 3.7 kg/kkg wool (3.7 (lb/1,000 lb wool).
Oils and Grease.	Maximum for any 1 day: 3.8 kg/kkg wool (3.8 lb/1,000 lb wool). Maximum average of daily values for any period of 30 consecutive days: 1.9 kg/kkg wool (1.9 lb/1,000 lb wool).
pH	Within the range of 6.0 to 9.0.
Fecal Coliform.	MPN shall not exceed 400 counts per 100 ml.

(b) The COD effluent limitation set forth in this section is not applicable for any point source subject to such effluent limitation with a production less than 6,500 kg product per day. This exemption is required because of economic factors listed in section 304(b).

§ 410.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of the best available technology economically achivable by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any 1 day: 5.0 kg/kkg wool (5.0 lb/1,000 lb wool). Maximum average of daily values for any period of 30 consecutive days: 2.5 kg/kkg wool (2.5 lb/1,000 lb wool).
COD	Maximum for any 1 day: 12.8 kg/kkg wool (12.8 lb/1,000 lb). Maximum average of daily values for any period of 30 consecutive days: 6.4 kg/kkg wool (6.4 lb/1,000 lb wool).
TSS	Maximum for any 1 day: 5.0 kg/kkg wool (5.0 lb/1,000 lb wool). Maximum average of daily values for any period of 30 consecutive days: 2.5 kg/kkg wool (2.5 lb/1,000 lb wool).
Oils and Grease.	Maximum for any 1 day: 3.8 kg/kkg wool (3.8 lb/1,000 lb wool). Maximum average of daily values for any period of 30 consecutive days: 1.9 kg/kkg wool (1.9 lb/1,000 lb wool).

Effluent characteristic	*Effluent limitation*
pH	Within the range of 6.0 to 9.0.
Fecal Coliform.	MPN shall not exceed 400 counts per 100 ml.

(b) The COD effluent limitation set forth in this section is not applicable for any point source subject to such effluent limitation with a production less than 6,500 kg product per day. This exemption is required because of economic factors listed in section 304(b).

§ 410.14 Standards of performance for new sources.

(a) The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged reflecting the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants by a new point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any 1 day: 5.0 kg/kkg wool (5.0 lb/1,000 lb wool). Maximum average of daily values for any period of 30 consecutive days: 2.5 kg/kkg wool (2.5 lb/1,000 lb wool).
COD	Maximum for any 1 day: 12.8 kg/kkg wool (12.8 lb/1,000 lb wool). Maximum average of daily values for any period of 30 consecutive days: 6.4 kg/kkg wool (6.4 lb/1,000 lb wool).
TSS	Maximum for any 1 day: 5.0 kg/kkg wool (5.0 lb/1,000 lb wool). Maximum average of daily values for any period of 30 consecutive days: 2.5 kg/kkg wool (2.5 lb/1,000 lb wool).
Oils and Grease.	Maximum for any 1 day: 3.8 kg/kkg wool (3.8 lb/1,000 lb wool). Maximum average of daily values for any period of 30 consecutive days: 1.9 kg/kkg wool (1.9 lb/1,000 lb wool).
pH	Within the range of 6.0 to 9.0.
Fecal Coliform.	MPN shall not exceed 400 counts per 100 ml.

(b) The COD effluent limitation set forth in this section is not applicable for any point source subject to such effluent limitation with a production less than 6,500 kg product per day. This exemption is required because of economic factors listed in section 304(b).

§ 410.15 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act, for a source within the wool scouring subcategory which is an industrial user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to navigable waters), shall be the standard set forth in Part 128 of this chapter, except that for the purposes of this section, § 128.133 of this chapter, shall be amended to read as follows:

In addition to the prohibitions set forth in § 128.131 the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works by a major contributing industry shall be the standard of performance for new sources specified in § 410.14 of this chapter: *Provided*, That if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced for that pollutant.

Subpart B—Wool Finishing Subcategory

§ 410.20 Applicability; description of wool finishing subcategory.

The provisions of this subpart are applicable to discharges resulting from the following types of textile mills: Wool finishers, including dyeing, bleaching, rinsing, fire proofing, and other such similar processes.

§ 410.21 Specialized definitions.

For the purposes of this subpart:

(a) The term "wool" shall mean the dry wool as it is received by the wool mill;

(b) The term "fecal coliform" shall be measured by the procedure presented in "Standard Methods for the Examination of Water and Wastewater", 13th Edition, 1971.

(c) The following abbreviations shall have the following meanings: (1) "kg" shall mean kilogram(s); (2) "kkg" shall mean 1,000 kilograms; (3) "lb" shall mean pound(s); (4) "ml" shall mean milliliter; (5) "TSS" shall mean total suspended nonfilterable solids; (6) "BOD5" shall mean five day biochemical oxygen demand; (7) "COD" shall mean the chemical oxygen demand.

§ 410.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of best practicable control technology currently available by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any 1 day: 15.0 kg/kkg wool (15.0 lb/1,000 lb wool). Maximum average of daily values for any period of 30 consecutive days: 7.5 kg/kkg wool (7.5 lb/1,000 lb wool).
COD	Maximum for any 1 day: 112 kg/kkg wool (112 lb/1,000 lb wool). Maximum average of daily values for any period of 30 consecutive days: 56 kg/kkg wool (56 lb/1,000 lb wool).
TSS	Maximum for any 1 day: 15.0 kg/kkg wool (15.0 lb/1,000 lb wool). Maximum average of daily values for any period of 30 consecutive days: 7.5 kg/kkg wool (7.5 lb/1,000 lb wool).
pH	Within the range of 6.0 to 9.0.
Fecal Coliform.	MPN shall not exceed 400 counts per 100 ml.

(b) The COD effluent limitation set forth in this section is not applicable for any point source subject to such effluent limitation with a production less than 900 kg product per day. This exemption is required because of economic factors listed in section 304(b).

§ 410.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of the best available technology economically achievable by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any 1 day: 10.0 kg/kkg product (10.0 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 5.0 kg/kkg product (5.0 lb/1,000 lb product).
COD	Maximum for any 1 day: 29.8 kg/kkg product (29.8 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 14.9 kg/kkg product (14.9 lb/1,000 lb product).
TSS	Maximum for any 1 day: 10.0 kg/kkg product (10.0 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 5.0 kg/kkg product (5.0 lb/1,000 lb product).
pH	Within the range of 6.0 to 9.0.
Fecal Coliform.	MPN shall not exceed 400 counts per 100 ml.

(b) The COD effluent limitation set forth in this section is not applicable for any point source subject to such effluent limitation with a production less than 900 kg product per day. This exemption is required because of economic factors listed in section 304(b).

§ 410.24 Standards of performance for new sources.

(a) The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged reflecting the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives,

including, where practicable, a standard permitting no discharge of pollutants by a new point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any 1 day: 10.0 kg/kkg product (10.0 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 5.0 kg/kkg product (5.0 lb/1,000 lb product).
COD	Maximum for any 1 day: 29.8 kg/kkg product (29.8 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 14.9 kg/kkg product (14.9 lb/1,000 lb product).
TSS	Maximum for any 1 day: 10.0 kg/kkg product (10.0 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 5.0 kg/kkg product (5.0 lb/1,000 lb product).
pH	Within the range of 6.0 to 9.0.
Fecal Coliform.	MPN shall not exceed 400 counts per 100 ml.

(b) The COD effluent limitation set forth in this section is not applicable for any point source subject to such effluent limitation with a production less than 900 kg product per day. This exemption is required because of economic factors listed in section 304(b).

§ 410.25 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act, for a source within the wool finishing subcategory which is an industrial user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to navigable waters), shall be the standard set forth in Part 128 of this chapter, except that for the purposes of this section, § 128.133 of this chapter shall be amended to read as follows:

In addition to the prohibitions set forth in § 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works by a major contributing industry shall be the standard of performance for new sources specified in § 410.24 of this chapter: *Provided*, That, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced for that pollutant.

Subpart C—Greige Mills Subcategory

§ 410.30 Applicability; description of greige mills subcategory.

The provisions of this subpart are applicable to discharges resulting from the following types of textile mills: greige mills.

§ 410.31 Specialized definitions.

For the purposes of this subpart:

(a) The term "product" shall mean the final material produced or processed by the mill;

(b) The term "fecal coliform" shall be measured by the procedure presented in "Standard Methods for the Examination of Water and Wastewater", 13th Edition, 1971.

(c) The following abbreviations shall have the following meanings: (1) "kg" shall mean kilogram(s); (2) "kkg" shall mean 1,000 kilograms; (3) "lb" shall mean pound(s); (4) "ml" shall mean milliliter; (5) "TSS" shall mean total suspended nonfilterable solids; (6) "BOD5" shall mean five day biochemical oxygen demand; (7) "COD" shall mean the chemical oxygen demand.

§ 410.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of best practicable control technology currently available by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any 1 day: 0.9 kg/kkg product (0.9 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 0.45 kg/kkg product (0.45 lb/1,000 lb product).
TSS	Maximum for any 1 day: 0.9 kg/kkg product (0.9 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 0.45 kg/kkg product (0.45 lb/1,000 lb product).
pH	Within the range of 6.0 to 9.0.
Fecal Coliform.	MPN shall not exceed 400 counts per 100 ml.

§ 410.33 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of the best available technology economically achievable by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any 1 day: 0.6 kg/kkg product (0.6 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 0.3 kg/kkg product (0.3 lb/1,000 lb product).
TSS	Maximum for any 1 day: 0.6 kg/kkg product (0.6 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 0.3 kg/kkg product (0.3 lb/1,000 lb product).
pH	Within the range of 6.0 to 9.0.
Fecal Coliform.	MPN shall not exceed 400 counts per 100 ml.

§ 410.34 Standards of performance for new sources.

The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged reflecting the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants by a new point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any 1 day: 0.6 kg/kkg product (0.6 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 0.3 kg/kkg product (0.3 lb/1,000 lb product).
TSS	Maximum for any 1 day: 0.6 kg/kkg product (0.6 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 0.3 kg/kkg product (0.3 lb/1,000 lb product).
pH	Within the range of 6.0 to 9.0.
Fecal Coliform.	MPN shall not exceed 400 counts per 100 ml.

§ 410.35 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act, for a source within the greige mills subcategory which is an industrial user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to navigable waters), shall be the standard set forth in Part 128 of this chapter, except that for the purposes of this section, § 128.133 of this chapter, shall be amended to read as follows:

In addition to the prohibitions set forth in § 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works by a major contributing industry shall be the standard of performance for new sources specified in § 410.34, of this chapter: *Provided*, That, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced for that pollutant.

Subpart D—Woven Fabric Finishing Subcategory

§ 410.40 Applicability; description of woven fabric finishing subcategory.

The provisions of this subpart are applicable to discharges resulting from the following types of textile mills: Woven fabric finishers, which may include any

or all of the following unit operations; desizing, bleaching, scouring, mercerizing, carbonizing, fulling, dyeing, printing, resin treatment, water proofing, flame proofing, soil repellency application and a special finish application.

§ 410.41 Specialized definitions.

For the purposes of this subpart:

(a) The term "product" shall mean the final material produced or processed by the mill;

(b) The term "fecal coliform" shall be measured by the procedure presented in "Standard Methods for the Examination of Water and Wastewater", 13th Edition, 1971.

(c) The following abbreviations shall have the following meanings: (1) "kg" shall mean kilograms(s); (2) "kkg" shall mean 1,000 kilograms; (3) "lb" shall mean pound(s); (4) "ml" shall mean milliliter; (5) "TSS" shall mean total suspended nonfilterable solids; (6) "BOD5" shall mean five day biochemical oxygen demand; (7) "COD" shall mean the chemical oxygen demand.

§ 410.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of best practicable control technology currently available by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any 1 day: 4.4 kg/kkg product (4.4 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 2.2 kg/kkg product (2.2 lb/1,000 lb product).
COD	Maximum for any 1 day: 66 kg/kkg product (66 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 33 kg/kkg product (33 lb/1,000 lb product).
TSS	Maximum for any 1 day: 13.8 kg/kkg product (13.8 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 6.9 kg/kkg product (6.9 lb/1,000 lb product).
pH	Within the range of 6.0 to 9.0.
Fecal Coliform.	MPN shall not exceed 400 counts per 100 ml.

(b) The COD effluent limitation set forth in this section is not applicable for any point source subject to such effluent limitation with a production less than 1,000 kg product per day. This exemption is required because of economic factors listed in section 304(b).

§ 410.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of the best available technology economically achievable by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any 1 day: 3.0 kg/kkg product (3.0 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 1.5 kg/kkg product (1.5 lb/1,000 lb product).
COD	Maximum for any 1 day: 17.6 kg/kkg product (17.6 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 8.8 kg/kkg product (8.8 lb/1,000 lb product).
TSS	Maximum for any 1 day: 9.2 kg/kkg product (9.2 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 4.6 kg/kkg product (4.6 lb/1,000 lb product).
pH	Within the range of 6.0 to 9.0.
Fecal Coliform.	MPN shall not exceed 400 counts per 100 ml.

(b) The COD effluent limitation set forth in this section is not applicable for any point source subject to such effluent limitation with a production less than 1,000 kg product per day. This exemption is required because of economic factors listed in section 304(b).

§ 410.44 Standards of performance for new sources.

(a) The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged reflecting the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants by a new point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any 1 day: 3.0 kg/kkg product (3.0 lb/1000 lb product). Maximum average of daily values for any period of 30 consecutive days: 1.5 kg/kkg product (1.5 lb/1,000 lb product).
COD	Maximum for any 1 day: 17.6 kg/kkg product (17.6 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 8.8 kg/kkg product (8.8 lb/1,000 lb product).
TSS	Maximum for any 1 day: 9.2 kg/kkg product (9.2 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 4.6 kg/kkg product (4.6 lb/1,000 lb product).
pH	Within the range of 6.0 to 9.0. MPN shall not exceed 400 counts per 100 ml.
Fecal Coliform.	

(b) The COD effluent limitation set forth in this section is not applicable for any point source subject to such effluent limitation with a production less than 1,000 kg product per day. This exemption is required because of economic factors listed in section 304(b).

§ 410.45 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act, for a source within the woven fabric finishing subcategory which is an industrial user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to navigable waters), shall be the standard set forth in Part 128 of this chapter, except that for the purposes of this section, § 128.133 of this chapter shall be amended to read as follows:

In addition to the prohibitions set forth in § 128.131 of this chapter the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works by a major contributing industry shall be the standard of performance for new sources specified in § 410.44 of this chapter: *Provided*, That, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced for that pollutant.

Subpart E—Knit Fabric Finishing Subcategory

§ 410.50 Applicability; description of knit fabric finishing subcategory.

The provisions of this subpart are applicable to discharges resulting from the following types of textile mills: Knit fabric finishers which may include any or all of the following unit operations; bleaching, scouring, mercerizing, carbonizing, fulling, dyeing, printing, resin treatment, water proofing, flame proofing soil repellancy application and application of special finishes.

§ 410.51 Specialized definitions.

For the purposes of this subpart:

(a) The term "product" shall mean the final material produced or processed by the mill;

(b) The term "fecal coliform" shall be measured by the procedure presented in "Standard methods for the Examination of Water and Wastewater", 13th Edition, 1971.

(c) The following abbreviations shall have the following meanings: (1) "kg" shall mean kilograms(s); (2) "kkg" shall mean 1,000 kilograms; (3) "lb" shall

mean pound(s); (4) "ml" shall mean milliliter; (5) "TSS" shall mean total suspended nonfilterable solids; (6) "BOD5" shall mean five day biochemical oxygen demand; (7) "COD" shall mean the chemical oxygen demand.

§ 410.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of best practicable control technology currently available by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any 1 day: 3.6 kg/kkg product (3.6 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 1.8 kg/kkg product (1.8 lb/1,000 lb product).
COD	Maximum for any 1 day: 48 kg/kkg product (48 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 24 kg/kkg product (24 lb/1,000 lb product).
TSS	Maximum for any 1 day: 16.0 kg/kkg product (16.0 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 8.0 kg/kkg product (8.0 lb/1,000 lb product).
pH	Within the range of 6.0 to 9.0.
Fecal Coliform.	MPN shall not exceed 400 counts per 100 ml.

(b) The COD effluent limitation set forth in this section is not applicable for any point source subject to such effluent limitation with a production less than 3,450 kg product per day. This exemption is required because of economic factors listed in section 304(b).

§ 410.53 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of the best available technology economically achievable by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any 1 day: 2.4 kg/kkg product (2.4 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 1.2 kg/kkg product (1.2 lb/1,000 lb product).
COD	Maximum for any 1 day: 12.8 kg/kkg product (12.8 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 6.4 kg/kkg product (6.4 lb/1,000 lb product).
TSS	Maximum for any 1 day: 10.6 kg/kkg product (10.6 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 5.3 kg/kkg product (5.3 lb/1,000 lb product).
pH	Within the range of 6.0 to 9.0
Fecal Coliform.	MPN shall not exceed 400 counts per 100 ml.

(b) The COD effluent limitation set forth in this section is not applicable for any point source subject to such effluent limitation with a production less than 3,450 kg product per day. This exemption is required because of economic factors listed in section 304(b).

§ 410.54 Standards of performance for new sources.

(a) The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged reflecting the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants by a new point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any 1 day: 2.4 kg/kkg product (2.4 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 1.2 kg/kkg product (1.2 lb/1,000 lb product).
COD	Maximum for any 1 day: 12.8 kg/kkg product (12.8 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 6.4 kg/kkg product (6.4 lb/1,000 lb product).
TSS	Maximum for any 1 day: 10.6 kg/kkg product (10.6 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 5.3 kg/kkg product (5.3 lb/1,000 lb product).
pH	Within the range of 6.0 to 9.0.
Fecal Coliform.	MPN shall not exceed 400 counts per 100 ml.

(b) The COD effluent limitation set forth in this section is not applicable for any point source subject to such effluent limitation with a production less than 3,450 kg product per day. This exemption is required because of economic factors listed in section 304(b).

§ 410.55 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act, for a source within the knit fabric finishing subcategory which is an industrial user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to navigable waters), shall be the standard set forth in Part 128 of this chapter, except that for the purposes of this section, § 128.133 of this chapter, shall be amended to read as follows:

In addition to the prohibitions set forth in § 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works by a major contributing industry shall be the standard of performance for new sources specified in § 410.54 of this chapter: *Provided*, That, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced for that pollutant.

Subpart F—Carpet Mills Subcategory

§ 410.60 Applicability; description of carpet mills subcategory.

The provisions of this subpart are applicable to discharges resulting from the following types of textile mills: Carpet mills, which may include any or all of the following unit operations; bleaching, scouring, carbonizing, fulling, dyeing, printing, resin treatment, water proofing, flame proofing, soil repellency, looping, backing with foamed and unfoamed latex and jute.

§ 410.61 Specialized definitions.

For the purposes of this subpart:

(a) The term "product" shall mean the final carpet produced or processed including the primary backing but excluding the secondary backing;

(b) The term "fecal coliform" shall be measured by the procedure presented in "Standard Methods for the Examination of Water and Wastewater", 13th Edition 1971.

(c) The following abbreviations shall have the following meanings: (1) "kg" shall mean kilograms(s); (2) "kkg" shall mean 1,000 kilograms; (3) "lb" shall mean pound(s); (4) "ml" shall mean milliliter; (5) "TSS" shall mean total suspended nonfilterable solids; (6) "BOD5" shall mean five day biochemical oxygen demand; (7) "COD" shall mean the chemical oxygen demand.

§ 410.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of best prac-

ticable control technology currently available by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any 1 day: 8.6 kg/kkg product (8.6 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 4.3 kg/kkg product (4.3 lb/1,000 lb product).
COD	Maximum for any 1 day: 60 kg/kkg product (60 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 30 kg/kkg product (30 lb/1,000 lb product).
TSS	Maximum for any 1 day: 8.6 kg/kkg product (8.6 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 4.3 kg/kkg product (4.3 lb/1,000 lb product).
pH	Within the range of 6.0 to 9.0
Fecal Coliform.	MPN shall not exceed 400 counts per 100 ml.

(b) The COD effluent limitation set forth in this section is not applicable for any point source subject to such effluent limitation with a production less than 3,450 kg product per day. This exemption is required because of economic factors listed in section 304(b).

§ 410.63 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of the best available technology economically achievable by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any 1 day: 5.8 kg/kkg product (5.8 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 2.9 kg/kkg product (2.9 lb/1,000 lb product).
COD	Maximum for any 1 day: 16.0 kg/kkg product (16.0 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 8.0 kg/kkg product (8.0 lb/1,000 lb product).
TSS	Maximum for any 1 day: 5.8 kg/kkg product (5.8 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 2.9 kg/kkg product (2.9 lb/1,000 lb product).
pH	Within the range of 6.0 to 9.0.
Fecal Coliform.	MPN shall not exceed 400 counts per 100 ml.

(b) The COD effluent limitation set forth in this section is not applicable for any point source subject to such effluent limitation with a production less than 3,450 kg product per day. This exemption is required because of economic factors listed in section 304(b).

§ 410.64 Standards of performance for new sources.

(a) The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged reflecting the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants by a new point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any 1 day: 5.8 kg/kkg product (5.8 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 2.9 kg/kkg product (2.9 lb/1,000 lb product).
COD	Maximum for any 1 day: 16.0 kg/kkg product (16.0 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 8.0 kg/kkg product (8.0 lb/1,000 lb product).
TSS	Maximum for any 1 day: 5.8 kg/kkg product (5.8 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 2.9 kg/kkg product (2.9 lb/1,000 lb product).
pH	Within the range of 6.0 to 9.0.
Fecal Coliform.	MPN shall not exceed 400 counts per 100 ml.

(b) The COD effluent limitation set forth in this section is not applicable for any point source subject to such effluent limitation with a production less than 3,450 kg product per day. This exemption is required because of economic factors listed in section 304(b).

§ 410.65 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act, for a source within the carpet mills subcategory which is an industrial user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to navigable waters), shall be the standard set forth in Part 128 of this chapter, except that for the purposes of this section, § 128.133 of this chapter shall be amended to read as follows:

In addition to the prohibitions set forth in § 128.131 of this chapter, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works by a major contributing industry shall be the standard of performance for new sources specified in § 410.64 of this chapter: *Provided*, That, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced for that pollutant.

Subpart G—Stock and Yarn Dyeing and Finishing Subcategory

§ 410.70 Applicability; description of stock and yarn dyeing and finishing subcategory.

The provisions of this subpart are applicable to discharges resulting from the following types of textile mills: Stock and yarn dyeing and finishing which may include any or all of the following unit operations and processes; cleaning, scouring, bleaching, mercerizing, dyeing and special finishing.

§ 410.71 Specialized definitions.

For the purposes of this subpart:

(a) The term "product" shall mean the final material produced or processed by the mill;

(b) The term "fecal coliform" shall be measured by the procedure presented in "Standard Methods for the Examination of Water and Wastewater", 13th Edition, 1971.

(c) The following abbreviations shall have the following meanings: (1) "kg" shall mean kilograms(s); (2) "kkg" shall mean 1,000 kilograms; (3) "lb" shall mean pound(s); (4) "ml" shall mean milliliter; (5) "TSS" shall mean total suspended nonfilterable solids; (6) "BOD5" shall mean five day biochemical oxygen demand; (7) "COD" shall mean the chemical oxygen demand.

§ 410.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of best practicable control technology currently available by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any 1 day: 7.0 kg/kkg product (7.0 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 3.5 kg/kkg product (3.5 lb/1,000 lb product).
COD	Maximum for any 1 day: 94 kg/kkg product (94 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 47 kg/kkg product (47 lb/1,000 lb product).
TSS	Maximum for any 1 day: 18.4 kg/kkg product (18.4 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 9.2 kg/kkg product (9.2 lb/1,000 lb product).

Effluent characteristic	*Effluent limitation*
pH	Within the range of 6.0 to 9.0.
Fecal Coliform.	MPN shall not exceed 400 counts per 100 ml.

(b) The COD effluent limitation set forth in this section is not applicable for any point source subject to such effluent limitation with a production less than 3,100 kg product per day. This exemption is required because of economic factors listed in section 304(b).

§ 410.73 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged after application of the best available technology economically achievable by a point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any 1 day: 4.6 kg/kkg product (4.6 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 2.3 kg/kkg product (2.3 lb/1,000 lb product).
COD	Maximum for any 1 day: 25.0 kg/kkg product (25.0 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 12.5 kg/kkg product (12.5 lb/1,000 lb product).
TSS	Maximum for any 1 day: 12.2 kg/kkg product (12.2 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 6.1 kg/kkg product (6.1 lb/1,000 lb product).
pH	Within the range of 6.0 to 9.0.
Fecal Coliform.	MPN shall not exceed 400 counts per 100 ml.

(b) The COD effluent limitation set forth in this section is not applicable for any point source subject to such effluent limitation with a production less than 3,100 kg product per day. This exemption is required because of economic factors listed in section 304(b).

§ 410.74 Standards of performance for new sources.

(a) The following limitations constitute the quantity or quality of pollutants or pollutant properties which may be discharged reflecting the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants by a new point source subject to the provisions of this subpart:

Effluent characteristic	*Effluent limitation*
BOD5	Maximum for any 1 day: 4.6 kg/kkg product (4.6 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 2.3 kg/kkg product (2.3 lb/1,000 lb product).
COD	Maximum for any 1 day: 25.0 kg/kkg product (25.0 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 12.5 kg/kkg product (12.5 lb/1,000 lb product).
TSS	Maximum for any 1 day: 12.2 kg/kkg product (12.2 lb/1,000 lb product). Maximum average of daily values for any period of 30 consecutive days: 6.1 kg/kkg product (6.1 lb/1,000 lb product).
pH	Within the range of 6.0 to 9.0.
Fecal Coliform.	MPN shall not exceed 400 counts per 100 ml.

(b) The COD effluent limitation set forth in this section is not applicable for any point source subject to such effluent limitation with a production less than 3,100 kg product per day. This exemption is required because of economic factors listed in section 304(b).

§ 410.75 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act, for a source within the stock and yarn dyeing and finishing subcategory which is an industrial user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to navigable waters), shall be the standard set forth in Part 128 of this chapter, except that for the purposes of this section, § 128.133 of this chapter, shall be amended to read as follows:

In addition to the prohibitions set forth in § 128.131 of this chapter, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works by a major contributing industry shall be the standard of performance for new sources specified in § 410.74: *Provided*, That, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced for that pollutant.

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PART III

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

■

GRAIN STANDARDS

Formal and Informal Proceedings; Proposed Rules of Practice

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 26]

GRAIN STANDARDS

Formal and Informal Proceedings

Under the authority contained in the U.S. Grain Standards Act (7 U.S.C. 71 et seq.), notice is hereby given pursuant to the administrative procedure provisions of 5 U.S.C. 553, that the U.S. Department of Agriculture proposes to amend §§ 26.10, 26.77, 26.89, 26.101, 26.118, and 26.127 of the regulations under the Act and to promulgate Subparts C and D prescribing rules of practice under 7 CFR Part 26.

Section 9 of the Act (7 U.S.C. 85) provides that a licensee shall be afforded an opportunity for a hearing before the refusal to renew, or suspension or revocation of a license, or after a license is temporarily suspended. Section 10 of the Act (7 U.S.C. 86) provides that before official inspection is refused to any person, such person shall be afforded opportunity for a hearing. Sections 26.10, 26.77, 26.89, 26.101, 26.102, 26.118, and 26.127 of the regulations under the Act provide that certain requests for inspection services; refusing official inspection; suspensions or revocations of a license; dismissals of applications for a renewal of a license, or for the return of a license which has been suspended; suspensions or revocations of the designation of an official inspection agency; and filing of complaints shall be conducted in accordance with the rules of practice in Subpart C of this part. The regulations state that the rules of practice in Subpart C will be issued later. Rules of practice have been and are currently needed to implement these sections of the Act and regulations.

Section 16 of the Act (7 U.S.C. 87e) provides that proceedings under section 9 or 10 of the Act shall not, unless requested by the respondent, be subject to the administrative procedure provisions in sections 554, 556, and 557 of title 5, United States Code. Accordingly, two separate rules of practice have been prepared, one for informal proceedings (Subpart C) and one for formal proceedings (Subpart D). The rules of practice governing the informal proceedings provide for the final order to be issued by the Administrator, Agricultural Marketing Service. The rules of practice governing, the formal proceedings provide for an initial decision to be issued by an Administrative Law Judge which shall become final unless appealed to the Secretary. Reference changes have been made in applicable sections of the regulations to identify which rules of practice are to govern a proceeding.

1. Section 26.10 would be amended by adding a reference to Subpart D and deleting the footnote. The amended section would read as follows:

§ 26.10 When a request for inspection services may be withdrawn or dismissed.

* * * * *

(d) *Procedure for dismissal.* When an official inspection agency or field office proposes to dismiss a request for official inspection service, it shall inform the applicant of the proposed action and the reasons therefor and afford him an opportunity to demonstrate or achieve compliance with the regulations prescribing conditions for the availability of the service. Thereafter the agency or office shall determine whether the request should be dismissed: *Provided,* That a request for inspection may be dismissed for reasons specified in section 10 of the Act only in accordance with the rules of practice provided in Subpart C or Subpart D of this part: *And provided further,* That a request for inspection for grain required to be inspected under section 5 of the Act may be dismissed only with the consent of the Administrator. When a request for inspection service is dismissed, notice of the dismissal shall be given in accordance with §§ 26.27, 26.30, 26.37, and 26.47 of the regulations or the rules of practice in Subpart C or Subpart D of this part.

* * * * *

2. Section 26.77 would be amended by adding a reference to Subpart D and deleting the footnote. The amended section would read as follows:

§ 26.77 Applications for licensing actions.

* * * * *

(c) *Withdrawal and dismissal.* An application for a licensing action may be withdrawn by an applicant at any time. An application may be dismissed by the Administrator (1) if the applicant is found not to meet the requirements of § 26.76; or (2) the application is found not to meet the requirements of this § 26.77: *Provided,* That an application for a renewal of a license, or for the return of a license which has been suspended, may be dismissed only after the licensee has been afforded an opportunity for a hearing in accordance with the rules of practice in Subpart C or Subpart D of this part. When an application is dismissed, the Administrator shall promptly inform the applicant of the reason for the dismissal.

* * * * *

3. Section 26.89 would be amended by adding a reference to Subpart D and deleting the footnote. The amended section would read as follows:

§ 26.89 Corrective actions for violations by official inspection personnel.

* * * * *

(b) *Administrative action.* In addition to the action described in paragraph (a) of this section, official inspection personnel are subject to administrative actions, in accordance with this paragraph, for any of the causes shown in section 9 of the Act: (1) Less serious cases may be disposed of by written cautionary notices or letters of warning; (2) in the more serious cases, administrative actions may be instituted for temporary suspension of a license pending final determination, suspension of a license for a prescribed period of time, or revocation of a license, as provided in the rules of practice in Subpart C or Subpart D of this part. Administrative actions for authorized Department employees may include, but are not limited to, changes in assigned duties or disciplinary action in accordance with law.

4. Section 26.101 would be amended by adding a reference to Subpart D and deleting the footnote. The amended section would read as follows:

§ 26.101 Cancellation, amendment, transfer, suspension, and revocation of designation.

* * * * *

(b) *Suspension or revocation for cause.* Proceedings for a temporary suspension, or for a suspension for a prescribed period of time, or for a revocation of a designation, for failure to comply with the requirements of § 26.96 or § 26.100 shall be conducted in accordance with rules of practice in Subpart C or Subpart D of this part.

* * * * *

5. Section 26.102 would be amended by deleting the footnote. The amended section would read as follows:

§ 26.102 Filing of complaints.

Agencies or persons who are aggrieved by an application action under § 26.98 or an assignment action under § 26.99 may file a complaint in accordance with the rules of practice in Subpart C of this part.

6. Section 26.118 would be amended by deleting the footnote and by providing separate paragraphs for (1) dismissal of requests; (2) conditional withholding; and (3) refusal of official inspection. The amended section would read as follows:

§ 26.118 Procedure for dismissal of requests or for withholding or refusal of official inspection.

(a) *Dismissal of requests.* A dismissal of a request for inspection shall be in accordance with the provisions of § 26.10 and the rules of practice in Subpart C or Subpart D of this part.

(b) *Conditional withholding.* The conditional withholding of official inspection for a correctable cause, such as failure to pay bills, shall be in accordance with § 26.11. Paragraph (c) of § 26.11 prescribes the procedures for the conditional withholding of inspection services.

(c) *Refusal of official inspection.* Official inspection may also be refused for any grain in accordance with section 10 of the Act and the rules of practice in Subpart C or Subpart D of this part. In proceedings under section 10 of the Act, if it is determined that there is a basis for refusal of inspection service with respect to any person, the order refusing inspection may be made applicable to all operations of such person, or it may be restricted to a particular location or to a particular type of inspection, in accordance with the provisions of section 10 of the Act.

7. Section 26.127 would be amended by deleting the footnote. The amended section would read as follows:

§ 26.127 Informal complaints.

Any person desiring to complain of any alleged violation of any provision of the

Act, or of any regulation or instruction issued pursuant thereto, or of any allegedly arbitrary, capricious, or unwarranted action by official inspection personnel, may file with the Administrator an informal complaint as provided in the rules of practice in Subpart C of this part.

8. Subpart C of this part would be promulgated to read as follows:

Subpart C—Rules of Practice Governing Informal Proceedings

GENERAL

Sec.	
26.2001	Meaning of words.
26.2002	Scope and applicability of this subpart.
26.2003	Informal complaints.
26.2004	Notice of proposed proceeding.
26.2005	Amendments.
26.2006	Answer.
26.2006–1	General.
26.2006–2	Contents.
26.2007	Motions and requests.
26.2007–1	General.
26.2007–2	Motions entertained.
26.2007–3	Contents.
26.2007–4	Answers to motions.
26.2008	Consent orders.
26.2009	Procedure upon admission of facts.
26.2009–1	General.
26.2009–2	Exceptions.
26.2009–3	Final order.
26.2010	Procedure upon failure to request an oral hearing or upon express waiver of an oral hearing.
26.2010–1	General.
26.2010–2	Exceptions.
26.2010–3	Final order.
26.2011	Procedure upon request of an oral hearing.
26.2011–1	Assignment of docket number; notice of time and place of hearing.
26.2011–2	Time and place of hearing.
26.2011–3	Appearances.
26.2011–4	Failure to appear.
26.2011–5	Order of proceeding.
26.2011–6	Powers of Hearing Officer.
26.2011–7	Who may act in the absence of the Hearing Officer.
26.2011–8	Evidence.
26.2011–9	Filing the transcript of evidence.
26.2011–10	Transcripts.
26.2011–11	Proposed findings of fact, conclusions, and order.
26.2011–12	Hearing Officer's report.
26.2011–13	Exceptions; proposed orders; objections.
26.2011–14	Final order.
26.2012	Filing; number of copies.
26.2013	Service; proof of service.
26.2014	Computation of time.
26.2015	Extensions of time.

Subpart C—Rules of Practice Governing Informal Proceedings

GENERAL

§ 26.2001 Meaning of words.

(a) *Construction of words.* Words used in the singular form in this Subpart shall be deemed to import the plural, and vice versa, as the case may be.

(b) *Definitions.* For the purposes of §§ 26.2002 through 26.2015 of this Subpart, unless the context requires otherwise, the following terms shall be construed, respectively, to have the following meanings:

(1) *Act.* The U.S. Grain Standards Act, as amended August 15, 1968 (Public Law 90–487, 82 Stat. 761, 7 U.S.C. 71, 74–79, 84–87, 87a–87h).

(2) *Complainant.* The party upon whose complaint the proceeding is instituted.

(3) *Complaint.* Any formal or informal complaint by virtue of which a proceeding under the Act is instituted.

(4) *Decision and order.* Includes the Administrator's findings of fact; conclusions with respect to all material issues of fact and law, as well as the reasons or basis therefor; and order.

(5) *Director.* The Director of the Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, or any officer or employee of the Department to whom authority is delegated to act in his stead.

(6) *Disciplinary refusal of official inspection service.* The refusal of official inspection service (other than a conditional withholding) because of a violation of the Act or regulations issued thereunder.

(7) *Hearing.* That part of a proceeding which involves the submission of oral evidence.

(8) *Hearing Clerk.* The Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250.

(9) *Hearing Officer.* A Judge of the Office of Administrative Law Judges, or other officer or employee of the Department of Agriculture, duly assigned to preside at a hearing held pursuant to §§ 26.2004 through 26.2015 of this subpart.

(10) *Respondent.* The party proceeded against.

§ 26.2002 Scope and applicability of this subpart.

(a) The rules of practice in §§ 26.2003 through 26.2015 are for use in informal proceedings (which are not subject to the rules of practice in Subpart D of this part) for (1) dismissals of requests for inspection services; (2) complaints filed by agencies or persons aggrieved by an application action under § 26.98 of Subpart A of this part and an assignment action under § 26.99 of Subpart A of this part; (3) suspensions or revocations to operate as an official inspection agency; and (4) informal complaints under § 26.127 of Subpart A of this part.

(b) The rules of practice in §§ 26.2003 through 26.2015 in this subpart are also for use in informal proceedings for (1) refusing official inspection; (2) suspensions or revocations of a license; and (3) dismissals of applications for a renewal of a license, or for the return of a license which has been suspended: *Provided,* That the respondent does not request that such proceeding be subject to the administrative procedure provisions in sections 554, 556, and 557 of title 5, United States Code, in which case the rules of practice in Subpart D of this part shall apply.

(c) Procedures for conditional withholding of inspection service are provided under § 26.11 of Subpart A of this part and therefore are not included in this subpart.

§ 26.2003 Informal complaints.

(a) *Filing.* Any person desiring to complain of any provision of the Act, or of any regulation or instruction issued pursuant thereto, or of any allegedly arbitrary, capricious, or unwarranted action by official inspection personnel, may file with the Director an informal complaint. Informal complaints may be the basis for informal proceedings specified in § 26.2002.

(b) *Form and contents.* An informal complaint may be made by telegraph, by letter, or by a preliminary statement of facts, setting forth the essential details of the transaction complained of. So far as practicable, every such informal complaint should state such of the following items as may be applicable:

(1) The name and address of each person and of his agent, if any, representing him in the transaction involved;

(2) Place where alleged violation or alleged unwarranted action by official inspection personnel occurred;

(3) Quantity and quality of the grain involved;

(4) Date of alleged violation or alleged unwarranted action;

(5) Amount of damages claimed, if any, and method of computation; and

(6) Statement of other material facts, including terms of contract. The informal complaint should, so far as practicable, be accompanied by true copies of all available papers relating to the transaction complained about, including shipping documents, letters, telegrams, invoices, manifests, accounts sales, and all relevant contracts or agreements.

(c) *Investigation and disposition.* Upon receipt of all the information and supporting evidence submitted by the person filing the informal complaint, the Director shall cause such investigation to be made as, in his opinion, is justified by the facts. If such investigation discloses that no violation of the Act, or of the regulations or instructions issued pursuant thereto, or any unwarranted action by official inspection personnel has occurred, the matter will be dropped and the person filing the informal complaint will be so advised. If the statements in the informal complaint and the investigation thereunder seem to warrant such action and in any case, except one of willfulness or one in which public health, interest, or safety otherwise requires, prior to the institution of a disciplinary proceeding which may result in the suspension or revocation of a license or designation, the Director, in an effort to effect an amicable or informal adjustment of the matter, shall give written notice to the person complained against of the facts or conduct concerning which complaint is made and shall afford such person an opportunity within a reasonable time fixed by the Director to demonstrate or achieve compliance with the applicable requirements of the Act and regulations promulgated thereunder.

(d) *Status of person filing.* The person filing an informal complaint shall not be a party to any disciplinary proceeding which may be instituted as a result of the informal complaint, and such per-

son shall have no legal status in any such proceeding, except as he may be subpenaed as a witness or his deposition taken without expense to him.

§ 26.2004 Notice of proposed proceeding.

The Director (hereinafter sometimes referred to as the complainant) shall transmit to respondent a written notice (telegram or letter) which shall set forth briefly the nature of the proposed proceeding, including allegations of fact which constitute a basis for the proceeding. The notice shall offer respondent the opportunity to submit a specific written statement by way of answer and the right to request an oral hearing at which evidence may be presented in support of respondent's position, and shall state the time within which answer by respondent must be made, which shall not be less than 20 days after service of the notice.

§ 26.2005 Amendments.

At any time prior to the close of the hearing, the notice of the proposed proceeding may be amended; but, in case of an amendment adding new provisions, the hearing shall, on the request of the respondent, be adjourned for a period not exceeding 15 days, in order to offer the respondent opportunity to file an answer thereto.

§ 26.2006 Answer.

§ 26.2006–1 General.

The respondent shall file an answer to the allegations of the notice with the Director, signed by the respondent or his attorney, within the period of time for answering set forth in the notice.

§ 26.2006–2 Contents.

The answer shall (a) contain a concise statement of the facts which constitute the grounds of defense, and shall specifically admit, deny, or explain each of the facts alleged in the notice unless the respondent is without knowledge, in which case, the answer shall so state; (b) state that the respondent admits all of the facts alleged in the notice; or (c) state that the respondent admits the jurisdictional allegations of the complaint and neither admits nor denies the remaining allegations and consents to the issuance of a specified order without further procedure. The answer may, in addition, request an oral hearing. If an oral hearing is not expressly requested, the procedure outlined in § 26.2010–1 shall be followed.

§ 26.2007 Motions and requests.

§ 26.2007–1 General.

All motions and requests shall be filed with the Administrator, except that if a hearing has been requested by respondent, such motions and requests shall be filed with the Hearing Clerk, unless made during the course of an oral hearing, in which case, they may be stated orally and made a part of the transcript. The Administrator shall rule upon all motions and requests filed, except that if a hearing has been requested by respondent, the Hearing Officer is authorized to rule upon all motions and requests filed or made prior to the filing of his report as hereinafter provided, except motions to dismiss.

§ 26.2007–2 Motions entertained.

Any motion will be entertained except a motion to dismiss on the pleadings.

§ 26.2007–3 Contents.

All written motions shall state the particular order, ruling, or action desired and the grounds therefor.

§ 26.2007–4 Answers to motions.

Within 15 days after service of any written motion, or within any longer period fixed by the Administrator or Hearing Officer, the opposing party shall file an answer to the motion or shall be deemed to have no objection to the granting of the relief asked for in the motion. Unless permitted by the Administrator or Hearing Officer, the moving party shall have no right to reply to the answer.

§ 26.2008 Consent orders.

At any time after the institution of a proceeding, the respondent may file an answer consenting to an order. Such an answer shall contain an admission of all jurisdictional facts, an express waiver of further procedural steps, and the order consented to by the respondent. Within 10 days after service of such an answer, the complainant shall file its recommendation. The Administrator may, in his discretion, enter the order consented to by the respondent, which shall have the same force and effect as other orders issued hereunder.

§ 26.2009 Procedure upon admission of facts.

§ 26.2009–1 General.

The admission, in the answer or by failure to file an answer, of all the material allegations of fact contained in the notice shall constitute a waiver of oral hearing. Upon such admission of facts, the Administrator, without further investigation or hearing, shall issue a tentative decision and order, in which he shall adopt as his tentative findings of fact the material facts alleged in the notice. The tentative decision and order shall be served upon the respondent and the Director.

§ 26.2009–2 Exceptions.

The parties shall be given a period of not less than 10 days in which to file with the Administrator exceptions to the tentative order and briefs in support thereof.

§ 26.2009–3 Final order.

Within a reasonable time after the expiration of the period for filing exceptions and briefs, the Administrator shall issue and cause to be served upon the parties his final decision and order, including his ruling on any exceptions received from the parties.

§ 26.2010 Procedure upon failure to request an oral hearing or upon express waiver of an oral hearing.

§ 26.2010–1 General.

Failure to request an oral hearing within the time allowed for the filing of the answer shall constitute a waiver of such hearing. Upon such failure to request an oral hearing or upon express waiver of such hearing by respondent, the parties shall have a period of 20 days from the final date for filing the answer in which to file with the Administrator sworn statements or affidavits in support of their respective positions. Within a reasonable time thereafter, the Administrator shall issue and cause to be served upon the parties a tentative decision and order.

§ 26.2010–2 Exceptions.

The parties shall be given a period of 20 days in which to file with the Administrator exceptions to the tentative order and briefs in support thereof.

§ 26.2010–3 Final order.

Within a reasonable time after the expiration of the period for filing exceptions and briefs, the Administrator shall issue and cause to be served upon the parties his final decision and order, including his ruling on any exceptions received from the parties.

§ 26.2011 Procedure upon request for an oral hearing.

§ 26.2011–1 Assignment of docket number; notice of time and place of hearing.

If respondent requests an oral hearing, a copy of the notice and answering statement of respondent shall be filed with the Hearing Clerk who shall assign the matter a docket number and, when the time and place of hearing have been fixed serve respondent with notice thereof.

§ 26.2011–2 Time and place of hearing.

The Hearing Officer, after careful consideration of the convenience of the parties, shall set a time and place of 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 the hearing is made, the Hearing Officer shall file with the Hearing Clerk a notice of such change, which notice shall be served upon the parties, unless it is made during the course of an oral hearing and made a part of the transcript.

§ 26.2011–3 Appearances.

The parties may appear in person or by counsel or other representative. Persons who appear as counsel or in a representative capacity for a respondent must conform to the standards of ethical conduct required of practitioners before the courts of the United States.

§ 26.2011–4 Failure to appear.

If any party to a proceeding, after being duly notified, fails to appear at

the hearing, he shall be deemed to have waived the right to an oral hearing in the proceeding. In the event that a party appears at the hearing and no party appears for the opposing side, the party who is present shall have an election whether to present his evidence, in whole or in part, in the form of affidavits or by oral testimony before the Hearing Officer. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Hearing Officer's report and to file exceptions as hereinafter provided.

§ 26.2011–5 Order of proceeding.

Except as may be determined otherwise by the Hearing Officer, the moving party shall proceed first at the hearing.

§ 26.2011–6 Powers of Hearing Officer.

The Hearing Officer shall have the power to:

(a) Rule upon motions and requests;

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

(c) Administer oaths and affirmations and take affidavits;

(d) Examine witnesses;

(e) Admit or exclude evidence;

(f) Hear oral argument on facts or law; and

(g) 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.

§ 26.2011–7 Who may act in the absence of the Hearing Officer.

In the case of the absence of the Hearing Officer or his inability to act, the powers and duties to be performed by him under this part in connection with a proceeding assigned to him may, without abatement of the proceeding unless otherwise directed by the Administrator, be assigned to any other Hearing Officer.

§ 26.2011–8 Evidence.

(a) *General.* The testimony of witnesses at a hearing shall be upon oath or affirmation and subject to cross-examination. Any witness may, in the discretion of the Hearing Officer, be examined separately and apart from all other witnesses except those who may be parties to the proceeding. The Hearing Officer shall admit all relevant and material evidence, except evidence which is unduly repetitious.

(b) *Objections.* If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination, he shall state briefly the grounds for such objection, whereupon an automatic exception will follow if the objection is overruled by the Hearing Officer. The transcript shall not include argument or debate thereon except as ordered by the Hearing Officer. The ruling of the Hearing Officer on any objection shall be a part of the transcript. Only objections made before the Hearing Officer may subsequently be relied upon in the proceeding.

(c) *Records of the Department.* A true copy of every written entry in the records of the Department, 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.

(d) *Exhibits.* Except where the Hearing Officer finds that the furnishing of copies is impracticable, a copy of each exhibit, in addition to the original, shall be filed with the Hearing Officer, for the use of each other party to the proceeding.

(e) *Official notice.* Official notice may be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical or scientific fact of established character: *Provided,* That the parties shall be given adequate notice, at the hearing or by reference in the Hearing Officer's report or otherwise, of matters so noticed, and shall be given adequate opportunity to show that such facts are erroneously noticed.

(f) *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 shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Administrator decides that the Hearing Officer's ruling in excluding the evidence was erroneous. The Hearing Officer shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if the Administrator decides that the Hearing Officer's ruling in excluding the evidence was erroneous, the hearing shall be reopened to permit the taking of such evidence.

§ 26.2011–9 Filing the transcript of evidence.

As soon as practicable after the close of the hearing, the Hearing Officer shall transmit to the Hearing Clerk an original and two copies of the transcript of testimony and the original and two copies of exhibits introduced in evidence at the hearing. He shall attach to the original transcript of the evidence a certificate stating that the transcript is a true transcript of the testimony offered or received at the hearing, except in such particulars as he shall specify, and that the exhibits transmitted 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 of evidence.

§ 26.2011–10 Transcripts.

Parties to the proceeding who desire a copy of the transcript of the hearing may place orders at the hearing 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 the Department for such reporting service.

§ 26.2011–11 Proposed findings of fact, conclusions, and order.

Within such time as the Hearing Officer may prescribe, each party may file with the Hearing Clerk proposed findings of fact and conclusions, and a brief in support thereof. A copy of each such document filed by a party shall be served upon the other party by the Hearing Clerk.

§ 26.2011–12 Hearing Officer's report.

The Hearing Officer, within a reasonable time after the filing of the proposed findings of fact and conclusions, shall prepare and shall file with the Hearing Clerk, a report containing his recommended findings of fact and conclusions, but no recommended order. A copy of such report shall be served by the Hearing Clerk upon each of the parties.

§ 26.2011–13 Exceptions; proposed orders; objections.

The complainant, within 20 days, and the respondent within 30 days, after service of the Hearing Officer's report, may take exception to any matter set out in such report and in such case shall file exceptions in writing with the Hearing Clerk, referring to the relevant pages of the transcript, and suggesting corrected findings of fact and conclusions. Complainant and respondent, within such periods of time, shall file their proposed orders, whether or not exceptions are filed. Within the same periods of time, each party shall file with the Hearing Clerk a brief statement, in writing, concerning each of the objections taken to the action of the Hearing Officers at the hearing, as set out in § 26.2010–8(b), upon which the party wishes to reply, referring where relevant, to the pages of the transcript. A party, if he files exceptions or a statement of objections, may file a brief in support of his exceptions or objections.

§ 26.2011–14 Final order.

Within a reasonable time after the expiration of the period for filing exceptions, proposed orders, and objections, the Administrator shall issue and cause to be served upon the parties his final decision and order, including his ruling on any exceptions or objections filed by the parties.

§ 26.2012 Filing; number of copies.

Except as is provided otherwise by the rules in this subpart, all documents or papers required or authorized to be filed shall be filed in triplicate: *Provided,* That, where there are more than two parties to the proceeding, a sufficient number of copies shall be filed so as to provide copies for service upon all the parties to the proceeding.

§ 26.2013 Service; proof of service.

Copies of all documents or papers required or authorized by the rules in this subpart to be served on any party to a

proceeding shall be served by the Hearing Officer, Hearing Clerk, Administrator, or by some other employee of the U.S. Department of Agriculture. Except as is provided otherwise by the rules in this subpart, service shall be made either (a) by delivering a copy of the document or paper to the individual to be served or to a member of the partnership to be served or to the president, secretary, or other executive officer or any director of the corporation, organization, or association to be served, or to the attorney, or agent of record of such individual, partnership, corporation, organization, or association; (b) by leaving a copy of the document or paper at the principal office or place of business of such individual, partnership, corporation, organization, or association or of his or its attorney or agent of record; (c) by registering or certifying and mailing a copy of the document or paper, addressed to such individual, partnership, corporation, organization, or association, or to his or its attorney or agent of record, by mailing, by regular mail, a copy of the document or paper, addressed to him at his address of record. Proof of service hereunder shall be made by the affidavit of the person who actually made the service: *Provided*, That if the service is made by the Hearing Clerk by regular mail, proof of service shall be made by certification of the Hearing Clerk, and if the service be made by registered or certified mail, proof of service shall be made by the return post office receipt. The affidavit or post office receipt contemplated hereby shall be filed with the Administrator or with the Hearing Clerk (after an oral hearing has been requested) and the fact of filing thereof shall be noted in the record of the proceeding.

§ 26.2014 Computation of time.

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

§ 26.2015 Extensions of time.

The time for filing any document or paper required or authorized by the rules in this subpart to be filed may be extended by the Administrator or the Hearing Officer (after an oral hearing has been requested and before the Hearing Officer's report is filed), if request for such extension of time is made prior to or on the final date allowed for such filing, and if in the judgment of the Administrator or Hearing Officer, as the case may be, after notice to and consideration of the views of the other party, when practicable, there is good reason for the extension.

9. Subpart D of this part would be amended to read as follows:

Subpart D—Rules of Practice Governing Formal Proceedings

Sec.

26.2025 Meaning of words.
26.2026 Scope and applicability of this subpart.
26.2027 Docket number.
26.2028 Formal complaint.
26.2028–1 Filing and service.
26.2028–2 Contents.
26.2028–3 Amendments.
26.2029 Answer.
26.2029–1 Filing and service.
26.2029–2 Contents.
26.2029–3 Failure to file.
26.2030 Consent orders.
26.2031 Judges.
26.2031–1 Assignment.
26.2031–2 Disqualification of Judge.
26.2031–3 Conduct.
26.2031–4 Powers.
26.2031–5 Who may act in the absence of the Judge.
26.2032 Prehearing conferences.
26.2033 Motions and requests.
26.2033–1 General.
26.2033–2 Motions entertained.
26.2033–3 Contents.
26.2033–4 Answers to motions and requests.
26.2033–5 Certification to Secretary.
26.2034 Procedure upon failure to request oral hearing or waiver of oral hearing.
26.2035 Procedure upon admission of facts.
26.2036 Procedure upon request for an oral hearing.
26.2036–1 Time and place of hearing.
26.2036–2 Appearances.
26.2036–3 Order of proceeding.
26.2036–4 Evidence.
26.2036–5 Transcripts.
26.2036–6 Proposed findings of fact, conclusions, and order.
26.2036–7 Judge's initial decision.
26.2037 Depositions.
26.2038 Subpenas.
26.2039 Fees of witnesses.
26.2040 Argument before the Secretary.
26.2040–1 Finality of Judge's initial decision.
26.2040–2 Filing of appeal.
26.2040–3 Transmittal of record.
26.2040–4 Response to appeal petition.
26.2040–5 Argument before Secretary.
26.2040–6 Consideration of appeal by Secretary and issuance of final order.
26.2041 Ex parte discussion.
26.2042 Petitions for reopening hearing; for rehearing or reargument of proceeding; or for reconsiderations of order.
26.2042–1 Petition requisite.
26.2042–2 Procedure for disposition of petitions.
26.2043 Filing documents.
26.2044 Service.
26.2045 Computation of time.
26.2046 Extension of time.

Subpart D—Rules of Practice Governing Formal Proceedings

§ 26.2025 Meaning of words.

(a) *Construction of words.* Words used in the singular form in this Subpart shall be deemed to import the plural, and vice versa, as the case may be.

(b) *Definitions.* For the purposes of §§ 26.2026 through 26.2046 of this Subpart, unless the context requires otherwise, the following terms shall be construed, respectively, to have the following meanings:

(1) *Act.* The U.S. Grain Standards Act, as amended August 15, 1968 (Public Law 90–487, 82 Stat. 761, 7 U.S.C. 71, 74–79, 84–87, 87a–87h).

(2) *Complainant.* The party upon whose complaint the proceeding is instituted.

(3) *Complaint.* Any formal or informal complaint by virtue of which a proceeding under the Act is instituted.

(4) *Decision and Order.* The initial decision of the Administrative Law Judge if not appealed, or the Secretary's decision on appeal.

(5) *Director.* The Director of the Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, or any officer or employee of the Department to whom authority is delegated to act in his stead.

(6) *Disciplinary refusal of official inspection service.* The refusal of official inspection service (other than a conditional withholding) because of a violation of the Act or regulations issued thereunder.

(7) *Hearing.* That part of a proceeding which involves the submission of evidence.

(8) *Hearing Clerk.* The Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250.

(9) *Judge.* An Administrative Law Judge in the Office of the Administrative Law Judges, U.S. Department of Agriculture.

(10) *Judge's initial decision.* The initial decision of the Administrative Law Judge, including the Judge's (i) findings of facts and conclusions with respect to all material issues of fact, law, or discretion, as well as the reasons or basis therefor; (ii) order; and (iii) ruling on findings, conclusions, and orders submitted by the parties.

(11) *Respondent.* The party proceeded against.

(12) *Secretary.* The Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead, including the Judicial Officer.

§ 26.2026 Scope and applicability of this subpart.

The rules of practice in §§ 26.2026 through 26.2046 of this subpart are for use in formal proceedings for (1) refusing official inspection; (2) suspensions or revocations of a license; and (3) dismissals of applications for a renewal of a license, or for the return of a license which has been suspended: *Provided*, That the respondent requests that such proceeding be subject to the administrative procedure provisions in sections 554, 556, and 557 of title 5, United States Code. If such a request is not made, the rules of practice in Subpart C of this part shall apply.

(b) The rules of practice do not include procedures for (1) dismissal of requests for inspection services; (2) conditional withholding of inspection service under which is provided § 26.11 of Subpart A of this part; (3) complaints filed by agencies or persons aggrieved by an application action under § 26.98 of Subpart A of this part and an assignment action under § 26.99 of Subpart A of this part; (4) suspensions or revocations to operate as an official inspection agency;

and (5) informal complaints under § 26.127 of Subpart A of this part.

§ 26.2027 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the Hearing Clerk, and thereafter the proceeding shall be referred to by such number.

§ 26.2028 Formal complaint.

§ 26.2028–1 Filing and service.

If the Director has reason to believe that a proceeding under sections 9 or 10 of the Act or §§ 26.10, 26.77, 26.89, and 26.118 of the regulations issued or promulgated thereunder, a complaint may be filed with the Hearing Clerk, a copy of which shall be served upon each respondent as provided in § 26.2044.

§ 26.2028–2 Contents.

The complaint shall set forth briefly the nature of the proposed proceeding, including allegations of fact which constitute a basis for the proceeding.

§ 26.2028–3 Amendments.

At any time prior to the close of the hearing, the complaint may be amended; but, in case of an amendment adding new provisions, the hearing shall, on the request of the respondent, be adjourned for a period not exceeding 15 days.

§ 26.2029 Answer.

§ 26.2029–1 Filing and service.

The respondent shall file, within 20 days after service of the complaint upon the respondent, an answer to the allegations of the complaint, with the Hearing Clerk, signed by the respondent or his attorney.

§ 26.2029–2 Contents.

The answer shall:

(a) Contain a concise statement of the facts which constitute the grounds of defense, and shall specifically admit, deny, or explain each of the allegations of the complaint, unless the respondent is without knowledge, in which case the answer shall so state;

(b) State that the respondent admits all of the facts alleged in the complaint; or

(c) State that the respondent admits the jurisdictional allegations of the complaint and neither admits nor denies the remaining allegations and consents to the issuance of a specified order without further procedure. The answer may, in addition, request an oral hearing. If an oral hearing is not expressly requested, the procedure outlined in § 26.2034 shall be followed.

§ 26.2029–3 Failure to file.

Failure to file an answer to, or plead specifically to, any allegation of the complaint shall constitute an admission of such allegation.

§ 26.2030 Consent orders.

At any time after the institution of a proceeding, the respondent may file an answer or amended answer consenting to an order as set forth in § 26.2029–2 (c). Within 15 days after service of such an answer, the complainant shall file its recommendations. If the complainant recommends that the order consented to by respondent be issued, the Judge may, in his discretion, enter such order which shall have the same force and effect as other orders issued hereunder and shall be served upon the parties in the manner provided in § 26.2044.

§ 26.2031 Judges.

§ 26.2031–1 Assignment.

No judge shall serve in any proceeding if he: (a) Has any pecuniary interest in any matter or business involved in the proceeding; (b) is related within the third degree by blood or marriage to any party to the proceeding; or (c) has participated in the investigation preceding the institution of the proceeding or in the determination that it should be instituted or in the preparation of the complaint or in the development of the evidence to be introduced therein.

§ 26.2031–2 Disqualification of Judge.

(a) Any party may, by motion made to the Judge, request that the Judge disqualify himself and withdraw from the proceeding. The Judge may then either rule upon or certify the motion to the Secretary, but not both.

(b) A Judge shall withdraw from any proceeding in which he deems himself disqualified for any reason.

§ 26.2031–3 Conduct.

The Judge shall conduct the proceeding in a fair and impartial manner, and except to the extent required for the disposition of ex parte matters as authorized by law, he shall not consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate.

§ 26.2031–4 Powers.

Subject to review by the Secretary as provided elsewhere in this part, the Judge, in any proceeding assigned to him, shall have power to:

(a) Rule upon motions and requests;

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

(c) Administer oaths and affirmations and take affidavits;

(d) Issue subpenas requiring the attendance and testimony of witnesses and the production of books, contracts, papers, and other documentary evidence;

(e) Summon and examine witnesses and receive evidence;

(f) Take or order the taking of depositions;

(g) Admit or exclude evidence;

(h) Hear oral argument on facts or law; and

(i) 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.

§ 26.2031–5 Who may act in the absence of the Judge.

In case of the absence of the Judge or his inability to act, the powers and duties to be performed by him under this part in connection with a proceeding assigned to him may, without abatement of the proceeding unless otherwise directed by the Secretary, be assigned to any other Judge.

§ 26.2032 Prehearing conferences.

In any proceeding in which it appears that such procedure will expedite the proceeding, the Judge may request the parties or their counsel to appear at a conference before him to consider: (a) the simplification of issues; (b) the necessity or desirability of amendments to pleadings; (c) the possibility of obtaining stipulations of fact and of documents which will avoid unnecessary proof; (d) the limitation of the number of experts or other witnesses; and (e) such matters as may expedite and aid in the disposition of the proceeding. No transcript of such conference shall be made, but the Judge shall prepare and file for the record a written summary of the action taken at the conference, which shall incorporate any written stipulations or agreements made by the parties at the conference or as a result of the conference. If the circumstances are such that a conference is impracticable, the Judge may request the parties to correspond with him for the purpose of accomplishing any of the objects set forth in this section. The Judge shall forward copies of letters and documents to the parties as the circumstances require. Correspondence in such negotiations shall not be a part of the record, but the Judge shall submit a written summary for the record if any action is taken.

§ 26.2033 Motions and requests.

§ 26.2033–1 General.

All motions and requests shall be filed with the Hearing Clerk, unless made during the course of an oral hearing, in which case they may be stated orally and made a part of the transcript. The Judge is authorized to rule upon all motions and requests filed or made prior to the filing of his Initial Decision with the Hearing Clerk as hereinafter provided. The Secretary will rule upon all motions and requests filed after that time.

§ 26.2033–2 Motions entertained.

Any motion will be entertained, except a motion to dismiss the complaint on the pleadings. All motions and requests concerning the sufficiency of the complaint must be made within the time allowed for filing an answer.

§ 26.2033–3 Contents.

All written motions and requests shall state the particular order, ruling, or action desired and the grounds therefor.

§ 26.2033–4 Answers to motions and requests.

Within 15 days after service of any written motion or request, or within any longer period fixed by the Secretary or Judge, the 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 permitted by the Secretary or Judge, the moving party shall have no right to reply to the answer.

§ 26.2033–5 Certification to Secretary.

The submission or certification of any motion, request, objection or other question to the Secretary prior to the time when the Judge's Initial Decision is filed with the Hearing Clerk shall be in the discretion of the Judge, except as provided in this section. The Judge may either rule upon or certify the motion, request, objection, or other question, but not both.

§ 26.2034 Procedure upon failure to request oral hearing or waiver of oral hearing.

Failure to request an oral hearing within the time allowed for the filing of the answer shall constitute a waiver of such hearing. Except as provided in § 26.2035, upon such failure to request an oral hearing, or upon express waiver of such hearing, by the parties, the parties shall have a period of 20 days from the final date for filing the answer in which to file sworn statements or affidavits in support of their respective positions. Within a reasonable time thereafter, the Judge shall issue his Initial Decision, which shall be served upon the parties in the manner provided in § 26.2044: *Provided, however,* That if such sworn statements or affidavits raise any material issue of fact, the Judge may afford the parties an opportunity to submit sworn statements or affidavits in reply or supplemental thereto or he may set the matter down for an oral hearing with respect to such material issues of fact. In the event the matter is set down for oral hearing, the rules in § 26.2036 shall be applicable. The Initial Decision of the Judge shall become final without further proceeding unless there is an appeal to the Secretary by a party to the proceeding pursuant to § 26.2040.

§ 26.2035 Procedure upon admission of facts.

Failure to file an answer shall constitute an admission of all the material allegations of fact contained in the complaint. The admission, in the answer or by failure to file an answer, of all the material allegations of fact contained in the complaint, shall constitute a waiver of oral hearing. Upon such admission of facts the Judge, without further procedure or hearing, shall issue his Initial Decision, in which he shall adopt as his proposed findings of fact the material facts alleged in the complaint. The Judge's Initial Decision shall be served upon the parties in the manner provided in § 26.2044. The Initial Decision of the Judge shall become final without further proceeding unless there is an appeal to the Secretary by a party to the proceeding pursuant to § 26.2040.

§ 26.2036 Procedure upon request for an oral hearing.

§ 26.2036–1 Time and place of hearing.

If and when the proceeding has reached the point where an oral hearing is to be held, the Judge, giving careful consideration to the convenience of the parties, shall set a time and place of hearing and shall file with the Hearing Clerk a notice stating the time and place of hearing. If any change in the time or place of the hearing is made, the Judge shall file with the Hearing Clerk a notice of such change, which notice shall be served upon the parties, unless it is made during the course of an oral hearing and made a part of the transcript.

§ 26.2036–2 Appearances.

(a) *Representation.* The parties may appear in person or by counsel or other representative. Parties who appear in person and 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 Secretary 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 Secretary, is unfit to act as such representative or counsel, he will order that such person be precluded from acting as counsel or representative in any proceeding under the Act. The procedure in such case will be governed by the applicable provisions of this subpart.

(b) *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 an oral hearing in the proceeding. In the event that a party appears at the hearing and no party appears for the opposing side, the party who is present shall have an election whether to present his evidence, in whole or in part, in the form of affidavits or by oral testimony before the Judge. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Judge's Initial Decision and to file exceptions and make oral argument before the Secretary with respect thereto, in the manner provided in §§ 26.2036–8 and 26.2040.

§ 26.2036–3 Order of proceeding.

Except as may be determined otherwise by the Judge, the complainant shall proceed first at the hearing.

§ 26.2036–4 Evidence.

(a) *General.* The testimony of witnesses at the hearing shall be upon oath or affirmation and subject to cross-examination. Any witness may, in the discretion of the Judge, be examined separately and apart from all other witnesses except those who may be parties to the proceeding. The Judge shall admit all relevant and material evidence, except evidence which is unduly repetitious.

(b) *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 briefly state the grounds for such objection, whereupon an automatic exception will follow if the objection is overruled by the Judge. Only objections made before the Judge may be subsequently relied upon in the proceeding.

(c) *Depositions.* The deposition of any witness shall be admitted in the manner provided in and subject to the provisions of § 26.2037.

(d) *Records of the Department.* A true copy of every written entry in the records of the Department made by an officer or employee thereof in the course of his official duty and relevant to 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.

(e) *Exhibits.* Except where the Judge finds that the furnishing of copies is impracticable, copies of each exhibit, in addition to the original, shall be filed with the Judge for the use of the other parties to the proceeding. A true copy of an exhibit may, in the discretion of the Judge, be substituted for the original.

(f) *Official notice.* Official notice may be taken of the official publications of the Department 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 notice, at the hearing or by reference in the Judge's Initial Decision or otherwise, of matters so noticed, and shall be given adequate opportunity to show that such facts are erroneously noticed.

(g) *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 toto. In the event the Secretary decides that the Judge's ruling in excluding the evidence was erroneous and prejudicial, the hearing shall be reopened to permit the taking of such evidence.

§ 26.2036–5 Transcripts.

(a) *Filing and certification.* Oral hearings shall be stenographically reported and transcribed. As soon as practicable after the close of the hearing, the Judge shall cause to be transmitted to the Hearing Clerk an original and two copies of the transcript of testimony and the original and copies of exhibits introduced or offered in evidence at the hearing. He shall attach to the original transcript of the evidence a certification stating that the transcript is a true transcript of the testimony offered or received at the hearing, except in such particulars as he shall specify, and that the exhibits transmitted are all the exhibits offered or 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 of evidence.

(b) *Ordering copies.* Parties to the proceeding or other persons who desire a copy of the transcript of the hearing may place orders at the close of the hearing

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 the purchaser.

§ 26.2036–6 Proposed findings of fact, conclusions, and order.

Within such time as the Judge may prescribe, each party may file with the Hearing Clerk proposed findings of fact, conclusions, and order, 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 in the manner provided in § 26.2044.

§ 26.2036–7 Judge's Initial Decision.

The Judge, within a reasonable time after the termination of the period allowed to the parties for the filing of proposed findings of fact, conclusions, and order, and briefs in support thereof, shall prepare on the basis of the record and shall file with the Hearing Clerk his Initial Decision, a copy of which shall be served upon each of the parties in the manner provided in § 26.2044. The Initial Decision of the Judge shall become final without further proceedings unless there is an appeal to the Secretary by a party to the proceeding pursuant to § 26.2040.

§ 26.2037 Depositions.

(a) *Application for taking deposition.* Upon the application of a party to the proceeding, the Judge may, at any time after the filing of the complaint, order 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 such deposition should be taken.

(b) *Judge's order for taking deposition.* If the Judge 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 examination (which shall not be less than 15 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 Judge, 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 Secretary to administer oaths. No deposition shall be made before an officer who is a relative (within the third degree by 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: *Provided, however,* That an officer who is an employee of the Department and is not a relative of any such party, attorney, or counsel may take depositions in any proceeding under the Act.

(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 Judge, upon the 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 transcript 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 the 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 Judge 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 or certified 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 Judge finds that the evidence is otherwise admissible 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) that the party offering the deposition has endeavored but has been unable to procure the attendance of the witness by subpena; or (5) 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 Judge, to allow the deposition to be used. If any part of a deposition is put in evidence by a party, or any other party may require the production of the remainder, or any other portion, of the deposition.

§ 26.2038 Subpenas.

(a) *Issuance of subpenas.* The attendance of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to the proceeding may, by subpena, be required at any designated place of hearing. Subpenas may be issued by the Secretary or by the Judge, upon a reasonable showing by the applicant of the grounds, necessity, and reasonable scope thereof.

(b) *Application for subpena duces tecum.* Subpenas for the production of documentary evidence, unless issued by the Judge upon his own motion, shall be issued only upon a verified written application. Such application shall specify, as exactly as possbile, the documents desired and shall show their competency, relevancy, and materiality and the necessity for their production.

(c) *Service of subpenas.* Subpenas may be served (1) by a U.S. marshal or his deputy, (2) by any other person who is not less than 18 years of age, or (3) by registering or certifying and mailing a copy of the subpena addressed to the person to be served at his or its last known residence or principal place of business. Proof of service may be made by the return of service on the subpena by the U.S. marshal or his deputy; or, if served by an individual other than a U.S. marshal or his deputy, by an affidavit of such person stating that he personally served a copy of the subpena upon the person named therein; or if the service was by registered or certified mail, by an affidavit made by the person mailing the subpena that it was mailed as provided herein and by the signed return post office receipt: *Provided, however,* That where the subpena is issued on behalf of the Secretary, the return receipt without an affidavit of mailing shall be sufficient proof of service. In making personal service, the person making service shall leave a copy of the subpena with the person subpenaed; the

original, bearing or accompanied by the required proof of service, shall be returned to the official who issued the same.

§ 26.2039 Fees of witnesses.

Witnesses summoned before the Judge or the Secretary 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.

§ 26.2040 Appeal to Secretary.

§ 26.2040–1 Finality of Judge's initial decision.

The Initial Decision of the Judge shall become final without further proceeding 35 days after the date of service thereof unless there is an appeal to the Secretary by a party to the proceeding pursuant to this section: *Provided, however,* That no decision shall be final for the purpose of judicial review except a final decision issued by the Secretary pursuant to an appeal by a party to the proceeding.

§ 26.2040–2 Filing of appeal.

Any party who disagrees with a Judge's decision, or any part thereof, may appeal the decision to the Secretary by transmitting an appeal petition to the Hearing Clerk within 30 days after service of the decision upon said party. Each issue set forth in the appeal, and the arguments thereon, shall be separately numbered; shall be plainly stated; and shall contain detailed citations of the record, statutes, regulations, and authorities being relied on in support thereof. The appeal petitions shall be served upon the other party to the proceeding by the Hearing Clerk.

§ 26.2040–3 Transmittal of record.

Whenever an appeal of an Initial Decision is filed and a response thereto has been filed or the time for filing a response has expired, the Hearing Clerk shall transmit to the Secretary the record of the proceeding. Such shall include: the pleadings; any motions and requests filed, and rulings thereon; the transcript of the testimony taken at the hearing, together with the exhibits filed therein; any statements filed if an oral hearing was waived; any documents or papers filed in connection with prehearing conferences; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the hearings; the Judge's Initial Decision; and the appeal petition, briefs in support thereof and responses thereto as may have been filed in the proceeding.

§ 26.2040–4 Response to appeal petition.

Within 20 days after the service of an appeal brought by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or an opposition to such appeal.

§ 26.2040–5 Argument before Secretary.

(a) *Oral argument.* A party bringing an appeal may request, within the required time period for filing such appeal, an opportunity for oral argument before the Secretary. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Secretary, in his discretion, may grant, refuse or limit any request for oral argument on appeal.

(b) *Briefs.* The Secretary may allow or refuse to allow briefs to be filed, either in lieu of or addition to oral argument.

(c) *Scope of argument.* Argument to be heard on appeal, whether oral or in a written brief, shall be limited to the issues raised by the appeal, except that if the Secretary determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all the issues to be argued.

§ 26.2040–6 Consideration of appeal by Secretary and issuance of final order.

As soon as practicable after the receipt of the record from the Hearing Clerk, or, in the case oral argument was heard, as soon as practicable thereafter, the Secretary, upon the basis of and after due consideration of the record, shall rule on the appeal. If the Secretary decides that no change or modification of the Judge's decision is warranted, he may adopt the Judge's decision as the final order of the Secretary, preserving the right of the party bringing the appeal to seek judicial review of such decision in the proper form. A final order issued by the Secretary shall be filed with the Hearing Clerk, who shall serve it forthwith upon the parties.

§ 26.2041 Ex parte discussion.

At no stage of the proceeding between its institution and the issuance of the order shall the Secretary discuss ex parte the merits of the proceeding with any person who is connected with the proceeding in an advocative or in an investigative capacity, or with any representative of such person: *Provided, however,* That the Secretary may discuss the merits of the case with such a person if all parties to the proceeding, or their representatives, have been given an opportunity to be present. Any memorandum or other communication addressed to the Secretary, 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 and shall be filed with the Hearing Clerk. A copy thereof shall be served upon the other party or parties in the manner provided in § 26.2044, and opportunity will be given the other party or parties to file a reply thereto.

§ 26.2042 Petitions for reopening hearing; for rehearing or reargument of proceeding; or for reconsideration of order.

§ 26.2042–1 Petition requisite.

(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 Secretary filed with the Hearing Clerk. A copy thereof shall be served upon the other party or parties in the manner provided in § 26.2044. Every such petition must state specifically the grounds relied upon.

(b) *Petition to reopen hearing.* 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 the hearing.

(c) *Petition to rehear or reargue proceeding, or to reconsider order.* A petition to rehear or reargue the proceeding or to reconsider the order shall be filed within 15 days after the date of the 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.

§ 26.2042–2 Procedure for disposition of petitions.

Within 20 days following the service of any petition provided for in this § 26.2042, the other party or parties to the proceeding shall file with the Hearing Clerk an answer thereto. As soon as practicable thereafter, the Secretary shall announce his decision whether to grant or to deny the petition. Unless the Secretary 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 Secretary, the applicable rules of practice, as set out elsewhere herein, shall be followed. A person filing a petition under this section shall be regarded as the moving party or complainant, although he shall be referred to as the complainant or respondent, depending upon his designation in the original proceeding.

§ 26.2043 Filing documents.

All documents or papers required or authorized to be filed, except as provided otherwise in the rules in this part, shall be filed with the Hearing Clerk in triplicate: *Provided, however,* That, where there are more than two parties to the proceeding, a sufficient number of copies shall be filed so as to provide copies for service upon all parties to the proceeding.

§ 26.2044 Service.

Copies of all documents or papers, required or authorized by the rules in this part to be served on any party to a proceeding, shall be served by the Judge, Hearing Clerk, or some other employee of the United States. Except as is provided otherwise by the rules in this part, service shall be made either: (a) By delivering a copy of the document or paper to the individual to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or any director of the

corporation, organization, or association to be served, or to the attorney or agent of record of such individual, partnership, corporation, organization, or association; (b) by leaving a copy of the document or paper at the principal office or place of business of such individual, partnership, corporation, organization, or association, or of his or its attorney or agent of record; or (c) by registering or certifying and mailing a copy of the document or paper, addressed to such individual, partnership, corporation, organization, or association, or to his or its attorney or agent of record, at his or its last known principal office or place of business. Proof of service hereunder shall be made by the affidavit of the person who actually made the service: *Provided, however,* That if the service is made by registered or certified mail, proof of service shall be made by the return post office receipt. The affidavit or post office receipt contemplated hereby shall be filed with the Hearing Clerk and the fact of filing thereof shall be noted in the record of the proceeding.

§ 26.2045 Computation of time.

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 a legal holiday (Federal or State), such period shall be extended to include the next following business day.

§ 26.2046 Extension of time.

The time for the filing of any document or paper required or authorized under the rules in this part to be filed may be extended by the Judge (before the Judge's Initial Decision is filed), or by the Secretary (after the Judge's Initial Decision is filed), if request for such extension of time is made prior to or on the final date allowed for such filing, and if in the judgment of the Judge or the Secretary, as the case may be, after notice to and consideration of the views of the other party, when practicable, there is good reason for the extension.

Opportunity is hereby afforded all interested parties to submit written data, views, or arguments, with respect to the proposals to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions should be in duplicate and should be received by the Hearing Clerk on or before March 18, 1974. All 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)).

Consideration will be given to the written data, views, or arguments received by the Hearing Clerk and to other information available to the U.S. Department of Agriculture before final determination is made with respect to these proposals.

Done in Washington, D.C. on January 28, 1974.

E. L. PETERSON,
Administrator.

[FR Doc.74-2619 Filed 2-4-74;8:45 am]

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