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federal register

TUESDAY, JANUARY 10, 1978

highlights

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

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

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
	CSC			CSC
	LABOR			LABOR
	HEW/ADAMHA			HEW/ADAMHA
	HEW/CDC			HEW/CDC
	HEW/FDA			HEW/FDA
	HEW/HRA			HEW/HRA
	HEW/HSA			HEW/HSA
	HEW/NIH			HEW/NIH
	HEW/PHS			HEW/PHS

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

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

federal register

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A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

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rules and regulations

[6325-01]

Title 5—Administrative Personnel

CHAPTER I— CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Commerce

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The title of the Merchant Marine Academy position of Assistant Superintendent for Planning is changed to Assistant Superintendent for Planning and Administration.

EFFECTIVE DATE: January 10, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3114(h)(11) is amended as set out below:

§ 213.3114 Department of Commerce.

* * * * *

(h) *Maritime Administration.* * * *

(11) U.S. Merchant Marine Academy positions of: Superintendent; Special Assistant to the Superintendent; Assistant Superintendent for Planning and Administration; Dean; Assistant Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; and three Academy Training Representatives.

* * * * *

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218.)

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-436 Filed 1-9-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Department of Commerce

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The position of Private Secretary to the Deputy Director, Office of Congressional Affairs, is excepted from the competitive service under Schedule C because it is confidential in nature.

EFFECTIVE DATE: January 10, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3314(a)(11) is added as set out below:

§ 213.3314 Department of Commerce.

(a) *Office of the Secretary.* * * *

(11) One Private Secretary to the Deputy Director, Office of Congressional Affairs.

* * * * *

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218.)

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-437 Filed 1-9-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Department of Defense

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: One additional position of Special Assistant to the Principal Deputy Assistant Secretary (International Security Affairs), Office of the Assistant Secretary of Defense for International Security Affairs, is excepted under Schedule C because it is confidential in nature.

EFFECTIVE DATE: January 10, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3306(a)(12) is amended as set out below:

§ 213.3306 Department of Defense.

(a) *Office of the Secretary.* * * *

(12) One Private Secretary and two Special Assistants to the Principal Deputy Assistant Secretary (International Security Affairs), Office of the Assistant Secretary of Defense for International Security Affairs.

* * * * *

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218.)

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-438 Filed 1-9-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Department of Defense

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: One position of Secretary (Stenography), on the White House Support Group, Office of the Secretary of Defense, is excepted from the competitive service under Schedule A because it is impracticable to examine for the position.

EFFECTIVE DATE: January 10, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3106(a)(7) is added as set out below:

§ 213.3106 Department of Defense.

(a) *Office of the Secretary.* * * *

(7) One position of Secretary (Stenography) on the White House Support Group.

* * * * *

(5 U.S.C 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218)

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-439 Filed 1-9-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Department of Energy

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to change the titles of two positions. The positions are Confidential Secretary to the Undersecretary and Confidential Secretary to the Special Assistant. Their new titles, respectively, are Confidential Assistant (Secretary) to the Undersecretary and Confidential Assistant (Secretary) to the Special Assistant.

EFFECTIVE DATE: January 10, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3331(a) (3) and (4) are amended as set out below:

§ 213.3331 Department of Energy.

(a) *Office of the Secretary.* * * *

(3) One Confidential Assistant (Secretary) to the Undersecretary.

(4) One Confidential Assistant (Secretary) to the Special Assistant.

* * * * *

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218.)

For the U.S. Civil Service Commission.

JAMES C. SPRY,
Executive Assistant
to the Commissioners.

[FR Doc. 78-440 Filed 1-9-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Farm Credit Administration

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment changes the title of the position of Deputy Governor, Credit and Operations to that of Deputy Governor, Supervision.

EFFECTIVE DATE: January 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Hugh A. Strehle, Civil Service Commission, 202-632-4625.

Accordingly, 5 CFR 213.3343(b) is changed as set out below:

§ 213.3343 Farm Credit Administration.

* * * * *

(b) Deputy Governor, Supervision

* * * * *

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218.)

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant
to the Commissioners.

[FR Doc. 78-465 Filed 1-9-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Farm Credit Administration

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one position of Senior Deputy Governor, Farm Credit Administration, because it requires that a confidential relationship be maintained between the Governor and Senior Deputy Governor.

EFFECTIVE DATE: January 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Hugh A. Strehle, Civil Service Commission, 202-632-4625.

Accordingly, 5 CFR 213.3343(a) is added as set out below:

§ 213.3343 Farm Credit Administration.

(a) Senior Deputy Governor.

* * * * *

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218.)

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant
to the Commissioners.

[FR Doc. 78-466 Filed 1-9-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Department of Health, Education, and Welfare

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule B 75 positions, not in excess of GS-13, of a professional or analytical nature when filled by persons other than college faculty members or candidates working toward college degrees, who are participating in midcareer development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year. This authority may not be used for new appointments after June 30, 1979. This exception is granted because it is impracticable to examine competitively for these positions.

EFFECTIVE DATE: January 10, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3216(e) is added as follows:

§ 213.3216 Department of Health, Education, and Welfare.

* * * * *

(e) Seventy-five positions, not in excess of GS-13, of a professional or analytical nature when filled by persons, other than college faculty members or candidates working toward college degrees, who are participating in midcareer development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year. This authority may not be used for new appointments after June 30, 1979.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218.)

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant
to the Commissioners.

[FR Doc. 78-441 Filed 1-9-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Department of the Treasury

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: An additional 58 positions of criminal investigator are excepted under Schedule A in Treasury's Bureau of Alcohol, Tobacco and Firearms because it is impracticable to examine for them.

EFFECTIVE DATE: January 10, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3105(g)(1) is amended as set out below:

§ 213.3105 Department of the Treasury.

* * * * *

(g) *Bureau of Alcohol, Tobacco and Firearms.* (1) One hundred positions of criminal investigator for special assignments.

* * * * *

(U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218.)

For the U.S. Civil Service Commission.

JAMES C. SPRY,
Executive Assistant
to the Commissioners.

[FR Doc. 78-442 Filed 1-9-78; 8:45 am]

[6325-01]

PART 511—CLASSIFICATION UNDER THE GENERAL SCHEDULE

PART 534—PAY UNDER OTHER SYSTEMS

Exclusions and Stipends

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment publicizes the Commission's actions excluding certain student-employee positions from the Classification Act, and establishing for each a maximum stipend.

EFFECTIVE DATE: These exclusions and stipends are effective as follows: Group Dynamics Training Intern, effective January 30, 1977; Group Dynamics Training Resident, effective January 30, 1977 and April 10, 1977; Group Psychotherapy Intern, effective January 30, 1977; Group Psychotherapy Resident, effective January 30, 1977; Social Work Student, effective January 2, 1977; Student Cardiopulmonary Technologist, effective September 26, 1976; Student Dietitian, effective March 27, 1977; and Student Surgical Technician, effective December 23, 1977.

FOR FURTHER INFORMATION CONTACT:

Steven Slatin, Room 3F10, Civil Service Commission, 1900 E Street NW., Washington, D.C. 20415, 632-5595.

Accordingly, 5 CFR 511.201(b) and 534.202(b) are amended by adding in alphabetical sequence the following items:

§ 511.201 Coverage of and exclusions from the General Schedule.

* * * * *

(b) *Exclusions.* * * *

Group Dynamics Training Intern, Department of Health, Education, and Welfare, approved training after attainment of a bachelor's degree, or after a minimum of 1, 2, or 3 years of postgraduate training.

Group Dynamics Training Resident, Department of Health, Education, and Welfare, approved training after attainment of a doctorate or after a minimum of 1 or 2 years postdoctoral training.

Group Psychotherapy Intern, Department of Health, Education, and Welfare, approved training after a minimum of 2 or 3 years postgraduate training.

Group Psychotherapy Resident, Department of Health, Education, and Welfare, approved training after attainment of a doctorate or after a minimum of 1, 2, or 3 years of postdoctoral training.

* * * * *

Social Work Student, Department of Health, Education, and Welfare, approved training after a minimum of three years of college level training.

* * * * *

Student Cardiopulmonary Technologist, Department of Health, Education, and Welfare, approved training after a minimum of one year of college level training.

* * * * *

Student Dietitian, Department of Health, Education, and Welfare, approved training after a minimum of two years of college level training.

* * * * *

Student Surgical Technician, Department of Health, Education, and Welfare, approved training during first year of college level training.

(5 U.S.C. 5102.)

* * * * *

§ 534.202 Maximum stipends.

* * * * *

(b) * * *

Group Dynamics Training Intern, Department of Health, Education, and Welfare:

Approved training after attainment of bachelor's degree	L-5
Approved training after a minimum of one year of postgraduate training	L-6
Approved training after a minimum of two years of postgraduate training	L-7
Approved training after a minimum of three years of postgraduate training	L-8

Group Dynamics Training Resident, Department of Health, Education, and Welfare:

Approved training after attainment of a doctorate	L-9
Approved training after minimum of one year of postdoctoral training	L-10
Approved training after minimum of two years of postdoctoral training	L-11

Group Psychotherapy Intern, Department of Health, Education, and Welfare:

Approved training after a minimum of two years of postgraduate training	L-7
Approved training after a minimum of three years of postgraduate training	L-8

Group Psychotherapy Resident, Department of Health, Education, and Welfare:

Approved training after attainment of a doctorate	L-9
Approved training after a minimum of one year of postdoctoral training	L-10
Approved training after a minimum of two years of postdoctoral training	L-11
Approved training after a minimum of three years of postdoctoral training	L-12

* * * * *

Social Work Student, Department of Health, Education, and Welfare:

Approved training after a minimum of three years of college level training	L-4

* * * * *

Student Cardiopulmonary Technologist, Department of Health, Education, and Welfare:

Approved training after a minimum of one year of college level training	L-2

* * * * *

Student Dietitian, Department of Health, Education, and Welfare:

Approved training after a minimum of two years of college level training	L-3

* * * * *

Student Surgical Technician, Department of Health, Education, and Welfare:

Approved training during the first year of college level training	L-1

(5 U.S.C. secs. 5102, 5351, 5352, 5541.)

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

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to
the Commissioners.

[FR Doc. 78-443 Filed 1-9-78; 8:45 am]

[6325-01]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Defense

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: One position of Special Assistant to the Deputy Assistant Secretary (Policy Plans and NSC Affairs), Office of the Assistant Secretary of Defense for International Security Affairs, is excepted under Schedule C because it is confidential in nature.

EFFECTIVE DATE: January 10, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3306(a)(98) is added as set out below:

§ 213.3306 Department of Defense.

(a) *Office of the Secretary.* * * *

(98) One Special Assistant to the Deputy Assistant Secretary (Policy Plans and NSC Affairs), Office of the Assistant Secretary of Defense for International Security Affairs.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218.)

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-632 Filed 1-9-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Department of Health, Education, and Welfare

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMA RY: One position of Special Assistant to the Executive Deputy Commissioner of Education is excepted under Schedule C because it is confidential in nature.

EFFECTIVE DATE: January 10, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3316(c)(19) is added as set out below:

§ 213.3316 Department of Health, Education, and Welfare.

* * * * *

(c) *Office of Education.* * * *

(19) One Special Assistant to the Executive Deputy Commissioner.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218.)

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-631 Filed 1-9-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Department of State

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: One position of Supervisory Intelligence Research Specialist in the Bureau of Intelligence and Research, Department of State, is excepted under Schedule A because it is impracticable to examine for this position.

EFFECTIVE DATE: January 10, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3104(f)(l) is amended as set out below:

§ 213.3104 Department of State.

(f) *Bureau of Intelligence and Research.*

(l) Two positions of Intelligence Operations Specialist and one position of Supervisory Intelligence Research Specialist.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218.)

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-633 Filed 1-9-78; 8:45 am]

[3410-02]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

Subpart—Rules and Regulations

ALLOTMENT TRANSFER AND DISPOSITION OF GROWERS ANNUAL ALLOTMENT CERTIFICATE

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes procedures governing the transfer of unused allotment of cranberries among growers and the disposition of each grower's annual allotment certificate. The action is necessary to keep the Cranberry Marketing Committee informed of transfers in connection with filling deficiencies in allotment or cranberries and to enable the committee to check compliance with regulations applicable to handlers of cranberries.

EFFECTIVE DATE: February 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-3545.

SUPPLEMENTARY INFORMATION: A proposal submitted by the Cranberry Marketing Committee was published at 42 FR 39989 and amended at 42 FR 58532. The committee is established under the marketing agreement and Order No. 929, both as amended (7 CFR Part 929), regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. This is a regulatory program effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The notice, as amended, provided that all written data, views, or arguments in connection with the proposal be submitted not later than December 1, 1977. No views were received.

Section 929.49(c) of the order specifies, in part, that as a condition to a transfer of allotment of cranberries each grower or handler shall furnish a full report to the committee, including the names of the parties, the quantity involved in the transaction and other necessary information. This regulation establishes the procedure by which such information shall be furnished to the committee. The regulation is necessary to keep the committee informed of transfers in connection with filling deficits in allotment of cranberries and to enable the committee to ascertain that no handler has handled cranberries in excess of a grower's annual allotment and any transferred allotment.

After consideration of all relevant matter presented, including the aforesaid proposal, the recommendations by the Cranberry Marketing Committee, and other available information, it is hereby found that amendment of said rules and regulations, as hereinafter set forth, is in accordance with the provisions of the order and will tend to effectuate the declared policy of the act. Therefore, said rules and regulations are hereby amended by adding a new section reading as follows:

§ 929.151 Allotment Transfers and Disposition of the Growers Annual Allotment Certificate.

(a) Growers who transfer or receive the transfer of cranberries or allotment to fill deficiencies pursuant to § 929.49(c) shall report the details of such transfer to the committee on CMC forms T3 through T6, as applicable.

(b) Growers may enter into an agreement with a handler or handlers as to the disposition of the grower's annual allotment. The terms of the agreement shall be contained on CMC form T7 or a similarly executed agreement acceptable to the committee, and shall include the following:

(1) The quantity of allotment available to the handler for transfer;

(2) The effective date of the agreement; and

(3) The signature of the grower and the handler or their authorized representatives.

Any transfer effected by the handler pursuant to this agreement shall be documented on committee forms and submitted to the committee.

(c) Each grower shall submit to the committee his annual allotment certificate: *Provided,* That each grower may authorize a handler to submit the

annual allotment certificate to the committee. Notification that the handler agrees to perform this service shall be provided to the committee and the terms of the agreement shall be contained on CMC form T7 or similarly executed agreement acceptable to the committee. Each handler shall submit the allotment certificate to the committee. Each allotment certificate submitted by the grower or his authorized handler shall show quantities of cranberries purchased by handlers and the dates on which such purchases were made. Each certificate shall be signed by the handler and indicate the date on which any transfers were made.

(d) Reports and annual allotment certificates required pursuant to this section shall be filed with the committee by January 15 of each year.

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

Dated: January 5, 1978, to become effective February 28, 1978.

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

[FR Doc. 78-509 Filed 1-9-78; 8:45 am]

[3410-02]

PART 959—ONIONS GROWN IN SOUTH TEXAS

Expenses and Rate of Assessment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenses of $117,106 and a rate of assessment of one and one-half cents per 50-pound container, or equivalent quantity, of assessable onions for the functioning of the South Texas Onion Committee. The regulation will enable the committee to collect assessments from first handlers on all assessable onions and to use the resulting funds for its expenses.

EFFECTIVE DATE: August 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202-447-6393.

SUPPLEMENTARY INFORMATION: Marketing Agreement No. 143 and Order No. 959, both as amended, regulate the handling of onions grown in designated counties in south Texas. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The South Texas Onion Committee, established under the order, is responsible for its local administration.

Notice was published in the December 5, 1977, FEDERAL REGISTER (42 FR 61474), regarding the proposals. It afforded interested persons an opportunity to submit written comments not later than December 21, 1977. None was received.

After consideration of all relevant matters, including the proposals in the notice, it is found that the following expenses and rate of assessment should be approved.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because this part requires that the rate of assessment for a particular period shall apply to all assessable onions from the beginning of such period.

The regulation is as follows:

§ 959.218 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period ending July 31, 1978, by the South Texas Onion Committee for its maintenance and functioning, and for such purposes as the Secretary determines to be appropriate, will amount to $117,106.

(b) The rate of assessment to be paid by each handler in accordance with the marketing agreement and this part shall be one and one-half cents ($0.015) per 50-pound container of onions, or equivalent quantity, handled by him as the first handler thereof during said fiscal period.

(c) Unexpended income in excess of expenses for the fiscal period ending July 31, 1978, may be carried over as a reserve.

(d) Terms used in this section have the same meaning as when used in the said marketing agreement and this part.

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

Dated: January 4, 1978.

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

[FR Doc. 78-510 Filed 1-9-78; 8:45 am]

[3410-02]

[Amdt. No. 1]

PART 967—CELERY GROWN IN FLORIDA

Increase in Expenses and Rate of Assessment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes increases of expenses to $79,500 and the rate of assessment to one and one-half cents per crate of celery for the functioning of the Florida Celery Committee. This will enable the committee to collect assessments from first handlers on all assessable celery handled and to use the resulting funds for its expenses.

EFFECTIVE DATE: August 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202-447-6393.

SUPPLEMENTARY INFORMATION: Marketing Agreement No. 149 and Order No. 967 regulate the handling of celery grown in Florida. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The Florida Celery Committee, established under the order, is responsible for its local administration.

Notice was published in the December 15, 1977, FEDERAL REGISTER (42 FR 63178), regarding the proposals. It afforded interested persons an opportunity to file written comments not later than December 29, 1977. None was filed.

After consideration of all relevant matters, including the proposals set forth in the notice, it is found that the following expenses and rate of assessment should be approved.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) because this part requires that the rate of assessment for a particular fiscal period shall apply to all celery from the beginning of such period.

Amendment No. 1 is as follows:

Paragraphs (a) and (b) of § 967.213 (42 FR 45326), are amended to read as follows:

§ 967.213 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal year ending July 31, 1978, by the Florida Celery Committee, for its maintenance and functioning, and for such purposes as the Secretary determines to be appropriate, will amount to $79,500.

(b) The rate of assessment to be paid by each handler in accordance with this part shall be one and one-half cents ($0.015) per crate of celery handled by him as the first handler during the fiscal year.

* * * * *

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

Dated: January 5, 1978.

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

[FR Doc. 78-508 Filed 1-9-78; 8:45 am]

[3410-05]

Title 7—Agriculture

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

PART 1435—SUGAR

Subpart—Minimum Wage Rates for Sugarbeet and Sugarcane Fieldworkers

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes minimum wage rates for agricultural employees engaged in the production of sugar pursuant to section 201 of the Agricultural Act of 1949, as amended by section 902 of Title IX of the Food and Agriculture Act of 1977 (Pub. L. 95-113, 91 Stat. 949, effective October 1, 1977). In order to be eligible for benefits under the price support loan program for 1977 crop sugarbeets and sugarcane which became effective November 8, 1977, producers must pay all their fieldworkers engaged on and after November 8 in the production, cultivation, and harvesting of sugarbeets and sugarcane no less than the minimum wages specified by this rule.

EFFECTIVE DATE: January 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert R. Stansberry, Jr., ASCS, 202-447-7561 or 202-447-3517, P.O. Box 2415, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION: Section 902 of the Food and Agriculture Act of 1977 amended section 201 of the Agriculture Act of 1949 to provide that the price of the 1977 and 1978 crops of sugarbeets and sugarcane shall be supported through loans or purchases with respect to the processed products thereof. Section 201 also directs the Secretary of Agriculture, in carrying out this program, to establish minimum wage rates for agricultural employees engaged in the production of sugar crops.

On November 11, 1977, a final rule was published in the FEDERAL REGISTER (42 FR 58734) implementing a program, effective as of November 8, 1977, to support prices in the marketplace for producers of 1977 crop sugarbeets and sugarcane through loans made to sugar processors. The loan regulations provide that loans may be made on eligible sugar processed from that part of the 1977 crop grown by eligible producers (7 CFR 1435.19(a)). The term "eligible producer" is defined in § 1435.17(c) of the regulations as a producer who pays and certifies to his processor that he has paid or will pay, to his agricultural employees engaged in the production of sugar, wage rates in accordance with wage rate regulations to be issued by the Secretary.

On November 8, 1977, the date the loan program was implemented, the Department announced the proposed determination of minimum wage rates for sugarbeet and sugarcane fieldworkers. The notice of proposed rulemaking, published in the FEDERAL REGISTER (42 FR 58759) on November 11, pointed out that the Food and Agriculture Act of 1977 does not provide any guidance or standards to the Secretary of Agriculture in establishing such rates. Two possible bases for establishing the minimum wage rates were suggested in the notice, i.e., (1) establish rates in the same manner and under the same guidelines as previously done under the Sugar Act, or (2) adopt the rates provided for agricultural workers under the Fair Labor Standards Act. Interested persons were invited to submit their views on the use of either of these methods or other proposed methods for establishing minimum wage rates. Respondents were also asked, in the interest of obtaining information which would be of assistance to the Secretary in establishing fair and reasonable wage rates, to submit their specific recommendations on terms of the wage requirements.

The Department received 28 written comments by the close of the comment period on November 21, and 17 additional comments after the closing date. Thirty-six of the respondents, consisting of several Members of Congress, various labor union, legal aid, and civil rights organizations, and other groups and individuals interested in workers, supported the proposed determination by the Secretary of minimum wage rates for sugar crop fieldworkers. Nine respondents, primarily producer associations and processors, either recommended that miminum wages be set at or near levels prescribed by the Fair Labor Standards Act of 1938, as amended, or that no "special" wage rates be set, in which case the Fair Labor Standards Act minimum rates would apply.

The major concern of respondents speaking in the interest of workers was that sugar fieldworkers now endure an unacceptably low standard of living and that any miminum wage rate adopted should meaningfully raise their standard of living. Hourly wage recommendations ranged from $3.09 to $4.06 per hour. Other major recommendations by this group were:

1. Minimum wages established should maintain the same relationship to Fair Labor Standards Act wages as existed in 1974 when minimum wages were established under the Sugar Act which expired in that year.

2. Provision should be made for overtime rates for hours worked over 40 hours per week.

3. Any piecework rates established should result in the same pay as hourly rates set times a reasonable time for completing the work.

4. Provision should be made for workers to receive a fair share of any substantial increases in sugar prices (as occurred in 1974-75).

5. Producers should be required to maintain records, available for inspection, for each worker which show total pay, hours worked, and all deductions.

6. Minimum wages should reflect a labor cost per ton of sugarcane equal to 35.67 percent of the price support value.

7. Minimum wages reflecting 1974 minimums adjusted by the increase in cost of living would be an improvement but would not be adequate.

8. Puerto Rican and Hawaiian respondents recommended that establishment of minimum wages should be left to labor-management negotiation or local statute, as is the current practice and as provided under the "old" Sugar Act.

Producer/processor interests generally expressed the belief that no logical reason existed for establishing rates for sugar fieldworkers different than those required for other workers in agriculture. Their hourly wage recommendations ranged from $2.20 to $2.50 per hour.

Review of the comments received and other available research information resulted finally in the consideration of the following six alternative methods for establishing minimum wage rates:

(1) Adoption of the 1978 calendar year rate ($2.65 per hour) provided for agricultural employees under the Fair Labor Standards Act of 1938, as amended (FLSA). This option would provide a minimum wage rate near the wages currently prevailing for 1977. Adoption of this option would have little if any effect upon growers but would, by failing to recognize the cost of living increase from 1974, lower the 1974 standard for sugarworkers in terms of the current cost of living.

(2) Establish rates in the same manner, and under the same guidelines, as was followed under the Sugar Act. This option would result in higher wages and would likely decrease domestic production and employment to a greater degree than the option selected (Option 6). The full extent of the reduction in domestic production and employment would be difficult to specify because cost of production and profit and loss data plus other decision criteria, necessary for such a calculation is limited. However, the status of sugarworkers who remained in the industry would be proportionately improved.

(3) Establish rates which would produce increases in real earnings at least equal to the increase in real prices being supported under the Food and Agriculture Act of 1977. This option would significantly lower wages below those now prevailing but would improve the growers' economic status since their labor costs would decrease.

(4) Establish rates that possibly would have existed had the Sugar Act not expired, adjusted downward by an amount equal to the reduction in price support being afforded producers under the 1977 Act as compared to the Sugar Act. This option would decrease domestic production to a lesser degree than would Option 2 because of lower labor costs. Since wages under this option exceed those now prevailing but fall short of the increase in the cost of living since 1974, workers would not maintain 1974 standards in terms of current costs.

(5) Establish a single hourly minimum wage rate applicable to all sugarworkers in all areas. This rate would apply to unskilled workers only, allowing rates for skilled workers to "seek their own level." The rate established would be equal to the so-called adverse effect rate established by the U.S. Department of Labor for off-shore workers employed in Florida to cut sugarcane by hand. This option would result in the highest wages of all options considered. Consequently, a more severe effect upon domestic production and employment, and a greater benefit for remaining sugarworkers employed, could be expected than under the option selected or any other option.

(6) For the 1977 crop, increase all rates established under the Sugar Act for 1974 (the last year such rates were established) by the cost of living percentage increase which has occurred since that time. For the 1978 crop, increase all 1977 rates by the estimated cost of living percentage increase from 1977 to 1978. This option would decrease production and employment (to a degree which cannot be predicted because of the unavailability of current cost or production and profit/loss data) but would maintain sugarworkers' 1974 standards in terms of 1977 actual and 1978 projected cost of living.

In evaluating these options consideration was given to the fact that the Food and Agriculture Act of 1977 permits no punitive action for noncompliance with the rates established. We can only provide an incentive for compliance by limiting sugar price support benefits to those producers who pay at least the minimum rates established.

Option 6 has been selected because, while it is doubtful that any increase over prevailing wages can be absorbed without some adversity to growers, it is felt essential to maintain the 1974 standard for sugarworkers in terms of current living costs. Minimum wage rates for work on the 1978 crop have also been established at this time following the same principle so that workers and growers can have a basis for planning their operations and entering into work agreements. Accordingly, the minimum wage rates which were established in 1974 under provisions of the Sugar Act of 1948, as amended, have been increased by 23 percent for work performed in the production cultivation, and harvesting of 1977 crop sugarbeets and sugarcane and by an additional 6 percent for the 1978 crop.

The cost of living increases were computed as follows:

In calendar year 1974, the Consumer Price Index (published by Bureau of Labor Statistics, U.S. Department of Labor) for all items averaged 147.7 (1967=100). For 1977, the index has averaged 180.3 through September. Assuming that the index increases by 0.5 each month during the last quarter, the average for calendar year 1977 will be 181.5, or 22.9 percent greater than in 1974. This indicates that the cost of living (COL) has increased by about 23 percent since 1974. It has been estimated that the COL will increase by another 6 percent in calendar year 1978.

The operations of the sugar price support loan program authorized by the Food and Agriculture Act of 1977 became effective November 8, 1977. The loan program is designed to support prices to sugarbeet and sugarcane producers through loans made to sugar processors. The Act directs the Secretary, in carrying out the loan program, to establish minimum wage rates for sugar fieldworkers, and the loan program regulations provide that loans can be made only on sugar processed from sugarbeets or sugarcane grown by producers who agree to pay their fieldworkers in accordance with the minimum wage requirements established by this rule. Producers were notified of this condition of price support through the Department's press announcement on November 8. Therefore, the minimum wage rates established by this rule shall be applicable to work performed on and after November 8, 1977, in the production, cultivation, and harvesting of the 1977 and 1978 crops of sugarbeets and sugarcane.

Since the price support loan program has been in effect since November 8, 1977 and the payment of wage rates in accordance with wage rate regulations issued by the Secretary is a condition of eligibility for obtaining a loan, it is hereby determined that compliance with the 30-day effective date requirement of 5 U.S.C. 553 is impractical and contrary to the public interest. Accordingly, these regulations shall become effective on date of filing with the Director, Office of the Federal Register.

Economic, environmental, and EEO/Civil Rights impact statements are available by contacting the Office of the Director of Economics, Policy Analysis and Budget, Room 214, Administration Building, USDA, Washington, D.C. 20250.

Accordingly, Chapter XIV of Title 7 of the Code of Federal Regulations is amended by adding a new Subpart—Minimum Wage Rates for Sugarbeet and Sugarcane Fieldworkers—to Part 1435 which reads as follows:

Subpart—Minimum Wage Rates for Sugarbeet and Sugarcane Fieldworkers

Sec.

AUTHORITY: The provisions of this subpart are issued under sec. 201 of the Agricultural Act of 1949, as amended, Pub. L. 81-439, 62 Stat. 1051; sec. 902, Pub. L. 95-113, 91 Stat. 949 (7 U.S.C. 1446).

§ 1435.26 General statement.

This subpart contains the regulations which set forth the minimum wage rates for agricultural employees engaged in the production of the 1977 and 1978 crops of sugarbeets and sugarcane established in conjunction with the operation of the price support loan program for sugarbeets and sugarcane which became effective November 8, 1977. The regulations governing the loan program for the 1977 crop are contained in §§ 1435.15 through 1435.25 of this part.

§ 1435.27 Administration.

The Procurement and Sales Division, Agricultural Stabilization and Conservation Service (referred to as "ASCS"), will administer this subpart under the general direction and supervision of the Deputy Administrator, Commodity Operations. In the field, this subpart will be administered by Agricultural Stabilization and Conservation State and county committees (referred to as "State and county committees").

§ 1435.28 General requirements.

For the purpose of determining eligibility for obtaining price support under programs conducted pursuant to the authority of section 201 of the Agricultural Act of 1949, as amended, the wage rates for all fieldworkers employed in the production, cultivation, or harvesting of sugarbeets or sugarcane, as provided in § 1435.31, shall be not less than the rates set forth in §§ 1435.29 and 1435.30, in connection with work performed on and after November 8, 1977.

§ 1435.29 Wage rates when employed on a time basis.

When employed on a time basis, the wage rates shall be as follows:

		Rate per hour	
		1977 crop	1978 crop
All States in which sugarbeets are grown.	Hand labor operations of thinning, hoeing, hoe-trimming, weeding, pulling, topping, loading, or gleaning.	$2.85	$3.00
Louisiana sugarcane	Tractor and truck drivers and operators of mechanical equipment.	3.10	3.30
	All other workers	2.85	3.00
Florida and Texas sugarcane	Tractor and truck drivers and operators of mechanical equipment.	3.40	3.60
	All other workers	3.00	3.20
Hawaii and Puerto Rico sugarcane.	All classes	As required by existing legal obligations resulting from a labor union agreement or from Federal or local legislative or regulatory action.	

§ 1435.30 Wage rates when employed on a piecework basis.

(a) *Sugarbeet States.* (1) When employed on a piecework basis for hand labor operations specified in the following table, the wage rates shall not be less than:

	Rate per acre	
	1977 crop	1978 crop
(i) Thinning: Removing excess beets with a hoe only	$20.30	$21.50
(ii) Hoeing: Removing weeds and excess beets with a hoe only	26.45	28.05
(iii) Hoe-trimming: Removing weeds with a hoe and by hand and removing excess beets with a hoe only	31.65	33.55
(iv) Weeding: Removing weeds with a hoe only in fields which have been completely machine-thinned and on which chemical herbicides have been applied	17.20	18.25
(v) Weeding: Removing weeds with a hoe and by hand following either i, ii, iii, iv, v above	17.20	18.25

Provided, That the above rates (1) may be reduced by not more than the indicated percentages for the following wide row spacing: 28 inches or more but less than 31 inches, 20 percent; 31 inches or more but less than 34 inches, 25 percent; 34 inches or more, 30 percent, and (2) shall be increased by not less than the indicated percentages for the following narrow row spacing: 19 inches or less but more than 16 inches, 25 percent; 16 inches or less, 35 percent.

(2) *When employed on a piecework basis for hand labor operations not specified or defined in subsection (1) or for harvesting.* For hand labor operations other than those specified or defined in subsection (1) involving the removal of beets or weeds and for operations involving pulling, topping, loading, or gleaning which are performed on a piecework basis, the average hourly rate of earnings of each worker for each operation during the time the worker is employed for the operation shall be not less than $2.85 per hour for 1977 crop work or $3 per hour for 1978 crop work.

(b) *All sugarcane areas.* For any operation performed on a piecework basis in sugarcane areas, the average hourly rate of earnings of each worker during each pay period (not to be in excess of 2 weeks) shall be not less than the hourly rate for comparable work performed by each class of worker prescribed for each sugarcane area in § 1435.29.

§ 1435.31 Applicability of wage requirements.

The wage requirements of this subpart are applicable to all fieldworkers employed in operations directly connected with the production, cultivation, or harvesting of 1977 and 1978 crop sugarbeets or sugarcane marketed for processing into refined beet sugar or raw cane sugar, cane syrup, or edible molasses. The wage requirements are not applicable to custom operators; hauling contractors; and workers performing services which are indirectly connected with production, cultivation, or harvesting, including but not limited to mechanics, welders, and other maintenance workers and repairmen.

§ 1435.32 Subterfuge.

Wage rates to any worker shall not be reduced below those determined in accordance with the requirements of this subpart through any subterfuge or device whatsoever.

§ 1435.33 Wage records.

The producer shall maintain for a period of three years records which will demonstrate that each worker has been paid wage rates in accordance with the requirements of this subpart. Such wage records shall be available for inspection by ASCS.

NOTE.—The ASCS, to meet the requirements of the National Environmental Policy Act (Pub. L. 91-190, 42 U.S.C. 4321 et seq.), has developed an environmental assessment on the program and has determined that the proposed action would not constitute a major Federal action significantly affecting the human environment.

NOTE.—It is hereby certified that the economic effects of this action have been carefully evaluated in accordance with Executive Order 11921 and OMB Circular A-107.

Signed at Washington, D.C., on January 5, 1978.

BOB BERGLAND,
Secretary.

[FR Doc. 78-595 Filed 1-9-78; 8:45 am]

[3410-34]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER E—VIRUSES, SERUMS, TOXINS, AND ANALOGOUS PRODUCTS; ORGANISMS AND VECTORS

PART 113—STANDARD REQUIREMENTS

Miscellaneous Amendments

AGENCY: Animal and Plant Health Inspection Service (APHIS).

ACTION: Final rule.

SUMMARY: This amendment provides for the use of a shorter expiration dating for Tetanus Antitoxin based upon the number of units of the antitoxin in the final container. At the present time, a 3-year dating for a serial of product having a 20 percent overage is authorized, but no provision is made for products with less than a 20 percent unit overage. This amendment provides requirements for a 1-year dating for a serial of product having more than 10 percent but less than 20 percent overage.

EFFECTIVE DATE: This amendment becomes effective February 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. R. J. Price, 301-436-8245.

SUPPLEMENTARY INFORMATION: On September 27, 1977, a notice of a proposed amendment to part 113 was published in the FEDERAL REGISTER at 42 FR 49462. To assure an adequate number of units in all final containers of Tetanus Antitoxin throughout a dating period, the regulations require that each container of the product must contain a greater number of units of antitoxin than is indicated on the label. Presently, if that number of units is greater than the number indicated on the label by 20 percent or more, the regulations provide for a 3-year dating. The proposal provides for a 1-year dating for a product with a unit overage of more than 10 percent, but less than 20 percent. Comments on this proposal were solicited and two favorable comments were received. No objections were received.

After due consideration of all relevant matters, including the proposal set forth in the aforesaid notice and pursuant to the authority contained in the Virus-Serum-Toxin Act of March

4, 1913 (21 U.S.C. 151-158), the amendment of Part 113, Subchapter E, Chapter I, Title 9 of the Code of Federal Regulations, as contained in the aforesaid notice is hereby adopted.

The first letter in each word of the heading for § 113.251 shall be capitalized. In § 113.251, paragraph (a)(2) shall be revised to read:

§ 113.251 Tetanus Antitoxin.

* * * * *

(a) * * *

(2) The expiration date of Tetanus Antitoxin shall be not more than 3 years after the date of a potency test which demonstrates that the recoverable antitoxin from the final container provides at least 20 percent excess over the number of units claimed on the label or not more than 1 year after the date of a potency test which demonstrates that the recoverable antitoxin from the final container provides 10 to 19 percent excess over the number of units claimed on the label.

* * * * *

(21 U.S.C. 151 and 154; 37 FR 28477, 28646; 38 FR 19141.)

The foregoing amendment shall become effective 30 days after issuance.

Done at Washington, D.C., this 3d day of January 1978.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

J. K. ATWELL,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc. 78-446 Filed 1-9-78; 8:45 am]

[3410-34]

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

Miscellaneous Amendments

AGENCY: Animal and Plant Health Inspection Service (APHIS).

ACTION: Final rule.

SUMMARY: This amendment clarifies and simplifies the requirements for extending the expiration date for a biological product. A "U.S. Standard of Potency" for each fraction of a product is presently required before an extension of expiration date is granted, although the meaning of that term is unclear. The present regulations also require that the extended expiration date must be limited to 6 months and be computed from the harvest date. This amendment deletes the necessity of establishing a "U.S. Standard of Potency," provides for different potency evaluation tests, permits longer extensions when provided for in the outline of production, and deletes the "from harvest" requirement.

EFFECTIVE DATE: This amendment becomes effective February 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. R. J. Price, 301-436-8245, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 828-A, Federal Building, Hyattsville, Md. 20782.

SUPPLEMENTARY INFORMATION: On October 4, 1977, a notice of proposed amendments to Part 114 was published in the FEDERAL REGISTER, Volume 42, No. 192, page 53968. Comments were invited.

Four responses were received. Three were favorable to the proposal as published without suggested changes. One response included criticisms and suggested changes. The two major points raised were with regard to the 6-month limitation on extensions of expiration dates appearing in § 114.14(b)(1) and the requirement that in order to obtain an extended expiration date, test data which are submitted in support of a request of such extension must be obtained "prior to the original expiration date" of a product. It was pointed out in the comment that some biological products are much more stable than others and should, therefore, be granted an expiration date in excess of 6 months. Furthermore, it often takes considerable time to obtain necessary test data, and this time may, in some instances, run past the "original expiration date" of a product. These suggestions are considered valid and the requested changes are added by this amendment.

After due consideration of all relevant matters, including the proposal set forth in the aforesaid notice and pursuant to the authority contained in the Virus-Serum-Toxin Act of March 4, 1913 (21 U.S.C. 151-158), the amendment of Part 114, Subchapter E, Chapter I, Title 9 of the Code of Federal Regulations, as contained in the aforesaid notice is hereby adopted with the following exceptions:

The words "obtained prior to the original expiration date" have been deleted from the introductory portion of paragraph (b) as being unnecessarily restrictive. Valid test data submitted by the licensee to substantiate a request for extension of dating should be acceptable regardless of the time it is obtained.

Paragraph (b)(1), as now written, limits the extension of dating to 6 months regardless of the product involved. This limitation is justified for some products but may not be for others. Therefore, this paragraph is further amended to permit extensions of more than 6 months when provided for in the outline of production approved by Veterinary Services. Furthermore, the amendment has been clarified by providing that extensions of expiration dates may be granted by Veterinary Services.

In § 114.14, paragraph (a)(1), the introductory portion of paragraph (b), and paragraph (b)(1) are revised to read as follows:

§ 114.14 Extension of the expiration date for a serial or subserial.

(a) * * *

(1) If all fractions of the product are not evaluated for potency by tests designated in the filed outline of production for such product in accordance with § 113.4(b) of this subchapter; or

* * * * *

(b) An extension of the expiration date may be granted by Veterinary Services if a request from the licensee is substantiated by valid test data and the following conditions are met:

(1) Unless otherwise provided in the filed outline of production for the product, the new expiration date shall not exceed 6 months beyond the maximum time permitted by the outline of production; and

* * * * *

(21 U.S.C 151 and 154; 37 FR 28477, 28646; 38 FR 19141.)

Done at Washington, D.C., this 3rd day of January 1978.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107.

J. K. ATWELL,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc. 78-447 Filed 1-9-78; 8:45 am]

[3128-01]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION[1]

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

1977 Price and Allocation Interpretations

AGENCY: Department of Energy.

ACTION: Notice of Interpretations.

SUMMARY: Attached are the Interpretations issued by the Department

[1] Editorial Note.—Chapter II will be renamed at a future date to reflect that it contains regulations administered by the Economic Regulatory Administration of the Department of Energy.

of Energy under 10 CFR Part 205, Subpart F, during the period November 16, 1977, through December 31, 1977.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Interpretations issued pursuant to 10 CFR Part 205, Subpart F, are published in the FEDERAL REGISTER in accordance with the editorial and classification criteria set forth in 42 FR 7923, February 8, 1977, as modified in 42 FR 46270, September 15, 1977.

These Interpretations depend for their authority on the accuracy of the factual statement used as a basis for the Interpretation (10 CFR 205.84(a)(2)), and may be rescinded or modified at any time (§ 205.85(d)). Only the persons to whom Interpretations are addressed and other persons upon whom Interpretations are served are entitled to rely on them (§ 205.85(c)). An Interpretation is modified by a subsequent amendment to the regulation(s) or ruling(s) interpreted thereby to the extent that the Interpretation is inconsistent with the amended regulation(s) or ruling(s) (§ 205.85(e)). In addition, Interpretations are subject to appeal. The Interpretations appended hereto are published today only for general guidance in accordance with the reasons set forth in the Notice first cited above.

Issued in Washington, D.C., January 4, 1978.

WILLIAM S. HEFFELFINGER,
Director of Administration,
Department of Energy.

APPENDIX

No.	To	Date	Category
1977-45	Commonwealth Oil Refining Co	Nov. 30	Allocation.
1977-46	Meridian Oil Co	Dec. 19	Price.
1977-47	Vickers Petroleum Corp	Dec. 21	Allocation.
1977-48	L. O. Ward	do	Price.
1977-49	Koch Oil Co	do	Allocation.
1977-50	Independent Oil Compounders Association	do	Price.
1977-51	Webber Tanks, Inc	do	Do.
1977-52	Exxon Corp	do	Do.
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INTERPRETATION 1977-45

To: Commonwealth Oil Refining Co.

Date: November 30, 1977.

Rules Interpreted: Section 211.67(d)(5).

Code: GCW-AI—Entitlements Program.

FACTS

Commonwealth Oil Refining Co. (CORCO), is a refiner as that term is defined in 10 CFR 211.62. CORCO owns and operates a refinery in Penuelas, P.R., which has a capacity of 161,000 barrels per day (B/D), of crude oil. CORCO also owns and operates two large aromatics petrochemical plants at the refinery site with a combined capacity of approximately 80,000 B/D of petrochemical feedstocks. This petrochemical facility produces petrochemical feedstocks, gasoline blending components and aromatics, which represent a broad class of petrochemical compounds including benzene, toluene and xylenes. The feedstocks consumed at the facility are generally heavy "naphthenic" naphthas.

The Puerto Rico Olefins (PRO), facility at Penuelas is an "olefins" plant which has a capacity 35,000 B/D of petrochemical feedstocks and produces ethylene, propylene and butadienne. The feedstocks consumed at this facility are partially "paraffinic" naphthas, which are lighter naphthas with a high paraffinic content. PRO is a joint venture, with CORCO and PPG Industries, Inc. (PPG), each having a fifty percent ownership interest.

PRO operates under independent management, with its own operating staff, managed by an Operating Committee and a Supervisory Committee. PPG and CORCO are equally represented on these committees, and the chairmanship of these committees rotates between an officer of CORCO and an officer of PPG. The related joint venture agreement requires that the everyday operations of PRO be supervised by a Clerk of the Works, a PRO employee not previously employed by either CORCO or PPG. PRO has 217 employees who are responsible for PRO's financial, accounting and administrative operations, and hires 47 maintenance employees on a contract basis from a firm which is neither owned nor controlled by CORCO or PPG. CORCO and PRO maintain separate transportation facilities, market their products separately, and file separate Puerto Rican tax returns.

The naphthas imported by both CORCO and PRO for processing as petrochemical feedstock are eligible for entitlement treatment under the domestic crude oil allocation program (the entitlements program), of the Department of Energy (DOE). Pursuant to 10 CFR 211.67(d)(5) naphtha imported into Puerto Rico and utilized as a petrochemical feedstock at a petrochemical plant in Puerto Rico is eligible for the same entitlement treatment as is in effect for a refiner that processes a like volume of imported crude oil (with limitations based on the landed cost of foreign naphthas in Puerto Rico as compared with an imputed domestic naphtha cost, as well as certain other factors).

CORCO's aromatics plants consume naphthenic naphtha, which is more expensive by volume than the paraffinic naphtha used by the PRO's olefins plant. Thus, the treatment of these two companies as a single firm for reporting purposes in the entitlements program lowers CORCO's per barrel naphtha acquisition costs and affects the amount of exception relief which it receives under a decision and order issued by the Office of Exceptions and Appeals of the Federal Energy Administration (now the Office of Administrative Review of the Economic Regulatory Administration of the DOE). See "Commonwealth Oil Refining Company", 5 FEA ¶ 83,132 (April 14, 1977).

CORCO and PRO have heretofore reported their naphtha imports under 10 CFR 211.67(d)(5)(i) as one firm and CORCO seeks an interpretation (supported by PRO), that each of these companies can report separately as to its own naphtha imports, and can therefore obtain separate entitlement treatment.

In evaluating CORCO's November 17 request, comments from PRO and PPG were received and considered. A copy of the request was also provided to the Commonwealth of Puerto Rico which failed to respond.

ISSUE

Solely for purposes of the entitlements program, as set forth at 10 CFR 211.67(d)(5), may CORCO and PRO report their receipts of naphtha into Puerto Rico on a separate basis?

INTERPRETATION

For the reasons set forth below, CORCO and PRO may report their receipts of naphtha into Puerto Rico on a separate basis solely for the purposes of the entitlements program, 10 CFR 211.67(d)(5).

The provisions governing the issuance of entitlements with respect to naphtha imports into Puerto Rico are set forth in 10 CFR 211.67(d)(5). Section 211.67(d)(5) (i) and (iv) state in part that:

"(i) The volume of a refiner's crude oil runs to stills in a particular month for purposes of the calculations in subparagraph (1) of paragraph (a) of this section and the calculations for the national domestic crude oil supply ratio shall include * * * the total number of barrels of naphthas which are imported into Puerto Rico * * * and are utilized in that month as a petrochemical feedstock at a petrochemical plant owned or operated by that refiner in Puerto Rico.

* * * * *

"(iv) Notwithstanding any other provisions of this section, a firm other than a refiner that owns a petrochemical plant in Puerto Rico shall be eligible to receive entitlements with respect to naphthas processed at such a plant on the same basis as is provided for refiners in subdivisions (i) through (iii) of this subparagraph, except that such a firm shall not be eligible for any additional entitlements under the provisions of paragraph (e) of this section. Any such firm shall file reports under § 211.66 on the same basis as a refiner."

These regulatory provisions permit reporting of naphtha imports by both refiners and non-refiners. Under provisions contained in § 211.67(d)(5)(i), if it were determined that CORCO owned or operated the PRO facility, the naphtha imports thereof would be properly reported by CORCO. However, if the provisions of § 211.67(d)(5)(i) are not applicable, it is appropriate to consider PRO a firm other than a refiner that would report its naphtha imports separately under § 211.67(d)(5)(iv).

It has been concluded, with regard to the provisions of 10 CFR 211.67(d)(5), that CORCO does not own or operate the PRO olefins plant. It is clear from the facts set forth that neither CORCO not PPG operate the PRO facility. The PRO olefins plant operates under independent management consisting of Operating and Supervisory Committees. Although PPG and CORCO are equally represented on these committees in accordance with the joint venture agreement, neither PPG nor CORCO individually can control the day-to-day operations of PRO. The PRO plant manager is neither a PPG nor a CORCO employee and is solely responsible to the PRO management committees.

With regard to the question of ownership the issue of whether either CORCO or PPG "owns" PRO for purposes of §211.67(d)(5)(i) is less clear. There is no doubt that both PPG and CORCO "own" the PRO facility. However, because of the terms of the joint venture agreement, which does not permit either party to the agreement to exercise any independent control or authority over the operations of PRO, it cannot be concluded in the context of §211.67(d)(5) that CORCO "owns" PRO. CORCO cannot exercise any of the perogatives normally associated with "ownership", i.e. control over the management of PRO's everyday operations. Interpretations such as those issued to "Ball Marketing Enterprises", Interpretation 1977-18, "Tesoro Petroleum Corp.", Interpretation 1975-32, and "Enterprise Products Co.", Interpretation 1975-3 are not inapposite to the conclusion reached hereinabove. In each of those cases, one entity was deemed to be subsumed within another entity for purposes of the Mandatory Petroleum Allocation and Price Regulations since actual or potential control of the operations of the subsumed entity was found to exist. No such control relationship exists between CORCO and PRO.

Since the provisions of §211.67(d)(5)(i) are inapplicable to PRO, it has been concluded that PRO[2] may report its purchases of naphtha for entitlements purposes pursuant to §211.67(d)(5)(iv), which applies to "a firm other than a refiner that owns a petrochemical plant in Puerto Rico." PRO is not a refiner under the regulatory definitions applicable to the domestic crude oil allocation program. The term "refiner" at §211.62 is defined as "a firm which owns, operates or controls a refinery." "Refinery" is defined in §211.62 as an industrial plant, including a petrochemical plant, "processing crude oil feedstock." Since PRO processes no crude oil feedstocks, it is not a refinery for purposes of the Domestic Crude Oil Allocation Program, and therefore falls within the scope of §211.67(d)(5)(iv).[3]

This interpretation should not be construed as altering the status of PRO under 10 CFR Part 213 for purposes of the Mandatory Oil Import Program.

INTERPRETATION 1977-46

To: Meridian Oil Corp.
Date: December 19, 1977.
Rules Interpreted: Section 212.72.

Code: GCW-PI—Definition of Property.

FACTS

Action Capital Development Fund ("Action"), acquired by instrument of assignment dated December 14, 1971, the right to produce crude oil from 120 acres in Dawson County, Tex. ("Kimbrell Property"), and the right to produce crude oil from an adjacent 40-acre tract ("Mathis Property"). Action's leasehold rights with respect to the Kimbrell Property derived from an oil, gas, and mineral lease executed in 1968.

Action drilled a single well on the Kimbrell Property and production and sale of crude oil commenced in February 1972.

The Kimbrell Property and Mathis Property were pooled and combined as a unit ("Kimbrell Unit"), effective November 1, 1972. There were no production wells on the Mathis Property before or after unitization.

In September 1975, Action assigned its leasehold rights with respect to both the Kimbrell Property and the Mathis Property to Meridian Oil Corp. ("Meridian"). Meridian produced and sold crude oil from the single well on the Kimbrell Property until November 1976, when the casing of that well collapsed because of corrosion. Repairing or reworking the collapsed casing was not economically feasible. The well was plugged and abandoned on December 7, 1976.

Meridian did not commence additional drilling or reworking operations and relinquished all working interest rights to the Kimbrell Property effective March 9, 1977. This relinquishment also dissolved the Kimbrell Unit. Meridian's leasehold interest in the Mathis Property continued until later assigned to Getty Oil Co.

By instrument of assignment bearing the date of September 6, 1977, Meridian once again acquired the right to produce crude oil from the Kimbrell Property. These rights derive from an oil, gas, and mineral lease dated December 1, 1976.

ISSUE

Whether Meridian's right to produce crude oil from the Kimbrell Property, acquired on September 6, 1977, constitutes a new "property," permitting any crude oil thereafter produced and sold from that property to be classified as "new crude oil" under 10 CFR 212.72.

INTERPRETATION

For the reasons set forth below, we conclude that further production from the Kimbrell Property cannot be sold as "new" crude oil merely by virtue of acquisition of leasehold rights under a new lease.

Qualification for "new" or "old" crude oil is tested on the basis of each "property" as defined in 10 CFR 212.72. "Property" is defined, for purposes relevant to this Interpretation, as "the right to produce domestic crude oil, which arises from a lease or from a fee interest."

This office recently reviewed in detail an issue very similar to the issue here raised. Interpretation 1977-42 (November 4, 1977), considered whether, solely by virtue of the substitution of a new lessee-producer for the previous lessee-producer whose lease had expired, production from the leased land qualified after such substitution to be priced as "new crude oil" under §§ 212.72 and 212.74. After analyzing Ruling 1977-1 and the production-incentive purposes of the two-tier crude oil pricing system set forth in 10 CFR 212.72-74, Interpretation 1977-42 concluded that the definition of "property" for crude oil price control purposes generally contemplates a constant frame of reference unaffected by the substitution of one lessee for another or by the execution of a new instrument of conveyance in place of another. In reaching that conclusion the Interpretation stated:

While it is true that the meaning of "lease" is broad enough in ordinary usage to include the instrument of conveyance itself as well as the piece of land or other property leased, it would be wholly irrational, in the context of the definition of "property" in §212.72, to interpret "lease" as a reference to a particular lessee's rights under a particular lease. If a "new" property (and thus "new" crude oil), could be created merely through the execution of new leasehold agreements between the same lessor and lessee, or through the substitution of a new lessee, the purpose of the two-tier crude oil pricing system as a production incentive would be quickly circumvented and defeated. The price regulations applicable to producers of crude oil require for their effectiveness a concept of "property" which provides a constant frame of reference for measurement of crude oil production between the base level and the current level. As stated in Ruling 1975-15 (40 FR 40832, September 4, 1975), "the need to compare like quantities, today and in 1972, in order to insure a meaningful application of the new and released provisions," requires that the "property" be defined by reference to the "property" as it existed in 1972. Thus, the definition of "property" was not made dependent upon the continued effectiveness of a specific lease agreement or upon the rights accruing to any specific lessee.

This reasoning applies with equal force to the facts in the present case. The same considerations which required rejection of the theory of "new" crude oil based on lessee substitution in Interpretation 1977-42 compel rejection of "new" crude oil based merely on execution of a new leasehold agreement to replace one that had terminated. In either case, the "property" under §§212.72-74 remains unchanged.

The unitization in this case does not lead to a different result. Even if the Kimbrell unit constituted a "unitized property" effective November 1, 1972, under §212.75 (a question not raised in the interpretation request and not determined here), the unit base production control level must continue to be used for purposes of computing "new" crude oil notwithstanding the subdivision of that unit into its component parts (the Kimbrell property and the Mathis property) upon relinquishment by Meridian of its working interest rights derived from the 1968 lease. See Ruling 1975-15, 40 FR 40832 (September 4, 1975), which specifically states that—

Just as a post-1972 unitization does not establish a new property, neither does the subdivision after 1972 (through assignment, creation of new leases, or otherwise) of a single right to produce crude oil into several rights to produce crude oil establish a new property for purposes of measuring the BPCL and determining whether any new * * * crude oil has been produced.

Meridian states that it will not be economically feasible to resume production from the Kimbrell property unless all future production from the property can be sold as "new" crude oil. We are sympathetic toward Meridian's claim of inability to resume production of crude oil at lower tier

[2]The definition of "firm" at 10 CFR 211.51 expressly includes a "joint-venture".

[3]Pursuant to the terms of §211.67(d)(5)(iv), any firm reporting in accordance with this subsection is not eligible for "small refiner bias" benefits as set forth in §211.67(e).

price levels. However, these considerations, while possibly forming the basis of a request for exception from price regulations applicable to producers, are not relevant to a legal interpretation of the meaning and applicability of those regulations.

INTERPRETATION 1977-47

To: Vickers Petroleum Corp.
Date: December 21, 1977.
Rules Interpreted: § 211.106.
Code: GCW-AI—Transfer of Allocation Entitlement.

FACTS

Vickers Petroleum Corp. ("Vickers") supplied motor gasoline during the base period (as specified in 10 CFR 211.102) to Forest Collins the owner-operator of a Vickers branded retail motor gasoline station in Lindsborg, Kans. (hereinafter referred to as station A for ease of reference). In December 1975, Collins contracted to sell his service station and equipment to LeRoy Peterson. Peterson began operating the service station as of January 1976, and in April 1976 the sale was consumated, i.e., title to the property passed to Peterson. Collins has retired from the motor gasoline retail sales business.

Prior to the purchase of Collins' station, Peterson was an operator of a Champlin Petroleum Co. ("Champlin") branded retail motor gasoline service station also located in Lindsborg, Kans. (hereinafter station B).

Station B is approximately four blocks from station A and was supplied during the base period (as specified in 10 CFR 211.102) by Walthers Oil Co., a Champlin-branded distributor.

Peterson is a wholesale purchaser-reseller under the mandatory petroleum allocation regulations and qualifies as a branded independent marketer as that term is defined in section 3(1) of the Emergency Petroleum Allocation Act of 1973, as amended.

At the time that Peterson purchased station A, he ceased selling gasoline at station B and began to sell gasoline under the Champlin brand at station A. However, Peterson retained ownership of station B. Peterson continued to purchase the base period allocation formerly supplied by Champlin to station B and also purchased the base period allocation supplied by Vickers to station A, having both allocations shipped to station A.

ISSUE

Under the facts presented, (1) which supplier has a supply obligation to station A pursuant to 10 CFR Part 211; and (2) can Peterson transfer the base period allocation entitlement from station B to station A?

INTERPRETATION

For the reasons set forth below, it has been concluded that: (1) Peterson is the successor on the site of station A within the meaning of 10 CFR 211.106(e) and therefore, Vickers continues to be obligated to supply the base period allocation entitlement of motor gasoline to station A; and (2) the allocation entitlement of motor gasoline to station B cannot be transferred by Peterson to station A.

The provisions of 10 CFR 211.9 require that supplier/purchaser relationships which existed during the base period generally must be maintained for the duration of the mandatory petroleum allocation program (see Ruling 1974-3[4]). With reference to a retail sales outlet of motor gasoline,[5] 10 CFR 211.106(e) provides that such a supplier/purchaser relationship is transferred if the operator of the retail sales outlet is deemed to have gone out of business (by vacating the site as specified in 10 CFR 211.106(c)(1)) and a successor on the site establishes the same on-going business in a reasonable period of time. The regulation provides:

(e) *Transfer of entitlement.* Whenever a wholesale purchaser-reseller is deemed to have gone out of business * * * the right to an allocation with respect to the retail sales outlet shall be deemed to have been transferred to its successor on the site, provided such successor established the same on-going business on the site within a reasonable period of time, as determined by FEO, after its predecessor vacates the premises.

It is clear, based on the facts enumerated above, that Collins sold station A to Peterson, vacated the premises and Peterson became the successor owner-operator of that same on-going business on the same site immediately at the time of sale. There is no doubt therefore that Peterson succeeded to station A's adjusted base period allocation supplied by Vickers in accordance with § 211.106(e). It is fundamental to the operation of the mandatory petroleum allocation regulations that "changes in business form or ownership do not modify obligations arising under the mandatory petroleum allocation program." *Chevron Oil Co.*, 2 FEA ¶ 80,531, at 80,610 (June 13, 1975). See, also *Cities Service Co.*, 1 FEA ¶ 20,134 (July 29, 1974). Vickers, therefore, continues to be obligated to supply the adjusted base period volumes of motor gasoline to station A, notwithstanding the transfer of ownership of the station from Collins to Peterson.

The allocation of motor gasoline formerly attributable to station B may not be transferred to station A. An allocation entitlement for a retail sales outlet of motor gasoline may be transferred by a wholesale purchaser-reseller of motor gasoline who is also an independent marketer to a new site only in accordance with the provisions of 10 CFR 211.106(c)(1) which (in relevant part) require that: "(i) the independent marketer vacates the site on which it formerly operated a retail sales outlet, (ii) the former site is closed as a retail sales outlet * * *, and (iii) the independent marketer that occupied the former site, within a reasonable period of time, as determined by FEO, reestablishes another retail sales outlet at another location serving substantially the same customers or market that was served by the former site."

As the facts in this case clearly show, although Peterson qualifies as an independent marketer, he has not met all of the criteria which are a prerequisite to transfer of a retail station motor gasoline entitlement in accordance with § 211.106(c)(1). First, although Peterson has ceased selling motor gasoline at station B, he has not vacated that site. Peterson remains in possession of the station B site and has merely changed the character of the business operations conducted thereon. Second, Peterson has not "reestablished another retail sales outlet at another location * * *" Peterson merely continued the on-going business (which he already owned and operated) at station A. Therefore, it cannot be said that Peterson has "reestablished" another retail sales outlet at another location.

It should be noted that the provisions of 10 CFR Part 211 expressly provide some latitude for an entity which operates more than one retail sales outlet to obtain upward adjustments to its base period volumes to account for station closings. Section 211.106(c)(2)(i) provides that in such cases an entity, such as Peterson, who owned more than one retail outlet could have petitioned the Federal Energy Administration, now Department of Energy (DOE), for such an upward adjustment. In addition, Peterson can purchase and sell such surplus product as becomes available, in excess of his base period allocation entitlement without limitation at station A.

Finally, Peterson and Vickers may terminate their supplier/purchaser relationship pursuant to 10 CFR 211.9(a)(2)(i) and Peterson may seek permanent reassignment as provided in 10 CFR 211.12(e) with another supplier, such as Champlin, if each of the three parties involved is agreeable, subject to required DOE approval.

INTERPRETATION 1977-48

To: L. O. Ward.
Date: December 21, 1977.
Rules Interpreted: § 212.54; Ruling 1975-12.
Code: GCW-PI—Stripper Well Exemption.

FACTS

L. O. Ward ("Ward") is an independent crude oil producer and operator in Oklahoma. Some of the wells Ward operates are located on qualified stripper well properties and therefore produce crude oil that is exempt under 10 CFR 212.54 from the mandatory petroleum price regulations. The properties on which some of the other wells Ward operates are located may qualify as stripper well properties if some of these wells are considered to be multiple completion wells for the purposes of calculating the maximum average daily production per well as set forth in § 212.54(c). However these wells do not fit within the literal definition of a "multiple completion well" as described in Federal Energy Administration (FEA) Ruling 1975-12 as they are not composed of multiple producing strings.

Ward claims that in Oklahoma the term "multiple completion well" can be used to describe several types of producing wells without multiple producing strings. These wells may generally be divided into three groups which share similar characteristics. The simplest type of well consists of two oil-containing zones of different depths which are produced by means of a single well bore. In this case, a packer is set between the two zones and a production string run to the lower zone. The lower zone is produced through the production string and the upper zone through the annulus (the space between the surface and producing casings). The crude oil then emerges from the ground in separate streams that can be separately measured and handled.

The other types of wells described by Ward involve the subsurface commingling of crude oil produced allegedly from different zones through a single production string, where Ward claims that various methods could be used to establish the crude oil production from each zone. In one case a standing valve (or check) is placed be-

[4] 39 FR 4467, February 4, 1974.

[5] Normally, where a firm operates more than one retail gasoline station, each station is considered a separate firm which is a separate wholesale purchaser-reseller for the purposes of the allocation regulations. 10 CFR 211.106(b).

tween two producing zones and a ported sleeve (also referred to as a sliding side door sleeve) is installed in the production string above the standing valve. When properly installed and maintained, the standing valve allows crude oil to flow only from the lower zone toward the surface and the ported sleeve allows production from the upper zone to be turned on and off. By alternately opening and closing the ported sleeve the producer can try to establish the rate of crude oil production from the lower zone only and from both zones and can estimate the proportion of production from either the upper or lower zones when both are produced simultaneously. By addition of a blanking plug below the ported sleeve the producer can try to produce either the upper or lower zone separately and to estimate the proportion of production from each zone when both zones are produced simultaneously. Finally, the single string well described above could also employ flow beans or bottom hole chokes at each zone and packers between zones designed to restrict the crude oil flow into the single production string from each zone to an approximate volume of crude oil, estimated by reference to reservoir pressure and oil viscosity. Ward claims that in some instances the Oklahoma Corporation Commission assigns separate allowables for each zone produced by these types of wells.

ISSUE

Are any of the types of producing wells that Ward describes multiple completion wells as that term is defined in FEA Ruling 1975-12 for purposes of calculating the maximum average daily production of crude oil per well under 10 CFR 212.54 and determining a property's eligibility for the stripper well crude oil price exemption?

INTERPRETATION

Since none of the producing wells that Ward describes have multiple tubing strings, none of these wells qualify as multiple completion wells as that term is defined in FEA Ruling 1975-12 (40 FR 40828, September 4, 1975). Thus, each producing well Ward describes is a single well on a particular property for purposes of computing the maximum average daily production levels. Therefore, pursuant to 10 CFR 212.54, in order to qualify for the stripper well crude oil exemption, each property which contains these wells must produce not more than ten barrels of crude oil per well per day. However, a producer may treat as production from two separate properties crude oil production from a single well which is carried from one reservoir through a single production string and from a second reservoir through the annulus, when each reservoir is properly classified as a separate property pursuant to FEA Ruling 1977-2. Should a producer treat each reservoir as a separate property, production from each reservoir may be treated separately in determining whether each property qualifies as a stripper well property in accordance with 10 CFR 212.54.

The stripper well lease exemption originated in the Trans-Alaska Pipeline Authorization Act (TAPAA), Pub. L. 93-153, November 16, 1973 and was later readopted by the Congress in the Emergency Petroleum Allocation Act of 1973 (EPAA) (Pub. L. 93-159, November 27, 1973 as amended by Pub. L. 94-385, August 14, 1976). Section 8(i)(2) of the EPAA defines "stripper well crude oil" as "crude oil produced and sold from a property whose maximum average daily production of crude oil per well during any consecutive 12-month period beginning after December 31, 1972, does not exceed 10 barrels."

However, in passing the original exemption the conference report accompanying TAPAA noted (Conf. Rep. No. 93-924, 93rd Cong., 1st Sess. (1973); 2 U.S. Cong. and Admin. News 2531-32 (1973)):

Section 406, relating to stripper oil wells, was a Senate floor amendment to S. 1081. The Conferees have adopted the general concept of the floor amendment, but have added new provisions to insure that the exemption is narrowly defined and prudently administered, and to insure that the incentive being granted is properly limited in accord with congressional intent.

The purpose of exempting small stripper wells—wells whose average daily production does not exceed ten barrels per well—from the price restraints of the Economic Stabilization Act (now in phase IV) and from any system of mandatory fuel allocation is to insure that direct or indirect price ceilings do not have the effect of resulting in any loss of domestic crude oil production from the premature shutdown of stripper wells for economic reasons.

* * * * *

The Congress intends that the provisiops of this section will be strictly enforced and regulated by the administering agency to insure that the limited exemption of this class of wells for the express purposes described above is not in any way broadened * * *. These regulations shall be so designed as to provide safeguards against any abuse, over-reaching or altering of normal patterns of operations to achieve a benefit under this section which would not otherwise be available. Congress specifically intends that the regulations shall, among other things, prevent any "gerrymandering" of leases to average down high production wells * * *.

Thus, Congress mandated that the stripper well exemption be used only to ensure the continued production of marginal wells and consequently contemplated that the provisions of that exemption be strictly enforced.

In accordance with congressional intent, FEA Ruling 1975-12 established certain specific, limited conditions under which a well could be considered to be more than one well for purposes of calculating the maximum average daily production of crude oil per well required for a stripper well property under 10 CFR 212.54(c). That ruling stated:

Therefore, the FEA has determined that multiple completion wells may be considered as two (or more) wells for the purpose of calculating "average daily production" pursuant to the stripper well lease exemption of 10 CFR 210.32 if,

(a) The well consists of two (or more) separate tubing strings run inside the casing, each of which carries crude oil from a separate and distinct producing formation, and

(b) The production capabilities of each formation are unaffected by any change in the production level of any other formation producing through the same well.

Ruling 1975-12 sets forth two basic reasons for this limited definition of multiple completion wells for purposes of qualifying for the stripper well exemption. First, the capital investment in such wells and their operating costs are significantly greater than for ordinary oil wells. Thus, if the multiple completion wells were not treated as two or more wells for purposes of qualifying for the stripper well exemption there was a risk that marginal wells of this type would be prematurely abandoned as unprofitable. See *Ruthven, Inc.*, 4 FEA ¶ 83, 199 (November 15, 1976).

As Ward has recognized in the request, the costs of obtaining and running additional production strings as contemplated in Ruling 1975-12 in a well are proportionally greater than running only a single string. Placement of each additional string and the associated packer(s) requires more rig time. Normal operation and maintenance of such a well becomes more costly and complicated with the addition of each string. Repairing problems with production from any reservoir, for example, could require the temporary shutdown of production from all reservoirs.

Secondly, multiple completion wells possess many of the physical characteristics of two or more individual wells and are readily verifiable by enforcement officials. Although this type of well has only a single well bore, the well produces from two or more separate and distinct reservoirs, each through its own production string, in the same manner as two or more individual wells. The crude oil emerges from the ground in separate streams, that can be separately diverted, stored, and measured.

Therefore, Ruling 1975-12 has clearly delineated the limits of the stripper well exemption based upon a full examination of the Congressional intent for the exemption from ceiling price limitations.

In contrast, the wells outlined by Ward are of completely distinguishable types that would not further the limited objective of the policy of the stripper well lease exemption as enunciated in FEA Ruling 1975-12. L. O. Ward has not claimed or shown that allowing the wells described above to be treated as more than one well for the purpose of calculating average daily production would prevent the premature abandonment of otherwise marginal wells. Use of such devices as ported sleeves, blanking plugs, standing valves, and flow beans only control and limit the production of oil from underground reservoirs but does not increase the production rate in any way. Extending the stripper well exemption as requested by L. O. Ward would give a special financial incentive to install such devices in situations where they would not otherwise be used. As a result the rate of production from some reservoirs would be artificially restricted in some cases and could be temporarily curtailed when these devices are installed or maintained.

In addition, the first and simplest type of well described above, with one zone producing up a single production string and the other zone producing up the annulus, requires capital and operating costs that are more comparable to a single, simple well than to a well with multiple production strings and packers. There is no reason to believe, therefore, that each well of this type must be treated as two wells under the stripper well exemption in order to avoid premature abandonment of such wells for economic reasons. If an operator of this type of well finds that a property on which such a well is located does not qualify under the stripper well exemption and that operating revenues are insufficient to justify continuing its production of crude oil, he has at least two potential options to avoid the well's abandonment. If each zone from

which the well produces crude oil constitutes a reservoir separate and distinct from the other reservoir, as "recognized by the appropriate [state] regulatory body," so that "the production capabilities of each reservoir are unaffected by any change in the production level of any other reservoir being produced through the same well * * * [and] production from each reservoir can be separately measured at the wellhead" (Ruling 1977-2), the producer may elect to treat each reservoir as a separate property according to the procedures established in FEA Rulings 1977-2 and 1977-7. In such a case, in determining whether such a property is eligible for the stripper well exemption, the well's production from reservoir(s) located on other properties may be ignored. Alternatively, the producer may petition the Department of Energy for exception relief. The other types of "multiple completion wells" described by Ward involve the subsurface commingling of crude oil production from two or more zones. The subsurface commingling in these wells precludes the accurate measurement necessary for the verification and determination of actual continuing production, if any, from separate reservoirs for multiple completion wells as described in Ruling 1975-12.

A different result is not indicated by Ward's claim that the Oklahoma Corporation Commission assigns multiple allowables for some of the "multiple completion wells" described above that have subsurface commingling of crude oil from more than one zone. The Oklahoma Corporation Commission regulates crude oil production for conservation purposes where some of the devices Ward describes may yield production estimates that are sufficiently accurate, at least for wells producing crude oil at high rates. DOE on the other hand must implement the stripper well property exemption in reference to a price control program based on actual crude oil production reports for properties which produce 10 barrels of crude oil per well or less during the qualifying period, where greater reliability and precision in measuring crude oil production is required.

Accordingly, none of the producing wells described by L. O. Ward qualify as a "multiple completion well" as defined in FEA Ruling 1975-12 and except as noted above each well may only be considered as one well in computing a property's eligibility for the stripper well exemption under 10 CFR 212.54.

INTERPRETATION 1977-49

To: Koch Oil Co.
Date: December 21, 1977.
Rules Interpreted: §§ 211.9, 211.12(e), and 211.96(b).
Code: GCW-AI—Supplier/Purchaser Relationship.

FACTS

Doric Petroleum Corp. ("Doric"), formerly Federal Petroleum, Inc., is a producer of crude oil and gas and also owns and operates three natural gas processing plants. Doric is a wholly-owned subsidiary of Doric Corp. Koch Oil Co. ("Koch") is an operating division of Koch Industries, Inc. and is a refiner.

On August 24, 1973, Doric (then doing business as Federal Petroleum, Inc.) accepted Koch's standard purchase orders of June 26, 1973 for the total plant production of HD 5 Propane (subject to allocation under 10 CFR Part 211, Subpart D) and No. 32 R.V.P. Natural Gasoline (subject to allocation under 10 CFR Part 211, Subpart E) of Doric's Newcastle, Okla. natural gas processing plant. That plant, which was under construction at the time of Koch's orders, commenced deliveries of product to Koch in October 1973 pursuant to those purchase orders.

Effective March 1, 1976, Doric advised Koch that it would no longer sell No. 32 R.V.P. Natural Gasoline to Koch, even though sales of HD 5 Propane would continue.

All of the No. 32 R.V.P. Natural Gasoline Koch purchased from Doric is used within Koch's refining operations. At no time prior to October 1973 did Koch make purchases of No. 32 R.V.P. Natural Gasoline from Doric.

ISSUE

Whether a supplier/purchaser relationship as defined in 10 CFR 211.9 was established between Koch and Doric resulting from Koch's purchases of butane and natural gasoline from Doric from October 1973 to March 1976.

INTERPRETATION

For the reasons set forth below, it has been concluded that no supplier/purchaser relationship, as that term is used in 10 CFR 211.9, exists between Koch and Doric arising out of Koch's purchases of No. 32 R.V.P. Natural Gasoline from Doric from October 1973 to March 1976.

No. 32 R.V.P. Natural Gasoline is a product which meets the DOE regulatory definition of natural gasoline, an allocated product. Special allocation provisions for butane and natural gasoline are found in 10 CFR, Part 211, Subpart E. As defined in 10 CFR 211.92, the base period for butane and natural gasoline is the calendar quarter during the period April 1, 1972 through March 31, 1973 which corresponds to the present calendar quarter. Koch purchased butane and natural gasoline from firms other than Doric during the base period and all transactions between Doric and Koch were subsequent to the base period.

Koch stipulates that all of the product purchased from Doric is consumed within its refining operations. Koch contends that in its capacity as a wholesale purchaser-consumer* as defined in 10 CFR 211.51 a supplier/purchaser relationship exists between it and Doric based upon 10 CFR 211.12(e)(5) which states:

"Any purchaser which is assigned to or accepted by a supplier under the provisions of this paragraph (211.12(e)(1) relating to mutual arrangements) shall be accepted by the supplier for the duration of the program or until otherwise directed by FEA."

Although 10 CFR 211.9-13 generally governs butane and natural gasoline supplier/purchaser relationships, 10 CFR 211.96(b) of Subpart E states that the provisions of 10 CFR 211.12(e)(1) concerning mutual arrangements between new wholesale purchaser-consumers and suppliers shall not apply to butane and natural gasoline and, further, that new wholesale purchaser-consumers must apply to the Federal Energy Administration (now Department of Energy) national office for an assignment pursuant to 10 CFR 211.12(e)(3) in order to establish a supplier/purchaser relationship and a base period volume. Koch neither requested nor was issued assignment orders which established a base period volume and a supplier/purchaser relationship between Koch and Doric.

Koch admits that it has base period suppliers of natural gasoline and butane. Koch states that it processes and resells the product purchased from these base period suppliers. Thus, Koch may not be viewed as a wholesale purchaser-reseller pursuant to 10 CFR 211.51 since that definition of a wholesale purchaser-reseller does not include a firm which substantially changes the form of the allocated product. However, if some of the allocated product is resold without substantial change of form by Koch, the firm would qualify as a wholesale purchaser-reseller. In this context Koch can be said to have dual capacities under DOE regulations. Section 211.9(e) provides that:

"Dual capacities. * * * a wholesale purchaser-consumer may also be a wholesale purchaser-reseller. A firm which is acting in one or more different capacities shall comply with the appropriate regulations governing each capacity in which it acts."

Even if Koch can qualify as a wholesale purchaser/reseller, it may not enforce a supply relationship with Doric which began after the base period. The provisions of § 211.12(e) which apply to new wholesale purchaser/resellers apply only to those wholesale purchaser/resellers which do not have base period suppliers and wholesale purchaser/resellers whose base period suppliers are unable to supply them with sufficient product. Because Koch has base period suppliers and has not alleged an inability to obtain sufficient product from them, it may not rely on § 211.12(e) as providing the basis for a supplier-purchaser relationship with Doric.

Accordingly, regardless of the capacity in which Koch operates, i.e. either wholesale purchaser/consumer or wholesale purchaser/reseller, it can not establish, pursuant to § 211.9, a supplier/purchaser relationship with Doric.

INTERPRETATION 1977-50

To: The Independent Oil Compounders Association.
Date: December 21, 1977.
Rule Interpreted: § 212.31.
Code: GCW-PI— Covered Products.

FACTS

The Independent Oil Compounders Association (IOCA) is a trade association representing independent firms (independent compounders) which purchase, blend, compound and/or resell refined lubricating oils (finished lubricants). For purposes of this Interpretation, independent compounders are those firms which: (1) Have less than $75 million in annual sales of finished lubricants; (2) are neither owned nor controlled by a firm which is a producer or refiner of crude oil and which also refines lubricant base oil stocks; and (3) blend or compound lubricant base oil stocks purchased from crude oil refineries to produce finished lubricants, repackage and resell lubricants previously finished by crude oil refineries, or simply resell such previously finished lubricants without repackaging them.

From the inception of the Mandatory Petroleum Price Regulations to April 3, 1974, "covered products" were defined by refer-

*It should be noted that Koch, as a refiner, is a supplier as that term is used in 10 CFR 211.51. However, 10 CFR 211.9(e) expressly allows a supplier to "act in the capacity of a wholesale purchaser and an end-user."

ence to the Standard Industrial Classification Manual (SIC Manual). 39 FR 1924 (January 15, 1974), codified in 10 CFR 212.31. On April 3, 1974, however, reference to the SIC Manual was deleted from the Mandatory Petroleum Price Regulations, and covered products were redefined as "crude oil, residual fuel oil and refined petroleum products." 39 FR 12353 (April 5, 1974).

In its submission, IOCA argues that the use of the SIC Manual prior to April 3, 1974, implies that those finished lubricants which independent compounders blended or compounded from lubricant base oil stocks were not covered products during that period of time. IOCA notes that lubricants previously finished by refineries were clearly covered products under the SIC Manual definition, and further concedes that the definition of covered products used after April 3, 1974, included both lubricants finished by independent compounders and lubricants previously finished by refineries. However, IOCA maintains that because of the anomaly which it perceives in the definition of covered products prior to April 3, 1974, the Mandatory Petroleum Price Regulations have not consistently applied to all independent compounders.

IOCA also states that non-product costs comprise a greater part of the total costs of finished lubricants than is the case for other refined petroleum products, and that independent compounders have, therefore, been unable to pass through adequate amounts of these non-product costs. As a result, IOCA contends that the application of the price rules of the Mandatory Petroleum Price Regulations works an undue hardship upon independent compounders. In its request for Interpretation, IOCA proposes a separate price rule, to be applied retroactively, which would alleviate this alleged hardship.

ISSUE

Were independent compounders of finished lubricants subject to the Mandatory Petroleum Price Regulations prior to April 3, 1974, for sales of finished lubricants which they produced by blending and compounding lubricant base oil stocks?

INTERPRETATION

For the reasons set forth below, it has been determined that the Mandatory Petroleum Price Regulations applied to the sale of all finished lubricants by independent compounders prior to April 3, 1974, and consistently applied to all such sales until the exemption of finished lubricants and lubricant base oil stocks from the Mandatory Petroleum Price Regulations on September 1, 1976.[7]

In Section 4(a) of the Emergency Petroleum Allocation Act of 1973 (the EPAA), Pub. L. No. 93-159, Congress directed the promulgation of mandatory allocation and price regulations for "crude oil, residual fuel oil, and each refined petroleum product. * * * The latter were defined in Section 3(5) of the EPAA as "gasoline, kerosene, distillates (including Number 2 fuel oil), LPG, *refined lubricating oils* or diesel fuel" (emphasis supplied).

In the Mandatory Petroleum Price Regulations, promulgated pursuant to the EPAA, covered products were defined as "product[s] described in the 1972 edition, Standard Industrial Classification Manual, Industry Code 1311 (except natural gas), 1321, or 2911." 39 FR 1924 (January 15, 1974). Use of the SIC Manual followed the approach which had been taken by the Cost of Living Council under the Economic Stabilization Act of 1970, Pub. L. 92-210.[8] See 38 FR 22536 (August 22, 1973).

Industry Code 2911, which governs petroleum refining, describes, inter alia, the following products:

* * * * *

Greases: Lubricating, produced in petroleum refineries.

* * * * *

Oils: Fuel, lubricating, and illuminating—produced in petroleum refineries.
Oils, partly refined: Sold for rerunning—produced in refineries.

* * * * *

As IOCA points out in its request, a separate Industry Code, No. 2992, governs "[e]stablishments primarily engaged in blending, compounding, and refining lubricating oils and greases * * *." IOCA's conclusion, however, that this separate classification means that finished lubricants blended and compounded by independent compounders were not covered prior to April 3, 1974, is erroneous. To reach such a conclusion, IOCA must rely upon the difference in the process by which the finished lubricants are produced, since that difference is the basis of the separate SIC Manual classifications.

The pre-April 3, 1974, definition of covered products, however, was not concerned with the process by which a product was produced. Rather, the definition simply applied the Mandatory Petroleum Price Regulations to any "product *described*" in the relevant portions of the SIC Manual (emphasis supplied). Lubricating greases, oils, and partly refined oils were all described in Industry Code 2911, and were, therefore, covered products when sold by crude oil refineries to independent compounders. Because the reseller price rule set forth in 10 CFR Part 212, Subpart F, "applies to each sale of a covered product * * * by resellers, reseller-retailers, and retailers * * *," 10 CFR 212.91, sales of lubricants blended and compounded by independent compounders from lubricant base oil stocks were sales of covered products prior to April 3, 1974.[9]

It should be noted that this Interpretation does not address the question of whether the process of blending and compounding lubricant base oil stocks is one which "blends and substantially changes covered products," thus subjecting an independent compounder using that process to the refiner price rule, 10 CFR Part 212, Subpart E, rather than the reseller price rule.

It is apparent that the analysis which IOCA advances would lead to an incongruous regulatory result, as pre-April 1974 lubricants produced by refineries would be treated as covered products, while identical products blended and compounded by independent compounders would be exempted from regulation. For the reasons outlined herein, it is clear that the Mandatory Petroleum Price Regulations cannot be construed to permit such a result.

Moreover, the Department of Energy (DOE) has never intended the use of the SIC Manual to be interpreted as limiting the scope of the Mandatory Petroleum Price Regulations. Indeed, in the preamble promulgating the April 3, 1974, amended definition of covered products, the Federal Energy Office (FEO), a predecessor agency to the DOE, noted that the definition was merely being changed to "conform to the substances over which [the FEO] has price regulation authority under the Allocation Act. Therefore, 'covered products' is now defined to mean crude oil, residual fuel oil, and refined petroleum products." 39 FR at 12354 (April 5, 1974). It is clear from the preamble that the FEO did not view this amendment as a substantive change expanding the scope of the Mandatory Petroleum Price Regulations to include, for the first time, finished lubricants blended and compounded by independent compounders.

The fact that all finished lubricants were always subject to the Mandatory Petroleum Price Regulations was again emphasized by the Federal Energy Administration (FEA), successor agency to the FEO, in the preamble to a later amendment to 10 CFR 212.31, which further clarified the definition of covered products. 40 FR 2795 (January 16, 1975). In that preamble, the FEA stated:

"With respect to 'covered products' (i.e., those products which are subject to FEA price regulations), the intent of the FEO, and now the FEA, has always been to exercise its regulatory authority under the Emergency Petroleum Allocation Act of 1973 (Pub. L. No. 93-159), with respect to all products that are subject to that Act. Previous definitions of 'covered products', as set forth in the Mandatory Petroleum Price Regulations, were in no way intended to restrict the scope of the price regulations to anything less than all the products subject to the Act."

Thus the lubricants blended and compounded by independent compounders, clearly "refined lubricating oils" as specified in Section 3(5) of the EPAA, were consistently included in the definition of covered products for purposes of the Mandatory Petroleum Price Regulations from the inception of those regulations to September 1, 1976. Viewed in this light, it is readily apparent that IOCA has failed to substantiate its contention that the Mandatory Petroleum Price Regulations were inconsistently applied to independent compounders of lubricating oils.

In addition, it would also be useful to analyze the underlying premise of IOCA's position, that is, that the FEA could, by its definition of covered products, exempt from control a product for which the EPAA mandated regulation. The EPAA required the

[7] Refined lubricants and lubricant base oils stocks were deleted from the definition of covered products effective September 1, 1976, in 41 FR 30096 (July 22, 1976) and are, therefore, not presently subject to the Mandatory Petroleum Price Regulations.

[8] The Economic Stabilization Act of 1970 was, in relevant part, incorporated by reference into the Emergency Petroleum Allocation Act of 1973, Pub. L. No. 93-159.

[9] The fact that independent compounders blended and compounded the covered products they purchased from refineries to produce finished lubricants did not remove those finished lubricants from covered product status. As the definition of covered products points out, "[a] blend [of] two or more particular covered products is considered to be that particular covered product constituting the major proportion of the blend." 10 CFR 212.31. Because independent compounders blended and compounded various lubricant base oil stocks—all of which were clearly covered products—the resultant finished lubricant remained a covered product and, therefore, remained subject to the Mandatory Petroleum Price Regulations.

imposition of price and allocation regulations for all refined lubricating oils. Congress could have exempted or even have granted the FEA discretionary authority over independent compounders or the products they produce. However, Congress did not choose to do so, either expressly or implicitly.[10] As a result, the FEA was under a non-discretionary duty to include all refined lubricating oils among those products covered by the Mandatory Petroleum Price Regulations. Regardless of the definition of covered products set forth in the Mandatory Petroleum Price Regulatons, therefore, refined lubricating oils were subject to those regulations by the terms of the EPAA.

The effect of a possible regulatory oversight in interpreting the mandatory provisions of the EPAA was considered in *Skelly Oil Company* v. *FEA*, —— F. Supp. —— (C.A. No. 76-C-238-C, N.D. Okla., Sept. 8, 1977). In *Skelly*, the court rejected the contention that an inadvertent omission of "solvents" from the regulatory definition of covered products could have the effect of decontrolling that product. The court found that the solvents in question were among the products specified in the EPAA, and ruled that:

"Because solvents are within the scope of the EPAA, the FEO and FEA had the non-discretionary duty to include them in their defintions of 'covered products' * * *. It is clear that solvents remained, as a matter of law, 'covered products' between April 5, 1974 and January 16, 1975."

Slip op. at 10.

IOCA has also requested that a separate, retroactive price rule be devised for independent compounders, ostensibly because of claimed hardship resulting from the inability of such compounders to pass through adequate amounts of nonproduct costs. Such considerations, however, are not properly raised in a request for Interpretation. In 10 CFR Part 205, Subpart D, the Department of Energy has established "procedures for applying for an exception from a regulation, ruling or generally applicable requirement based upon an assertion of serious hardship or gross inequity * * *." 10 CFR 205.50. Such an application for exception is the only means by which independent compounders may seek special treatment upon grounds of hardship or inequity.

INTERPRETATION 1977-51

To: Webber Tanks, Inc.
Date: December 21, 1977.
Rules Interpreted: § 212.92, Rulings 1975-1, 1975-9, 1975-10.
Code: GCW-PI—Transportation Cost to Reseller/Retailer Inventory.

FACTS

1. Webber Tanks, Inc. ("Webber") is an independent reseller-retailer of No. 2 heating oil and other middle distillates. Prior to exemption of middle distillates from price controls effective July 1, 1976, sales of middle distillates by Webber were subject to the price control regulations in 10 CFR Part 212, Subpart F (§§ 212.91-212.93). It is understood that the facts in this case, although generally expressed and discussed in the present tense, are equally applicable to the period prior to July 1, 1976, to which Webber's request for interpretation relates.

2. Webber receives shipments of middle distillates ("product") at two water terminals. The first terminal is located at Bucksport, Maine, at the mouth of Penobscot Bay. The second terminal is located approximately 15 miles north of Bucksport on the Penobscot River at Brewer, Maine.

3. Because there is no deep-water port at Brewer, the ocean-going tankers which call at the Bucksport terminal off-load at Bucksport the product destined for the Brewer terminal as well as the product intended for distribution and sale from the Bucksport terminal.

4. An estimated 6-10 percent of the product destined for the Brewer terminal ("Brewer") is transferred directly from the tanker to waiting barges and lightered upriver to Brewer. The degree to which such direct transshipment is utilized depends upon the availability of barges at the time of arrival of a tanker at the Bucksport terminal ("Bucksport") and the availability of storage space at Brewer at that time to receive the product.

5. The remainder of the product destined for Brewer is pumped from the tanker into Webber's storage tanks at Bucksport where it is held until it can be transshipped to Brewer by barge. The length of time the product is held at Bucksport depends on the availability of barges for transshipment to Brewer and the availability of storage facilities there. On the average, the product is held at Bucksport for about 10 days, but it may be held there for as little as one day or for as much as two weeks.

6. The barges used to transship all products to Brewer are owned and operated by an independent shipping company unaffiliated with Webber. During the heating season, an average of three barges per month transfer product from Bucksport to Brewer.

7. The product held temporarily in storage at Bucksport until transferred to Brewer is not segregated but is commingled in common storage tanks with other product held in inventory at Bucksport.

ISSUE

When a covered product destined for a second terminal is briefly stored at the terminal of initial reception due in part to circumstances beyond the control of the reseller/retailer, may the transshipment costs associated with the movement of the product from the first terminal to the second terminal be treated as product costs under 10 CFR Part 212, Subpart F?

INTERPRETATION

The question of reseller/retailer transportation costs was the subject of FEA Rulings 1975-1, 1975-9, and 1975-10. These Rulings, insofar as they relate to the facts in this case, essentially provide that transportation charges incurred by the seller in acquiring covered products—i.e., those incurred "in bringing the covered product into the seller's inventory"—are included as "product" costs, whether or not separately incurred; whereas transportation costs associated with subsequent movement of the product to other locations within the firm, or delivery to the firm's customers, are costs of doing business and may be treated only as "non-product" costs.

The distinction between product and non-product costs is significant because increases in product costs may generally be passed through without restriction in the form of price increases, or "banked" for later recoupment if not passed through immediately. §§ 212.93 (a) and (e). Non-product cost increases, on the other hand, generally have been subject to the cents-per-gallon maximums indicated in § 212.93(b).

Webber essentially presents two arguments for the proposition that the increased costs of transshipping product from Bucksport to Brewer are product cost increases under Rulings 1975-1, 1975-9, and 1975-10. The first is that under these Rulings transportation costs associated with moving product from a bulk plant or terminal to a retail outlet is a "cost of doing business" but transportation costs associated with moving product from one terminal to another at the same general level of distribution are not. The second argument is that the product destined for Brewer is not actually placed in Webber's storage and distribution system until it reaches Brewer. It should therefore not be considered received in inventory until it reaches Brewer.

Webber's first argument is not consistent with applicable rulings. It is true that Ruling 1975-9 characterizes the cost of transporting product from a firm's "bulk plant to its retail outlets" as a cost of doing business. However, this statement is merely illustrative and does not constitute the only type of internal transshipment costs which are non-product costs. This is shown by the statement in Ruling 1975-10 that costs of transporting product from a terminal directly to a customer "or to other selling locations" are costs of doing business. This is also shown by statements made by FEA in the preamble to regulation amendments which permitted the use of "separate inventories" under certain conditions effective May 1, 1976, in computing product cost increases. FEA stated that the amendments included a provision which made it clear that "transportation costs may be included as a cost of product only up to the point at which the product was first received in inventory." FEA also stated in this connection that Rulings 1975-1, 1975-9, and 1975-10 "remain[ed] unaltered" by adoption of those amendments. 41 FR 11910, May 10, 1976.

The essence of the cited Rulings is that transportation costs associated with acquiring covered products are product costs. All subsequent transportation costs incurred in moving product, regardless of level of distribution, are costs of doing business (non-product costs) unless specifically provided otherwise under those rulings.

Webber's second argument appears to relate, in part, to an aspect of Ruling 1975-9 which is inapplicable here. Ruling 1975-9 permitted an exception, in effect, to the general rules described above concerning transportation costs. That Ruling allowed as product costs, the costs associated with movement of product through a distribution system (such as an underground propane storage facility or a propane pipeline) that is "used in common" with other firms to distribute product to various firms operating at the same level of distribution as the buying

[10] Under the terms of Section 12 the EPAA, a product subject to the Act can be exempted from control only after the President transmits a proposed amendment of the Mandatory Petroleum allocation and Price Regulations to Congress and Congress agrees with such deregulation. This, of course, was not done for refined lubricating oils until September 1, 1976. See note 1, supra.

firm, even if the buying firm owned that common distribution system or took title to the product when it first entered that system. The ruling therefore referred to arrival of the product into storage that constitutes a part of the buying firm's own product "storage and distribution system" as the point at which transportation costs as product costs ended. Ruling 1975-9 does not extend, however, to distribution systems used to move product from one location to another after it has once been received into the buying firm's storage and distribution system.

Webber's second argument appears to rest, in part, on the view that when product destined for a second terminal is briefly stored at the initial place of reception due to circumstances beyond the control of the purchaser-reseller, all of the transportation costs to the second terminal may be treated as product costs. However, even if storage at Bucksport lasts for only a brief period and is due to circumstances beyond the control of Webber, and even though distribution is to a predetermined location which is also a Webber distribution terminal, the fact remains that most of the product destined for Brewer does in fact enter Webber's storage and distribution system when it arrives at Bucksport. Subsequent transshipment costs are therefore non-product costs. While unusual circumstances may form the basis for a request for exception from applicable regulations, they cannot serve to modify regulations and rulings which plainly require all internal transshipment cost to be treated as non-product costs.

This conclusion does not apply to product which is directly transferred to barges and transshipped to Brewer without being held in inventory at Bucksport, since under the facts presented Brewer is the terminal of first reception in such cases. Increased costs of shipment by barge to Brewer in such cases may be treated as increased product costs in the same manner as any other increased costs of bringing product into inventory.

Analysis of certain other considerations indicates the soundness of the rule requiring internal transshipment costs to be treated as non-product costs and the inappropriateness of an interpretation in the present case which would qualify that rule. Among such considerations is the fact that the storage at Bucksport is not due entirely to circumstances beyond the control of Webber. Product is temporarily stored at Bucksport, in part, for reasons of convenience and economy to Webber. The facts indicate that both the amount of product which is directly transshipped to Brewer and the length of time other product is held in inventory at Bucksport before transshipment depend, in part, upon whether and when Brewer is able to receive the product. In other words, if Brewer has a full inventory at a given point in time, the product in storage at Bucksport or the product being off-loaded from a tanker at Bucksport must remain at Bucksport until there is space available at Brewer. This would be true regardless of the non-availability of barges for transshipment of product to Brewer at a given point in time and it would also be true even if Brewer were accessible to tankers.

In addition, the question of the extent to which product "destined" for Brewer remains identifiable as such and fixed in terms of volume, from the time of arrival of the tanker at Bucksport until transshipment to brewer up to two weeks later, bears examination. Because the product "destined" for Brewer is commingled with other Webber inventory in common storage tanks at Bucksport, and because the seasonal demand for No. 2 heating oil varies widely depending upon changing winter weather patterns, it does not appear realistic to view the product eventually transshipped to Brewer as consisting of a separate and distinct inventory of predetermined volume from the time of arrival of the tanker at Bucksport. It appears more appropriate to view the product destined for Brewer from the common storage tanks at Bucksport as an indeterminate amount of indistinguishable product whose volume may vary according to changing demand levels at Brewer.

These considerations suggest that the product distribution relationship between the two Webber terminals is in significant respects essentially similar to that between any typical primary and secondary terminal where the ultimate destination of the product (or some quantity thereof) was always the secondary terminal, and that increased transportation costs between the terminals therefore appropriately fall within the category of operating (non-product) cost increases.

In response to a request for specific information concerning the manner in which product is or becomes "destined" for Brewer, representatives of Webber advised that: (1) The amount to be sent to Brewer is clear because it is determined according to what will be necessary to meet supply commitments in the area served by Brewer, and (2) Webber's records clearly show the quantity of oil which will be transshipped at any given time to Brewer. Although these statements were offered to show that the volume of product to be transferred to Brewer is determinable rather than indefinite, the statements do not deny the likelihood that volumes initially designated for Brewer are sometimes increased or decreased prior to actual transshipment to reflect depletion of supplies at Brewer at rates higher or lower than anticipated.

Even if such volumetric fluctuations do not occur, however, the facts show that the mix between direct and deferred transshipment and the length of time product destined for Brewer is held at Bucksport depend, in part, upon space availability at Brewer. This means that the temporary storage of product at Bucksport is in some degree a matter of convenience and economy to the reseller, and that costs relating thereto are appropriately deemed costs of doing business.

INTERPRETATION 1977-52

To: Exxon Co., U.S.A.
Date: December 21, 1977.
Rules Interpreted: §§ 212.72, 212.131.
Code: GCW-PI—Certification of new and released crude oil.

FACTS

Exxon Co., U.S.A. (Exxon), is the sole purchaser of crude oil produced from the St. Juste Webre lease (the lease) in St. Martin Parish, La. Vernon R. Faulconer (Faulconer) holds a majority interest in the lease, and is also the operator of the lease. In April 1975, Faulconer certified certain crude oil produced from the lease, which had previously been purchased by Exxon as old crude oil, as new and released crude oil.[11] Along with this certification, Faulconer billed Exxon retroactively for the difference between the old crude oil price Exxon had paid Faulconer for crude oil produced between September 1, 1973, and April 1975, and the amount Exxon would have paid had Faulconer certified certain amounts of that crude oil as new and released crude oil.

Exxon paid Faulconer new and released crude oil prices for the crude oil produced after February 1, 1975, but refused to pay a retroactive price increase to Faulconer for the crude oil produced between September 1, 1973, and February 1, 1975. As a result of Exxon's refusal to accept Faulconer's retroactive certification of new and released crude oil, Faulconer filed a civil action against Exxon in the U.S. District Court for the Eastern District of Texas. Faulconer sought to recover the difference in price that Exxon would have paid for the crude oil had it been certified as new and released crude oil at the time Exxon purchased it. In his complaint,[12] Faulconer further asserted that Exxon, as the sole purchaser of crude oil from the lease, "knew or should have known * * * that there was substantial 'new crude petroleum' * * * qualifying for exemptions to the ceiling price and being available for sale at the free market price." Complaint at 4. Exxon filed its request for interpretation as a result of the action filed against it by Faulconer. Exxon served a copy of its request on Faulconer on June 10, 1976. The Department of Energy (DOE) has not received any comment from Faulconer on Exxon's request.

In its request for interpretation, Exxon asks that the DOE determine (1) that pursuant to 10 CFR 212.131, Faulconer had the sole obligation to correctly certify, in a timely manner, the crude oil he produced as new and released crude oil in order to receive a price in excess of the ceiling price for old crude oil, and (2) that 10 CFR 212.72, as amended in March 1975, precluded Exxon from paying Faulconer an increased price for crude oil which was not timely certified as new and released crude oil.

ISSUE

Could Faulconer in April 1975 retroactively certify crude oil produced between September 1, 1973, and February 1, 1975, as new and released crude oil?

INTERPRETATION

For the reasons set forth below, the DOE has determined that Faulconer could not in April 1975 retroactively certify crude oil produced between September 1, 1973, and February 1, 1975, as new and released crude oil.

Faulconer is a producer of crude oil as defined in 10 CFR 212.31. As such, § 212.131 of the mandatory petroleum price regulations places upon him a continuing, affirmative obligation to correctly certify to a purchaser the nature of the crude oil he produces from the lease. At the time here relevant, 10 CFR 212.131(a)(1): *Provided*, That:

Each *producer* of domestic crude petroleum shall, with respect to a first sale of domestic crude petroleum, certify in writing to the purchaser: (i) the ceiling price of that domestic crude oil, (ii) the amount of strip-

[11] Apparently, Faulconer had not certified the crude oil he produced at the time it was sold to Exxon.

[12] Civil Action TY-75-226-C (E.D. Texas, filed July 31, 1975). A copy of Faulconer's complaint was submitted by Exxon as an attachment to its interpretation request.

per well crude petroleum, (iii) the amount of new crude petroleum, (iv) the amount of released crude petroleum, and (v) the amount of old crude petroleum * * *.

39 FR 42246 (November 29, 1974) [emphasis supplied].

Thus, as a producer of crude oil, it was Faulconer's obligation to certify the crude oil he produced and sold to Exxon as old, new, or released crude oil. Although Exxon was the sole purchaser of the crude oil produced from the lease, it had no obligation under the mandatory petroleum price regulations to inform Faulconer that certain crude oil could have been certified as new or released crude oil.[13]

On March 23, 1975, the Federal Energy Administration (FEA), a predecessor agency of DOE, proposed certain amendments to the definitions of new and released crude oil. 40 FR 13522 (March 27, 1975). Those proposals were adopted on July 7, 1975, and made retroactive to the March 23, 1975, date of proposal. 40 FR 28447 (July 7, 1975). As part of the revision, the following proviso was added to each definition:

* * * [the new or released crude oil] shall not include any number of barrels not certified as such pursuant to the provisions of § 212.131(a)(1) within the consecutive two-month period immediately succeeding the month in which the crude oil is produced and sold, except where such recertification is required or permitted by FEA order, interpretation, or ruling.

In addition, 10 CFR 212.74, which permitted new and released crude oil to be sold without reference to the ceiling price, was also amended to prohibit retroactive increases in prices by the addition of the following language:

* * * no producer may charge or accept a retroactive increase in price for new crude oil and released crude oil as defined in § 212.72 of this part.

40 FR 28447 (July 7, 1975).

The rationale for adopting the "60-day rule" in the amended definitions of new and released crude oil was set forth in detail in the preamble to the proposed amendments. 40 FR 13522 (March 27, 1975). The preamble stated:

* * * The purpose of this notice is to propose amendments to the regulations (effective today, if adopted) to limit the extent to which prices for or amounts of new and released domestic crude petroleum may be retroactively increased through retroactive invoices. In specific cases that have been brought to the attention of the FEA, such retroactive invoicing has covered periods of up to eighteen months and significant volumes of crude oil. Such retroactive invoicing takes place * * * through retroactive recertification of volumes of new and released crude petroleum included in previous transactions * * *.

* * * [R]etroactive invoicing may tend to have an adverse effect on * * * refiners * * *. Resellers of domestic crude petroleum may also be adversely affected. In either case, if the purchasers to whom refined petroleum products or crude oil have already been sold by refiners or resellers which receive retroactive price increases are unwilling, in turn, to increase retroactively the prices they have paid, the refiners or resellers which receive retroactive price increases are in the position of having increased costs for crude oil which can be recovered, if at all, only in prices charged in subsequent sales. In any event, the retroactively invoiced prices are costs incurred currently with respect to crude petroleum received and refined or resold in preceding months, which costs should more properly have been incurred in the months when the crude oil was purchased or landed and passed through in the following months.

* * * * *

The FEA proposes, therefore, to amend the definitions of "new crude petroleum" and "released crude petroleum" in § 212.72 to exclude those volumes that are not certified as new and released crude petroleum within the two-month period immediately following the month in which the petroleum is produced and sold. * * * [T]his means that all volumes not certified as new and released crude petroleum within the two-month period following the month in which they were produced and sold would therefore be old crude petroleum. This amendment should remove any incentive to unduly delay certification of volumes, as any volumes which became old crude petroleum by delay in certification, as provided by the proposed regulation, would then be subject to the ceiling price rule of § 212.73.

The FEA also proposes to amend § 212.74 to prohibit any producer from charging or accepting a retroactive increase in the price of new or released domestic crude petroleum. This amendment is intended to address * * * the situation where the producer initiates a retroactive increase in price * * *.

These two proposed amendments, taken together, should operate to bring the incurrence of costs more closely into line with the time of purchase of domestic crude petroleum and should lead to increased price stability and reliability.

The purpose of these amendments, then, was to end the practice of unduly late certification (as new and released crude oil) of crude oil previously sold at old crude oil prices, and thus to limit the obvious disruption such certification would bring to refiners' and resellers' pricing of covered products. This was further emphasized in the preamble promulgating the final amendments. That preamble provided:

Therefore, any volumes of crude oil, other than stripper well crude oil, produced and sold prior to January 1975 and not certified as new or released crude oil prior to March 23, 1975, are volumes of old crude oil and must be invoiced at the ceiling price. All volumes produced and sold in January 1975 must have been certified by the end of March 1975 or else have failed to qualify as new or released crude petroleum.

40 FR 28447 (July 7, 1975).

Thus, the amendments expressly prohibited a producer of crude oil which was produced and sold prior to January 1975 from certifying (or recertifying) that crude oil as new or released crude oil and retroactively charging the purchaser the higher, uncontrolled price for that crude oil. See Interpretation 1977-33, 42 FR 46274 (September 15, 1977).

In the instant case, Faulconer attempted to retroactively certify in April 1975 crude oil produced between September 1973 and February 1975. That certification was governed by the above-mentioned amendments to the mandatory petroleum price regulations, which were effective as of March 23, 1975. Exxon, therefore, properly applied the "60-day rule" set forth in § 212.72 to Faulconer's certification, and correctly refused to pay the higher prices for crude oil produced and sold before February 1, 1975. Thus, Faulconer's failure to correctly certify the crude oil he produced between September 1, 1973, and February 1, 1975, constitutes a bar to the certification he now seeks unless "permitted by FEA order, interpretation or ruling." 10 CFR 212.72. In light of this interpretation, Faulconer's only recourse would be to submit a request for an exception pursuant to 10 CFR Part 205, Subpart D. See, e.g., *Perrault Production Co.*, 5 FEA ¶ 80,622 (May 6, 1977); *Rancho Oil Co.*, 4 FEA ¶ 83,143 (October 8, 1976).

INTERPRETATION 1977-53

To: Union Oil Co. of California.
Date: December 21, 1977.
Rules Interpreted: §§ 212.31, 212.83.
Code: GCW-PI—Refiner Price Rule—Price Increase.

FACTS

Union Oil Co. of California (Union) is a "refiner" as that term is defined in the mandatory petroleum price regulations, 10 CFR 212.31, and, as such, must compute its current lawful prices for covered products pursuant to the refiner price rule, 10 CFR Part 212, Subpart E.

On May 15, 1973, Union refined two grades of motor gasoline at its Chicago refinery. These two grades of motor gasoline were designed as "regular" and "premium," and were characterized, in part, by "octane numbers" of 90.6 and 96.9, respectively. Union sold each grade of gasoline at a different price on May 15, 1973.

On May 18, 1973, Union reduced by one number the Octane numbers of the two grades of motor gasoline refined at its Chicago refinery. Union estimates that this reduction in the octane numbers of the two grades of motor gasoline has resulted in savings of approximately $1.4 million annually. Union did not, however, lower the prices it charged for the motor gasoline as a result of the octane reduction.

Union concedes that it is a "technical violation" of the mandatory petroleum price regulations to fail to lower the prices charged for the lower octane gasoline. In its request for interpretation to the Department of Energy (DOE), however, Union

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[13] In "Clarifications to Mandatory Petroleum Price Regulations Applicable to Domestic Crude Oil," 41 FR 36172 (August 26, 1976), the Federal Energy Administration (FEA) stated that:

* * * [I]t should be noted that it has been the practice among many purchasers and producers for the purchaser to prepare the certification and send it to the producer for completion and authentication and return to the purchaser. FEA has no objections to this practice to the extent that it permits any large purchaser to help to relieve the certification burdens of a small producer. *However, the certification responsibility must in every case rest ultimately with the producer.*

Id. at 36183 [emphasis supplied].

This principle was applied to an argument similar to that made by Faulconer in Interpretation 1977-33, 42 FR 46274 (September 15, 1977). There, a crude oil producer contended that the purchaser, a large oil company, should "share" the burden of certification compliance. In rejecting that contention, the FEA found that "[t]he regulations * * * explicitly require certification by the producer." Id. at 46275.

seeks an interpretation that the mandatory petroleum price regulations allow an increase in the sales price of motor gasoline to reflect a rise in the octane level. Union therefore requests that the DOE determine that the mandatory petroleum price regulations authorize higher prices to be charged for products of increased quality, just as they require lower prices for products of reduced quality.

ISSUE

Do the mandatory petroleum price regulations authorize an increase in price for a product when the quality of that product is increased?

INTERPRETATION

For the reasons set forth below, it has been determined that the mandatory petroleum price regulations do not authorize an increase in price for a product when the quality of that product has been increased.

The refiner price rule, 10 CFR 212.83, states in relevant part:

A refiner may not charge to any class of purchaser a price for a covered product in excess of the maximum allowable price * * *.

"Maximum allowable price" is defined in 10 CFR 212.82 as:

[T]he weighted average price at which the covered product was lawfully priced in transactions with the class of purchaser concerned on May 15, 1973, computed in accordance with the provisions of § 212.83(a), plus increased product costs and increased non-product costs incurred between the month of measurement and the month of may 1973 * * *.

10 CFR 212.31 defines "price increase" as follows:

'Price increase' means an increase in the unit price of an item or *a decrease in the quality or quantity of substantially the same item.* [Emphasis supplied.]

A reduction in the octane number for motor gasoline is a reduction in the quality of that item, both because most internal combustion engines operating on motor gasoline require fuel of a certain minimum octane level, and because historical prices for motor gasoline have varied in direct relation to its octane content. Thus, since lowering the octane number of motor gasoline is a decrease in the quality of the item, it is a "price increase" under the mandatory petroleum price regulations. Therefore, any reduction by a refiner in the octane number of motor gasoline must be coupled with a corresponding decrease in that refiner's maximum allowable selling price for that product.

Apparently conceding that this analysis is correct, Union asserts that equity requires that the converse must also be correct, that is, that an increase in the octane number of gasoline results in an effective price decrease, and that a corresponding upward adjustment to the refiner's lawful prices must therefore be permitted. There are two problems with Union's position. First, there is no specific provision in the mandatory petroleum price regulations which permits an increase in the quality of an item to be treated as an automatic reduction in the price of that item. In addition, even if such a provision could be implied, the price regulations do not provide a mechanism for upward adjustments to the maximum allowable price of an item to reflect an increase in its quality. Accordingly, DOE concludes that an increase in the octane level of motor gasoline sold by a refiner does not automatically permit an upward adjustment of the refiner's price for that item."

It should be noted in this regard that the provision of § 212.31 defining a reduction in the quality of an item as a price increase is designed primarily to prevent a firm from circumventing DOE's price rules by substituting a lower quality product for one of higher quality historically sold at higher price levels. Given this principal purpose, it does not necessarily follow that the price rules must also permit higher lawful prices to be charged where the quality of the same item is increased, since circumvention of DOE's price rules is not at issue under such circumstances.

The DOE recognizes that other considerations, such as market influences or alternate uses for motor gasoline, may in the future cause Union to increase the quality of motor gasoline by increasing its octane number. While the mandatory petroleum price regulations are not intended to penalize Union for so doing, at present Union's only recourse would be to submit a request for an exception from the mandatory petroleum price regulations in accordance with 10 CFR Part 205, Subpart D.

[FR Doc. 78-544 Filed 1-5-78; 3:36 pm]

"To the extent that an increase in the octane number of motor gasoline causes a refiner to incur increased product and non-product costs, however, application of the formulae set forth in § 212.83 may of course result in a higher maximum allowable price for that product.

[8025-01]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

[Amdt. 6]

PART 124—PROCUREMENT AND TECHNICAL ASSISTANCE

Certificate of Competency Approval Authority

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: SBA is increasing the approval authority for issuance of Certificates of Competency at the Regional Directors' level. This increase is prudent in order to bring the approval authority of the Regional Directors up-to-date with the current price structure.

EFFECTIVE DATE: January 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Harold S. Lang, Office of Procurement and Technical Assistance, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416, 202-653-6582.

SUPPLEMENTARY INFORMATION: Inasmuch as the amendments set forth below are procedural changes, notice of proposed rulemaking and public procedure thereon are not required by Section 553 of Title 5 of the United States Code.

Accordingly, Part 124 of Chapter I of Title 13 of the Code of Federal Regulations is amended by revising § 124.8-16(c) to read as follows:

* * * * *

§ 124.8-16 Issuance.

* * * * *

(c) If the Regional Director's decision is negative, the COC is denied and both the firm and procuring activity are notified. If the Regional Director's decision is affirmative and the procurement is less than $500,000, the Regional Director issues a COC. For procurements in excess of $500,000, if the Regional Director recommends issuance of the Certificate, the Associate Administrator for Procurement Assistance causes a review to be made and either issues or denies the Certificate. * * *

* * * * *

(Catalog of Federal Domestic Assistance Program No. 59.009, Procurement Assistance to Small Business.)

Dated: December 29, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-528 Filed 1-9-78; 8:45 am]

[6320-01]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-1039, Amdt. 7]

PART 298—CLASSIFICATION AND EXEMPTION OF AIR TAXI OPERATORS

Dual Operating Authority

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: On November 9, 1977, Congress amended the Federal Aviation Act to establish a new class of air carriers called "all-cargo air service carriers." These carriers will be authorized by the Board to carry air freight and mail between the various States of the United States and the District of Columbia, between the United States and Puerto Rico or the U.S. Virgin Islands, and between Puerto Rico and the U.S. Virgin Islands. This rule amends part 298 of the Board's regulations, so that these carriers will be authorized to operate both as all-cargo air service carriers and as air taxi operators.

DATES: Effective January 9, 1978; adopted January 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Simon J. Eilenberg, Office of General Counsel, Rules Division, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C., 202-673-5442.

SUPPLEMENTAL INFORMATION: Part 298 of the Board's Economic Regulations (14 CFR Part 298), grants authority to operators of small aircraft to engage in air transportation upon compliance with registration requirements and various other requirements prescribed in that regulation. Thus carriers operating as air taxis under part 298 have for many years been exempted from complying with the act's certification requirements as well as from many of the act's regulatory provisions applying to certificated air carriers. In order to effectuate the Board's intention to grant this "exemption authority" solely to persons who operate small aircraft exclusively, part 298 has contained certain provisions that exclude from the classification of "air taxi operators" any persons who operate large aircraft or who hold any kind of economic authority from the Board.

By a recent amendment to the act,[1] Congress has created a new class of air carriers who are to be authorized to provide "all-cargo air service," utilizing any size aircraft, upon receiving a special type of certificate issued by the Board under section 418 of the act. Holders of certificates under section 418 of the act would thus be disqualified from holding "exemption authority" under the express terms of part 298. Yet, nothing in the legislative history suggests any intention on the part of Congress to preclude section 418 carriers from becoming, or continuing to be, air taxi operators. Indeed, included among those air carriers to whom Congress granted "grandfather" rights to obtain this new type of special certificate are certain air taxi operators who have already been providing all-cargo service. And there certainly appears to be no doubt that Congress intended such "grandfather" rights to a section 418 certificate to be in addition to, rather than instead of, the part 298 exemption authority enjoyed by eligible air taxi operators.

It is therefore necessary to amend part 298, in order to enable air taxi operators who obtain section 418 certificates to retain their part 298 authority. Since this is in the nature of an interpretative amendment of part 298 of the Board's regulations, designed to conform our regulatory treatment of air taxi operators to the clear intention of Congress in enacting section 418, we find that notice and public rulemaking procedures are not necessary. Moreover, it is imperative that this amendment become effective immediately in order to remove any doubt that such dual operating authority as we are here authorizing expressly will be enjoyed by those air taxis who have chosen to exercise their "grandfather" rights to a section 418 certificate.

Accordingly, the Board hereby amends part 298 of its Economic Regulations (14 CFR Part 298) effective January 9, 1978, as set forth below:

1. Amend the Table of Contents to part 298 by adding a new listing after a listing for § 298.4, as follows:

Sec.
298.5 Dual operations—air taxi and all-cargo air service.

2. Amend § 298.2 by adding a new paragraph (e-1) to read as follows:

§ 298.2 Definitions.

* * * * *

(e-1) "All-cargo air service carrier" means an air carrier holding a certificate issued under section 418 of the act.

* * * * *

3. Revise paragraphs (a)(1), (a)(2), and (b) of § 298.3, to read as follows:

§ 298.3 Classification.

(a) * * *

(1) Except as provided in § 298.5, do not directly or indirectly utilize large aircraft in air transportation;

(2) Except as provided in § 298.5, do not hold a certificate of public convenience and necessity or economic authority issued by the Board other than that provided by this part;

* * * * *

(b) Except as provided in § 298.5, a person who does not observe the conditions set forth in paragraph (a) of this section shall not be an air taxi operator within the meaning of this part with respect to any operations conducted while such conditions are not being observed, and during such periods is not entitled to any of the exemptions set forth in this part.

4. Add a new § 298.5, to read as follows:

§ 298.5 Dual operations—air taxi and all-cargo air service.

On or after January 9, 1978, any person having or obtaining authority to operate as an all-cargo air service carrier shall not thereby lose, or be disqualified from obtaining, authority under this part to engage also in operations as an air taxi operator, regardless of the size of aircraft utilized in such all-cargo air service operations. The operations which such person conducts as an air taxi operator shall be subject to the conditions and entitled to the exemptions set forth in this part, and the operations which he conducts as an all-cargo air service carrier shall be subject to the conditions and entitled to the exemptions set forth in part 291 of this chapter.

(Secs. 204(a), 416(b), 418(c), Federal Aviation Act of 1958, as amended, 72 Stat. 743, 771, 91 Stat. 1283, (49 U.S.C. 1324(a), 1386(b), 1388(c)).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-591 Filed 1-9-78; 8:45 am]

[1] Pub. L. 95-163, November 9, 1977.

[1505-01]

Title 21—Food and Drugs

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

[Docket No. 75C-0283]

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

Logwood Extract

Correction

In FR Doc. 77-28798 appearing at page 52393 in the issue for Friday, September 30, 1977, make the following changes in § 73.1410:

1. The first word in the seventh line of the introductory paragraph should read "ophthalmic".

2. The second word in the first line of paragraph (c)(1) should read "quantity".

[4910-22]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER G—ENGINEERING AND TRAFFIC OPERATIONS

PART 630—PRECONSTRUCTION PROCEDURES

Federal Participation in Cost of Disposal of Existing Highway Bridges

AGENCY: Federal Highway Administration, DOT.

ACTION: Rescission of subpart.

SUMMARY: This action rescinds the regulation covering Federal participation in cost of disposal of existing highway bridges. The Federal Highway Administration will allow the State agencies to consider assigning the old bridge materials either to the contractor or to themselves without the requirement of declaring salvage credits to the project.

EFFECTIVE DATE: January 12, 1978.

FOR FURTHER INFORMATION CONTACT:

Herman Carter, Contract Administration Branch, Construction and Maintenance Division, Office of Highway Operations, 202-426-4847; Wilbert Baccus, Office of the Chief Counsel, 202-426-0786, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday.

In consideration of the foregoing, the Federal Highway Administration is amending Chapter I of Title 23, Code of Federal Regulations, Part 630, as follows:

1. The Table of Sections of Subpart F is rescinded in its entirety and reserved.

Sec.

* * * * *

Subpart F—Federal Participation in Cost of Disposal of Existing Highway Bridges

630.601-630.606 [Reserved]

* * * * *

Subpart F [§§ 630.601-630.606 Rescinded and Reserved]

2. Subpart F is rescinded in its entirety and reserved.

(23 U.S.C. 315, 49 CFR 1.48(b)(35).)

Issued on December 29, 1977.

L. P. LAMM,
Executive Director.

[FR Doc. 78-539 Filed 1-9-78; 8:45 am]

[4510-27]

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR

PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

AGENCY: Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document amends the Service Contract Act regulations to correlate them to the changes made by the Fair Labor Standards Amendments of 1977. These amendments reflect the changes in the FLSA minimum rates, and the changes in the crediting of tips to the FLSA minimum rates. The figures in certain examples are changed so that the rates in the examples will be above the minimum. No change in policy is involved.

DATE: These changes are effective January 10, 1978, as they merely conform the regulations to changes in the law made by the Fair Labor Standards Amendments of 1977.

FOR FURTHER INFORMATION CONTACT:

George E. Rivers, Counsel for Contract Labor Standards, General Legal Services, Office of the Solicitor, Room N2464, New Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20210, telephone, 202-523-8303.

SUPPLEMENTARY INFORMATION: Section 2(b)(1) of the Service Contract Act (41 U.S.C. 351(b)(1)) provides in effect that no contractor or subcontractor performing work covered by the Act shall pay his employee less than the minimum rate specified in Section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206(a)(1)). To assist contractors the FLSA minimum rates are stated in the Service Contract Act regulations. Further, the requirements for crediting tips under the FLSA are stated in the Service Contract Act regulations.

This document amends the Service Contract Act regulations to reflect the changes resulting from the Fair Labor Standards Amendments of 1977. It includes changes in minimum rates, changes in the tip requirements and it up-dates certain interpretations so the rates in the examples are above the FLSA minimum rates.

Specifically §§ 4.2 and 4.159 are amended to reflect the increased FLSA minimum rates.

Sections 4.6 and 4.167 are amended to incorporate the new tip requirements.

Sections 4.53 and 4.182 are amended so that the example used in each of these sections will not be on the basis of a sub-minimum rate.

Sections 4.114, 4.150 and 4.160 are amended to delete the reference to the exemption of linen supply contractors.

This document was prepared under the direction and control of Xavier M. Vela, Administrator, Wage and Hour Division.

Title 29 is amended as follows:

1. Section 4.2. of Title 29 is amended to read as follows:

§ 4.2 Payment of minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 under all service contracts.

Section 2(b)(1) of the Service Contract Act of 1965 provides in effect that, regardless of contract amount, no contractor or subcontractor performing work under any Federal contract the principal purpose of which is to furnish services through the use of service employees shall pay any of his employees engaged in such work less than the minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended ($2.65 per hour beginning January 1, 1978, $2.90 per hour beginning January 1, 1979, $3.10 per hour beginning January 1, 1980, and $3.35 per hour after December 31, 1980.

2. Section 4.6 of Title 29 is amended to read as follows:

§ 4.6 Labor Standards clauses for Federal Service Contracts exceeding $2,500.

* * * * *

(n) Notwithstanding any of the clauses in paragraphs (b) through (l) of this section, relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

* * * * *

(2) An employee engaged in an occupation in which he customarily and regularly receives more than $20 a month in tips ($30 a month on and after January 1, 1978) may have the amount of his tips credited by his employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with the regulations in Part 531 of this title: *Provided, however,* That the amount of such credit may not exceed $1.325 per hour beginning January 1, 1978, $1.305 per hour beginning January 1, 1979, $1.24 per hour beginning January 1, 1980 and $1.34 per hour after December 31, 1980. If the employer pays in full cents the $1.325 figure must be rounded down to $1.32 and the $1.305 figure to $1.30.

If the employer rounded the figures upward he would be claiming a credit of a higher percentage than is authorized by law.

3. Section 4.53 of Title 29 is amended to read as follows:

§ 4.53 Cash equivalents.

(a) Fringe benefit obligations may be discharged by paying, in addition to the monetary wage required, a cash amount per hour in lieu of the specified fringe benefits provided such amount is equivalent to the cost of the fringe benefits required. If, for example, an employee's monetary rate under an applicable determination is $3.50 an hour, and the fringe benefits to be furnished are hospitalization benefits costing 10 cents an hour and retirement benefits costing 10 cents an hour, the fringe benefit obligation is discharged if instead of furnishing the required fringe benefits the employer pays the employee, in cash, 20 cents per hour as the cash equivalent of the fringe benefits in addition to the $3.50 per hour required under the applicable wage determination.

(b) The hourly cash equivalent of those fringe benefits which are not listed in the applicable determination in terms of hourly cash amount may be obtained by mathematical computation through the use of pertinent factors such as the monetary wages paid the employee and the hours of work attributable to the period, if any, by which fringe benefits are measured in the determination. If the employee's regular rate of pay is greater than the minimum monetary wage specified in the wage determination and the contract, the former should be used for this computation, and if the fringe benefit determination does not specify any daily or weekly hours of work by which benefits should be measured, a standard 8-hour day and 40-hour week will be considered applicable. The application of these rules in typical situations is illustrated in paragraphs (c), (d), and (e) of this section.

(c) Where fringe benefits are stated as a percentage of the monetary rate, the hourly cash equivalent is determined by multiplying the stated percentage by the employee's regular or basic rate of pay. For example, if the determination calls for a 5 percent pension fund payment, and the employee is paid a monetary rate of $3.50 an hour, or if he earns $3.50 an hour on a piece-work basis in a particular workweek, the cash equivalent of that payment would be 17½ cents an hour.

(d) If the determination lists a particular fringe benefit in such terms as $25 a year, or as $2 a week, the hourly cash equivalent is determined by dividing the amount stated in the determination by the number of working hours to which the amount is attributable. For example, if a determination lists a fringe benefit as "pension—$2 a week," and does not specify weekly hours, the hourly cash equivalent is 5 cents per hour, i.e., $2 divided by 40, the number of standard working hours in a week.

(e) In determining the hourly cash equivalent of those fringe benefits which are not listed in a determination in terms of hourly cash amount, but are stated, for example, as "six paid holidays per year" or "1-week paid vacation," the employee's hourly monetary rate of pay is multipled by the number of hours making up the paid holidays or vacation. Unless the hours contemplated in the fringe benefit are specified in the determination, a standard 8-hour day and 40-hour week will be considered applicable. The total annual cost so determined will be divided by 2,080, the typical number of nonovertime hours in a year of work, to arrive at the hourly cash equivalent. To illustrate, if a particular determination lists as a fringe benefit "six paid holidays per year," and the employee's hourly rate of pay is $3.50, the $3.50 is multiplied by 48 (6 days of 8 hours each) and the result, $168.00, is then divided by 2,080 to arrive at the hourly cash equivalent, $0.0808 an hour. Similarly, where a determination requires 1-week's paid vacation during the year, a computation of this kind for a short term employee who does not receive the vacation with pay would be necessary to determine the cash equivalent payment to which he is entitled for the proprotionate part of the vacation earned during his period of employment.

4. Section 4.114 is amended to read as follows:

§ 4.114 Subcontracts.

(a) *Requirements applicable to subcontractors.* The Act's provisions apply to the performance not only of the contracts entered into with the United States or the District of Columbia which they cover but also to the performance of any subcontract thereunder. The Act and the regulations (§§ 4.6–4.7) require the Government prime contractor to agree that the required labor standards will be observed by his subcontractors as well as by himself, that the prescribed contract clauses relating thereto will be inserted in all subcontracts, and that appropriate sanctions provided under the Act may be invoked against him in the event of any failure to comply. Subcontractors responsible for violation of the contract stipulations are also liable for underpayments of wages which the stipulations require to be paid and are subject to the enforcement provisions of the Act. The payment by subcontractors to their employees, performing work on covered contracts with the Federal Government, of less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206(a)(1)) is expressly prohibited,

* * * * *

5. Section 4.150 is amended to read as follows:

§ 4.150 Employee coverage generally.

The Act, in section 2(b), makes it clear that its provisions apply generally to all employees engaged in performing work on a covered contract entered into by the contractor with the Federal Government, regardless of whether they are his employees or those of any subcontractor under such contract. All employees who, on or after the date of award, are engaged in working on or in connection with the contract, either in performing the specific services called for by its terms or in performing other duties necessary to the performance of the contract, are thus subject to the Act unless a specific exemption (see §§ 4.115 et seq.) is applicable. All such employees must be paid wages at a rate not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206(a)(1)), as amended. Payment of a higher minimum monetary wage and the furnishing of fringe benefits may be required under the contract, pursuant to the provisions of section 2(a) (1), (2), of the Act.

6. Section 4.159 of Title 29 is amended to read as follows:

§ 4.159 General minimum wage.

The Act, in section 2(b)(1), provides generally that no contractor or subcontractor under any Federal contract subject to the Act shall pay any of his employees engaged in performing work on such a contract less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act. Section 2(a)(1) provides that the minimum monetary wage specified in any such contract exceeding $2,500 shall in no case be lower than this Fair Labor Standards Act minimum wage. Section 2(b)(1) is a statutory provision which applies to the contractor or subcontractor without regard to whether it is incorporated in the contract; however, §§ 4.6–4.7 provide for inclusion of its requirements in covered contracts and subcontracts. Because the statutory requirement specifies no fixed monetary wage rate and refers only to the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act, and because its application does not depend on provisions of the contract, any increase in such Fair Labor Standards Act minimum wage during the life of the contract is, on its effective date, also effective to increase the minimum wage payable under section 2(b)(1) to employees engaged in performing work on the contract. The minimum wage rate under section 6(a)(1) of the Fair Labor Standards Act is $2.65 per hour beginning January 1, 1978, $2.90 per hour beginning January 1, 1979, $3.10 per hour beginning January 1, 1980, and $3.35 per hour after December 31, 1980.

7. Section 4.160 of Title 29 is deleted and replaced with the following:

§ 4.160 Effect of section 6(c) of the Fair Labor Standards Act.

Contractors and subcontractors performing work on contracts subject to the Service Contract Act are required to pay all employees, including those employees who are not performing work on or in connection with such contracts, not less than the general minimum wage standard provided in section 6(a)(1) of the Fair Labor Standards Act, as amended (Pub. L. 95-151).

8. Section 4.167 of Title 29 is amended to read as follows:

§ 4.167 Wage payments—medium of payment.

• • • While employment on contracts subject to the Act would not ordinarily involve situations in which service employees would receive tips from third persons, the treatment of tips for wage purposes in the situations where this may occur should be understood. For purposes of this Act, tips may be included in wages in accordance with the regulations under the Fair Labor Standards Act, contained in Part 531. The general rule under that Act is that the amount paid a tipped employee by his employer is deemed to be increased on account of tips by an amount determined by the employer, not in excess of 50 percent of the minimum wage applicable under section 6 of that Act, through December 31, 1978, 45 percent effective January 1, 1979 and 40 percent effective January 1, 1980. In no event shall the sum credited be in excess of the value of tips actually received by the employee. Thus, the tip credit taken by an employer subject to the Service Contract Act may not exceed $1.325 per hour beginning January 1, 1978, $1.305 per hour beginning January 1, 1979, $1.24 per hour beginning January 1, 1980 and $1.34 per hour after December 31, 1980.

If the employer pays in full cents the $1.325 figure must be rounded down to $1.32 and the $1.305 figure to $1.30, in order that the employer will not be crediting more than the permissible percentage.

9. Section 4.182 of Title 29 is amended to read as follows:

§ 4.182 Overtime pay of service employees entitled to fringe benefits.

Reference is made in § 4.180 to the rules prescribed by section 6 of the Act and Subpart B of this part which permit exclusion of certain fringe benefits and equivalents provided pursuant to section 2(a)(2) of the Act from the regular or basic rate of pay when computing overtime compensation of a service employee under the provisions of any other Federal law. As provided in § 4.55 of Subpart B, not only those fringe benefits excludable under section 6 as benefits determined and specified under section 2(a)(2), but also equivalent fringe benefits and cash payments authorized under Subpart B to be furnished in lieu of the specified benefits may be excluded from the regular or basic rate of such an employee. The application of this rule may be illustrated by the following examples:

(a) The A company pays a service employee $4.50 an hour in cash under a wage determination which requires a monetary rate of not less than $4 and a fringe benefit contribution of 50 cents which would qualify for exclusion from the regular rate under section 7(e) of the Fair Labor Standards Act. The contractor pays the 50 cents in cash because he made no contributions for fringe benefits specified in the determination and the contract. Overtime compensation in this case would be computed on a regular or basic rate of $4 an hour.

(b) The B Company has for some time been paying $4.25 an hour to a service employee as his basic cash wage plus 25 cents an hour as a contribution to a welfare and pension plan, which contribution qualifies for exclusion from the regular rate under the Fair Labor Standards Act. For performance of work under a contract subject to the Act a monetary rate of $4 and a fringe benefit contribution of 50 cents (also qualifying for such exclusion) are specified because found to be prevailing for such employees in the locality. The contractor may credit his 25-cent welfare and pension contribution toward the discharge of his fringe benefit obligation under the contract and make an additional contribution of 25 cents for the specified or equivalent fringe benefits or pay the employee an additional 25 cents in cash as authorized in Subpart B of this part. These contributions or equivalent payments may be excluded from the employee's regular rate which remains $4.25, the rate agreed upon as the basic cash wage.

(c) The C company has been paying $4 an hour as its basic cash wage on which the firm has been computing overtime compensation. For performance of work on a contract subject to the Act the same rate of monetary wages and a fringe benefit contribution of 50 cents an hour (qualifying for exclusion from the regular rate under the Fair Labor Standards Act) are specified in accordance with a determination that these are the monetary wages and fringe benefits prevailing for such employees in the locality. The contractor is required to continue to pay at least $4 an hour in monetary wages and at least this amount must be included in the employee's regular or basic rate for overtime purposes under applicable Federal law. His fringe benefit obligation under the contract would be discharged if 50 cents of the contributions for fringe benefits were for the fringe benefits specified in the contract or equivalent benefits as defined in Subpart B of this part. He may exclude such fringe benefit contributions from the regular or basic rate of pay of the service employee in computing overtime pay due. Exclusion of the remainder of the fringe benefit contributions from the regular rate under the Fair Labor Standards Act would depend on whether they are contributions excludable under section 7(e) of that Act.

Signed at Washington, D.C., on this 23d day of December 1977.

XAVIER M. VELA,
Administrator.

[FR Doc. 78-596 Filed 1-9-78; 8:45 am]

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 824-1]

PART 35—STATE AND LOCAL ASSISTANCE

State Public Water System Supervision Program Grants; Technical Amendments

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: These technical amendments to the State Public Water System Supervision Program Grant Regulations are necessary due to the passage of the Safe Drinking Water Act Amendments of 1977. They provide for the award of a State Program Grant to States which did not assume primary enforcement responsibility for public water systems within the State by October 1, 1977, if in the judgment of the Regional Administrator (a) the State is making a diligent effort to assume and maintain primary enforcement responsibility, (b) the State has made significant progress toward assuming and maintaining such primary enforcement responsibility, and (c) there is reason to believe the State will assume primary enforcement responsibility by October 1, 1979.

These amendments also specify the conditions under which the grant award is made. Specifically, the grant will not exceed 75 percent of the allotment which the State would have received if it had assumed and maintained primary enforcement responsibility. The 25 percent of each fiscal year grant award retained by the Administrator will be restored to the State if it assumes primary enforcement responsibility prior to the beginning of the next fiscal year. Otherwise, the retained amounts for each fiscal year will be reallotted by the Administrator.

EFFECTIVE DATE: January 10, 1978.

FOR FURTHER INFORMATION CONTACT:

James F. Manwaring, P.E., Chief, Drinking Water Regulations Implementation Branch, 401 M Street SW., Washington, D.C. 20460, 202-426-3983.

SUPPLEMENTAL INFORMATION: Thus far, 17 States have assumed primary enforcement responsibility. These amendments to the grant regulations will assist those States which have not assumed primary enforcement responsibility by October 1, 1977, to achieve this responsibility on or before October 1, 1979. States with primary enforcement responsibility will receive funds to continue building and improving their State programs.

Dated: January 4, 1978.

BARBARA BLUM,
Acting Administrator.

40 CFR Part 35 is amended as follows:

1. By revising § 35.605-1 (c) and (d) to read as follows:

§ 35.605-1 Notification of allotment and reallotment.

* * * * *

(c) (1) As soon as practicable but in no event later than 180 days prior to the end of the fiscal year, the Administrator will reallot on a national basis among those States which have assumed primary enforcement responsibility and can demonstrate a need for additional funds, all funds unobligated by the Agency except for those funds retained under § 35.613(d) for fiscal years 1978 and 1979, respectively. The unobligated funds will be reallotted to each State eligible to receive national reallocation funds on the basis of each such State's allocation factor compared to the sum of the allocation factors for all such States.

(2) The funds retained under § 35.613(d) and not subsequently awarded prior to the end of each fiscal year will be available for reallotment purposes on a national basis the following fiscal year under § 35.605-1(c)(1).

(d) Except for those funds retained under § 35.613(d), funds remaining unobligated 90 days prior to the end of the fiscal year from funds reallotted under § 35.605-1(c)(1) and other funds made available by reduction of grant amounts shall be made available within the Region for supplementary awards to those States which have assumed primary enforcement responsibility.

2. By revising § 35.613(b), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as follows:

§ 35.613 Limitation on grant award.

* * * * *

(b) No grant may be made to a State for any period beginning more than 12 months after the date of approval of the State's initial grant unless the State has assumed and maintains primary enforcement responsibility for public water systems within the State (see §§ 142.10 through 142.16 of this chapter). This prohibition may be waived by the Regional Administrator through fiscal year 1979, if in his judgement (1) the State is making a diligent effort to assume and maintain primary enforcement responsibility for public water systems within the State; (2) the State has made significant progress toward assuming and maintaining such primary enforcement responsibility; and (3) he has reason to believe that the State will assume such primary enforcement responsibility by October 1, 1979. The State must clearly demonstrate, through submission of the schedule required by § 35.613(c), its efforts, progress, intentions and probability for assuming such primary enforcement responsibility by October 1, 1979.

* * * * *

(d) No grant awarded under the provisions of § 35.613(b) may exceed 75 percent of the allotment which the State would have received for such fiscal year (determined under § 35.605-1) if it had assumed and maintained primary enforcement responsibility. The remaining 25 percent of the amount allotted to the State for such fiscal year shall be retained by the Environmental Protection Agency. The Regional Administrator may award such amount to such State if the State assumes primary enforcement responsibility prior to the beginning of the next fiscal year.

* * * * *

3. By revising § 35.626-2(a) to read as follows:

§ 35.626-2 Regional Administrator's action on grant application.

(a) The Regional Administrator shall notify the State of the approval or disapproval of any application for a grant (1) within 45 days after receipt of such application, or (2) not later than the first day of the fiscal year for which the grant application is made, whichever is later.

* * * * *

[FR Doc. 78-594 Filed 1-9-78; 8:45 am]

[6560-01]

SUBCHAPTER C—AIR PROGRAMS

[FRL 825-1]

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Revision of Reference Method 11

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action revises reference method 11, the method for determining the hydrogen sulfide content of fuel gas streams. The revision is made because EPA found that interferences resulting from the presence of mercaptans in some refinery fuel gases can lead to erroneous test data when the current method is used. This revision eliminates the problem of mercaptan interference and insures the accuracy of the test data.

EFFECTIVE DATE: January 10, 1978.

ADDRESSES: Copies of the comment letters responding to the proposed revision published in the FEDERAL REGISTER on May 23, 1977 (42 FR 26222), and a summary of the comments with EPA's responses are available for public inspection and copying at the U.S. Environmental Protection Agency, Public Information Reference Unit (EPA Library), Room 2922, 401 M Street SW., Washington, D.C. 20460. A copy of the summary of comments and EPA's responses may be obtained by writing the Emission Standards and Engineering Division (MD-13), Environmental Protection Agency, Research Triangle Park, N.C. 27711. When requesting this document, "Comments and Responses Summary: Revision of Reference Method 11," should be specified.

FOR FURTHER INFORMATION CONTACT:

Don R. Goodwin, Director, Emission Standards and Engineering Division, Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone 919-541-5271.

SUPPLEMENTARY INFORMATION: On March 8, 1974, the Environmental Protection Agency promulgated standards of performance limiting emissions of sulfur dioxide from new, modified, and reconstructed fuel gas combustion devices at petroleum refineries. At the same time, reference method 11 was promulgated as the performance test method for measuring H_2S in the fuel gases. It was found after the promulgation of method 11 that interference resulting from the presence of mercaptans in some refinery fuel gases can lead to erroneous test results in those cases where mercaptans were present in significant concentrations.

Following studies of the problems related to reference method 11, it was decided to revise the method and the revision was proposed in the FEDERAL REGISTER on May 23, 1977. The major change in the proposed revision from the original promulgation was a substitution of a new absorbing solution that is essentially free from mercaptan interference. New sections were also added which described the range and sensitivity, interferences, and precision and accuracy of the revision.

There were seven comments received concerning the proposed revision. Five were received from industry, one from a local environmental control agency and one from a research laboratory. None of the comments warranted any significant changes of the proposed revision. The final revision differs from the revision proposed on May 23, 1977, in only one respect: Phenylarsine oxide standard solution has been included as an acceptable titrant in lieu of sodium thiosulfate.

The effective date of this regulation is January 10, 1978, because section 111(b)(1)(B) of the Clean Air Act pro-

vides that standards of performance or revisions of them become effective upon promulgation.

NOTE.—The Environmental Protection Agency has determined that this document does not contain a major proposal requiring preparation of an economic impact analysis under Executive Orders 11821 and 11949 and OMB Circular A-107.

Dated: December 29, 1977.

DOUGLAS M. COSTLE,
Administrator.

Part 60 of Chapter I of Title 40 of the Code of Federal Regulations is amended by revising Method 11 of Appendix A—Reference Methods as follows:

APPENDIX A.—REFERENCE METHODS

* * * * *

METHOD 11—DETERMINATION OF HYDROGEN SULFIDE CONTENT OF FUEL GAS STREAMS IN PETROLEUM REFINERIES

1. *Principle and applicability.* 1.1 *Principle.* Hydrogen sulfide (H_2S) is collected from a source in a series of midget impingers and absorbed in pH 3.0 cadmium sulfate ($CdSO_4$) solution to form cadmium sulfide (CdS). The latter compound is then measured iodometrically. An impinger containing hydrogen peroxide is included to remove SO_2 as an interfering species. This method is a revision of the H_2S method originally published in the FEDERAL REGISTER, Volume 39, No. 47, dated Friday, March 8, 1974.

1.2 *Applicability.* This method is applicable for the determination of the hydrogen sulfide content of fuel gas streams at petroleum refineries.

2. *Range and sensitivity.* The lower limit of detection is approximately 8 mg/m³ (6 ppm). The maximum of the range is 740 mg/m³ (520 ppm).

3. *Interferences.* Any compound that reduces iodine or oxidizes iodide ion will interfere in this procedure, provide it is collected in the cadmium sulfate impingers. Sulfur dioxide in concentrations of up to 2,600 mg/m³ is eliminated by the hydrogen peroxide solution. Thiols precipitate with hydrogen sulfide. In the absence of H_2S, only co-traces of thiols are collected. When methane- and ethane-thiols at a total level of 300 mg/m³ are present in addition to H_2S, the results vary from 2 percent low at an H_2S concentration of 400 mg/m³ to 14 percent high at an H_2S concentration of 100 mg/m³. Carbon oxysulfide at a concentration of 20 percent does not interfere. Certain carbonyl-containing compounds react with iodine and produce recurring end points. However, acetaldehyde and acetone at concentrations of 1 and 3 percent, respectively, do not interfere.

Entrained hydrogen peroxide produces a negative interference equivalent to 100 percent of that of an equimolar quantity of hydrogen sulfide. Avoid the ejection of hydrogen peroxide into the cadmium sulfate impingers.

4. *Precision and accuracy.* Collaborative testing has shown the within-laboratory coefficient of variation to be 2.2 percent and the overall coefficient of variation to be 5 percent. The method bias was shown to be —4.8 percent when only H_2S was present. In the presence of the interferences cited in section 3, the bias was positive at low H_2S concentrations and negative at higher concentrations. At 230 mg H_2S/m³, the level of the compliance standard, the bias was +2.7 percent. Thiols had no effect on the precision.

5. *Apparatus.*

5.1 Sampling apparatus.

5.1.1 Sampling line. Six to 7 mm (¼ in.) Teflon[1] tubing to connect the sampling train to the sampling valve.

5.1.2 Impingers. Five midget impingers, each with 30 ml capacity. The internal diameter of the impinger tip must be 1 mm ±0.05 mm. The impinger tip must be positioned 4 to 6 mm from the bottom of the impinger.

5.1.3 Glass or Teflon connecting tubing for the impingers.

5.1.4 Ice bath container. To maintain absorbing solution at a low temperature.

5.1.5 Drying tube. Tube packed with 6- to 16-mesh indicating-type silica gel, or equivalent, to dry the gas sample and protect the meter and pump. If the silica gel has been used previously, dry at 175° C (350° F) for 2 hours. New silica gel may be used as received. Alternatively, other types of desiccants (equivalent or better) may be used, subject to approval of the Administrator.

NOTE.—Do not use more than 30 g of silica gel. Silica gel absorbs gases such as propane from the fuel gas stream, and use of excessive amounts of silica gel could result in errors in the determination of sample volume.

5.1.6 Sampling valve. Needle valve or equivalent to adjust gas flow rate. Stainless steel or other corrosion-resistant material.

5.1.7 Volume meter. Dry gas meter, sufficiently accurate to measure the sample volume within 2 percent, calibrated at the selected flow rate (~1.0 liter/min) and conditions actually encountered during sampling. The meter shall be equipped with a temperature gauge (dial thermometer or equivalent) capable of measuring temperature to within 3° C (5.4° F). The gas meter should have a petcock, or equivalent, on the outlet connector which can be closed during the leak check. Gas volume for one revolution of the meter must not be more than 10 liters.

5.1.8 Flow meter. Rotameter or equivalent, to measure flow rates in the range from 0.5 to 2 liters/min (1 to 4 cfh).

5.1.9 Graduated cylinder, 25 ml size.

5.1.10 Barometer. Mercury, aneroid, or other barometer capable of measuring atmospheric pressure to within 2.5 mm Hg (0.1 in. Hg). In many cases, the barometric reading may be obtained from a nearby National Weather Service station, in which case, the station value (which is the absolute barometric pressure) shall be requested and an adjustment for elevation differences between the weather station and the sampling point shall be applied at a rate of minus 2.5 mm Hg (0.1 in. Hg) per 30 m (100 ft) elevation increase or vice-versa for elevation decrease.

5.1.11 U-tube manometer. 0-30 cm water column. For leak check procedure.

5.1.12 Rubber squeeze bulb. To pressurize train for leak check.

5.1.13 Tee, pinchclamp, and connecting tubing. For leak check.

5.1.14 Pump. Diaphragm pump, or equivalent. Insert a small surge tank between the pump and rate meter to eliminate the pulsation effect of the diaphragm pump on the rotameter. The pump is used for the air purge at the end of the sample run; the pump is not ordinarily used during sampling, because fuel gas streams are usually sufficiently pressurized to force sample gas through the train at the required flow rate. The pump need not be leak-free unless it is used for sampling.

5.1.15 Needle valve or critical orifice. To set air purge flow to 1 liter/min.

5.1.16 Tube packed with active carbon. To filter air during purge.

5.1.17 Volumetric flask. One 1,000 ml.

5.1.18 Volumetric pipette. One 15 ml.

5.1.19 Pressure-reduction regulator. Depending on the sampling stream pressure, a pressure-reduction regulator may be needed to reduce the pressure of the gas stream entering the Teflon sample line to a safe level.

5.1.20 Cold trap. If condensed water or amine is present in the sample stream, a corrosion-resistant cold trap shall be used immediately after the sample tap. The trap shall not be operated below 0° C (32° F) to avoid condensation of C_3 or C_4 hydrocarbons.

5.2 Sample recovery.

5.2.1 Sample container. Iodine flask, glass-stoppered: 500 ml size.

5.2.2 Pipette. 50 ml volumetric type.

5.2.3 Graduated cylinders. One each 25 and 250 ml.

5.2.4 Flasks. 125 ml, Erlenmeyer.

5.2.5 Wash bottle.

5.2.6 Volumetric flasks. Three 1,000 ml.

5.3 Analysis.

5.3.1 Flask. 500 ml glass-stoppered iodine flask.

5.3.2 Burette. 50 ml.

5.3.3 Flask. 125 ml, Erlenmeyer.

5.3.4 Pipettes, volumetric. One 25 ml; two each 50 and 100 ml.

5.3.5 Volumetric flasks. One 1,000 ml; two 500 ml.

5.3.6 Graduated cylinders. One each 10 and 100 ml.

6. *Reagents.* Unless otherwise indicated, it is intended that all reagents conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available. Otherwise, use best available grade.

6.1 Sampling.

6.1.1 Cadmium sulfate absorbing solution. Dissolve 41 g of $3CdSO_4 \cdot 8H_2O$ and 15 ml of 0.1 M sulfuric acid in a 1-liter volumetric flask that contains approximately ¾ liter of deionized distilled water. Dilute to volume with deionized water. Mix thoroughly. pH should be 3±0.1. Add 10 drops of Dow-Corning Antifoam B. Shake well before use. If Antifoam B is not used, the alternate acidified iodine extraction procedure (section 7.2.2) must be used.

6.1.2 Hydrogen peroxide, 3 percent. Dilute 30 percent hydrogen peroxide to 3 percent as needed. Prepare fresh daily.

6.1.3 Water. Deionized, distilled to conform to ASTM specifications D1193-72, Type 3. At the option of the analyst, the $KMnO_4$ test for oxidizable organic matter may be omitted when high concentrations of organic matter are not expected to be present.

6.2 Sample recovery.

6.2.1 Hydrochloric acid solution (HCl), 3M. Add 240 ml of concentrated HCl (specific gravity 1.19) to 500 ml of deionized, distilled water in a 1-liter volumetric flask. Dilute to 1 liter with deionized water. Mix thoroughly.

[1] Mention of trade names of specific products does not constitute endorsement by the Environmental Protection Agency.

6.2.2 Iodine solution 0.1 N. Dissolve 24 g of potassium iodide (KI) in 30 ml of deionized, distilled water. Add 12.7 g of resublimed iodine (I_2) to the potassium iodide solution. Shake the mixture until the iodine is completely dissolved. If possible, let the solution stand overnight in the dark. Slowly dilute the solution to 1 liter with deionized, distilled water, with swirling. Filter the solution if it is cloudy. Store solution in a brown-glass reagent bottle.

6.2.3 Standard iodine solution, 0.01 N. Pipette 100.0 ml of the 0.1 N iodine solution into a 1-liter volumetric flask and dilute to volume with deionized, distilled water. Standardize daily as in section 8.1.1. This solution must be protected from light. Reagent bottles and flasks must be kept tightly stoppered.

6.3 Analysis.

6.3.1 Sodium thiosulfate solution, standard 0.1 N. Dissolve 24.8 g of sodium thiosulfate pentahydrate ($Na_2S_2O_3 \cdot 5H_2O$) or 15.8 g of anhydrous sodium thiosulfate ($Na_2S_2O_3$) in 1 liter of deionized, distilled water and add 0.01 g of anhydrous sodium carbonate (Na_2CO_3) and 0.4 ml of chloroform ($CHCl_3$) to stabilize. Mix thoroughly by shaking or by aerating with nitrogen for approximately 15 minutes and store in a glass-stoppered, reagent bottle. Standardize as in section 8.1.2.

6.3.2 Sodium thiosulfate solution, standard 0.01 N. Pipette 50.0 ml of the standard 0.1 N thiosulfate solution into a volumetric flask and dilute to 500 ml with distilled water.

NOTE.—A 0.01 N phenylarsine oxide solution may be prepared instead of 0.01 N thiosulfate (see section 6.3.3).

6.3.3 Phenylarsine oxide solution, standard 0.01 N. Dissolve 1.80 g of phenylarsine oxide (C_6H_5AsO) in 150 ml of 0.3 N sodium hydroxide. After settling, decant 140 ml of this solution into 800 ml of distilled water. Bring the solution to pH 6–7 with 6N hydrochloric acid and dilute to 1 liter. Standardize as in section 8.1.3.

6.3.4 Starch indicator solution. Suspend 10 g of soluble starch in 100 ml of deionized, distilled water and add 15 g of potassium hydroxide (KOH) pellets. Stir until dissolved, dilute with 900 ml of deionized distilled water and let stand for 1 hour. Neutralize the alkali with concentrated hydrochloric acid, using an indicator paper similar to Alkacid test ribbon, then add 2 ml of glacial acetic acid as a preservative.

NOTE.—Test starch indicator solution for decomposition by titrating, with 0.01 N iodine solution, 4 ml of starch solution in 200 ml of distilled water that contains 1 g potassium iodide. If more than 4 drops of the 0.01 N iodine solution are required to obtain the blue color, a fresh solution must be prepared.

7. *Procedure.*

7.1 Sampling.

7.1.1 Assemble the sampling train as shown in figure 11-1, connecting the five midget impingers in series. Place 15 ml of 3 percent hydrogen peroxide solution in the first impinger. Leave the second impinger empty. Place 15 ml of the cadmium sulfate absorbing solution in the third, fourth, and fifth impingers. Place the impinger assembly in an ice bath container and place crushed ice around the impingers. Add more ice during the run, if needed.

7.1.2 Connect the rubber bulb and manometer to first impinger, as shown in figure 11-1. Close the petcock on the dry gas meter outlet. Pressurize the train to 25-cm water pressure with the bulb and close off tubing connected to rubber bulb. The train must hold a 25-cm water pressure with not more than a 1-cm drop in pressure in a 1-minute interval. Stopcock grease is acceptable for sealing ground glass joints.

NOTE.—This leak check procedure is optional at the beginning of the sample run, but is mandatory at the conclusion. Note also that if the pump is used for sampling, it is recommended (but not required) that the pump be leak-checked separately, using a method consistent with the leak-check procedure for diaphragm pumps outlined in section 4.1.2 of reference method 6, 40 CFR Part 60, Appendix A.

7.1.3 Purge the connecting line between the sampling valve and first impinger, by disconnecting the line from the first impinger, opening the sampling valve, and allowing process gas to flow through the line for a minute or two. Then, close the sampling valve and reconnect the line to the impinger train. Open the petcock on the dry gas meter outlet. Record the initial dry gas meter reading.

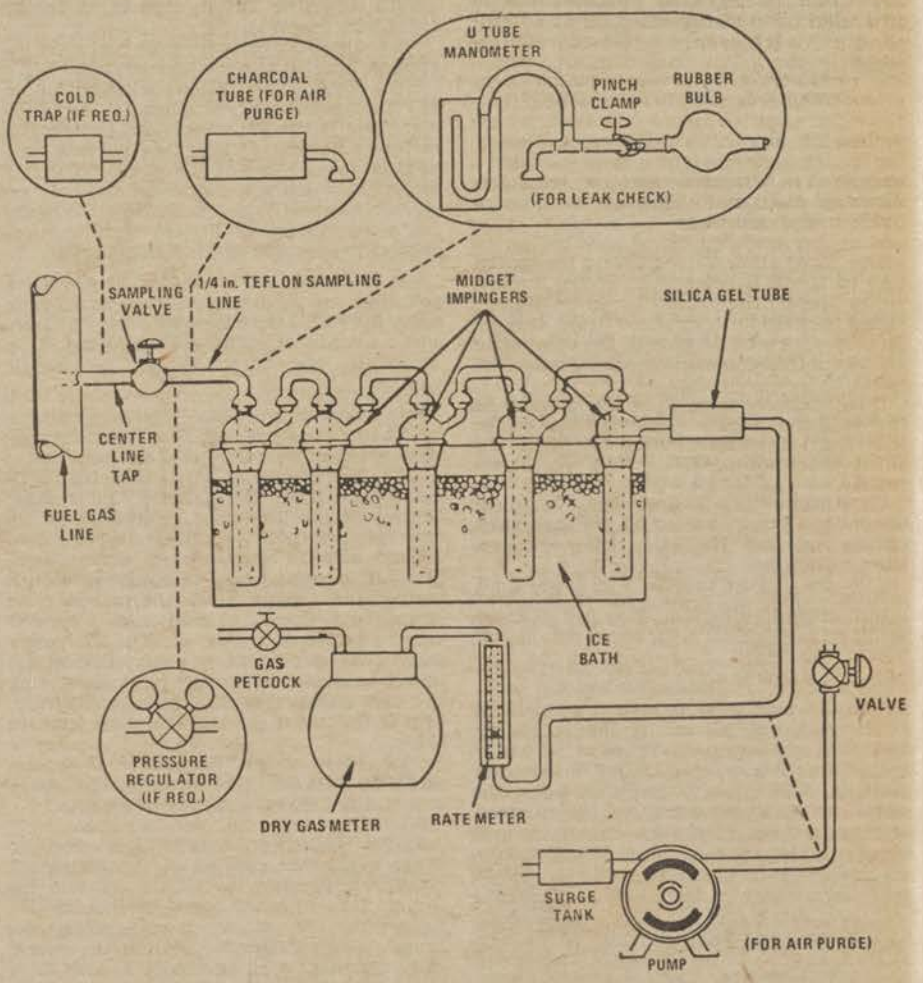

Figure 11-1. H_2S sampling train.

7.1.4 Open the sampling valve and then adjust the valve to obtain a rate of approximately 1 liter/min. Maintain a constant (±10 percent) flow rate during the test. Record the meter temperature.

7.1.5 Sample for at least 10 min. At the end of the sampling time, close the sampling valve and record the final volume and temperature readings. Conduct a leak check as described in Section 7.1.2 above.

7.1.6 Disconnect the impinger train from the sampling line. Connect the charcoal tube and the pump, as shown in figure 11-1. Purge the train (at a rate of 1 liter/min) with clean ambient air for 15 minutes to ensure that all H_2S is removed from the hydrogen peroxide. For sample recovery, cap the open ends and remove the impinger train to a clean area that is away from sources of heat. The area should be well lighted, but not exposed to direct sunlight.

7.2 Sample recovery.

7.2.1 Discard the contents of the hydrogen peroxide impinger. Carefully rinse the contents of the third, fourth, and fifth impingers into a 500 ml iodine flask.

NOTE.—The impingers normally have only a thin film of cadmium sulfide remaining after a water rinse. If Antifoam B was not used or if significant quantities of yellow cadmium sulfide remain in the impingers, the alternate recovery procedure described below must be used.

7.2.2 Pipette exactly 50 ml of 0.01 N iodine solution into a 125 ml Erlenmeyer flask. Add 10 ml of 3 M HCl to the solution. Quantitatively rinse the acidified iodine into the iodine flask. Stopper the flask immediately and shake briefly.

7.2.2 (Alternate). Extract the remaining cadmium sulfide from the third, fourth, and fifth impingers using the acidified iodine solution. Immediately after pouring the acidified iodine into an impinger, stopper it and shake for a few moments, then transfer the liquid to the iodine flask. Do not transfer any rinse portion from one impinger to another; transfer it directly to the iodine flask. Once the acidified iodine solution has been poured into any glassware containing cadmium sulfide, the container must be tightly stoppered at all times except when adding more solution, and this must be done as quickly and carefully as possible. After adding any acidified iodine solution to the iodine flask, allow a few minutes for absorption of the H_2S before adding any further rinses. Repeat the iodine extraction until all cadmium sulfide is removed from the impingers. Extract that part of the connecting glassware that contains visible cadmium sulfide.

Quantitatively rinse all of the iodine from the impingers, connectors, and the beaker into the iodine flask using deionized, distilled water. Stopper the flask and shake briefly.

7.2.3 Allow the iodine flask to stand about 30 minutes in the dark for absorption of the H_2S into the iodine, then complete the titration analysis as in section 7.3.

NOTE.—Caution! Iodine evaporates from acidified iodine solutions. Samples to which acidified iodine have been added may not be stored, but must be analyzed in the time schedule stated in section 7.2.3.

7.2.4 Prepare a blank by adding 45 ml of cadmium sulfate absorbing solution to an iodine flask. Pipette exactly 50 ml of 0.01 N iodine solution into a 125-ml Erlenmeyer flask. Add 10 ml of 3 M HCl. Follow the same impinger extracting and quantitative rinsing procedure carried out in sample analysis. Stopper the flask, shake briefly, let stand 30 minutes in the dark, and titrate with the samples.

NOTE.—The blank must be handled by exactly the same procedure as that used for the samples.

7.3 Analysis.

NOTE.—Titration analyses should be conducted at the sample-cleanup area in order to prevent loss of iodine from the sample. Titration should never be made in direct sunlight.

7.3.1 Using 0.01 N sodium thiosulfate solution (or 0.01 N phenylarsine oxide, if applicable), rapidly titrate each sample in an iodine flask using gentle mixing, until solution is light yellow. Add 4 ml of starch indicator solution and continue titrating slowly until the blue color just disappears. Record V_{Tr}, the volume of sodium thiosulfate solution used, or V_{AT}, the volume of phenylarsine oxide solution used (ml).

7.3.2 Titrate the blanks in the same manner as the samples. Run blanks each day until replicate values agree within 0.05 ml. Average the replicate titration values which agree within 0.05 ml.

8. *Calibration and standards.*

8.1 Standardizations.

8.1.1 Standardize the 0.01 N iodine solution daily as follows: Pipette 25 ml of the iodine solution into a 125 ml Erlenmeyer flask. Add 2 ml of 3 M HCl. Titrate rapidly with standard 0.01 N thiosulfate solution or with 0.01 N phenylarsine oxide until the solution is light yellow, using gentle mixing. Add four drops of starch indicator solution and continue titrating slowly until the blue color just disappears. Record V_T, the volume of thiosulfate solution used, or V_{AS}, the volume of phenylarsine oxide solution used (ml). Repeat until replicate values agree within 0.05 ml. Average the replicate titration values which agree within 0.05 ml and calculate the exact normality of the iodine solution using equation 9.3. Repeat the standardization daily.

8.1.2 Standardize the 0.1 N thiosulfate solution as follows: Oven-dry potassium dichromate ($K_2Cr_2O_7$) at 180 to 200° C (360 to 390° F). Weigh to the nearest milligram, 2 g of potassium dichromate. Transfer the dichromate to a 500 ml volumetric flask, dissolve in deionized, distilled water and dilute to exactly 500 ml. In a 500 ml iodine flask, dissolve approximately 3 g of potassium iodide (KI) in 45 ml of deionized, distilled water, then add 10 ml of 3 M hydrochloric acid solution. Pipette 50 ml of the dichromate solution into this mixture. Gently swirl the solution once and allow it to stand in the dark for 5 minutes. Dilute the solution with 100 to 200 ml of deionized distilled water, washing down the sides of the flask with part of the water. Titrate with 0.1 N thiosulfate until the solution is light yellow. Add 4 ml of starch indicator and continue titrating slowly to a green end point. Record V_S, the volume of thiosulfate solution used (ml). Repeat until replicate analyses agree within 0.05 ml. Calculate the normality using equation 9.1. Repeat the standardization each week, or after each test series, whichever time is shorter.

8.1.3 Standardize the 0.01 N Phenylarsine oxide (if applicable) as follows: oven dry potassium dichromate ($K_2Cr_2O_7$) at 180 to 200° C (360 to 390° F). Weigh to the nearest milligram, 2 g of the $K_2Cr_2O_7$; transfer the dichromate to a 500 ml volumetric flask, dissolve in deionized, distilled water, and dilute to exactly 500 ml. In a 500 ml iodine flask, dissolve approximately 0.3 g of potassium iodide (KI) in 45 ml of deionized, distilled water; add 10 ml of 3M hydrochloric acid. Pipette 5 ml of the $K_2Cr_2O_7$ solution into the iodine flask. Gently swirl the contents of the flask once and allow to stand in the dark for 5 minutes. Dilute the solution with 100 to 200 ml of deionized, distilled water, washing down the sides of the flask with part of the water. Titrate with 0.01 N phenylarsine oxide until the solution is light yellow. Add 4 ml of starch indicator and continue titrating slowly to a green end point. Record V_A, the volume of phenylarsine oxide used (ml). Repeat until replicate analyses agree within 0.05 ml. Calculate the normality using equation 9.2. Repeat the standardization each week or after each test series, whichever time is shorter.

8.2 Sampling train calibration. Calibrate the sampling train components as follows:

8.2.1 Dry gas meter.

8.2.1.1 Initial calibration. The dry gas meter shall be calibrated before its initial use in the field. Proceed as follows: First, assemble the following components in series: Drying tube, needle valve, pump, rotameter, and dry gas meter. Then, leak-check the system as follows: Place a vacuum gauge (at least 760 mm Hg) at the inlet to the drying tube and pull a vacuum of 250 mm (10 in.) Hg; plug or pinch off the outlet of the flow meter, and then turn off the pump. The vacuum shall remain stable for at least 30 seconds. Carefully release the vacuum gauge before releasing the flow meter end.

Next, calibrate the dry gas meter (at the sampling flow rate specified by the method) as follows: Connect an appropriately sized wet test meter (e.g., 1 liter per revolution) to the inlet of the drying tube. Make three independent calibration runs, using at least five revolutions of the dry gas meter per run. Calculate the calibration factor, Y (wet test meter calibration volume divided by the dry gas meter volume, both volumes adjusted to the same reference temperature and pressure), for each run, and average the results. If any Y value deviates by more than 2 percent from the average, the dry gas meter is unacceptable for use. Otherwise, use the average as the calibration factor for subsequent test runs.

8.2.1.2 Post-test calibration check. After each field test series, conduct a calibration check as in section 8.2.1.1. above, except for the following variations: (a) The leak check is not to be conducted, (b) three or more revolutions of the dry gas meter may be used, and (3) only two independent runs need be made. If the calibration factor does not deviate by more than 5 percent from the initial calibration factor (determined in section 8.2.1.1.), then the dry gas meter volumes obtained during the test series are acceptable. If the calibration factor deviates by more than 5 percent, recalibrate the dry gas meter as in section 8.2.1.1, and for the calculations, use the calibration factor (initial or recalibration) that yields the lower gas volume for each test run.

8.2.2 Thermometers. Calibrate against mercury-in-glass thermometers.

8.2.3 Rotameter. The rotameter need not be calibrated, but should be cleaned and maintained according to the manufacturer's instruction.

8.2.4 Barometer. Calibrate against a mercury barometer.

9. *Calculations.* Carry out calculations retaining at least one extra decimal figure beyond that of the acquired data. Round off results only after the final calculation.

9.1 Normality of the Standard (~0.1 N) Thiosulfate Solution.

$$N_S = 2.039 W/V_S$$

where:

W = Weight of $K_2Cr_2O_7$ used, g.
V_S = Volume of $Na_2S_2O_3$ solution used, ml.
N_S = Normality of standard thiosulfate solution, g-eq/liter.
2.039 = Conversion factor

(6 eq. I_2/mole $K_2Cr_2O_7$) (1,000 ml/liter)/= (294.2 g $K_2Cr_2O_7$/mole) (10 aliquot factor)

9.2 Normality of Standard Phenylarsine Oxide Solution (if applicable).

$$N_A = 0.2039\ W/V_A$$

where:

W = Weight of $K_2Cr_2O_7$ used, g.
V_A = Volume of $C_6H_5A_sO$ used, ml.
N_A = Normality of standard phenylarsine oxide solution, g=eq/liter.
0.2039 = Conversion factor

(6 eq. I_2/mole $K_2Cr_2O_7$) (1,000 ml/liter)/(249.2 g $K_2Cr_2O_7$/mole) (100 aliquot factor)

9.3 Normality of Standard Iodine Solution.

$$N_I = N_T V_T / V_I$$

where:

N_I = Normality of standard iodine solution, g-eq/liter.
V_I = Volume of standard iodine solution used, ml.
N_T = Normality of standard (~0.01 N) thiosulfate solution; assumed to be 0.1 N_S, g-eq/liter.
V_T = Volume of thiosulfate solution used, ml.

NOTE.—If phenylarsine oxide is used intead of thiosulfate, replace N_T and V_T in Equation 9.3 with N_A and V_{AS}, respectively (see sections 8.1.1 and 8.1.3).

9.4 Dry Gas Volume. Correct the sample volume measured by the dry gas meter to standard conditions (20° C) and 760 mm Hg.

$$V_{m(std)} = V_m Y [(T_{std}/T_m)(P_{bar}/P_{std})]$$

where:

$V_{m(std)}$ = Volume at standard conditions of gas sample through the dry gas meter, standard liters.
V_m = Volume of gas sample through the dry gas meter (meter conditions), liters.
T_{std} = Absolute temperature at standard conditions, 293° K.
T_m = Average dry gas meter temperature, °K.
P_{bar} = Barometric pressure at the sampling site, mm Hg.
P_{std} = Absolute pressure at standard conditions, 760 mm Hg.
Y = Dry gas meter calibration factor.

9.5 Concentration of H_2S. Calculate the concentration of H_2S in the gas stream at standard conditions using the following equation:

$$C_{H_2S} = K[(V_{TT}N_I - V_{TT}N_T)\text{ sample} - (V_{TT}N_I - V_{TT}N_T)\text{ blank}]/V_{m(std)}$$

where (metric units):

C_{H_2S} = Concentration of H_2S at standard conditions, mg/dscm.
K = Conversion factor = 17.04×10^3

(34.07 g/mole H_2S) (1,000 liters/m^3) (1,000 mg/g)/(1,000 ml/liter) ($2H_2S$ eq/mole)

V_{IT} = Volume of standard iodine solution = 50.0 ml.
N_I = Normality of standard iodine solution, g-eq/liter.
V_{TT} = Volume of standard (~0.01 N) sodium thiosulfate solution, ml.
N_T = Normality of standard sodium thiosulfate solution, g-eq/liter.
$V_{m(std)}$ = Dry gas volume at standard conditions, liters.

NOTE.—If phenylarsine oxide is used instead of thiosulfate, replace N_T and V_{TT} in Equation 9.5 with N_A and V_{AT}, respectively (see Sections 7.3.1 and 8.1.3).

10. *Stability.* The absorbing solution is stable for at least 1 month. Sample recovery and analysis should begin within 1 hour of sampling to minimize oxidation of the acidified cadmium sulfide. Once iodine has been added to the sample, the remainder of the analysis procedure must be completed according to sections 7.2.2 through 7.3.2.

11. *Bibliography.*

11.1 Determination of Hydrogen Sulfide, Ammoniacal Cadmium Chloride Method. API Method 772-54. In: Manual on Disposal of Refinery Wastes, Vol. V: Sampling and Analysis of Waste Gases and Particulate Matter, American Petroleum Institute, Washington, D.C., 1954.

11.2 Tentative Method of Determination of Hydrogen Sulfide and Mercaptan Sulfur in Natural Gas, Natural Gas Processors Association, Tulsa, Okla., NGPA Publication No. 2265-65, 1965.

11.3 Knoll, J. E., and M. R. Midgett. Determination of Hydrogen Sulfide in Refinery Fuel Gases, Environmental Monitoring Series, Office of Research and Development, USEPA, Research Triangle Park, N.C. 27711, EPA 600/4-77-007.

11.4 Scheill, G. W., and M. C. Sharp. Standardization of Method 11 at a Petroleum Refinery, Midwest Research Institute Draft Report for USEPA, Office of Research and Development, Research Triangle Park, N.C. 27711, EPA Contract No. 68-02-1098, August 1976, EPA 600/4-77-088a (Volume 1) and EPA 600/4-77-088b (Volume 2).

(Secs. 111, 114, 301(a), Clean Air Act as amended (42 U.S.C. 7411, 7414, 7601).)

[FR Doc. 78-482 Filed 1-9-78; 8:45 am]

[1505-01]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 66—NATIONAL RESEARCH SERVICE AWARDS

Technical Amendments

Correction

In FR Doc. 77-35569 appearing at page 63389 in the issue for Friday, December 16, 1977, the heading of § 66.106 *Award* was omitted from the text of the regulation. It should be inserted in the third column, page 63390, above the paragraph beginning "(a) Within the limits of funds avail-".

[6712-01]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

Editorial Amendments

AGENCY: Federal Communications Commission.

ACTION: Editorial amendment.

SUMMARY: Correction of Rules because of printing or typing error. No substantive change is involved.

EFFECTIVE DATE: January 9, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Eliot J. Greenwald, Common Carrier Bureau, 202-632-6450.

SUPPLEMENTARY INFORMATION: In the matter of editorial amendment of § 21.31(e) of the Commission's rules and regulations—memorandum opinion and order.

Adopted: December 21, 1977.

Released: January 3, 1978.

1. Section 21.31(e) of the Commission's rules states in part:

(e) For the purposes of this section, any application (whether mutually exclusive or not) will be considered to be a newly filed application if it is amended by a major amendment (as defined by § 21.23), except under the following circumstances:

This portion is then followed by a list of six circumstances. Circumstances 5 and 6 are separated by the word "or." It is apparent from reading the six circumstances that these were meant to be alternative occurrences and that it was not meant that all six circumstances must occur before an application is not considered to be newly filed. It thus appears that the words "any of" were omitted from the last phrase of the quoted portion. Accordingly, the last phrase of the quoted portion will be amended to read as follows: "except under any of the following circumstances:"

2. Section 21.31(e)(1) of the rules states:

(1) The application has been designed for comparative hearing, or for comparative evaluation (pursuant to § 21.35), and the Commission or the presiding officer accepts the amendment pursuant to § 21.23(b);

It appears that the word "designed" should have been "designated." The rule will be amended accordingly.

3. Since the amendment is editorial the provisions of 5 U.S.C. § 553 are not applicable.

4. In view of the foregoing, *It is ordered,* Pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, that Part 21 of the Commission's rules is amended as set forth below.

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

For the Federal Communications Commission.

RICHARD D. LICHTWARDT,
Executive Director.

Part 21 of Chapter I of Title 47 of the Code of Federal Regulations is amended to read as follows:

Section 21.31(e) and (e)(1) are amended to read as follows:

§ 21.31 Mutually exclusive applications.

* * * * *

(e) For the purposes of this section, any application (whether mutually exclusive or not) will be considered to be a newly filed application if it is amend-

ed by a major amendment (as defined by §21.23), except under any of the following circumstances:

(1) The application has been designated for comparative hearing, or for comparative evaluation (pursuant to §21.35), and the Commission or the presiding officer accepts the amendment pursuant to §21.23(b);

* * * * *

[FR Doc. 78-525 Filed 1-9-78; 8:45 am]

[6712-01]

[Docket No. 21412; RM-2902]

PART 73—RADIO BROADCAST SERVICES

FM Assignment to Elizabeth City, N.C.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: This action assigns a Class A FM channel to Elizabeth City, N.C. The channel assignment provides for a second FM station which would render a fourth local aural broadcast service to the community.

EFFECTIVE DATE: February 27, 1978.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: In the matter of amendment of §73.202(b), table of Assignments, FM broadcast stations. (Elizabeth City, N.C.). Report and order (Proceeding Terminated). See 42 FR 55106.

Adopted: December 23, 1977.

Released: January 3, 1978.

By the Chief, Broadcast Bureau.

1. The Commission has before it the notice of proposed rule making, adopted October 4, 1977 (42 FR 55106), proposing the assignment of channel 244A to Elizabeth City, N.C., as its second FM assignment. The proceeding was instituted on the basis of a petition filed by Campbell Broadcasting, Inc. ("petitioner"), licensee of AM station WGAI, Elizabeth City. Supporting comments were filed by petitioner, reaffirming its intention to file for the channel, if assigned, and willingness to compete under such circumstances. Joseph E. Revels also expressed his interest in the proposed channel assignment. No oppositions were received.

2. Elizabeth City (population 14,069), seat of Pasquotank County (population 25,824),[1] is located approximately 64 kilometers (40 miles) south of Norfolk, Va. It presently receives service from full-time AM stations WCNC and WGAI, and Class C FM station WMYK (channel 229).

3. Petitioner states that Elizabeth City's population increased between 1960 and 1970, and has experienced a steadily growing economy in recent years. It notes that agriculture has been the mainstay of the area's economy. In addition, it points out that Elizabeth City has become an increasingly popular tourism site which has produced revenues of approximately five million dollars in 1976.

4. Preclusion would occur only on the co-channel. However, the precluded area contains no communities with a population over 1,000 persons. Petitioner states that no first FM service would be provided by the proposed assignment, but that second FM service would be provided to 1,824 persons in an area of 130 square kilometers (50 square miles). It also adds that the second FM service would provide a substantial area and population with second and third fulltime aural service.

5. While the proposed assignment would contravene the usual policy of avoiding intermixture of a Class A with a Class C channel, we have deviated from this policy where there is no Class C channel available for assignment, and there is a demand for a Class A channel and the willingness to compete under such circumstances. Yakima, Wash., 4 FCC 548, 550 (1973); Key West, Fla., 45 FCC 2d 142, 145 (1974). Since there is no Class C FM channel that could be assigned to Elizabeth City, and two parties have expressed their intention to apply for channel 244A at Elizabeth City, in spite of the intermixture situation, we will make the assignment. The assignment would provide a second local FM service to the community.

6. In view of the foregoing, *It is ordered*, That effective February 27, 1978, §73.202(b) of the Commission's rules, the FM table of assignments, is amended to read as follows for the community listed below:

City and Channel No.
Elizabeth City, N.C., 229, 244A.

7. Authority for the action taken herein is contained in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §0.281 of the Commission's rules.

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

For the Federal Communications Commission.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-529 Filed 1-9-78; 8:45 am]

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

[6712-01]

[Docket No. 21427; RM-2933]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Station in Marion, Ala.; Changes made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Action taken herein assigns a first FM Class A channel to Marion, Ala. The channel assignment would provide for an FM station which will furnish a first full-time local aural broadcast service to the community.

EFFECTIVE DATE: February 27, 1978.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTAL INFORMATION:

In the matter of amendment of §73.202(b), table of assignments, FM broadcast stations (Marion, Alabama). Report and order (proceeding terminated). See 42 FR 54435.

Adopted: December 23, 1977.

Released: January 3, 1978.

By the Chief, Broadcast Bureau:

1. The Commission herein considers the Notice of Proposed Rule Making, adopted September 23, 1977 (42 FR 54435), in the above-entitled proceeding, instituted in response to a petition filed by Jimmie F. Mizzell and Samuel M. Shiller ("petitioners"), proposing the assignment of Channel 280A to Marion, Ala., as a first FM assignment to that community.

2. Marion (pop. 4,289), seat of Perry County (pop. 15,388),[1] is located approximately 40 kilometers (25 miles) northwest of Montgomery, Ala. Marion has a daytime-only AM station, WJAM, licensed to Radio Marion, Inc. Channel 280A could be assigned to Marion in conformity with the minimum distance separation requirements, if the station were to be located 4.8 kilometers (3 miles) west-northwest of the community.

3. In support of their proposal, petitioners submitted information with re-

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

spect to Marion which is persuasive as to its need for a first FM channel assignment.

4. We believe that the public interest would be served by the assignment of FM Channel 280A to Marion, Ala. An interest has been shown for its use, and such an assignment would provide the community and Perry County with a first full-time local aural broadcast service.

5. Authority for the adoption of the amendment contained herein appears in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules.

6. Accordingly, *it is ordered*, That effective February 27, 1978, §73.202(b) of the Commission's rules, the FM Table of Assignments, is amended as it pertains to the community listed below:

City and Channel No.
Marion, Ala., 280A.

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

For the Federal Communications Commission.

Wallace E. Johnson,
Chief, Broadcast Bureau.

[FR Doc. 78-527 Filed 1-9-78; 8:45 am]

[6712-01]

[Docket No. 20422; RM-2395 etc.; FCC 77-863]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Stations in Fort Walton Beach, Crestview, and Destin, Fla.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order.

SUMMARY: This action reverses an earlier decision assigning class C FM channel 243 to Crestview, Fla., and assigns it to Fort Walton Beach, Fla., instead. The Fort Walton Beach assignment is consistent with applicable criteria for class C assignments and is preferable since it is larger. It is also possible to insure use of a site which will provide the second FM service that it was incorrectly thought only a Crestview assignment would provide. In response to a separate request, Destin, Fla., is assigned a class A channel to provide its first local station.

EFFECTIVE DATE: February 15, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Mark N. Lipp, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION: In the matter of amendment of §73.202(b), table of assignments, FM broadcast stations (Fort Walton Beach, Crestview, and Destin, Fla.), Docket No. 20422, RM-2395, 2421, 2451, 2471, 2503. Memorandum opinion and order (proceeding terminated). See 41 FR 49097.

Adopted: December 21, 1977.

Released: January 3, 1978.

By the Commission.

1. Before the Commission are two petitions for reconsideration of the report and order, 62 FCC 2d 76, released November 5, 1976, which, inter alia, assigned FM Channel 243 to Crestview, Fla., and modified the license of Crestview Broadcasting Co. for station WAAZ-FM (channel 285A) to specify operation on that channel.[1] In one petition, Dr. John Matkowski argues that we should have assigned channel 243 to Destin, Fla., instead of Crestview, while, in the other, Vacationland Broadcasting Co., Inc., licensee of AM and FM Stations WFTW, Fort Walton Beach, Fla., argues we should have assigned channel 243 to Fort Walton Beach, in place of Channel 257A on which it operates. Oppositions to both petitions were submitted by Crestview Broadcasting Co. and by Deltona Broadcasting Co., Inc., licensee of station WPAP-FM, Panama City, Fla. Replies were filed by Matkowski, Vacationland Broadcasting Co., Inc., and Crestview Broadcasting Co.

2. The report and order in this proceeding considered conflicting requests for the assignment of channel 243 to Crestview, Destin, or Fort Walton Beach. The Crestview proposal was favored primarily because it was thought to be the most appropriate way to bring a second FM service to a larger area. Assignment of the channel to either Fort Walton Beach or Destin was thought to represent a less efficient use of the channel since a significant portion of the signal was expected to cover uninhabited water areas. It was also noted that intermixture in the Fort Walton Beach/Destin market would be created. Although Fort Walton Beach was not assigned channel 243, it was assigned a second class A channel. Destin was not given a class A assignment since no interest was expressed in such an assignment there.

3. In support of its request that we reverse our decision and assign channel 243 to Destin, Matkowski argues that Destin is a more appropriate place for the assignment since it has had a greater growth rate in population and business activity than Crestview. Matkowski describes Crestview as a dying town, citing the shift in some government offices out of that community and into Shalimar, Fla. (closer to the Fort Walton Beach/Destin area). He also contends that the Crestview assignment would result in an inefficient use of the channel since mostly uninhabited forest area would be covered from the proposed transmitter site area. Matkowski argues that the site proposed by Crestview Broadcasting Co. (from which the estimates of first and second FM services were made) is unavailable.[2] Finally, Matkowski asserts that any concern about an intermixture of classes of channels at the communities in the area is outweighed by the large first and second FM service that would be provided (525 persons and 19,500 persons, respectively). In the event he is denied reconsideration, the assignment of a class A channel is requested instead.[3]

4. By way of contrast, Vacationland argues that channel 243 should have been assigned to Fort Walton Beach rather than to Crestview. Its main complaint with the Commission's decision is the manner in which the Crestview station had its license modified to specify the newly assigned channel so that there was no opportunity for other parties to apply for it. It argues that if it were to have expressed such an interest in serving Crestview as is said to be necessary under the Commission's *Cheyenne* policy,[4] and thereby blocked the modification, then it would be weakening its position that the channel should be allocated to Fort Walton Beach. It suggests that the Commission should reopen the proceeding and make alternative assignments at each of the three interested communities so that the hearing process could determine the proper allocation. It further asserts that information regarding the greater need for a class C channel at Fort Walton Beach had already been set forth, including the fact that 78 percent of the county's population lives in the Fort Walton Beach area; that it is a large commercial and service center for this region; that it is undergoing signifi-

[1] The report and order also assigned channel 221A to Fort Walton Beach.

[2] In this regard, he notes that the proposed site is located six miles from the runway approach at Eglin Air Force Base and predicts that the FAA will not approve a 500 foot tower there. In addition, he argues that since a tower exceeding 300 feet is proposed, the applicant would have to satisfy applicable environmental concerns—see sections 1.1305 and 1.1311 of the Commission's rules.

[3] He also seeks to avoid the necessity for filing an application for this channel if it is assigned, but this is not possible. Unlike instances where a license could be modified to specify a new channel, Matkowski holds no such license and thus must apply for any channel assigned.

[4] Under that policy, request for modification of an existing permit or license can be granted at the rule making stage if no other person has stated an interest in applying for the new channel. See *Cheyenne, Wyo.*, 62 FCC 2d 63 (1976).

cant growth; and that Fort Walton Beach itself is the largest city in the area of Florida between Tallahassee and Pensacola, a distance of over 320 kilometers (200 miles). Further, Vacationland argued that the assignment of a wide area coverage channel to Crestview would focus primarily on Fort Walton Beach anyway since Crestview essentially is a dying community without even a building over two stories high.

5. Deltona Broadcasting, while agreeing that the allocation to Crestview was proper, believes that the modification procedure utilized by the Commission violates due process by not notifying all parties at an earlier stage in the proceeding that an expression of interest at Crestview was necessary to enable them to file applications there.[5]

6. Crestview, in response to these oppositions, argues that no new facts have been presented to favor either Destin or Fort Walton Beach as the community of assignment. Regarding the alleged transmitter site problems, Crestview argues that its assumed site is merely hypothetical and in any event, many sites in this vicinity are available which can achieve the population and area figures relied upon by the Commission.[6] It contends that the modification procedure used is not unfair to either Dr. Matkowski or Vactionland since both had the opportunity to express their interest in utilizing the channel at Crestview.

7. In the previous report and order, we decided to put channel 243 in Crestview (and to modify the license of station WAAZ-FM accordingly) as the best way to encourage the use of a site as close as possible to a large underserved area. We stated that our primary goal was to provide a second FM service[7] to a larger area (30,461 persons in a 2,124 square kilometers (820 square mile) area) than we thought would have been offered by assigning channel 243 to either Fort Walton Beach or Destin (approximately 19,000 persons in a 958 square kilometer (370 square mile) area). In point of fact, it was not necessary to assign the channel to Crestview to accomplish this. If channel 243 were assigned to Fort Walton Beach and the applicant were required to select a site approximately 37 kilometers (23 miles) north-northwest of Fort Walton Beach, this important second FM service could be achieved.[8] In our earlier action we assumed that assigning the channel to Fort Walton Beach would mean use of a site near there and away from the area needing service, but this need not be the case. Especially since such a location would be inefficient in its wasting much of the coverage area over the water there is little reason to expect such a site to be chosen regardless of any restrictions the Commission might invoke. In sum, then, our choices were not so narrow as we earlier thought. This in itself does not establish the need to alter our decision, but it does allow us to consider such a step if it is otherwise required. In our view it is, and had it not been for the matter of the site, the case would not have been decided as it was. It is clear to us that the choice of Fort Walton Beach for the class C channel is more logical for a number of reasons. It is significantly larger than Crestview,[9] its greater growth rate is undisputed and its position as the most important business and service center in this area of Florida deserves recognition. Although it has been contended by Matkowski that Destin deserves the class C channel assignment, when compared with the size and growth of Fort Walton Beach, Destin's needs are less important.

8. As for intermixture, which had been a matter of concern, Vacationland, the existing class A licensee, has not only failed to object to the addition of a class C station in Fort Walton Beach, but urges its assignment there so that it may apply for it. Under these circumstances we cannot find that it would be unfair to intermix classes of channels in this community.[10] Nor, in light of the service which would be provided, need we be concerned about intermixing channels in this general area.

9. Although channel 221A was assigned to Fort Walton Beach by the report and order, that decision was based on our then refusal to assign the class C channel there. Now that we have decided it is appropriate to assign the class C channel, we should reevaluate that assignment, a step which makes it possible to consider assigning channel 221A to Destin instead. Matkowski has requested a channel for Destin even if its proposal for a class C operation were denied. We believe that a first local FM station at Destin, which appears to be rapidly growing, is needed more than a third FM channel assignment at Fort Walton Beach,[11] especially in view of our population criteria which generally limits communities under 50,000 people to two channels. We note that no other class A channels are available for assignment and Destin would otherwise be precluded from using channel 221A. Although there are three applications pending for the use of channel 221A at Fort Walton Beach,[12] these applications may be amended to specify channel 243. Finally, we should note that if Vacationland were the successful applicant for channel 243 at Fort Walton Beach, channel 257A would become available for application by all parties who have applied for channel 221A as well as by other interested persons.

10. Accordingly, *it is ordered*, That effective February 15, 1978, the FM table of assignments (§73.202(b) of the Commission's rules and regulations) is amended for the cities listed below to read:

City and Channel No.

Crestview, Fla., 285A.
Destin, Fla., 221A.
Fort Walton Beach, Fla., 243, 257A.

11. *It is further ordered*, That the petition for reconsideration filed by Vacationland Broadcasting Co. is granted.

[5] Deltona questions the limitation of such expressions of interest to "qualified parties" asserting that this refers to matters not reviewable until the filing of an application. As used in the report and order, the term was not intended to have this meaning but only was intended to refer to those persons eligible to seek use of the channel.

[6] Crestview also asserts that it will not have to erect a tower in excess of approximately 152 meters (500 feet) to achieve its proposed service since ground elevation of 61 meters (200 feet) at the assumed site is substantially higher than the surrounding area. It also argues that the filing of an environmental impact statement is irrelevant to this rule making proceeding.

[7] The same first FM service would be provided from the various proposed sites.

[8] After further studying the availability of radio services in this area, we have discovered that not only would a second FM service be provided to a large area including over 30,000 persons, mostly in southern Alabama, but also a second aural service would be offered to this area from the proposed site relied upon in the report and order. While there appears to be some question as to the availability of that particular site, there is no reason to believe other sites would be unavailable to achieve essentially the same service. Further, with prudent site selection which would meet city grade coverage requirements, an even greater second aural service area could be covered.

[9] Fort Walton Beach has a population of 19,994; Crestview's population is 7,952; and Destin has 1,536 persons according to the 1970 U.S. Census.

[10] A similar situation occurred in *Hammond, La.*, 40 FCC 1041, 1045 or 2 FCC 2d 565, 569 (1966), where the class A station requested a class C channel. The Commission approved the assignment despite the creation of intermixture. See also *Rome, N.Y.*, 42 FR 58189 (1977).

[11] We also note that there is no demand for a second class A channel at Crestview which will retain its current channel 285A assignment.

[12] Applications have been submitted by White Sands Broadcasting, Inc., Gulfcoast Broadcasting, Inc., and Jericho Radio, Inc.

12. *It is further ordered*, That the petition for reconsideration filed by Dr. John Matkowski is granted to the extent indicated and is denied in all other respects.

13. Authority for the actions taken herein is found in sections 4(i), 5(d)(1), and 303 (g) and (r) of the Communications Act of 1934, as amended.

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

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

For the Federal Communications Commission.[13]

WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-517 Filed 1-9-78; 8:45 am]

[6712-01]

[Docket No. 21389; RM-2852]

PART 73—RADIO BROADCAST SERVICES

Television Broadcast Stations in Clarksdale and Greenville, Miss., and in Birmingham, Ala.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Action taken herein makes substitute television channel changes in Clarksdale and Greenville, Miss., so as to make it possible for another UHF television station to become active in this area. As a result of the substitutions, a change in the offset designation from zero to minus on channel 21 in Birmingham, Ala., is also required.

EFFECTIVE DATE: February 15, 1978.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: In the matter of amendment of §73.606(b), table of assignments, television broadcast stations (Clarksdale and Greenville, Miss.; Birmingham, Ala.), Docket No. 21389 RM-2852; report and order (proceeding terminated). See 42 FR 46560.

Adopted: December 28, 1977.

Released: January 4, 1978.

By the Chief, Broadcast Bureau.

1. The Commission has before it the notice of proposed rule making, adopted September 6, 1977, 42 FR 46560, in response to a petition filed by Big River Broadcasting Co. ("petitioner"), applicant for a television station on channel 15 at Greenville, Miss.[1] Petitioner proposed the substitution of channel *21 for channel *22 at Clarksdale, Miss., and the substitution of channel 44 for channel 21 at Greenville, Miss. Both of the existing assignments are unoccupied and unapplied for. Comments were filed by the petitioner in which it reaffirmed its intention to build a television station promptly if a construction permit is granted for channel 15 at Greenville. No other comments were received.

2. Clarksdale (population 21,673),[2] seat of Coahoma County (population 40,447), is located in northwest Mississippi. Greenville (population 39,468), seat of Washington County (population 70,581), is located in west-central Mississippi, approximately 100 kilometers (62 miles) south of Clarksdale.

3. The notice indicated that the proposed channel substitutions could be made in conformity with the distance separation requirements and without requiring any other changes in the television table of assignments, except for changing the offset on channel 21 in Birmingham, Ala., from zero to minus.

4. Petitioner contends that adoption of the proposed channel changes would permit the orderly processing of its application for channel 15 at Greenville, Miss. It states further that it would promote development of UHF television in west-central Mississippi, and increase the number of broadcast services available to residents of the area.

5. We believe that public interest would be served by substituting channel *21 for channel *22 at Clarksdale, Miss., and substituting channel 44 for channel 21 at Greenville, Miss. It would result in bringing an additional commercial television service to the area, promote the establishment of a first commercial UHF television service, and the third commercial UHF station in the State.

6. Accordingly, pursuant to authority contained in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and section 0.281 of the Commission's rules, *it is ordered*, That effective February 15, 1978, the television table of assignments (§73.606(b) of the Commission's rules), is amended with respect to the following communities:

City and Channel No.
Greenville, Miss., 15-, 44.
Clarksdale, Miss., *21.
Birmingham, Ala., 6-, *10-, 13-, 21-, 42+, *62+, 68+.

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

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

For the Federal Communications Commission.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-587 Filed 1-9-78; 8:45 am]

[6712-01]

[Docket No. 21388; RM-2745]

PART 73—RADIO BROADCAST SERVICES

TV Assignment to Sikeston, Mo.

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Action taken herein assigns a first UHF television channel to Sikeston, Mo. The channel 45 assignment will provide for a station which could render a first local television service to the community.

DATE: Effective February 13, 1978.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: In the matter of amendment of §73.606(b), table of assignments, television broadcast stations (Sikeston, Mo.) Docket No. 21388, RM-2745; report and order (proceeding terminated). See 42 FR 46559.

Adopted: December 28, 1977.

Released: January 4, 1978.

By the Chief, Broadcast Bureau.

1. The Commission has before it the notice of proposed rulemaking, adopted September 2, 1977, 42 FR 46559, in response to a petition filed by Delta Projects, Inc. ("petitioner"), requesting the assignment of channel 45 to Sikeston, Mo. Comments were filed only by the petitioner in which it reaffirmed its intention to file an application for the proposed channel, if assigned.

2. Sikeston, (population 14,699), lies partially in New Madrid County (population 23,420), but is situated primarly in Scott County (population 33,250). It is located midway between Mem-

[13] Commissioner Onell concurring in the result; Commissioner White absent.

[1] Petitioner, in its application (BPCT-4970) for channel 15 in Greenville, unknowingly proposed a site which was short-spaced to channel *22 in Clarksdale. Rather than select a less desirable site, or abandon the attempt to construct a new TV station for Greenville, Big River Broadcasting Co. filed the instant petition proposing the above-mentioned substitutions in order to correct the short spacing.

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

phis, Tenn., and St. Louis, Mo., and lies about 48 kilometers (30 miles), west of the Mississippi River.

3. The notice indicated that the proposed assignment meets the distance separation requirements and other technical criteria and could be assigned without affecting any existing assignments in the table. In support of its proposal, petitioner submitted information with respect to Sikeston and its need for a first television channel assignment.

4. In view of the foregoing, we conclude that it would be in the public interest to make the requested assignment so as to provide a first local television service to Sikeston.

5. Accordingly, *it is ordered*, That effective February 13, 1978, the television table of assignments, §73.606(b) of the Commission's rules, is amended with regard to the city listed below, as follows:

City and Channel No.

Sikeston, Mo.—45.

6. Authority for the action taken herein is formed in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communciations Act of 1934, as amended, and §0.281 of the Commission's rules.

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

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

For the Federal Communications Commission.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-589 Filed 1-9-78; 8:45 am]

[6712-01]

[Docket No. 21109; RM-2748; RM-2853]

PART 73—RADIO BROADCAST SERVICES

Television Broadcast Stations in Medford and Grants Pass, Oreg.; Changes made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: This action reserves VHF TV Channel 8 at Medford, Oreg., for noncommercial educational use to reflect the actual nature of the operation of the channel. Also VHF TV Channel 12 is assigned to Medford to provide a third VHF network service. Finally, a reassignment of Channel *18 from Medford to Grants Pass, Oreg., will provide a first local noncommercial educational station and extend a proposed statewide service to southwestern Oregon.

EFFECTIVE DATE: February 15, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Mark N. Lipp, Broadcast Bureau, 202-632-7792.

SUPPLEMENTAL INFORMATION: In the matter amendment of §73.606(b), Table of Assignments, Television Broadcast Stations. (Medford and Grants Pass,[1] Oreg.) Docket No. 21109, RM-2748, RM-2853; Report and order (Proceeding Terminated). See 42 FR 9401.

Adopted: December 28, 1977.

Released: January 4, 1978.

By the Chief, Broadcast Bureau:

1. Before the Commission is the Notice of Proposed Rule Making, adopted February 4, 1977, 42 FR 9401, proposing the reservation of VHF TV Channel 8 and the deletion of the reservation for UHF TV Channel *18 at Medford, Oreg. The Notice was issued in response to a petition from the Southern Oregon Education Co., licensee of noncommercial educational Station KSYS(TV) (Channel 8), Medford. Supporting comments were submitted by petitioner and by the Reverend Marion F. Ravan. A counterproposal requesting that Channel *18 be reassigned to Grants Pass, Oreg., was submitted by the Oregon State Board of Higher Education ("State Board"), licensee of noncommercial educational TV stations in Corvalles, La Grande, Portland and Salem, Oreg. Petetioner submitted a reply.

2. The Notice indicated that it would be appropriate to reflect the actual use of Channel 8 at Medford at such time as noncommercial educational programing was actually inaugurated. That has since occurred[2], and we therefore find that the public interest will be served by reserving Channel *8 at Medford for noncommercial educational use.

3. With regard to the proposals concerning Channel *18, the Reverend Ravan proclaims that a third commercial outlet in Medford[3] could offer network programing not already provided plus other valuable programs. He states that he would submit an application for commercial use of Channel *18 if the reservation were deleted. In its counterproposal, the State Board requests the reassignment of Channel *18 to Grants Pass in order to extend its current service to the Southwestern portion of the State. It states that it also intends to provide local programing and to feed a network of translators from its proposed station at Grants Pass.[4] While noting that Station KSYS(TV), Medford, provides a city grade signal to Grants Pass, the State Board urges that a second noncommercial educational station will provide diversity since it does not intend to duplicate the programing of the Medford station.

4. Although only one of the two communities can be assigned Channel *18 due to spacing requirements, our engineering staff has determined that other TV channels are available for assignment to either community. One such channel (Channel 12), may be assigned to Medford if the transmitter site were to be located at least 25.3 kilometers (15.7 miles), north of the community. The assignment of an additional VHF channel to Medford in this fashion could provide a third network service on VHF channels. It would then be possible to reassign Channel *18 to Grants Pass, reserved for noncommercial educational use, as requested. This assignment would provide a first such local service to Grants Pass and extend the state's educatioal programing to the southwest area of the State.

5. Accordingly, *it is ordered*, That effective February 15, 1978, §73.606(b) of the Commission's rules, is amended, for the communities listed below as follows:

City and Channel No.

Grants Pass, Oreg.—*18+
Medford, Oreg.—5, *8+, 10+, 12+

6. Authority for the action taken herein is contained in Sections 4(i), 5(d)(1), 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 and regulations.

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

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

For the Federal Communications Commission.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-585 Filed 1-9-78; 8:45 am]

[6712-01]

[Docket No. 21387; RM-2897]

PART 73—RADIO BROADCAST SERVICES

Television Broadcast Station in Galveston, Tex.; Changes made in Table of Assignments

AGENCY: Federal Communications Commission.

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[1] This community has been added to the caption.

[2] Program test authority was granted on February 9, 1977, and petitioner was issued a license on April 29, 1977.

[3] Medford is provided local service by Stations KOBI(TV) (Channel 5) (CBS) and KMED-TV (Channel 10) (NBC). Both stations also provide some ABC network programing.

[4] The State Board states that the location of Grants Pass was selected since it has a community college from which it will seek support.

ACTION: Report and order.

SUMMARY: Action taken herein substitutes UHF Channel 48 for Channel 47 in Galveston, Tex. The substitution of channels would provide flexibility in selecting a station site.

EFFECTIVE DATE: February 15, 1978.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: In the matter of amendment of §73.606(b), Table of Assignments, Television Broadcast Stations. (Galveston, Tex.) Docket No. 21387, RM-2897; Report and order (Proceeding Terminated). See 42 FR 46064.

Adopted: December 28, 1977.

Released: January 4, 1978.

By the Chief, Broadcast Bureau:

1. The Commission herein considers the Notice of Proposed Rule Making, adopted September 2, 1977, 42 FR 46064, inviting comments on a petition filed by The Old Time Religion Hour, Inc. ("petitioner"), proposing the substitution of Channel 48 for Channel 47 (presently unoccupied and unapplied for), in Galveston, Tex. The only comments submitted were from the petitioner in support of its proposal.

2. Galveston (pop. 61,809), is the seat of Galveston County (pop. 169,812),[1] and is located approximately 72 kilometers (45 miles), southeast of Houston, Tex.

3. Petitioner states that it has acquired the land, building and tower site of a station that formerly operated on a Channel 16 assignment at Galveston. The Channel 16 assignment was later moved to Corpus Christi, and replaced with Channel 47 in Galveston. To operate the Channel 47 assignment in Galveston at the former Channel 16 site would result in short spacing to Channel 39, Station KHTV, Houston, Tex. Substitution of Channel 48 for Channel 47 would eliminate this short-spacing.

4. The proposed substitution of channels could be made in conformity with the minimum distance separation requirements and other technical criteria and without requiring other changes in the Television Table of Assignments. Petitioner has reaffirmed its intention to file for Channel 48, if it is assigned.

5. In view of the above, the Commission believes that the public interest would be served by making the proposed substitution of channels since it would permit prompt commencement of commercial television service to the area.

6. Accordingly, *it is ordered*, That effective February 15, 1978, the Television Table of Assignments (Section 73.606(b) of the Commission's rules) is amended as follows for the community listed below:

City and Channel No.
Galveston, Tex.—*22, 48.

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

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

For the Federal Communications Commission.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-586 Filed 1-9-78; 8:45 am]

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

[6712-01]

[FCC 77-858]

PART 87—AVIATION SERVICES

Clarifying Who Must Be Given Written Notice of an Application for an Aeronautical Advisory Station License

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Amendment of the Commission's rules to clarify an existing ambiguity in the rules as to who is required to be given notice of an application for an aeronautical advisory station license by the applicant for such a license.

EFFECTIVE DATE: January 9, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Robert H. McNamara, Safety and Special Radio Services Bureau, 202-632-7197.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of §87.251(b) of the rules to clarify who must be given written notice of an application for an aeronautical advisory station license. Order.

Adopted: December 21, 1977.

Released: December 30, 1977.

By the Commission.

1. An ambiguity currently exists in §87.251(b) of the Commission's rules. This rule requires an applicant for an aeronautical advisory station license to give written notice of such application to the owner of the landing area to be served and all aviation service organizations, so-called fixed-base operators, who are located at the landing area.[1] The ambiguity arises from the fact that the terms "aviation service organization" and "fixed-base operator" are not defined in the Commission's rules or by other authoritative sources commonly recognized in the communictions and/or aviation fields.[2] The term "fixed-base operator," which was intended simply to clarify the phrase "aviation service organization," is apparently open to more than one reasonable interpretation by members of the aviation and communications communities. Therefore, uncertainty has existed on the part of some aeronautical advisory station applicants as to which organizations on a landing area are required to receive notice.

2. The Commission's intent in adopting Rule 87.251(b), as discussed in the Notice of Proposed Rule Making in Docket 16621 (FCC 66-401), was to ensure that notice be given to all persons at the landing area who have a primary interest in the efficient operation of the facility in order to provide an opportunity for such interested parties to file a protest, file a competing application or enter into a mutual sharing agreement with the prospective licensee. The purpose of this Order is to resolve the existing ambiguity by amending the rule to more clearly define which organizations on a landing area are required to be notified by an applicant for an aeronautical advisory station. We are, therefore, deleting the term "fixed-base operator" from the subject rule, and specifically identifying in a footnote the types of organizations considered to be aviation service organizations for the purposes of this rule.

3. Accordingly, *It is ordered*, That §87.251(b) of the rules is amended as set forth below, effective January 9, 1978.

4. Because this amendment is consistent with the Commission's reasons for adopting the subject rule, and because it is intended merely to clarify the rule, the public notice and procedure provisions of 5 U.S.C. 553 are not applicable. Authority for the action is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and §1.412(b) of the Commission's rules, 47 CFR 1.412(b).

[1] Pursuant to Rule 87.251(a) only one aeronautical advisory station may be authorized to operate at a landing area. Therefore, interested parties who may be well qualified to provide advisory service to the flying public, but who do not receive actual notice of such an application filing during the statutory 30 day notice period, are foreclosed from filing a competing application for the five year license term.

[2] The Federal Energy Administration defined "fixed-base operator" at 10 CFR 212.31, however this definition was specifically limited to Part 212 (Mandatory Petroleum Price Regulations) and thus not generally relevant herein.

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

For the Federal Communications Commission.[3]

WILLIAM J. TRICARICO,
Secretary.

Part 87 of Chapter I of Title 47 of the Code of Federal Regulations is amended by revising § 87.251(b) to read as follows:

§ 87.251 Special conditions.

* * * * *

(b) An applicant for an aeronautical advisory station license or renewal thereof must give written notice of such application to the owner of the landing area to be served and all aviation service organizations[1] who are located at the landing area. Such notice shall include the applicant's name and address, name of the landing area to be served, and a statement that the applicant intends to file an application with the Federal Communications Commission for an aeronautical advisory station (UNICOM) to serve the named landing area. Such notice shall be given within the 10-day period immediately preceding the filing of the application with the Commission.

* * * * *

[FRDoc.78-520Filed1-9-78;8:45am]

[3] Commissioner White absent.

[1] For the purpose of this subpart, an aviation service organization means any business firm which maintains facilities at a landing area for the purposes of one or more of the following general aviation activities: (i) aircraft fueling; (ii) aircraft services (e.g. parking, storage, tie-downs); (iii) aircraft maintenance and/or sales; (iv) avionics equipment maintenance and/or sales; (v) aircraft rental, air taxi service and/or flight instructions; and (vi) baggage and cargo handling, and other passenger/freight services.

proposed rules

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

[1505-01]

CIVIL SERVICE COMMISSION

[5 CFR Part 300]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

[29 CFR Part 1607]

DEPARTMENT OF JUSTICE

[28 CFR Part 50]

DEPARTMENT OF LABOR

[41 CFR Part 60-3]

UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

Notice of Proposed Rulemaking

Correction

In FR Doc. 77-37339 appearing at page 65542 in the FEDERAL REGISTER of Friday, December 30, 1977, the following correction should be made:

On page 65542, third column, fourth full paragraph, the 19th through 24th lines should be deleted and the following inserted: "990-1 (Book 3), of the Federal Personnel Manual, insuring."

[3410-34]

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[9 CFR Part 92]

IMPORTATION OF CATTLE FROM CANADA

Brucellosis-Vaccinated Female Calves

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend importation requirements for cattle from Canada by clarifying exceptions made for certain brucellosis-vaccinated female calves. The amendment is necessary in order to include certain categories of animals inadvertently excluded from the exceptions when the regulations were previously issued. The intended effect would be to ease the restrictions regarding the importation of certain cattle into the United States.

DATE: Comments on or before February 9, 1978.

ADDRESS: Written comments to Deputy Administrator, USDA, APHIS, VS, room 821, Federal Building, 6505 Belcrest Road, Hyattsville, Md. 20782.

FOR FURTHER INFORMATION CONTACT:

Dr. D. E. Herrick, USDA, APHIS, VS, room 815, Federal Building, Hyattsville, Md. 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION: Exceptions to the importation requirements are now contained in the regulations concerning certain vaccinated cattle, originating from specified herds in Canada. These cattle may be imported into the United States under less restrictive requirements than other cattle from Canada. The exceptions now in effect do not exempt female brucellosis-vaccinated calves under 18 months of age from the brucellosis test requirements when such calves originate from brucellosis-qualified for export herds. Such animals were inadvertently omitted from the exceptions set forth in the amendments of § 92.20 effective July 18, 1977. This amendment would clarify the status of such female vaccinated calves and provide for the importation of such calves without a brucellosis test, when they originate in specified brucellosis-qualified for export herds. Such calves do not present an undue risk of disseminating brucellosis into the United States. The amendment also provides that this section would not apply to such calves that do not originate from specified brucellosis-qualified for export herds. Therefore, they would have to meet the importation brucellosis test requirements presently in effect for such cattle.

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that, pursuant to section 2 of the Act of February 2, 1903, as amended; and sections 2, 3, 4, and 11 of the Act of July 2, 1962 (21 U.S.C. 111, 134a, 134b, 134c, and 134f), the Animal and Plant Health Inspection Service is considering amending Part 92, Title 9, Code of Federal Regulations.

Accordingly, Part 92, Title 9, Code of Federal Regulations, would be amended in the following respects:

In § 92.20(c), paragraph (3)(i)(*b*); the proviso in paragraph (3)(ii); and that portion of the first sentence preceding the proviso in paragraph (5) would be amended to read:

§ 92.20 Cattle from Canada.

* * * * *

(c) *Brucellosis test or vaccination certificates.*

* * * * *

(3) * * *

(i) * * * (*b*) all eligible cattle in the herd unit, including brucellosis-vaccinated female calves between the ages of 6 months and 18 months, have been tested negative for brucellosis no less than 90 days nor more than 12 months prior to the date of importation.

(ii) * * * *Provided*, That if all of the cattle are not from herd units qualified under (c)(3)(i) of this section, all eligible cattle, including brucellosis-vaccinated female calves between the ages of 6 and 18 months, have been tested for brucellosis and found negative to three laboratory tests administered at intervals of at least 90 days.

* * * * *

(5) Female cattle under 18 months of age that originate in herds in which cattle were tested as described in subparagraphs (c) (1), (2), and (3)(i) of this section are exempted from the test requirement for brucellosis, * * *

* * * * *

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, room 821, Hyattsville, Md., during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number in this issue of the FEDERAL REGISTER.

Done at Washington, D.C., this 4th day of January 1978.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

J. K. ATWELL,
Acting Deputy Administrator, Veterinary Services.

[FR Doc. 78-636 Field 1-9-78; 8:45 am]

[6750-01]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[Docket No. 9053]

SAFEWAY STORES, INC.

Consent Agreement with Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Provisional consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent agreement, among other things would require an Oakland, Calif., retail food store chain to cease over-pricemarking and failing to sell advertised items at or below advertised prices. Further, food stores would be required to conspicuously post advertisements and notices encouraging customers to check prices of advertised items. The order would additionally obligate the firm to maintain business records for a period of three years, and to establish a surveillance program designed to ensure compliance with the terms of the order.

DATE: Comments must be received on or before March 9, 1978.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave. NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Albert H. Kramer, Bureau of Consumer Protection, Federal Trade Commission, 6th St. and Pennsylvania Ave. NW., Washington, D.C. 20580, 202-523-3727.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's rules of practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record, together with material submitted to the Commission that is not exempt from public disclosure under the Freedom of Information Act, for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

[Docket No. 9053]

SAFEWAY STORES, INC.

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

The Federal Trade Commission, having initiated a proceeding challenging certain acts and practices of Safeway Stores, Inc., a corporation, and it now appearing that said corporation, hereinafter sometimes referred to as respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being challenged:

It is hereby agreed by and between Safeway Stores, Inc., by its duly authorized officers and its General Counsel, and counsel for the Federal Trade Commission that:

1. Safeway Stores, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the state of Maryland with its office and principal place of business located at 4th and Jackson Streets, Oakland, Calif.

2. Respondent admits all the jurisdictional fact set forth in the Complaint here attached.

3. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this Agreement.

4. This Agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with a copy of the Complaint issued in this proceeding, will be place on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if comments or views submitted to the Commission disclose facts or considerations which indicate that the Order contained in the Agreement is inappropriate, improper or inadequate.

5. This Agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the Complaint which is attached hereto. Nor shall any matter which has been admitted by respondent herein be deemed an admission for any other purpose or in any other proceeding.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25, of the Commission's rules of practice, the Commission may, without further notice to respondent, (a) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (b) make information public in respect thereto. When so entered, and when served upon respondent, the order to cease and desist shall have the same force and effect and shall become final and may be altered, modified or set aside in the same manner and within the same time provided by statute or regulation for other orders. The order shall become final upon service. Mailing of the Complaint and decision containing the agreed to order to respondent's address as stated in this Agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in this Agreement may be used to vary or contradict the terms of the order.

7. Respondent has read the Complaint and order contemplated hereby, and understands that once the order has been issued, it will be required to file one or more compliance reports showing that respondent has fully complied with the order, and that respondent may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

ORDER

PROHIBITED PRACTICES

I. *It is ordered,* That Respondent Safeway Stores, Inc., a corporation, its successors or assigns, its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of items offered or sold in its retail food stores, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

A. Disseminating, or causing dissemination of, any advertisement by any means which offers or presents any items for sale at a stated price, unless throughout the effective period of the advertised offer, at each retail food store covered by the advertisement:

(1) Each unit of each such advertised item, any of which are marked with a price, is individually, clearly, and conspicuously marked with a price no higher than the advertised price: *Provided,* That in the case of over-pricemarked scanned items, clear and conspicuous posting of the advertised price of such items at the point of display will be deemed compliance with this requirement; and

(2) Each unit of each such advertised item is charged out to customers at or below the advertised price: *Provided,* That in the case of advertised items the ultimate price of whose units are determined by the total dollar amount of the customer's order or the use of a coupon, or other similar conditional price arrangement, the prices at which the units are sold, and not the prices marked on the units, shall govern.

Provided further, It shall constitute a defense of a charge of over-price-

marking or overcharging if Respondent can show that such over-pricemarking or overcharging was due to circumstances beyond Respondent's reasonable control. It will be presumed that any instance of over-pricemarking or overcharging found was due to circumstances beyond Respondent's reasonable control if Respondent can show that such over-pricemarking and overcharging occurred despite Respondent's reasonable procedures to eliminate all over-pricemarking and overcharging, and that upon learning of any specific instance or instances of such over-pricemarking or overcharging, Respondent immediately acted to eliminate them and took reasonable measures to assure that they did not recur.

For Respondent's procedures to be reasonable, Respondent shall have the burden of establishing that:

(i) It has a reasonable basis in fact for concluding that its procedures for pricemarking and charging out advertised items are properly designed to achieve compliance with this order;

(ii) It has in effect a continuing surveillance program adequate to reveal whether its retail food stores are conforming with this order; and

(iii) Respondent regularly conducts a review and analysis of results of the surveillance program adequate to determine whether changes in market conditions, technology or other changes make it necessary for Respondent to revise its procedures for pricemarking and charging out advertised items to maintain compliance with this order.

II. A. No enforcement action will be brought against Respondent for any alleged instances of over-pricemarking or overcharging on the basis of a survey unless Respondent is notified in writing within three months following the completion of that survey that the survey has been conducted. At the time of said notice the Commission shall furnish Respondent copies of written instructions to the persons making in-store observations, and sufficient documentary material that will reasonably enable Respondent to identify the stores, items and prices surveyed.

B. If, in any enforcement action brought against Respondent, the Commission offers evidence purporting to establish an over-pricemarking rate for Respondent, such rate shall be calculated by taking, as of the date(s) of any survey and for the stores selected, the total number of items over-pricemarked as a percent of the total number of advertised items than in effect for those stores.

III. *It is further ordered*, That throughout the effective period of each newspaper advertisement, Respondent shall post conspicuously at or near each doorway affording entrance to the public of each retail food store,

(a) A copy of the advertisement effective for that store; and

(b) The following statement:

NOTICE TO OUR CUSTOMERS

To assure correct charging of advertised prices please check the price of any advertised item you purchase against the price indicated in our ad and report any errors to store personnel. If errors are not corrected to your satisfaction, please advise the store manager.

IV. Respondent shall not be subject to any of the provisions of this order to the extent that such provisions shall have been rendered inconsistent with the Trade Regulation Rule regarding Retail Food Store Advertising and Marketing Practices, 16 CFR Part 424 (1977) because of any future amendment to that rule.

V. *It is further ordered*, That: A. Respondent shall forthwith deliver a copy of this order to each of its officers (excluding assistant officers), and to other of its personnel in its retail divisions (down to the level of and including store managers), who, directly or indirectly, have any responsibilities relating to pricemarking and charging out of advertised items in Respondent's retail food stores, and Respondent shall secure a signed statement acknowledging receipt of said order from each such person.

B. Respondent shall maintain a surveillance program adequate to reveal whether the business practices of its retail food stores conform to this order and shall upon request inform the duly authorized representative of the Commission as to the nature of such program.

C. Respondent shall, for a period of three years subsequent to the date of this order:

(1) Maintain business records which show the efforts taken to achieve continuing compliance with the terms and provisions of this order; and

(2) Furnish to the Federal Trade Commission copies of the records to be maintained under subparagraph (1) above, upon written request by any of its duly authorized representatives.

D. Respondent shall, all other provisions of this order notwithstanding, within 90 days following the end of each year, for a period of three years from the date this order becomes final, file with the Commission a report setting forth in detail the manner and form in which it has complied with this order in the preceding year.

It is further ordered, That Respondent shall notify the Commission at least thirty days prior to any proposed change in the corporate Respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the Respondent which may affect compliance obligations arising out of this order.

It is further ordered, That the respondent herein shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

DEFINITIONS

"Retail Food Store" means any of Respondent's stores within the United States engaged primarily in the sale of foods for home consumption, excluding convenience-type stores with less than 4,000 square feet of building area.

"Item" means any article of merchandise which differs from any other article as to commodity, product, brand, variety, style or form, grade, type of package or label, size or weight: *Provided*, That size or weight is to be disregarded with respect to articles priced by a standard measure of weight or count.

"Scanned Item" means an item bearing a symbol, printed on or affixed to the packaging or container of such item, in any store in which it is electronically scanned by equipment which identifies and prints on a cash register tape the price of that item.

"Unit" means one consumer package of a packaged item or the smallest advertised quantity that a consumer may purchase of an unpackaged item, provided, for the purpose of paragraph I.A. (2) of the order, a unit of a multiple priced item (e.g., three for 41 cents) shall consist of that quantity, count or weight to which the multiple price applies.

"Over-pricemarked Item" means an advertised item of which more than five (or in the event a display contains fewer than 20 units, more than one-fourth) of the units in any one display bear a marked price higher than the advertised price.

"Unmarked Item" means an advertised item of which no more than five (or in the event a display contains fewer than 20 units, not more than one-fourth) of the units in any one display are legibly marked with a price.

"Overcharged Item" means an over-pricemarked item or an unmarked item of which one or more units are charged out at higher than the advertised price.

"Survey" means a compliance survey conducted by or under the direction of the Federal Trade Commission of a sample of 50 or more retail food stores over a period of at least three different weeks with approximately equal numbers of stores surveyed during each week stores are surveyed. All store surveying shall be completed

within a period of time not exceeding eight consecutive weeks. Stores to be surveyed shall be selected from at least three different Standard Metropolitan Statistical Areas (SMSAs) with an approximately equal number of stores surveyed in each SMSA in which stores are surveyed. Stores to be surveyed shall be chosen in a manner which is consistent with this definition, but which is otherwise to be determined at the discretion of the staff or the Commission. Respondent waives any rights it might have to challenge the admissibility into evidence of the results of the survey of the sample on the grounds that those results are not projectable to a universe greater than the sample. Respondent, however, retains the right to challenge the evidentiary weight to be given to or inferences to be drawn from the results of any such survey on any legally available basis. All data collected in the course of a survey are to be recorded.

[Docket No. 9053]

SAFEWAY STORES, INC., A CORPORATION

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement containing a proposed consent order from Safeway Stores, Inc. (Respondent), which operates retail food stores under the name Safeway.

The proposed consent order described in this analysis has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that, in a number of Respondent's retail foods stores, a substantial number of items listed in its advertisements were marked with prices higher than the advertised prices, and a substantial number of these items were sold at prices higher than the advertised prices. The complaint also alleges that Respondent violated the Federal Trade Commission Trade Regulation Rule concerning Retail Food Store Advertising and Marketing Practices (16 CFR Part 424).

The proposed order requires Respondent to sell each advertised item at or below the advertised price and provides that overcharging which is due to circumstances beyond Respondent's control shall not be a violation of the order. The proposed order further provides that if Respondent can show that any instance(s) of overcharging occurred despite Respondent's use of reasonable procedures to eliminate all overcharging, such instance(s) will be presumed to be due to circumstances beyond Respondent's reasonable control. Subject to certain defenses and limitations, the order also prohibits overpricemarking. Respondent is also required to maintain a surveillance program adequate to reveal whether it is in compliance with the order.

The order further requires Respondent's food stores to post copies of advertisements and notices to customers encouraging them to check the prices of advertised items.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-511 Filed 1-9-78; 8:45 am]

[6740-02]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Parts 2, 154]

[Docket No. RM78-4]

INCORPORATION OF COMPENSATION PROVISIONS IN CURTAILMENT PLANS

Procedure for Compiling Service List and Serving Comments; Extension of Comment Period

AGENCY: Federal Energy Regulatory Commission.

ACTION: Extension of Time.

SUMMARY: The Commission is granting an extension of time to and including January 31, 1978, for filing initial comments and to and including March 2, 1978, for filing reply comments in the proposed rulemaking proceeding docketed as RM78-4. This extension is being granted in order to ensure that all parties have adequate time in which to respond to the proposed rulemaking.

DATES: Initial comments must be received on or before January 31, 1978, and reply comments must be received on or before March 2, 1978.

ADDRESS: Send comments to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Kenneth F. Plumb, Secretary, 202-275-4166.

SUPPLEMENTARY INFORMATION: On December 14, 15, and 19, 1977, respectively, Southern Union Co., twenty-nine gas distribution companies (New England Gas Distributors), and Algonquin Gas Transmission Co. filed motions to extend the time for filing initial and reply comments to the Preliminary Notice of Proposed Rulemaking, issued November 30, 1977, and published December 13, 1977 (42 FR 62496), in the above designated proceeding.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-503 Filed 1-9-78; 8:45 am]

[1505-01]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 146]

[Docket No. 76P-0181]

ORANGE JUICE WITH PRESERVATIVE AND CONCENTRATED ORANGE JUICE WITH PRESERVATIVE

Proposed Amendment to Standards of Identity

Correction

In FR Doc. 77-32687, appearing at page 58761 in the issue of Friday, November 11, 1977, make the following changes:

1. On page 58761, the "Dates" paragraph should read, "DATES: Comments by January 10, 1978."

2. On page 58763, first column, the second line of the paragraph beginning, "Interested persons * * *" should read, "January 10, 1978, submit to the Hearing".

[1505-01]

[21 CFR Parts 182, 184, 186]

[Docket No. 77N-0232]

GELATIN

Affirmation of GRAS Status as a Direct and Indirect Human Food Ingredient

Correction

In FR Doc. 77-32686, appearing at page 58763 in the issue of Friday, November 11, 1977, make the following changes:

1. On page 58764, the second complete word in the third from last line of the second column should read, "tyrosine".

2. On page 58765, second column, the seventh line of § 184.1318(d) should read, "(n)(1) of this chapter, 2.5 percent for".

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 20418; RM-2346, RM-2727]

TELEVISION TABLE OF ASSIGNMENTS

Request to add new VHF stations in the top 100 markets

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for filing reply comments in the proceeding concerning VHF television drop-ins. Petitioners, Association of Maximum Service Telecasters, Inc., and Mohawk-Hudson Council on Educational Television, state the additional time is necessary so that it can review and study engineering statements which have been submitted with comments.

DATE: Reply comments must be received on or before March 6, 1978.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

ORDER EXTENDING TIME FOR FILING REPLY COMMENTS

Adopted: December 28, 1977.

Released: December 30, 1977.

In the matter of petition for rulemaking to amend the Television Table of Assignments to add new VHF stations in the top 100 markets and to insure that the new stations maximize diversity of ownership, control, and programing, Docket No. 20418, RM-2346, RM-2727.

1. On March 18, 1977, the Commission released a Memorandum Opinion and Order and Notice of Proposed Rule Making in the above-entitled proceeding, 42 FR 16782. The date for filing comments has expired and the date for filing reply comments is presently January 6, 1978.[1]

2. On December 16 and 22, 1978, the Association of Maximum Service Telecasters, Inc. ("AMST"), and the Mohawk-Hudson Council on Educational Television ("Mohawk-Hudson"), respectively, filed requests seeking an extension of time for filing reply comments to and including April 6, 1978. Petitioners state that the volume and scope of the comments filed in the proceeding require additional time, noting in particular that several comments are supported by engineering statements which must be studied in detail. In addition, AMST notes, engineering studies were submitted by several announced potential applicants for the proposed short-spaced assignments purportedly demonstrating that equivalent protection can be provided to existing stations to which the drop-in would be short-spaced. AMST states that not only will it be necessary to subject these engineering studies to the most careful review, but these studies, especially those for short-spaced drop-ins or sites not previously considered, may also have the effect of involving new parties who will need adequate time to prepare comments. A ninety-day extension is opposed by the Group for the Advancement of Television Service ("GATS"), which argues that a thirty-day extension would more appropriately accommodate the interests of all parties to this proceeding.

3. In light of the foregoing, we are persuaded that additional time is warranted in order to assure development of a sound and comprehensive record on which to base a final decision in this proceeding. However, in recognition of GATS' argument that a full ninety-day extension is not necessary given the fact that the field of possible drop-ins was effectively limited by the March 18, 1977, Commission order and that comments thereon are principally restatements of positions already taken in this proceeding, we believe a less lengthy extension would be appropriate.

4. Accordingly, *it is ordered*, That the Association of Maximum Service Telecasters, Inc.'s, and Mohawk-Hudson Council on Educational Television's motions for extension of time are granted to the extent that the time for filing reply comments is extended to and including March 6, 1978, and in all other respects are denied.

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

For the Federal Communications Commission.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-526 Filed 1-9-78; 8:45am]

[1] See 42 FR 61878, December 7, 1977.

[6712-01]

[47 CFR PART 73]

[Docket No. 21393; RM-2864; RM-3002]

FM BROADCAST STATIONS IN TALLAHASSEE AND QUINCY, FLA.

Order Extending Time For Filing Replies to Counterproposal

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for filing reply comments to a counterproposal filed in a proceeding involving FM channel assignments in Tallahassee and Quincy, Fla. Petitioner states that the additional time is necessary so that he can review the documents and prepare an adequate reply.

DATES: Reply comments to the counterproposal must be filed on or before January 17, 1978.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

ORDER EXTENDING TIME FOR FILING REPLY COMMENTS

Adopted: December 22, 1977.

Released: December 27, 1977.

In the matter of amendment of § 73.202b, Table of Assignments, FM Broadcast Stations. Tallahassee and Quincy, Fla., Docket No. 21393, RM-2864, RM-3002.

1. On September 13, 1977, the Commission adopted a Notice of Proposed Rule Making, 42 FR 48357, in this proceeding. The Notice proposed the addition of FM Channel 240A to Tallahassee, Fla., as its fifth FM assignment. Public Notice of a counterproposal filed by Pat F. Thomas and Mary Ann Thomas ("Thomas"), of Quincy, Fla., was given on December 2, 1977. Replies to this counterproposal are due to be filed on December 17, 1977.[1]

2. On December 7, 1977, counsel for Big Bend Broadcasting Corp. ("Big Bend"), licensee of Stations WCNH and WCNH-FM, Quincy, Fla., sought to extend the date for filing replies to the counterproposal, stating that because of the holiday mail rush and his workload, more time will be needed to review all documents and prepare adequate comments.

3. We are of the view that the requested additional time is warranted. Accordingly, *it is ordered*, That the date for filing replies to the counterproposal in Docket 21393, is extended to and including January 17, 1978.

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 of the Commission's rules.

For the Federal Commission.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-522 Filed 1-9-78; 8:45 am]

[1] See 42 FR 57697, November 4, 1977.

[6712-01]

[47 CFR Part 73]

[Docket No. 21474; RM-1968; RM-2810]

ANNUAL EMPLOYMENT FORM

Amending FCC Form 395; Extension of Comment Period

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for filing comments and reply comments in a rulemaking proceeding concerning the amendment of the Annual Employment Form (FCC Form 395). Petitioner, National Association of Broadcasters, states that the additional time is needed so that it can establish an Advisory Committee and obtain from it assistance in the preparation of employee job classifications for use in the form which will reflect the employment categories used by the broadcast industry.

DATES: Comments must be filed on or before March 24, 1978, and reply comments on or before April 21, 1978.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: In the matter of petition for rulemaking to amend FCC Form 395 and instructions, Docket No. 21474, RM-1968, RM-2810. Order extending time for filing comments and reply comments.

Adopted: December 27, 1977.

Released: December 28, 1977.

1. On November 9, 1977, the Commission adopted a Notice of Proposed Rule Making, 42 FR 60168, concerning the above-captioned proceeding to consider revisions in the Commission's Annual Employment Form (FCC Form 395). The present dates for filing comments and reply comments are January 23, and February 22, 1978, respectively.

2. On December 15, 1977, the National Association of Broadcasters ("NAB"), filed a request seeking the extension of time for filing comments and reply comments to and including March 24, and April 12, 1978, respectively. NAB states that its Executive Committee's staff is organizing an informal Advisory Committee which will consist of small, medium and large market broadcast licensees. It hopes that this committee will assist NAB in preparing information regarding employee job classifications in the broadcast industry so that these categories could be used in Form 395. NAB notes that the time for filing comments is not adequate to establish and receive guidance from the Advisory Committee and therefore requests additional time.

3. We are of the view that the public interest would be served by this extension so that the National Association of Broadcasters may file any information which could well be helpful to the Commission in reaching a decision in this proceeding.

4. Accordingly, *it is ordered*, That the dates for filing comments and reply comments in Docket No. 21474, are extended to and including March 24, and April 21, 1978, respectively.

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

For the Federal Communications Commission.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-521 Filed 1-9-78; 8:45 am]

[6712-01]

[47 CFR Part 73]

[Docket No. 21513]

FM BROADCAST STATIONS

FM Assignment to Freeport, Tex.

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: Action taken herein proposes the assignment of a Class C FM channel to Freeport, Tex., as that community's first FM assignment. Petitioner, Weymar, Inc., states that the proposed assignment would provide for a station which could render a first full-time local aural broadcast service to Freeport, Tex.

DATES: Comments must be filed on or before February 27, 1978, and reply comments on or before March 20, 1978.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Adopted: December 28, 1977.

Released: January 4, 1978.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Freeport, Tex.), Docket No. 21513, RM-2882.

1. *Petitioner, Proposal, Comments.* (a) Notice of Proposed Rule Making is hereby given concerning amendment to the FM Table of Assignments, § 73.202(b) of the Commission's rules, regarding the assignment of Class C Channel 273 to Freeport, Tex.

(b) The petition[1] was filed on February 1, 1977, by Weymar, Inc. No comments in support of or in opposition to the petition have been filed.

(c) Channel 273 could be assigned in conformity with the minimum distance separation requirements, provided a transmitter site is located approximately 21 kilometers (13 miles), southwest of Freeport.

2. *Demographic Data.*(a) *Location.* Freeport is located on the Gulf of Mexico, approximately 80 kilometers (50 miles), south of Houston, Tex.

(b) *Population.* Freeport, 11,997; Brazoria County, 109,020.[2]

(c) *Present Aural Service.* Freeport has a daytime-only AM station (KBRZ), licensed to Coastal Broadcasting, Inc. Freeport receives a number of broadcast services from Houston and Galveston, approximately 80 kilometers (50 miles), and 64 kilometers (40 miles), distant, respectively. It also receives service from a Class C FM station at Lake Jackson, in Brazoria County, approximately 24 kilometers (15 miles), northwest of Freeport.

3. *Economic Data.* Petitioner states that Freeport is one of several communities collectively referred to as "Brazosport."[3] Of these communities, Freeport has the largest population. We are told that Brazoria County has had a population increase of 42.1 percent between 1960 and 1970, with Freeport and the other communities being responsible in large measure because of their development as industrial and recreational centers. Petitioner notes that Freeport has recently been selected as the site for one of the country's major oil seaports and adds that, in view of this development, there is no doubt that Freeport will continue to grow. In support of its proposal, petitioner has submitted population data and a profile of the local economy.

4. Petitioner contends that the existing local broadcast service in Freeport is inadequate to properly serve the needs and interests of its residents. It asserts that, even though a full-time Class C FM channel is in operation at Lake Jackson, that station's primary responsibility is to its community and, regardless of its best efforts, cannot compensate Freeport for the absence of its own local radio facility.

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[1] Public Notice of the petition was given on May 17, 1977.

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

[3] The communities are Lake Jackson, Oyster Creek, Jones Creek, Clute, and Richmond.

5. *Preclusion Studies.* Petitioner's engineering study indicates that assignment of Channel 273 to Freeport would have no preclusionary impact on the co-channel or any adjacent channels, since all these channels are already precluded by existing FM assignments.

6. *Additional Considerations.* Assignment of Channel 273 to Freeport requires that the transmitter site be located approximately 21 kilometers (13 miles) southwest of the Freeport post office in order to comply with the minimum distance separation requirements. From such a site it would be able to provide the requisite city coverage to Freeport. Since the required site for the proposed assignment is located on a narrow strip of land abutting the Gulf of Mexico, petitioner should indicate in its comments the basis upon which it believes that such a transmitter site could be obtained.

7. Petitioner states that a Class A FM channel is not available for Freeport and that only Channel 273 is suitable for such assignment. It also notes that, although the principal service area of a station on Channel 273 would be Freeport, the communities of Lake Jackson, Oyster Creek, Jones Creek, Clute and Richmond, also would be served by such a station. Petitioner recognizes that its proposed station would not provide first or second aural service to any area or population.

8. Based on our examination of petitioner's proposal, there appears to be a basis for considering assigning a Class C channel to Freeport, especially since there are no Class A channels available for assignment. Moreover, the proposed station would provide for a first full-time local aural broadcast service to the community.

9. Accordingly, the Commission proposes to amend the FM Table of Assignments (§ 73.202(b) of the Commission's rules) with regard to Freeport, Tex., as follows:

City and Channel Nos., Present/Proposed

Freeport, Tex., —/273.

10. The Commission's authority to institute rule making proceedings; showings required; cut-off procedures; and filing requirements are contained in the attached Appendix below and are incorporated herein.

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

11. Interested parties may file comments on or before February 27, 1978, and reply comments on or before March 20, 1978.

For the Federal Communications Commission.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

APPENDIX

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

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

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

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

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

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

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

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

[FR Doc. 78-519 Filed 1-9-78; 8:45 am]

[6712-01]

[47 CFR Part 73]

[Docket No. 21510; RM-2989]

FM BROADCAST STATIONS

FM Assignment in Baxter Springs, Kans.

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: Action herein proposes the assignment of a Class A channel to Baxter Springs, Kans., as that community's first FM assignment. Petitioner, Jack R. Maxton, states the proposed channel would provide for an FM station which could render a first full-time local aural broadcast service to Baxter Springs, Kans.

DATES: Comments must be received on or before February 24, 1978, and reply comments on or before March 16, 1978.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Baxter Springs, Kans.), Docket No. 21510, RM-2989.

Adopted: December 23, 1977.

Released: January 3, 1978.

1. *Petitioner, Proposal, Comments.* (a) Notice of Proposed Rule Making is given concerning amendment of the FM Table of Assignments (§ 73.202(b) of the Commission's rules) as it relates to Baxter Springs, Kans.

(b) Petition for rulemaking[1] was filed on behalf of Jack R. Maxton ("petitioner"), seeking the assignment of Channel 296A to Baxter Springs, Kans., as its first FM assignment. No responses to the petition were received.

(c) Channel 296A could be assigned to Baxter Springs in conformity with the minimum distance separation requirements provided the transmitter site is located 11 kilometers (7 miles) north of the community.

2. *Community Data.*—(a) *Location.* Baxter Springs, situated in Cherokee County, is located in the southeastern corner of the state approximately 21 kilometers (13 miles) west of Joplin, Mo.

(b) *Population.* Baxter Springs—4,489; Cherokee County—21,549.[2]

[1] Public Notice of the petition was given on November 7, 1977 (Report No. 1088).

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

(c) *Local Broadcast Service.* There is no local aural broadcast service in Baxter Springs.

(d) *Economic Data.* Petitioner states that the community's population has increased 7 percent between 1970 and 1973, and the community is fast becoming the trade center for the area. He notes that there is a steady and sure growth evidenced by the expansion of the present and the development of new businesses. Petitioner submitted information which indicates a level of manufacturing and other business activities in the county which appears to provide adequate basis for the proposed station.

4. Petitioner asserts that the lack of local media, including a newspaper, has been a significant obstacle to the full development of the county. The proposed FM broadcast station, he adds, would provide an outlet for the expression of community needs and local issues.

5. In light of the above information and the fact that the proposed FM channel assignment would provide Baxter Springs, as well as Cherokee County, an opportunity to acquire a first full-time local aural station, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the rules, with regard to Baxter Springs, Kans., as follows:

City and Channel Nos., Present/Proposed

Baxter Springs, Kans., —/296A.

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

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

7. Interested parties may file comments on or before February 24, 1978, and reply comments on or before March 16, 1978.

For the Federal Communications Commission.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

APPENDIX

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

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

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

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

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

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

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

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

[FR Doc. 78-516 Filed 1-9-78; 8:45 am]

[6712-01]

[47 CFR Part 73]

[Docket No. 21511; RM-2752]

FM BROADCAST STATIONS

FM Assignment to Harrison, Ark.

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of a second FM channel to Harrison, Ark. Petitioners Charles E. Bowman and Don E. Loveland state that the proposed channel would provide for an FM station which could render a second local full-time aural broadcast service to the community.

DATES: Comments must be received on or before February 24, 1978, and reply comments on or before March 16, 1978.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations (Harrison, Ark.), Docket No. 21511, RM-2752; Notice of proposed rulemaking.

Adopted: December 23, 1977.

Released: January 3, 1978.

By the Chief, Broadcast Bureau.

1. *Petitioner, proposal, and comments.* (a) Petition for rulemaking,[1] filed June 17, 1976, by Charles E. Bowman and Don E. Loveland ("petitioners"), proposing the assignment of channel 244A to Harrison, Ark., as its second FM assignment.

(b) The channel may be assigned without affecting any of the existing FM assignments in the table. There were no responses to the proposal.

(c) Petitioners state that, if the channel is assigned, they will file an application for an FM station.

2. *Community data.*—(a) *Location.* Harrison, situated in Boone County, is located in northwestern Arkansas, 176 kilometers (110 miles) northwest of Little Rock.

(b) *Population.* Harrison—7,239; Boone County—19,073.[2]

(c) *Local broadcast service.* Harrison is served by station KHOZ-FM, channel 275, and daytime-only AM station KHOZ, both licensed to Harrison Broadcasting Corp.

(d) *Economic considerations.* Petitioners state that Harrison's population has increased 23 percent during the last five years. We are told that the area's economy depends on agriculture, light manufacturing, and leisure industry. Petitioners note that food processing, wood products, apparel, electrical, and plastic manufacturing are the major industries. They state that expansion of present industry and continuing location of new branch plants of regional and national manufacturers of consumer products is expected to provide an expanding job market in the future. Petitioners have also submitted letters from local officials and citizens stating their support for the proposed assignment.

3. *Preclusion studies.* Assignment of channel 244A to Harrison would cause

[1] Public notice of the petition was given on September 27, 1976 (report No. 1005).

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

preclusion on channel 243. One community, Buffalo, Mo. (population 1,915), is located in the precluded area. It has no AM or commercial FM assignments. Petitioners are requested to identify in their comments whether alternate channels are available for assignment to Buffalo. Since Harrison already has a class C FM station, there would be no first FM or first nighttime aural service. However, petitioners should submit a *Roanoke Rapids*, 9 FCC 2d 672 (1967) and *Anamosa-Iowa City, Iowa*, 46 FCC 520 (1974), showing as to the area and population which would receive a second FM and second nighttime aural service, if any.

4. *Additional considerations.* The proposed assignment would result in intermixing a class A with a class C channel. Although there is a policy against intermixture of classes of FM channels, an exception can be made when a class C channel is unavailable for assignment and a petitioner is willing to apply for the channel in spite of the intermixture situation. *Yakima, Wash.*, 42 FCC 2d 548, 550 (1973); *Key West, Fla.*, 45 FCC 2d 142, 145 (1974). Since petitioner is willing to apply for and operate on channel 244A at Harrison, this assignment could be made.

5. In view of the above, the Commission proposes to amend the FM table of assignments, § 73.202(b) of the Commission's rules and regulations, with respect to Harrison, Ark., as follows:

City and Channel Nos., Present/Proposed

Harrison, Ark., 275/244A, 275.

6. The Commission's authority to institute rulemaking proceedings; showings required; cut-off procedures; and filing requirements are contained in the attached appendix and are incorporated herein.

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

7. Interested parties may file comments on or before February 24, 1978, and reply comments on or before March 16, 1978.

For the Federal Communications Commission.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

APPENDIX

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and section 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM table of assignments, section 73.202(b) of the Commission's rules and regulations, as set forth in the notice of proposed rulemaking to which this appendix is attached.

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

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

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

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

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

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

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

[FR Doc. 78-590 Filed 1-9-78; 8:45 am]

[6712-01]

[47 CFR Part 73]

[Docket No. 21512; RM-2990]

FM BROADCAST STATIONS

FM Assignment to Remsen, N.Y.

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes a first class A FM channel to Remsen, N.Y. Petitioner, Renman Broadcasting, Inc., states that the proposed assignment would provide for a station which would render a first full-time local aural broadcast service to the community.

DATES: Comments must be received on or before February 27, 1978. Reply comments must be received on or before March 20, 1978.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations (Remsen, N.Y.), Docket No. 21512, RM-2990.

Adopted: December 28, 1977.

Released: January 4, 1978.

1. *Petitioner, proposal, and comments.* (a) Petition for rulemaking,[1] filed October 21, 1977, by Renman Broadcasting, Inc. ("petitioner"), licensee of daytime-only AM Station WADR, Remsen, N.Y., proposing the assignment of channel 228A to Remsen, N.Y., as a first FM assignment to that community. There were no responses to the proposal.

(b) The channel could be assigned in full conformity with the minimum distance separation requirements.

(c) Petitioner states that it will immediately file an application for a construction permit if the channel is assigned.

2. *Community data.*—(a) *Location.* Remsen Town, situated in Oneida County, is located approximately 32 kilometers (20 miles) north-northeast of Utica, N.Y.

(b) *Population.* Remsen Town—1,366; Oneida County—273,037.[2]

(c) *Local broadcast service.* Remsen is served by daytime-only station WADR, licensed to petitioner.

(d) *Economic considerations.* Petitioner notes that Remsen Town has a variety of businesses including service trades, retail stores, insurance agencies, restaurants, etc. In support of its petition, petitioner has also submitted information with respect to education, civic organizations and form of government.

3. Since Remsen Town is located within 402 kilometers (250 miles) of the United States-Canada border, the proposed assignment of channel 228A to Remsen Town requires coordination with the Canadian Government.

4. In view of the fact that the proposed FM station would provide the community with a first full-time local aural broadcast service, the Commission proposes to amend the FM table

[1] Public notice of the petition was given on November 7, 1977 (report No. 1088).

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

of assignments, § 73.202(b) of the rules, with regard to Remsen Town, N.Y., as follows:

City and Channel No., Present/Proposed

Remsen Town, N.Y., —/228A.

5. The Commission's authority to institute rulemaking proceedings; showings required; cut-off procedures; and filing requirements are contained in the attached appendix below and are incorporated herein.

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

6. Interested parties may file comments on or before February 27, 1978, and reply comments on or before March 20, 1978.

For the Federal Communications Commission.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

APPENDIX

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM table of assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the notice of proposed rulemaking to which this appendix is attached.

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

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

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

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

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

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

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

[FR Doc. 78-515 Filed 1-9-78; 8:45 am]

[6712-01]

[47 CFR Part 73]

[Docket No. 21504; RM-2929]

FM BROADCAST STATIONS

Proposed amendments to FM assignments in Blytheville, Ark., and Mayfield, Ky.

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking and order to show cause.

SUMMARY: Action taken herein proposes the assignment of a Class A FM channel to Mayfield, Ky., and the substitution of a Class C channel at Blytheville, Ark. Petitioner, Purchase Sound, Inc., states that, because of short spacing, it is necessary to substitute channels at Blytheville in order to assign a channel to Mayfield. The proposed Class A channel would provide for an FM station which could render a second full-time local aural broadcast service.

DATES: Comments must be received on or before February 21, 1978, and reply comments on or before March 10, 1978.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: December 19, 1977.

Released: December 23, 1977.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Mayfield, Ky., and Blytheville, Ark.), Docket No. 21504, RM-2929.

1. The Commission herein considers a petition[1] filed by Purchase Sound, Inc. ("petitioner"), licensee of AM Station WYMC(AM), Mayfield, Ky., which seeks the assignment of Channel 240A to Mayfield, as a second FM channel assignment to the community. In order to make the assignment, the petitioner also requests that Channel 242 be substituted for Channel 241 (presently occupied by Station KHSL(FM)) by Blytheville, Ark.[2]

2. Petitoner states that, although the 1970 Census shows the population of Mayfield to be 10,724, the 1975 Census shows it to be 13,500. It points out that the community serves a prime retail trade area with sales amounting to $72,631,000 in 1975. In support of its proposal, petitioner has submitted information with respect to education, churches, and civic organizations in addition to a profile of the local economy of Mayfield. The community is presently served by Station WXID(FM), Channel 234 (Class C) and daytime-only AM stations WNGO and WYMC. Petitioner asserts that the proposed station would provide Mayfield and Graves County, of which it is the county seat, with its first choice of FM service. It avers that if the assignment is made as requested, it will promptly file an application for a construction permit and, if granted, will proceed expeditiously to construct and operate an FM station.

3. *Preclusion Consideration.* If Channel 242 were substituted for Channel 241 at Blytheville and Channel 240A assigned to Mayfield, additional areas would be precluded on Channels 240A and 242.[3] Nine communities (all over 1,000 population), Cairo, Ill. (6,277); Bardwell (1,049), Clinton (1,618), Fulton (3,250), Murray (1,537), Ky.; and South Fulton (3,122), Paris (9,92), McKenzie (4,873), and Huntingdon (3,661), Tenn., are located in the Channel 240A preclusion area. Each of these except Cairo, Bardwell, Clinton and South Fulton has a commercial FM assignment. Cairo has an AM station. Petitioner should indicate in its comments whether alternate FM channels are available for assignment to the communities which have no FM assignments in the precluded area.

4. *Other Considerations.* The assignment of Channel 240A to Mayfield

[1] Public Notice of the petition was given on July 29, 1977 (Report No. 1068).

[2] Under the Commission's minimum distance separation requirements (§ 73.207(a) of the rules), a separation of 169 kilometers (105 miles), would be required between the Blytheville facility operating on Channel 241 and the proposed Mayfield facility operating on Channel 240A. Since Mayfield is only 145 kilometers (90 miles), from Blytheville, channel substitution is required.

[3] In contrast, petitioner points out that the assignment of Channel 240A to Mayfield would also make it possible to assign Channel 240A to Lexington, Henderson, Bemis or Jackson, Tenn.

would result in intermixing a Class A channel with a Class C channel (234). The Commission has a policy against intermixture of classes of FM channels, but an exception is made when no Class C channel appears to be available and the petitioner, as is the case here, is willing to apply for the proposed channel in spite of the intermixture situation. Yakima, Wash., 42 FCC 547, 550 (1973). Moreover, if Channel 240A were to be assigned to Mayfield, it would be necessary, as noted above, to substitute Channel 242 for Channel 241 at Blytheville, Ark. Station KHLS(FM), licensed to Sudbury Services, Inc., is presently operating on Channel 241 at Blytheville. Under existing Commission precedents, see Circleville, Ohio, 8 FCC 2d 159 (1967), reimbursement to Station KHSL(FM) for the necessary and reasonable costs of converting to the new frequency will be required. Petitioner recognizes the requirement of reimbursement and has expressed its consent thereto if it obtains a permit for proposed channel 240A at Mayfield.

5. Accordingly, pursuant to authority contained in sections 4(i), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, it is proposed to amend § 73.202(b) of the Commission's rules, the FM Table of Assignments for the communities listed below as follows:

City and Channel Nos., Present/Proposed

Blytheville, Ark., 241/242.
Mayfield, Ky., 234/234, 240A.

6. *It is ordered,* That, pursuant to Section 316 of the Communications Act of 1934, as amended, Sudbury Services, Inc., shall show cause why its license for Station KHSL(FM), Channel 241, should not be modified to specify operation on Channel 242 in lieu of Channel 241 at Blytheville, Ark. This order is being made with the understanding that Sudbury Services, Inc., will receive reimbursement from the ultimate licensee of Channel 240A at Mayfield. Ky., for all necessary and reasonable expenses incurred in the channel change.

7. Pursuant to § 1.87 of the Commission's rules, the licensee of Station KHSL(FM), Sudbury Services, Inc., may not later than February 21, 1978, request that a hearing be held on the proposed modification. Pursuant to § 1.97(f), if the right to request a hearing is waived, Sudbury Services, Inc., may, not later than 1978, file a written statement showing with particularity why its license should not be modified or not so modified as proposed in the order to show cause. In this case, the Commission may call on Sudbury Services, Inc., to furnish additional information, designate the matter for hearing, or issue without further proceeding an Order modifying the license as provided in the order to show cause. If the right to request a hearing is waived and no written statement is filed by the date referred to above, Sudbury Services, Inc., is deemed to consent to the modification as proposed in the order to show cause and a final order will be issued by the Commission if the channel changes referred to in paragraph 5 above, are found to be in the public interest.

8. The Commission's authority to institute rulemaking proceedings; showings required; cut-off procedures and filing requirements are contained in the attached appendix below and are incorporated herein.

9. Interested parties may file comments on or before February 21, 1978, and reply comments on or before March 10, 1978.

10. *It is further ordered.* That the Secretary of the Commission shall send a copy of this order by certified mail return receipt requested, to Sudbury Services, Inc., Box 989, Blytheville, Ark. 72315, the party to whom the order to show cause is directed.

For the Federal Communications Commission.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

APPENDIX

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

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

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

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

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

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

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

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

[FR Doc. 78-524 Filed 1-9-78; 8:45 am]

[6712-01]

[47 CFR PART 73]

[Docket No. 21502; RM-2737; FCC 77-848]

SUBSCRIPTION TELEVISION SERVICE

Memorandum Opinion and Order; Inquiry

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order and notice of inquiry and notice of proposed rulemaking.

SUMMARY: FCC proposes to change an existing rule which provides that only one subscription television authorization may be granted in any community and proposes a rule providing for a cut-off procedure for STV applications. FCC also proposes that an inquiry be commenced into, among other things, the following matters: whether to continue to allow subscription television systems with different technical characteristics or now to require them to be compatible; whether the purchase of decoders by subscription television subscribers should now be permitted or the system of leasing such equipment be continued; what procedural and decisional criteria should be established to govern proceedings involving mutually exclusive subscription television proposals and proceedings involving an STV proposal which is mutually exclusive with a proposal for a conventional station. The intended effect of the proposed rule changes and inquiry is to further the development of subscription television as a benefit to the public. This action was initiated by Midwest St. Louis, Inc., and others filing jointly.

DATES: Comments must be received on or before January 30, 1978, and reply comments must be received on or before February 21, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Freda Lippert Thyden, Boadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION: Also in this document, FCC denied a request by Feature Film Services, Inc., for waiver of the rule providing that no STV system will be approved if it requires an increase in the width of a television broadcast channel beyond 6 MHz. Petitioner's desire for additional spectrum space to transmit decoder control information was not shown to be warranted.

Memorandum Opinion and Order and Notice of Inquiry and Notice of Proposed Rulemaking

Adopted: December 15, 1977.

Released: December 30, 1977.

In the matter of amendment of part 73 of the Commission's rules and regulations in regard to § 73.642(a)(3) and other aspects of the Subscription Television Service, Docket No. 21502, RM-2737.

1. The Commission has before it for consideration a petition filed on behalf of Midwest St. Louis, Inc.; Liberty STV, Inc., et al. ("Midwest"), requesting the issuance of a Notice of Inquiry as an initial stip before rulemaking procedures are instituted to establish uniform standards or policies for designation for hearing of applications seeking authorization for subscription television ("STV").[1] Petitioners suggest that the Commission might explore the questions of the criteria and procedures to be used in the course of comparative evaluation of mutually exclusive STV proposals, especially with regard to comparative evaluation of differing STV equipment systems. No responses, either in support of or in opposition to the petition, were filed. The characteristics of the technical systems to be employed in STV operations is also involved in a petition for waiver of § 73.644(b) of the Commission's rules, filed by Feature Film Services, Inc. ("Feature Film"). No response was filed to this request.

2. We propose to commence an inquiry into the matters, among others, specified by Midwest, as well as to propose rulemaking concerning that part of § 73.642(a)(3) of the Commission's rules which provides that only one STV authorization may be granted in any community, the "one-to-a-community" rule. Also proposed in this document is a rule which would apply a cut-off procedure to STV applications. However, before discussing these issues, we will dispose of the petition for waiver of § 73.644(b)(3) of the Commission's rules.

3. This section provides that no STV system will be approved if it requires an increase in the width of a television broadcast channel beyond 6 MHz. Feature Film requests waiver of this requirement to permit an additional 4 MHz of spectrum space on a channel, either adjacent or non-adjacent to the channel allocated for STV service, in order to transmit decorder control information. Feature Film contends that the new technical STV system it has developed, which requires the additional spectrum space, is superior to other STV technical systems in various ways, since, among other things, it eliminates the possibility of piracy of the audio and video STV signals and provides a pay-per-view program feature. Further, Feature Film asserts that the UHF spectrum, where most STV development is expected, is not heavily used now and could accommodate its request for additional spectrum space.

4. Petitioner has failed to demonstrate that its proposal would provide public interest benefits sufficient to warrant waiver of the Commission's rules in this regard. Thus, no indication has been given that those STV technical systems using 6 MHz of the spectrum cannot successfully deal with any problems of piracy of signals which may exist. Indeed, petitioner itself recognizes that STV systems which conform to our present rules in this specific regard are feasible. As to Feature Film's other alleged technical improvements, they do not warrant the use of such a scarce commodity as that of UHF spectrum space. Accordingly, this request will be denied and will not be one of the technical issues which are to be explored in this proceeding.

5. In order to place the questions being raised in this notice into proper perspective, we will first provide a brief history of the subscrtiption television service as developed in Docket No. 11279. In 1957, the Commission adopted a *First Report and Order*, 23 FCC 532, in which it concluded that it had statutory authority to authorize STV operations, and it announced the conditions under which applications for trail STV operations would be accepted and considered. The following year, a *Second Report and Order*, 16 R.R. 1529 (1958), gave notice that action on trial STV applications would be deferred in order to provide the 85th Congress with an opportunity to consider the questions of public policy raised by subscription television. The acceptance of such applications, however, was not barred. Believing that its action would be consonant with the then current Congressional concern with the development of STV, the Commission in 1959, issued a *Third Report and Order*, 26 FCC 265, which basically readopted and affirmed the first report and order. This third report stated that the Commission was ready to consider applications for trial STV operations and take action appropriate with the public interest. It was therein provided that STV trial operations might be conducted only in communities lying within the grade A contours of at least four commercial television stations, including the station of the STV applicant. One of the primary reasons for this provision was to assure the continued availability of substantial amounts of conventional, that is, "free" television programming to the public. Of three applications for trial authorizations filed, one was denied, one was granted (but operation never commenced) and the third was granted to UHF station WHCT, Hartford, Conn., which began such operations in 1962.[2]

6. Based on experience with the trial operation in Hartford, and other developments which had occured, the Commission, in 1968, in a *Fourth Report and Order*, 15 FCC 2d 466, established a nationwide over-the-air subscription television service[3] and adopted rules—other than those concerning equipment and system performance capability—to govern the service.[4] We therein concluded that STV could provide a beneficial supplement to the conventional television programming and that, as an alternative medium, it might well provide a wholesome stimulus to free television which could lead to an improvement in overall programming available to the public. Although the Hartford trial did furnish information that proved helpful in making some reasonable estimates about future developments, numerous questions remained. Thus, we believed that it was best to proceed with caution and concluded that STV should be restricted to communities lying within the Grade A contours of at least five commercial television stations including that of the STV opera-

[1] Briefly described, subscription television broadcasting involves the broadcasting of a scrambled television signal which, on payment of a fee, subscribers are authorized to unscramble through use of a decoder. See In the Matter of Subscription Television Program Rules, 52 FCC 2d 1, at 2 (1974).

[2] The Hartford grant was affirmed by the U.S. Court of Appeals in *Connecticut Committee Against Pay TV* v. *F.C.C.*, 301 F. 2d 835 (D.C. Cir. 1962), cert. denied, 371 U.S. 816.

[3] The Court of Appeals affirmed the Commission's power to authorize nationwide STV on a permanent basis in *National Association of Theatre Owners* v. *F.C.C.*, 420 F. 2d. 194 (D.C. Cir. 1969), cert. denied, 397 U.S. 922 (1970).

[4] For amendments of those rules pertaining to STV broadcasting of feature films, sports events and program series, see the *Report and Order*, 34 FCC 2d 271 (1972), and the *First Report and Order*, 52 FCC 2d 1 (1974), in Docket No. 18893, and the *Second Report and Order*, 40 FR 52731, 35 R.R. 2d 767 (1975), in Docket No. 19554. Also see *Home Box Office, Inc.* v. *F.C.C.*, No. 75-1280 (D.C. Cir., March 25, 1977).

tor. This was a more stringent requirement than that provided in the third report and order. In order to restrict preempting of time, the Commission also provided that in the five-station communities[5] where STV would be permitted, only one station in the community might engage in STV operations[6] and that, not counting the station of the applicant, at least four of the stations would have to be in operation and providing conventional television service at the time of the STV grant of authorization.[7] These provisions were adopted as part of § 73.642(a) of the Commission's rules. In the last and *Fifth Report and Order*, 19 FCC 2d 559 (1969), in Docket No. 11279, the Commission adopted rules governing equipment and system performance capability. It also announced the manner in which applications for STV authorization should be filed, and it prescribed their content and form.

7. As to the present STV situation, we note that the Commission has issued eight STV authorizations.[8] Of these stations, only those in Newark, N.J., and Corona, Calif., have actually begun STV operations, the former commencing on March 1, 1977, and the latter on April 1, 1977. Additionally, applications are pending for STV authorizations in at least fourteen other communities, many of which must be designated for comparative hearing since the "one-to-a-community" rule has made them mutually exclusive.[9]

8. Because of the significant interest presently being shown by broadcasters and the public in the operation of STV stations and the development of the industry since Docket No. 11279 was closed in 1969, we are proposing to consider a change in the "one-to-a-community" requirement specified in § 73.642(a)(3) and to consider the adoption of a rule providing for a cut-off procedure for STV applications. We are also proposing to examine—but on an inquiry basis only at this stage—a number of other STV matters which are now ripe for consideration. The points to be considered are discussed more fully below. Before proceeding to these matters, however, it should be noted that the scope of the inquiry will not include consideration of any change in the provision of § 73.642(a)(3) which specifies that no STV authorization will be granted unless (not counting the station of the applicant) at least four stations which include the community of the applicant within their Grade A contours are operating conventional, i.e., nonsubscription, stations. No change in this requirement appears warranted.

9. With regard to the "one-to-a-community" rule, we request that comments be directed to whether, and under what circumstances, the Commission should permit more than one television station in a given community to provide an STV service. For example, if more than one STV service were to be permitted, should there be any limit so long as the community is still served by four conventional television stations? In this regard, those commenting should consider what impact a relaxation of the "one-to-a-community" rule would have on conventional television service. While we remain convinced that the preservation of some limit on the number of channels available for STV use is of substantial importance to the public, we need to know if the present rule is necessary to assure that free television will continue to be available in ample quantity and quality. This issue takes on added significance in view of the Commission's recent proposal to eliminate the restrictions on those feature movies that may be shown on STV, a restriction first imposed to prevent program siphoning.[10] Another point to be considered is whether on balance the public would benefit from additional STV service and, if so, how. In answering this point it is important to discuss, based on the experience of those STV stations presently operating, as well as those formerly operating on a trial basis, whether competition has resulted in improved and more varied programming for both services.

10. To provide an orderly procedure for the consideration of mutually exclusive AM, FM, and TV applications, the Commission has established cut-off procedures.[11] We need to consider whether, because of the volume of applications or otherwise, a like approach should be followed here. All suggestions on how to develop appropriate cut-off or other procedureal guidelines are invited.

11. there are various other matters for inquiry in this proceeding, two of which, the compatibility of STV systems and the purchase of subscriber decoder equipment, pertain to the technical aspects of STV. In the fourth report and order, the Commission decided that it was in the public interest that multiple technical STV systems be permitted. In so concluding, it found that there would be no problem of inconvenience or expense to the public caused by having more than one decoder for purposes of receiving multiple STV operations because of the one-to-a-community limitation on STV operations. Now, however, if a rule is adopted allowing more than one STV station per community, the issue of whether to allow technically differing STV systems or to require their compatibility so that a subscriber receiving multiple STV services will not have to attach a number of different decoders to his television set becomes particularly significant. We urge that various subsidiary points be addressed by commenting parties, such as whether compatible equipment is presently available for purchase or could readily be made available for sale to holders of STV authorizations. Other questions to be addressed are what additional costs would requiring a compatible STV system have, especially on an existing STV station? Could a compatible STV system approach degrade the performance or quality of STV transmissions? Could it preclude the making of improvements in STV equipment?

12. The other matter for inquiry which relates to the technical side of STV is not necessarily dependent on resolution of the question of whether one or more STV authorizations should be granted in a community. This second issue, which concerns the ownership of decoders, is whether their purchase by subscribers could be allowed or the present system of leasing such equipment be continued. A further question is whether the merits

[5] When we speak of a five-station community we mean a community receiving five Grade A services. The rule does not require that all five be licensed to the STV community itself.

[6] See *Kaiser Broadcasting Corp.*, 60 FCC 2d 961 (1976), and *In the Matter of Request for a Declaratory Ruling*, 55 FCC 2d 187 (1975), in which the Commission stated that the "one-to-a-community" rule meant that no more than one STV service would be authorized in any one community and not that only one such service would be authorized in any given market.

[7] In the interest of assuring adequate free programming for the public, the Commission also required that STV stations broadcast at least a minimum number of hours of free programming. See section 73.643(e) of the Commission's rules.

[8] The Commission has granted STV authorizations to stations WBTB-TV (channel 68), Newark, N.J.; KBSC-TV (channel 52), Corona, Calif.; WQTV (channel 68), Boston, Mass.; WCGU-TV (channel 24), Milwaukee, Wis.; KWHY-TV (channel 22), Los Angeles, Calif.; KTSF-TV (channel 26), San Francisco, Calif.; and most recently to WXON-TV (channel 20), Detroit, Mich.; and to Buford Television of Ohio, Inc., for its new commercial television station on UHF Channel 64, Cincinnati, Ohio.

[9] Where two or more applicants seek to operate a television station on the same channel, their mutually exclusive applications must be designated for comparative hearing in a consolidated proceeding to determine which proposal, if granted, would better serve the public interest, convenience and necessity. See *Ashbacker Radio Corp.* v. *F.C.C.*, 326 U.S. 327 (1946).

[10] See *In the Matter of Repeal of Movie Restrictions on Subscription Television*, FCC 77-436, 42 FR 34341. See also n. 4, supra.

[11] See, for example, § 1.572(c) of the Commission's rules which provides the cut-off procedures for television applications.

of leasing or purchasing decoders are different if the present "one-to-a-community" rule is retained or if more than one STV station to a community is allowed.

13. There are other matters now ripe for inqiury. This includes the procedures to follow and comparative criteria to apply in two situations: (1) Where a choice must be made between two applicants for a new television station, one to be used conventionally, the other to be for STV; and (2) where a choice must be made between two mutually exclusive STV applicants.[12] As correctly noted by petitioners, there are particular procedural and decisional problems which arise if an applicant seeking an STV authorization in a mutually exclusive hearing is also involved in a competitive hearing for a construction permit for a new television station. For a clear understanding of this subject, it is important to keep in mind that, at this point, we follow a two-step procedure in which an STV authorization may be issued only to an entity that already is either the licensee of a commercial television broadcast station or the holder of a construction permit for a new commercial television broadcast station.[13] Although this two step process may be a logical sequence in a single applicant context, it can confuse matters in a comparative situation. More specifically, if the two stages of the decisional process are not consolidated and the proceeding remains bifurcated, it is possible that an applicant may obtain an authorization for a conventional television broadcast facility which it does not desire to construct and operate. The applicant may be granted a construction permit for a television station in one administrative hearing, but be denied the STV authorization in the other administrative hearing. Correlatively, the mutually exclusive applicant seeking a conventional television station, which is otherwise qualified to be a licensee, might be unnecessarily denied a construction permit on comparative grounds alone. In light of these possibilities, it is necessary—both for policy and procedural reasons—to address the question of whether the two requests for authorization necessary for ultimately commencing STV service should be acted on separately and, if so, in what order, or if the two requests should be consolidated in some appropriate manner for consideration.[14] We suggest that comments be directed to the problems and advantages involved in various procedural approaches and the appropriateness of a policy statement being released or a rule being adopted on this subject. Also, to avoid reliance on a situation in making a grant, only to have it change, commenting parties are requested to address whether we should require new television applicants to specify if they contemplate STV operation and if their answer is no, if they should be considered ineligible for STV authorization for the same channel for a given period.

14. As a related matter, since one of the Commission's primary responsibilities is to choose the best of the qualified new applicants for the same broadcast facilities, it has already established criteria for comparing mutually exclusive applications for conventional stations. However, such criteria do not exist for comparing two competing STV applications. The Commission therefore invites comment on whether such criteria should be established or whether some other means of selection should be employed. Nor are there standards to use to compare two competing applications for a new television station when one is for conventional use and the other contemplates STV operation. We believe that this may be the appropriate time for establishing comparative criteria for such situations and we invite all possible comment on both possible comparative situations. In commenting on what criteria should be used to decide between mutually exclusive STV applications, parties should address themselves to such questions as whether a comparative evaluation of STV technical equipment in terms of costs, availability and security against unauthorized decoding is appropriate. Further to be considered is whether comparative preference should be given to STV applicants who propose operation on UHF channels rather than on VHF channels; to STV applicants who, at least in part, are owned by minorities; and to STV applicants who are applicants for new television stations versus STV applicants already operating stations, i.e., conventional television stations. In commenting on what criteria should be used to decide between two mutually exclusive applicants for construction permits for new stations, only one of which proposes to provide STV service, parties should address themselves to the question of whether a programming comparison would be appropriate and, in the event any ascertainment requirement with respect to STV programming were eliminated, how to give recognition to the difference between conventional and STV operation insofar as program offerings and intended audience are concerned. Finally, all other suggestions and comments pertinent to these areas of inquiry are invited.

15. *It is ordered*, That the petition for waiver of § 73.644(b) of the Commission's rules, filed by Feature Film Services, Inc., is denied.

16. Based on the foregoing discussion, and pursuant to the authority contained in sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, it is proposed to amend the Commission's rules as described above, and to inquire into the other matters set out above.

17. Pursuant to applicable procedures set forth in §§ 1.415 and 1.46 of the Commission's rules, interested parties may file comments on or before March 13, 1978, and reply comments on or before April 12, 1978. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding.

18. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 5 copies of all comments, replies, pleadings, briefs, and other documents shall be furnished the Commission. All filings made in this proceeding will be made available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

For the Federal Communications Commission.

WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-543 Filed 1-9-78; 8:45 am]

[12] In responding, the parties should bear in mind that these STV applicants may both have licensed broadcast stations or one or both may also be seeking a construction permit for a new broadcast station.

[13] Although an STV authorization can be given to an applicant for a construction permit for a new commercial television broadcast station, such authorization will not be issued prior to issuance of the construction permit for the new station. (Section 73.642(a) of the Commission's rules.)

[14] See *Midwest St. Louis, Inc., et al.*, 61 FCC 2d 203 (1976), in which the Review Board certified to the Commission the question of whether such a consolidation of applications should be effected.

notices

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

[3410-11]

DEPARTMENT OF AGRICULTURE

Forest Service

JURISDICTION OF CERTAIN LANDS WITHIN THE OZARK NATIONAL FOREST

Notice of Transfer to the Department of the Interior

Notice is hereby given that administrative jurisdiction of the lands described below is transferred from the Forest Service, Department of Agriculture, to the National Park Service, Department of the Interior. This action is in accord with Pub. L. 92-237. The affected lands are located in Baxter, Marion, and Newton Counties, Ark., and have previously been administered as part of the Ozark National Forest.

Effective January 10, 1978, the lands more particularly described as follows will be administered as part of the Buffalo National River.

BOB BERGLAND,
Secretary.

JANUARY 5, 1978.

FIFTH PRINCIPAL MERIDIAN

NEWTON COUNTY, ARK.

T. 16 N., R. 21 W.

Sec. 11, all that part of E½E½SW¼ lying East of County Road and South of Big Buffalo River described as follows: Beginning at the southeast corner of the SW¼, thence, North 27.62 chains to center of Big Buffalo River; thence, with meandering of said River N. 71¾° W., 3.78 chains; thence, N. 40½° W., 3.58 chains; thence, N. 35½° W., 1.36 chains to center line of Dry Ford of Big Buffalo River; thence, in a southwesterly direction with meanderings of Old County Road S. 54½° W., 3.44 chains; thence, S. 31½° W., 3.96 chains; thence, S. 37½° W., 2.13 chains to center line of New County Road; thence, with meanderings of New County Road N. 51° E., 4.28 chains; thence, N. 86° E., 2.34 chains; thence, S. 40½° W., 3.63 chains; thence, S. 29¾° W., 4.51 chains; thence, S. 4¼° W., 3.63 chains; thence, S. 29¾° W., 4.51 chains; thence, S. 4¼° E., 7.28 chains; thence, S. 7½° E., 6.46 chains; thence, S. 32¼° E., 7.37 chains; thence, S. 44¼° E., 2.41 chains; thence, East 4.10 chains (leaving road) to place of beginning; except the following which was formerly deeded to the Pentecostal Church, beginning at the southeast corner of the SW¼ of Section 11, T. 16 N., R. 21 W., running thence West 150 feet for a place of beginning; thence, North 200 feet; thence, West 275 feet to the road; thence, in a southeasterly direction with meanderings of said road 250 feet; thence, East 100 feet to the place of beginning; containing 27.75 acres, more or less.

BAXTER COUNTY, ARK.

T. 17 N., R. 14 W.

Sec. 1, SW¼SW¼, containing 40.00 acres, more or less.

T. 18 N., R. 13 W.

Sec. 30, the fractional W½SW¼ lying East of the right bank of White River, less and except 8.00 acres described as follows: Beginning at the southeast corner of the fractional NW¼SW¼ of Section 30, thence South 3.33 chains; thence, West 6.00 chains; thence, North 13.33 chains; thence, East 6.00 chains; thence, South 10.00 chains to point of beginning; containing in the aggregate 50.14 acres, more or less.

Sec. 31, S½NW¼ East of the center of the Buffalo River; fractional NW¼NW¼, NE¼SW¼; fractional NW¼SW¼, more particularly described as follows: Beginning at the northeast corner of fractional NW¼SW¼, thence, S. 1° 15' W., 20.00 chains; thence, west 9.67 chains to east bank of Buffalo River; thence, follow east bank of Buffalo River N. 33° 43' E., 4.03 chains; thence, N. 19° 06' E., 3.95 chains; thence, N. 4° 34' E., 5.98 chains; thence, N. 10° 18' W., 2.98 chains; thence, N. 3° 08' W., 4.18 chains; thence, S. 88° 30' E., 6.86 chains, to point of beginning; containing, in the aggregate, 148.23 acres, more or less.

MARION COUNTY, ARK.

T. 17 N., R. 14 W.

Sec. 11, E½SE¼, SE¼NE¼, containing 120.00 acres, more or less.

Sec. 12, W½SW¼, SW¼NW¼, S½NW¼NW¼, containing 140.00 acres, more or less.

Sec. 13, SW¼SW¼, W½NW¼, containing 120.00 acres, more or less.

Sec. 14, part of the E½SE¼ lying East of Buffalo River described as follows: Beginning at Corner 1, the corner common to Sections 13, 14, 23 and 24, said corner being a 1" iron pipe with brass cap; thence, N. 87° 51' W., 19.20 chains with the south line of Section 14 to Corner 2, a point in the center of Buffalo River; thence, with the center of Buffalo River as follows: N. 26° 30' E., 21.00 chains to Corner 3, a point; N. 1° 30' E., 15.40 chains to Corner 4, a point; N. 31° 15' W., 4.60 chains to Corner 5, a point; N. 76° W., 6.38 chains to Corner 6, a point on the north line of the E½SE¼; thence, S. 87° 47' E., 20.24 chains with the north line of the E½SE¼ to Corner 7, a 1" iron pipe with brass cap; thence, S. 3° 13' W., 39.67 chains with the east line of Section 14, to Corner 1, the place of beginning; also, part of the NW¼SE¼ lying North of Buffalo River, described as follows: Beginning at Corner 1, the northwest corner of the NW¼SE¼, said corner being a point, thence, S. 87° 47' E., 16.23 chains with the north line of the NW¼SE¼, to Corner 2, a point in the center of Buffalo River; thence, with the center of Buffalo River, S. 77° W., 16.87 chains to Corner 3, a point on the west line of the NW¼SE¼; thence, N. 2° 56' E., 4.43 chains with the west line of the NW¼SE¼ to Corner 1, the place of beginning; also, part of the W½NW¼ lying East of Buffalo River, described as follows: Beginning at Corner 1, the southeast corner of the W½NW¼, said corner being a point, thence, N. 87° 47' W., 4.10 chains with the south line of the W½NW¼ to Corner 2, a point in the center of Buffalo River; thence with the center of Buffalo River as follows: N. 31° W., 11.44 chains to Corner 3, a point; N. 3° 15' E., 12.00 chains to Corner 4, a point; N. 40° E., 10.00 chains to Corner 5, a point; N. 48° 30' E., 5.64 chains to Corner 6, a point in the east line of the W½NW¼; thence S. 2° 18' W., 33.37 chains with the east line of the W½NW¼ to Corner 1, the place of beginning; also, part of the N½SW¼ lying North of Buffalo River, described as follows: Beginning at Corner 1, the northeast corner of the N½SW¼, said corner being a point; thence, S. 2° 56' W., 4.43 chains with the east line of the N½SW¼ to Corner 2, a point in the center of Buffalo River; thence, with the center of Buffalo River as follows: S. 77° W., 13.41 chains to Corner 3, a point; N. 65° W., 8.50 chains to Corner 4, a point; N. 31° W., 5.56 chains to Corner 5, a point on the north line of the N½SE¼; S. 87° 47' E., 23.87 chains with the north line of the N½SW¼ to Corner 1, the place of beginning; containing, in the aggregate, 95.96 acres, more or less.

Sec. 22, part of the S½SE¼ described as follows: Beginning at Corner 1, the corner common to Sections 22, 23, 26 and 27, said corner being a 1" iron pipe with brass cap, thence, N. 1° 08' E., 19.84 chains with the east line of Section 22 to Corner 2, an irregular shaped stone; thence, N. 87° 41' W., 38.06 chains with the north line of the S½SE¼ to Corner 3, a point in the center of Buffalo River; thence S. 19° 30' W., 8.56 chains with the center of Buffalo River to Corner 4, a point on the west line of the S½SE¼; thence, S. 1° 33' W., 11.62 chains with the west line of the S½SE¼ to Corner 5, a 1" iron pipe with brass cap; thence, S. 87° 39' E., 40.86 chains with the south line of Section 22 to Corner 1, the place of beginning; also, part of the SE¼SW¼ lying East of Buffalo River described as follows: Beginning at Corner 1, the quarter corner common to Sections 22 and 27, said Corner being a 1" iron pipe with a brass cap, thence, N. 1° 33' E., 11.62 chains with the east line of the SE¼SW¼ to Corner 2, a point in the center of Buffalo River; thence, S. 19° 30' W., 12.16 chains with the center of

Buffalo River to Corner 3, a point on the south line of Section 22; thence, S. 87° 39' E., 3.75 chains with the south line of Section 22, to Corner 1, the place of beginning; containing, in the aggregate, 81.10 acres, more or less.

Sec. 23, part of the E½ lying east of Buffalo River, described as follows: Beginning at Corner 1, the corner common to Sections 23, 24, 25, and 26, said corner being a 1" iron pipe with brass cap, thence, N. 00°08' E., 79.20 chains with the east line of Section 23 to Corner 2, the corner common to Sections 13, 14, 23, and 24, said corner being a 1" iron pipe with brass cap; thence, N. 87°51' W., 19.20 chains with the north line of Section 23 to Corner 3, a point in the center of Buffalo River; thence, with the center of Buffalo River as follows: S. 39° W., 18.10 chains to Corner 4, a point; S. 30° W., 14.00 chains to Corner 5, a point; S. 1° W., 11.50 chains to Corner 6, a point; S. 45° E., 40.00 chains to Corner 7, a point; S. 32° E., 6.00 chains to Corner 8, a point; S. 15° E., 9.00 chains to Corner 9, a point on the south line of Section 23; thence, S. 87°58' E., 3.70 chains with the south line of Section 23 to Corner 1, the place of beginning; containing 193.09 acres, more or less.

Sec. 24, W½NW¼, W½SW¼, containing 160.00 acres, more or less.

Sec. 25, W½SW¼, W½NW¼, except that part lying West of the Buffalo River more particularly described as follows: Commencing at the corner common to Sections 23, 24, 25, and 26, said corner being a 1" iron pipe with brass cap, thence, S. 2°30' W., 2.99 chains with the west line of Section 25 to Corner 1, the point of beginning, said corner being a point in the center of Buffalo River; thence with the center of Buffalo River as follows: S. 52°30' E., 4.00 chains to Corner 2, a point; S. 00°30' W., 11.30 chains to Corner 3, a point; S. 32°15' W., 7.40 chains to Corner 4, a point; thence, N. 2°30' E., 20.00 chains to Corner 1, the point of beginning; which exception contains 5.48 acres, more or less. The above described land contains, in the aggregate, 154.52 acres, more or less.

Sec. 26, SW¼NW¼, also, part of the N½ lying South of the center of Buffalo River described as follows: Beginning at Corner 1, the corner common to Sections 22, 23, 26, and 27, said corner being a 2" iron pipe with brass cap; thence, S. 87°58' E., 6.55 chains to Corner 2, a point in the center of Buffalo River; thence, with the center of Buffalo River as follows: S. 27°15' E., 21.40 chains to Corner 3, a point; S. 54°30' E., 9.30 chains to Corner 4, a point; S. 73° E., 36.80 chains to Corner 5, a point; N. 82°30' E., 11.20 chains to Corner 6, a point; N. 52° E., 13.00 chains to Corner 7, a point on the east line of Section 26; thence, S. 2°30' W., 16.65 chains with the east line of Section 26 to Corner 8, a 1" iron pipe with brass cap, said corner being the east quarter corner of Section 26; thence N. 87°56' W., 60.79 chains with the south line of the N½ of Section 26 to Corner 9, a point; thence, north with the east line of the SW¼NW¼ to Corner 10, the northeast corner of the SW¼NW¼, a point; thence, west with the north line of the SW¼NW¼ to Corner 11, the northwest corner of the SW¼NW¼, a point; thence, N. 1°45' E., 19.85 chains with the west line of Section 26 to Corner 1, the place of beginning; containing, in the aggregate, 134.27 acres, more or less.

Sec. 27, SE¼NE¼, NE¼SE¼, SW¼SE¼, NE¼NE¼, W½NE¼, part of the NW¼ lying South and East of the center line of Buffalo River described as follows: Beginning at Corner 1, the west quarter corner of Section 27, said corner being a 1" iron pipe with a brass cap, thence, N. 00°41' E., 10.78 chains with the west line of Section 27 to Corner 2, a point in the center of the Buffalo River; thence, with the center of Buffalo River as follows: N. 79° E., 16.70 chains to Corner 3, a point; N. 51°45' E., 17.00 chains to Corner 5, a point on the north line of Section 27; thence, S. 87°39' E., 3.75 chains with the north line of Section 27 to Corner 6, the north quarter corner of Section 27, said corner being a 1" iron pipe with brass cap; thence, south with the east line of the NW¼ to the southeast corner of the NW¼ to Corner 7, a point; thence, west with the south line of the NW¼ to Corner 1, the place of beginning; containing, in the aggregate, 328.88 acres, more or less.

Sec. 28, SW¼SE¼, containing 40.00 acres, more or less.

Sec. 33, NE¼NE¼, containing 40.00 acres, more or less.

Sec. 34, SE¼NW¼, NE¼SW¼, part of the N½NW¼ lying North and East of Big Creek described as follows: Beginning at Corner 1, the corner common to Sections 27, 28, 33, and 34, said corner being a 1" iron pipe with brass cap, thence, S. 88°25' E., 40.08 chains with the north line of Section 34 to Corner 2, the north quarter corner of Section 34, said corner being a 1" iron pipe; thence, S. 2°12' W., 19.82 chains with the east line of the N½NW¼ to Corner 3, a point; thence, N. 88°35' W., 21.38 chains with the south line of the N½NW¼ to Corner 4, a point in the center of Big Creek; thence, with the center of Big Creek as follows: N. 16°30' E., 4.05 chains to Corner 5, a point; N. 38°30' W., 3.60 chains to Corner 6, a point; N. 82° W., 7.00 chains to Corner 7, a point; S. 78° W., 5.00 chains to Corner 8, a point; S. 52° W., 6.80 chains to Corner 9, a point; S. 15° W., 2.02 chains to Corner 10, a point on the south line of the N½NW¼; thence, N. 87°50' W., 0.48 chains to Corner 11, the southwest corner of the NW¼NW¼, a point; thence N. 4°16' E., 20.16 chains with the west line of Section 34 to Corner 1, the place of beginning; containing, in the aggregate, 148.58 acres, more or less.

Sec. 36, NW¼NW¼, containing 40.00 acres, more or less.

It is the intent of the United States Forest Service to transfer all its lands within the boundary of Buffalo National River to the National Park Service for administrative jurisdiction. These lands consist of Forest Service Tract Numbers 971 (part), 971a (part), 971b (part), 1406, 1483 (part), 2304 (part), 2707b (part), 2707c, 2707d (part), 2707f (part), 2707g, 2727 (part), and 3237, and are Buffalo National River Tracts 11-109, 73-108, 81-106, and 83-103.

Baxter County, 238.37.
Marion County, 1,796.40.
Newton County, 27.75.
Total acreage, 2,062.52 acres, more or less.

[FR Doc. 78-550 Filed 1-9-78; 8:45 am]

[3410-02]

Packers and Stockyards Administration

MADISON STOCKYARDS, INC., MADISON, FLA., ET AL.

Deposting of Stockyards

It has been ascertained, and notice is hereby given, that the livestock markets named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), no longer come within the definition of a stockyard under said Act and are, therefore, no longer subject to the provisions of the Act.

Facility No., Name, Location of Stockyard, and Date of Posting

FL-111—Madison Stockyards, Inc., Madison, Fla., July 15, 1960.
LA-129—Alsbrooks-Guilbeau Stockyards, Inc., Opelousas, La., July 25, 1957.
MA-105—Couite's Auction, West Bridgewater, Mass., December 19, 1973.
MS-110—Decatur Stock Yard, Inc., Decatur, Miss., January 7, 1959.
OK-102—Triangle Livestock Company, Alva, Okla., October 10, 1949.
TN-102—Farmers Commission Co., Carthage, Tenn., May 11, 1959.

Notice or other public procedure has not preceded promulgation of the foregoing rule. There is no legal justification for not promptly deposting a stockyard which is no longer within the definition of that term contained in the Act.

The foregoing is in the nature of a rule relieving a restriction and may be made effective in less than 30 days after publication in the FEDERAL REGISTER. This notice shall become effective January 10, 1978.

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 et seq.)

Done at Washington, D.C., this 3rd day of January 1978.

EDWARD L. THOMPSON,
Chief, Registrations, Bonds, and Reports Branch Livestock Marketing Division.

[FR Doc. 78-506 Filed 1-9-78; 8:45 am]

[3410-02]

NORTHWEST ALABAMA LIVESTOCK AUCTION, RUSSELLVILLE, ALA., ET AL.

Posted Stockyards

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. et seq.), it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on the respective dates specified below.

Facility No., Name, Location of Stockyard, and Date of Posting

ALABAMA

AL-161—Northwest Alabama Livestock, Auction, Russellville, October 31, 1977.

GEORGIA

GA-184—Telfair-Wheeler Livestock, Market, Inc., McRae, July 20, 1977.

MISSOURI

MO-242—MFA Livestock Association, Inc., Buffalo Concentration Point, Buffalo, December 15, 1977.

OREGON

OR-125—Ontario Livestock Commission, Inc., Ontario, December 6, 1977.

OKLAHOMA

OK-197—Triangle Livestock Company, Alva, November 10, 1977.

Done at Washington, D.C., this 3rd day of January 1978.

EDWARD L. THOMPSON,
Chief, Registrations, Bonds, and Reports Branch Livestock Marketing Division.

[FR Doc. 78-507 Filed 1-9-78; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[Docket No. 30777; Agreement CAB 27061 R-1 and R-2; Agreement CAB 27066 R-1 and R-2; Docket No. 30332; Agreement CAB 27065; Order 77-12-135]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Passenger Fares and Specific Commodity Rates

Issued under delegated authority, December 28, 1977.

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 Traffic Conferences of the International Air Transport Association (IATA). Agreement CAB 27061 was adopted at the Composite Passenger Traffic Conference held in Cannes during October/November 1977, and Agreements CAB 27065 and CAB 27066 were adopted by mail vote.

Agreement CAB 27061 would readopt IATA Resolutions 115d and 115f, which allow IATA members to meet non-IATA competition in passenger fares and practices within TC3 (Asia/Pacific), and would rescind Resolution 004b, which precludes passenger services within the area comprised of Malaysia/Brunei/Singapore from the application of IATA resolutions governing such services to/from that area. Agreement CAB 27066 would increase first-class and normal economy-class fares between Kumasi, Ghana and Abidjan, Ivory Coast by 3 percent. Agreement CAB 27065 would increase, by 10 percent, the specific commodity rates for Item 1421 (cut flowers) at a minimum weight of 200 kilograms from points in Columbia to points in the United States.

We will approve the agreements, which have application in air transportation as defined by the Act insofar as they involve fares to/from U.S. points, rates to U.S. points, and fares which are combinable with fares to/from U.S. points.

Pursuant to authority duly delegated by the Board's Regulations, 14 CFR 385.14:

1. It is not found that the following resolution, which has to direct application in air transportation as defined by the Act, is adverse to the public interest or in violation of the Act:

Agreement CAB	IATA No.	Title	Application
27061: R-1	002tt	Special Readoption Resolution	(Asis/Pacific).

2. It is not found that the following resolution, which has direct application in air transportation as defined by the Act, is adverse to the public interest or in violation of the Act, *Provided,* That approval is subject to the conditions ordered:

Agreement CAB	IATA No.	Title	Application
27065:	590	Specific Commodity Rates Board (Amending)	1 (Columbia-U.S.).

3. It is not found that the following resolutions, which have indirect application in air transportation as defined by the Act, are adverse to the public interest or in violation of the Act:

Agreement CAB	IATA No.	Title	Application
27061: R-2	003	Standard Rescission Resolution	3 (Asia/Pacific).
27066: R-1	052	TC2 1st Class Fares (amending)	2 (Within Africa).
R-2	062	TC2 Economy Class Fares (amending)	Do.

Accordingly, it is ordered, That:

1. Agreements CAB 27061 and CAB 27066, described in finding paragraphs 1 and 3 above, be approved; and

2. Agreement CAB 27065, described in finding paragraph 2 above, be approved: *Provided,* That (a) approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publications; (b) tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing; and (c) where a specific commodity rate is published for a specified minimum weight at a level lower than the general commodity rate applicable for such weight, and where a general commodity rate is published for a greater minimum weight at a level lower than such specific commodity rate, the specific commodity rate shall be extended to all such greater minimum weights at the applicable general commodity rate level.

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 10 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 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.

JAMES L. DEEGAN,
Chief, Passenger and Cargo Rates Division, Bureau of Fares and Rates.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-451 Filed 1-9-78; 8:45 am]

[6325-01]

CIVIL SERVICE COMMISSION

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Grant of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Health, Education, and

Welfare to fill be noncareer executive assignment in the excepted service the position of Director, Office of Planning, Research and Evaluation, Office of the Assistant Secretary for Human Development, Office of the Secretary.

For the U.S. Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-435 Filed 1-9-78; 8:45 am]

[3510-22]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

CARIBBEAN FISHERY MANAGEMENT COUNCIL AND ITS SCIENTIFIC AND STATISTICAL COMMITTEE AND ADVISORY PANEL

Public Meeting

The Caribbean Fishery Management Council and its Scientific and Statistical Committee (SCC) and Advisory Panel (AP) established by the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet February 14-16, 1978, at Hotel Pierre, 105 De Diego Avenue, San Juan, P.R. The meeting starts at 9 a.m. on February 14, and will adjourn at about 12 noon on February 16.

Proposed Agenda. (1) Consideration of the Second Draft Fishery Management Plan (FMP) for Spiny Lobster; (2) Report of the SSC and AP on the Goals and Objectives, Data Requirements, and Recommendations on the FMP for Migratory Coastal Pelagics; (3) SSC and AP Recommendations on Amendments to Pub. L. 94-265 in Relation to International Sport Fishing Tournaments; (4) Report to the Council on Budget Requests for fiscal year 1978, fiscal year 1979, and fiscal year 1980; (5) Marine Sanctuaries: the Concept, the Application to Fishing Grounds, and Present Status in the Caribbean Area; (6) Report by Chief Scientist on His Attendance to the Intergovernmental Oceanographic Commission Association for the Caribbean and Adjacent Regions (IOCARIBE) Meeting; (7) The Concept and Commercial Feasibility of Artificial Reefs; (8) AP Membership; (9) Administrative Matters; (10) Other Council Business.

Meeting is open to the public. For information on seating, changes to the agenda, or written comments, contact Mr. Omar Muonz-Roure, Executive Director, Caribbean Fishery Management Council, P.O. Box 1001, Hato Rey, P.R. 00918, telephone 809-472-6620.

Dated: January 4, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-492 Filed 1-9-78; 8:45 am]

[6355-01]

CONSUMER PRODUCT SAFETY COMMISSION

[IRLG-1:002; FRL-839-0]

INTERAGENCY REGULATORY LIAISON GROUP

Intent To Develop Compatible Testing Standards and Guidelines

The heads of the U.S. Consumer Product Safety Commission, the U.S. Environmental Protection Agency, the Food and Drug Administration, and the Occupational Safety and Health Administration have agreed to work together as the Interagency Regulatory Liaison Group (IRLG), for the purpose of reforming the regulatory process and improving protection of workers, public health and the environment. In agreeing to cooperate in this way, the heads of the agencies join in President Carter's commitment to improve the management of Government by eliminating waste and duplication wherever possible. This agreement was announced at a joint press conference on August 2, 1977.

On October 11, 1977, the IRLG published in the FEDERAL REGISTER an Interagency Agreement relating to the Regulation of Toxic and Hazardous Substances (42 FR 54856). To implement this agreement, the IRLG has established work groups to develop common, consistent, or compatible practices in eight areas of activity common to the four agencies: (1) Testing standards and guidelines, (2) epidemiology, (3) risk assessment, (4) information exchange, (5) research planning, (6) regulatory development, (7) compliance and enforcement, and (8) education and communications.

The purpose of this notice is to announce that the Testing Standards and Guidelines Work Group is currently developing uniform guidelines for the conduct of acceptable testing. These testing standards and guidelines are intended for use by the four agencies to assess existing guidelines and aid in the development of new testing regulations and guidelines. Use of these testing standards and guidelines is intended to permit greater interagency consistency and compatibility. The Work Group's overall objective is to make the regulatory process more effective and efficient for the agencies, industry, and the public.

The Work Group has agreed to the following principle of cooperative effort to guide each individual agency in the development of all new testing regulations which are related to the activities of the IRLG: To the extent permitted by each agency's legislation, parts of proposed new regulations and guidelines may be amended to agree with uniform testing standards and guidelines developed jointly by the Consumer Product Safety Commission, the Environmental Protection Agency, the Food and Drug Administration, and the Occupational Safety and Health Administration. In the event that such new standards and guidelines are jointly agreed upon, data resulting from use of pre-existing testing standards and guidelines will be accepted by the agency requiring them so long as these data are generated from studies begun before the joint standards and guidelines are promulgated and the data are valid and scientifically sound.

Opportunities for public participation will be provided through open work group meetings and public forums announced in the FEDERAL REGISTER. Correspondence and comments should be addressed to the Chairman: Dr. James R. Beall, WH-557, Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Comments should be filed in triplicate and bear the identifying notation IRLG-1:002.

Dated: December 30, 1977.

For the Consumer Product Safety Commission.

S. JOHN BYINGTON,
Chairman.

For the Food and Drug Administration.

DONALD KENNEDY,
Commissioner.

For the Environmental Protection Agency.

DOUGLAS M. COSTLE,
Administrator.

For the Occupational Safety and Health Administration.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-474 Filed 1-9-78; 8:45 am]

[3810-70]

DEPARTMENT OF DEFENSE

Defense Nuclear Agency

Scientific Advisory Group on Effects (SAGE)

Closed Meeting

NAME OF COMMITTEE: Scientific Advisory Group on Effects (SAGE).

DATES: 28 February-3 March 1978.

PLACE: Naval War College, Newport, R.I. 02840.

AGENDA: 28 February 1978 (0830-1730), and 1 March 1978 (0830-1230), Presentations, Discussion and Executive Sessions on Pulse Power Nuclear Weapons Effects Simulators. 1 March 1978 (1400-1800), 2 March 1978 (0830-1700), and 3 March 1978 (0830-1130), Seminar, Presentations, Discussions and Executive Sessions on Comprehensive Test Ban Treaty (CTBT)

Issues, Recent Nuclear Weapons Effects Test Results, Theater Nuclear Forces Survivability and Security (TNFS²), and Pulse Power Simulators.

The presentations and discussions in the above cited agenda will focus on current and planned RDT&E programs sponsored by the Defense Nuclear Agency (DNA). Executive sessions will be held for the primary purpose of advising the Director, DNA as to the adequacy of ongoing and planned programs. All planned presentations, discussions and executive sessions will include classified defense information; therefore, under the provisions of Sections 552b(c) (1) and (3), Title 5, U.S.C., this meeting is closed to the public.

Any additional information concerning the meeting may be obtained from the undersigned, ATTN: DDST, Headquarters, Defense Nuclear Agency, Washington, D.C. 20305.

OTTO D. LAURSEN,
LTC, USA
Scientific Secretary, SAGE

JANUARY 4, 1978.

[FR Doc. 78-494 Filed 1-9-78; 8:45 am]

[1505-01]

Office of the Secretary of Defense

PRIVACY ACT OF 1974

New System of Records

Correction

In FR Doc. 77-36225 published on 42FR64334 in the issue for Thursday, December 22, 1977, in the right-hand column under "Retention and disposal", the following material should have been a separate paragraph:

System manager and address:

Director of Personnel, Office of the Secretary of Defense, Room 3B347, Pentagon, Washington, D.C. 20301.

[3128-01]

DEPARTMENT OF ENERGY

RENEWAL OF ADVISORY COMMITTEES

This notice is published in accordance with the provisions of section 7 of the Office of Management and Budget Circular No. A-63, as amended. Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act and following consultation with the Committee Management Secretariat, notice is hereby given that the following DOE advisory committees have been renewed for a 14-month period beginning from the date that copies of the charters have been filed with the appropriate standing committees of Congress (December 30, 1977 and ending February 28, 1979):

Food Industry Advisory Committee.
Fuel Oil Marketing Advisory Committee.
Gasoline Marketing Advisory Committee.
LP-Gas Industry Advisory Committee.
State Regulatory Advisory Committee.
Coal Industry Advisory Committee.
Consumer Affairs Advisory Committee.
Electricity Advisory Committee.
Natural Gas Advisory Committee.
Fossil Energy Advisory Committee, Lignite Subcommittee.

These committees are among those recently transferred to the Department pursuant to the Department of Energy Organization Act, Pub. L. 95-91. These committees advise with regard to functions transferred to the Department by that act. It is imperative that the Department receive necessary and significant advice regarding these functions during its initial period of existence. At the same time it is recognized that this transitional period is characterized by tentative intra-agency arrangements which, as the Department adjusts and formulates its new role in the Federal Government, may impact on the structuring of these functions and on the advisory committees which render advice.

The renewal of these committees has been determined necessary and in the public interest. However, in keeping with the congressional intent that advisory committees be used only when necessary and their number be minimized, these committees are renewed for a limited period of 14 months, during which time their objectives shall be assessed with a view toward modification, consolidation or termination to the extent necessary and appropriate at the completion of this transitional period.

The committees will operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), the Department of Energy Organization Act (Pub. L. 95-91), OMB Circular No. A-63 (Revised), and other directives and instructions issued in implementation of those acts. This determination follows consultation with the Committee Management Secretariat, General Services Administration. Further information regarding these committees may be obtained from the Department of Energy Advisory Committee Management Office, 202-566-9996.

Issued at Washington, D.C., on January 4, 1978.

WILLIAM S. HEFFELFINGER,
Director of Administration.

[FR Doc. 78-541 Filed 1-9-78; 8:45 am]

[6740-02]

Federal Energy Regulatory Commission

[Docket No. ER78-77]

ALABAMA POWER CO.

Order Accepting for Filing and Suspending Rate Schedules, Denying Motion, Granting Intervention, Providing for Hearing, and Establishing Procedures

DECEMBER 30, 1977.

On December 1, 1977, Alabama Power Co. (APC) submitted for filing a proposed rate increase of $18,375,860 to its wholesale customers. The rate schedules filed contain two steps; Phase 1 and Phase 2. APC proposes that Phase 1 become effective January 1, 1978, and that Phase 2 become effective either March 1, 1978, or July 1, 1978.

APC states that the reasons for its bifurcated rate proposals are:

(1) APC recognizes that the entire amount of the increase requested represents approximately a 31% increase to affected customers. APC states that June is the period when the highest usage by its ultimate customers occurs. If APC requested an effective date of January 1, 1978, and the Commission were to suspend the rates for five months, the new rates would go into effect in June, 1978. APC states that by its placing the increase into effect in two steps, the ultimate customers would not receive the full impact of the increase until late 1978.

(2) APC states that a two-step rate will provide more opportunities for negotiations between itself, the Commission Staff, and the affected customers.

(3) APC states that it is aware that had it requested that the entire $18.4 million increase go into effect in January, 1978, there would be a greater risk that this Commission would suspend the increase for a longer period than it expects will result from the two-part filing.

To facilitate the implementation of its proposed rate increase, APC suggests that Phase 2, scheduled to become effective March 1, 1978, be suspended for five months, until August 1, 1978, and that its implementation be further deferred to December 1, 1978. The adoption of a suspension period in excess of five months would contravene the limitation contained in Section 205(e) of the Federal Power Act:

> Whenever any such new schedule is filed the Commission * * * may suspend the operation of such a schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; * * *[1]

[1] 16 U.S.C. § 824d(e).

However, we recognize that, were we to reject APC's Phase 2 filing as failing to comply with our Rules and Regulations[2] the refiling would require additional cost incurrence by APC which would ultimately be borne by the consumer.

APC's selection of March 1, 1978 as the effective date for Phase 2 is designed to conform to the requirements of Section for 35.3 (a) of the Commission's Regulations.[3] That section provides in pertinent part:

> All rate schedules or any part thereof shall be tendered for filing with the Commission and posted not less than thirty days nor more than ninety days prior to * * * the date on which the filing party proposes to make any change in electric service and/or rate, charge, classification, practice, rule, regulation or contract effective as a change in rate schedule, except as provided in paragraph (b) of this section, or unless a different period of time is permitted by the Commission.

Since the proposed increase was filed on December 1, 1977, the proposed March 1, 1978 effective date for Phase 2 falls within the ninety-day period specified above. However, Section 35.3)a), above, specifically authorizes this Commission to permit a different period of time between the filing date and the effective date. Utilizing this provision of the Regulations, APC suggests, in the alternative, that we can establish an effective date of July 1, 1978 for Phase 2 of the filing. Suspension of the proposed Phase 2 increase for the maximum period of five months will adhere to APC's desire to delay the imposition of the increased Phase 2 rates until December 1, 1978.

The Federal Power Commission adopted a similar procedure in *Municipal Electric Utility Association of Alabama* v. *Federal Power Commission.*[4] In that case, Alabama Power had 46 individual wholesale contracts, with various termination dates, ranging from January 3, 1972, to April 17, 1976. On November 1, 1971, Alabama power tendered for filing with the Federal Power Commission a new tariff schedule under which Alabama proposed that the new schedule "become effective January 3, 1972, or the earliest date thereafter in accordance with existing contracts with [the affected] customers." For reasons not relevant to the instant case, Petitioners objected to the proposed extensions of the effective date. By order issued December 30, 1971, the FPC rejected Petitioners' objections, and accepted the filing. Affirming the Federal Power Commission's action, the Court of Appeals held that:

> Section 35.3(a) permits an exception to the 30-90 rule not merely in cases covered by § 35.3(b), but whenever "a different period of time is permited by the Commission." This reserves to the FPC discretion to accept non-construction-related filing more than 90 days in advance of their effective date * * * The single, consolidated proceeding envisioned in Alabama Power's filing mitigates these difficulties. The FPC's rules give ample latitude for the agency to develop and implement innovative methods for the effective dispatch of its function.[5]

The Court's holding applies to the procedure we are adopting in the instant case. By extending the effective date, pursuant to the provisions of Section 35.3(a), we can avoid the need for APC to submit a redundant filing and still establish an appropriate suspension period for both Phases 1 and 2 of the filing.

Notice of the filing was issued on December 14, 1977, with comments due on or before December 21, 1977. On December 21, 1977, the Alabama Electric Cooperative, Inc. and nine member cooperatives (AEC), the Secretary of the Army, Alexandria City, the Cities of Dothan and Fairhope, the Utilities Board of the City of Foley, City of Lafayette, City of Lanett, City of Luverne, City of Opelika, City of Piedmont, the Utilities Board of the City of Sylacauga, City of Troy, the Utilities Board of the City of Tuskegee, and Municipal Electric Utility Association of Alabama (collectively "Petitioners") filed petitions to intervene. On December 21, 1977, the Municipal Electric Utility Association of Alabama and its 12 member municipalities and municipal utilities boards and the AEC filed protests and motions for maximum statutory suspension.

In the petition to intervene, Petitioners state that they are engaged in direct retail competition with APC for residential, commercial and industrial customers, and that APC's proposed wholesale rate increase will place them in a price squeeze. Petitioners state that the proposed Phase 1 wholesale rate is 22 percent higher for an industrial customer than APC's retail rate LPL. Petitioners claim that APC last filed for increased retail rates in October, 1976.

In their protest and motion for maximum statutory suspension, Petitioners allege that:

(1) APC's filing is discriminatory against the municipalities (Petitioners) in favor of APC's cooperative customers.

(2) APC does not need a rate increase to attract necessary capital.

(3) APC's filing contains a termination provision that violates Section 35.15 of the Regulations.

(4) APC has failed to meet the evidentiary standards of Order No. 530 in support of its interperiod tax allocation proposal.

(5) APC's requested common equity return allowance is excessive.

(6) APC's proposed debt and preferred stock amounts would produce revenues in excess of cost.

(7) APC's filing does not take into account the tax deduction related to projected debt costs.

(8) APC proposes an unwarranted hybrid rate base averaging.

(9) APC's 60 percent increase in the Period II estimate for fuel stock is unsupported.

(10) APC's treatment of gains and losses in the sale of utility plant is inconsistent.

(11) APC seeks an unjustified return on accumulated deferred investment tax credits.

(12) APC's change in direction in the treatment of consolidated tax return is improper.

(13) APC's proposed reduction in the high voltage discount is unsupported, contraproductive, confiscatory, and discriminatory.

(14) APC has overstated working capital.

(15) APC's cost allocation methodology and projection of peak demands is unsupportable.

(16) APC's fuel clause unfairly charges customers with the full cost of economy energy purchases while crediting them only the fuel component of the price in economy energy sales.

(17) APC neglects to credit its cost of service with an amount for current investment tax credit.

(18) Bouldin Dam investment and associated costs should be removed from the rate base, as the dam is no longer used and useful in the rendition of utility service.

(19) APC's projected purchase power costs are not supported.

(20) APC's write-off of costs associated with the cancellation of its proposed Barton Nuclear Plant is unjustified.

(21) APC's allocation of administrative and general expenses to wholesale customers is excessive.

(22) APC's fuel-clause use of a single loss factor for wholesale service discriminates against the Municipalities.

(23) APC's proposed treatment of pollution control expenditures included in CWIP overstates the wholesale customers' current and future cost of service.

(24) APC's depreciation expense may be overstated by the use of unsupported depreciation rates.

(25) Alabama has wrongly assigned to the wholesale customers costs associated with wheeling power for the Southeastern Power Administration.

Our review of APC's filing indicates that it is in substantive compliance with all applicable sections of the Commission's Regulations. Whether

[2] 18 CFR § 35.5.
[3] 18 CFR § 35.3(a).
[4] 485 F. 2d. 967 (D.C. Cir. 1973).
[5] Id. at 973.

the proposed rates are in fact discriminatory and excessive, as Petitioners allege, should be resolved in an evidentiary hearing. Review of the filings and pleadings by the Commission indicates that the proposed Phase 1 increase should be accepted for filing and suspended until January 2, 1978, and that the proposed Phase 2 increase should be accepted for filing as of July 1, 1978, and suspended for the maximum five month period, until December 1, 1978. Petitioners' motion for a maximum suspension for the Phase 1 increase should be denied.

Our review of the filing indicates that the proposed rate schedules filed by APC have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential or otherwise unlawful. We will therefore suspend the proposed rate schedules as discussed above, and establish hearing procedures.

In view of the Petitioners' price squeeze allegations, the Commission will direct the Presiding Administrative Law Judge to convene a prehearing conference within 15 days from the date of this order for the purpose of hearing their requests for data necessary to present their prima facie showing on the price squeeze issue.

The Commission finds: (1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Federal Power Act that the Commission enter upon a hearing concerning the lawfulness of the proposed increased rates and charges tendered by APC on December 1, 1977, and that the proposed increased rates and charges be accepted for filing, suspended, and the use thereof deferred, all as hereinafter ordered.

(2) Participation by the municipalities, municipal utilities boards, the Secretary of the Army, the Alabama Electric Cooperative, Inc., and its member cooperatives, and municipal electric utility association of Alabama, listed supra, may be in the public interest.

(3) Good cause exists to deny Petitioners' Motion for Maximum Statutory Suspension of the Phase 1 increase proposal.

(4) Good cause exists to establish price-squeeze procedures to effectuate the Commission's policy announced in Order No. 563.

The Commission orders: (A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the Regulations under the Federal Power Act (18 CFR, Chapter I), a hearing shall be held concerning the justness and reasonableness of the rates proposed by APC in this proceeding.

(B) Pending such hearing and decision thereon, the proposed increased rates and charges filed by APC on December 1, 1977, and identified as Phase 1 rates in Attachment A are hereby accepted for filing, suspended and the use thereof deferred until January 2, 1978, when they shall become effective, subject to refund. The proposed increased rates and charges identified as Phase 2 rates in Attachment A are accepted for filing, effective July 1, 1978, suspended and the use thereof deferred until December 1, 1978, when they shall become effective subject to refund.

(C) The Staff shall prepare and serve top sheets on all parties for settlement purposes on or before April 3, 1978. (See Administrative Order 157.)

(D) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (see, Delegation of Authority, 18 CFR § 33.5(d)), shall convene a conference in this proceeding to be held within ten days after the service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Said Law Judge is authorized to establish all procedural dates and to rule upon all motions (except petitions to intervene, motions to consolidate and sever, and motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

(E) Petitioners, listed supra, are hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission: *Provided, however,* That participation of such intervenors shall be limited to the matters specifically set forth in the petitions to intervene; and *Provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved by any orders entered in this proceeding.

(F) Petitioners' Motion for Maximum Statutory Suspension is hereby denied.

(G) The Administrative Law Judge shall convene a prehearing conference within 15 days from the date of this order for the purpose of hearing Petitioners' request for data required to present their case, including a prima facie showing on the price squeeze issue. APC shall be required to respond to the discovery requests authorized by the Administrative Law Judge within 30 days, and Petitioners shall file its case-in-chief on the price squeeze issue within 30 days of APC's response.

(H) Nothing contained herein shall be construed as limiting the rights of parties to this proceeding regarding the convening of conferences or offers of settlement pursuant to section 1.18 of the Commission's Rules of Practice and Procedure.

(I) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

ATTACHMENT A.—*Alabama Power Co., Electric Tariff Original Volume No. 1*

[Docket No. ER78-77]

Designations

Filed: December 1, 1977.

Dated: Undated.

Designations	*Description*
1. 5th revised sheet No. 5* (supersedes 4th revised sheet No. 5).	Revision No. 3 rate schedule REA-1—phase 1 rates.
2. 5th revised sheet No. 5A* (supersedes 4th revised sheet No. 5A).	Continuation of phase 1 rates.
3. Original sheet No. 5B**.	Phase 2 rates for REA-1.
4. 5th revised sheet No. 7* (supersedes 4th revised sheet No. 7).	Fuel cost adjustment.
5. 2d revised sheet No. 7A* (supersedes revised sheet No. 7A).	Continuation of fuel cost adjustment.
6. 5th revised sheet No. 8* (supersedes revised sheet No. 8).	Revision No. 3—rate schedule MUN-1, phase 1 rates.
7. 5th revised sheet No. 8A** (supersedes 4th revised sheet No. 8A).	Continuation of phase 1 rates.
8. Original sheet No. 8B**	Phase 2 rates for MUN-1.
9 5th revised sheet No. 10* (supersedes 4th revised sheet No. 10).	Fuel cost adjustment.
10. 2d revised sheet No. 10A* (supersedes 1st revised sheet No. 10A).	Continuation of fuel cost adjustment.
11 3d revised sheet No. 32* (supersedes 2d revised sheet No. 32).	Index of purchasers and their delivery points.
12. 3d revised sheet No. 33* (supersedes 2d revised sheet No. 33).	Do.
13. 11th revised sheet No. 34* (supersedes 10th revised sheet No. 34).	Do.
14. 12th revised sheet No. 35* (supersedes 11th revised sheet No. 35)	Do.
15. 7th revised sheet No. 36* (supersedes 6th revised sheet No. 36).	Do.
16. 13th revised sheet No. 37* (supersedes 12th revised sheet No. 37).	Do.
17. 13th revised sheet No. 38* (supersedes 12th revised sheet No. 38).	Do.
18. 9th revised sheet No. 39* (supersedes 8th revised sheet No. 39).	Do.
19. Original sheet No. 40*	Do.

ATTACHMENT A.—*Alabama Power Co., Electric Tariff Original Volume No. 1*—Continued
[Docket No. ER78-77]

Designations

Filed: December 1, 1977.

Dated: Undated.

Designations	*Description*
20. Supplement No. 5 to FPC No. 120*** (supersedes supplement No. 4 to FPC No. 120). Other party: Utility board of the city of Foley.	Rate schedule MUN-1.
21. Supplement No. 1 to supplement No. 5** to FPC No. 120. Other party: Utility board of the city of Foley.	Phase 2 rates (original sheet No. 8B under the tariff).

* Effective date—Jan. 2, 1978, subject to refund.
** Effective date—Dec. 1, 1978, subject to refund.
*** Effective date—Jan. 31, 1978, subject to refund.

[FR Doc. 78-495 Filed 1-9-78; 8:45 am]

[6740-02]

[Docket No. ER78-80]

CENTRAL ILLINOIS PUBLIC SERVICE CO.

Order Conditionally Accepting for Filing Proposed Increased Rates, Suspending Proposed Increased Rates, Accepting Without Suspension Proposed Rate, Granting Waiver and Providing for Hearing

DECEMBER 30, 1977.

On December 8, 1977,[1] Central Illinois Public Service Company (CIPS) tendered for filing proposed increases in rates for jurisdictional electric service[2] to eleven cooperative,[3] nine municipal,[4] and four partial requirements (P-R) customers.[5]

The proposed rates have a proposed effective date of January 1, 1978, for all cooperative, municipal and P-R customers except for those two municipal and one P-R customer whose individual contracts with CIPS have not yet expired.[6] The increased rates are to become effective to these customers in their respective rate categories upon expiration of the contracts.

Notice of CIPS' filing was issued on December 19, 1977, with all protests or petitions to intervene due on or before December 27, 1977.[7]

Because the deficiency in the filing was not cured until December 8, 1977, a request for waiver of the notice requirements will be implied in the filing in order to continue to consider the proposed effective date of January 1, 1978.

Commission review of CIPS' proposed rates indicates that it is in the public interest to grant waiver of the Commission's Section 35.11 notice requirements, and to conditionally accept for filing the three rate schedules tendered. However, the W-2 and W-3 proposed rate schedules have not been shown to be in the public interest and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, the Commission will suspend those rate schedules' effectiveness for one day to become effective subject to refund on January 2, 1978.

The Commission finds: (1) Good cause exists to waive the notice requirements of Section 35.11 of the Commission's Regulations.

(2) Good cause exists to conditionally accept CIPS' proposed rate schedules for filing.

(3) Good cause exists to grant the proposed effective date of January 1, 1978 for the rate schedule pertaining to the cooperative bulk power customers, and to suspend the effectiveness of the W-2 and W-3 rate schedules for one day, after which they will become effective, subject to refund.

(4) It is necessary and proper in the public interest and as an aid in the enforcement of the provisions of the Federal Power Act that the Commission enter upon a hearing concerning the lawfulness of the proposed increased rates and charges tendered by CIPS for its municipal bulk power and partial requirements customers on December 8, 1977.

The Commission orders: (A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's rules of practice and procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of the rates proposed by CIPS for its municipal bulk power and partial requirements customers.

(B) CIPS' implied request for waiver of section 35.11 notice requirements is hereby granted.

(C) CIPS' rate schedule pertaining to service to its cooperative customers is hereby accepted for filing with rates effective January 1, 1978.

(D) CIPS' rate schedules pertaining to its service to its municipal bulk power and partial requirements customers are conditionally accepted for filing and suspended for one day, until January 2, 1978, when they shall become effective subject to refund.

(E) The Federal Energy Regulatory Commission Staff shall serve topsheets in this proceeding on or before April 17, 1978.

(F) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose shall preside at a prehearing conference in this proceeding to be held on April 27, 1978 at 10 a.m. in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. The Law Judge is authorized to establish all procedural dates and to rule upon all motions (except petitions to intervene, motions to consolidate and sever, and motions to dismiss) as provided for in the Commission's rules of practice and procedure.

(G) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

ATTACHMENT.—*Central Illinois Public Service Co.*
[Docket No. ER78-80]

Designation	Supersedes	Description
FPC electric tariff original vol. No. 1		
3d revised sheet No. 1.	2d revised sheet No. 1.	Revised cooperative rate W-1.
FPC electric tariff original vol. No. 2		
3d revised sheet No. 1.	2d revised sheet No. 1.	Revised municipal rate W-2.
FPC electric tariff original vol. No. 3		
2d revised sheet No. 1.	1st revised sheet No. 1.	Revised partial-requirements rate W-3.

[FR Doc. 78-496 Filed 1-9-78; 8:45 am]

[1] CIPS originally submitted the proposed increases for filing on December 1, 1977, but was notified that its form of notice was deficient. The deficienty was cured on December 8, 1977.

[2] See Attachment for List of Designations and Descriptions.

[3] Clay Electric Cooperative, Coles-Moultrie Electric Cooperative, Eastern Illinois Power Cooperative, Edgar Electric Cooperative, Illinois Electric Cooperative, McDonough Power Cooperative, Norris Electric Cooperative, Shelby Electric Cooperative, Southwestern Electric Cooperative, Wayne-White Counties Electric Cooperative, Western Illinois Power Cooperative.

[4] Newton, Flora, Bethany, Greenup, Altamont, Cairo, Casey, Metropolis, Woodhouse, Ill.

[5] Bushnell, Marshall, Mount Carmel, Rantoul, Ill.

[6] Contract with Bethany expires July 20, 1978; contract with Metropolis expires April 13, 1980; contract with Marshall expires October 26, 1979.

[7] On December 27, 1977, the Illinois Municipal Group filed a Motion to Reject, Protest, and Petition to Intervene. The substantive issues raised in that pleading pertain to the proposed W-2 and W-3 rates and will be addressed in a subsequent order. In the meantime, we will conditionally accept for filing those rates pending determination of the issues raised by the Municipal Group's filing.

[6740-02]

[Docket Nos. E-9597, E-9306]

NEVADA POWER CO. AND CALIFORNIA PACIFIC UTILITIES CO.

Order Authorizing Exchange of Electrical Facilities and Terminating Proceeding

DECEMBER 30, 1977.

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Pub. L. 95-91, 91 Stat. 565 (August 4, 1977) and Executive Order No. 12009, 42 FR 46267 (September 15, 1977), the Federal Power Commission ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on October 1, 1977.

The "savings provisions" of section 705(b) of the DOE Act provide that proceedings pending before the FPC on the date the DOE Act takes effect shall not be affected and that orders shall be issued in such proceedings as if the DOE Act had not been enacted. All such proceedings shall be continued and further actions shall be taken by the appropriate component of DOE now responsible for the function under the DOE Act and regulations promulgated thereunder. The functions which are the subject of these proceedings were specifically transferred to the FERC by section 402(a)(1) of the DOE Act.

The joint regulation adopted on October 1, 1977 by the Secretary and the FERC entitled "Transfer of Proceedings to the Secretary of Energy and the FERC," 10 CFR ——, provided that this proceeding would be continued before the FERC. The FERC takes action in this proceeding in accordance with the above mentioned authorities.

On June 17, 1977, Nevada Power Co. (Nevada) and California-Pacific Utilities Co. (Cal-Pac) submitted a joint application for Commission approval of the exchange of electric facilities.[1] Cal-Pac proposes to transfer to Nevada all of its electric transmission and distribution facilities located in Henderson, Nev., which have a net depreciated cost of $3,038,000. Nevada proposes to transfer to Cal-Pac all of its electric transmission and distribution facilities located in and around Elko, Nev. (located in northeast Nevada), with a net depreciated cost of $2,783,000; plus line trucks and distribution transformers equal to the difference in net book values. In addition, the parties have agreed to assume each other's customer advances for construction and other minor financial obligations, but the net effect is that no cash will change hands under the proposed exchange.

On November 29, 1977, Nevada and Cal-Pac filed a joint motion for expedited Commission consideration. The movants' justification is that under the terms of the exchange agreement all regulatory approvals and the closing must take place on or before December 31, 1977.

Nevada has two electric systems, the principal one is the Las Vegas service area and the other is the Elko Service area. Cal-Pac operates ten separate electric divisions, and also provides water, telephone and natural gas service. It derives 44 percent of its revenue from its electric operations. Cal-Pac purchases 98 percent of the electric requirements for its various divisions including 100 percent of the Henderson service area requirements. Cal-Pac's Henderson service area is completely surrounded by Nevada's Las Vegas service area.

The transfer of the Elko facilities by Nevada to Cal-Pac and the acquisition by Cal-Pac are subject to the Commission's jurisdiction pursuant to section 203(a) of the Federal Power Act which provides that no public utility shall sell or dispose of the whole of its facilities subject to the jurisdiction of the Commission or any part thereof in excess of $50,000. The Elko properties include $448,673 of transmission facilities. Cal-Pac's transmission facilities at Henderson have an original cost of only $26,875.

In discharging its responsibilities under section 203 of the Federal Power Act, the Commission will consider, inter alia, the reasonableness of the purchase price, the accounting treatment, the economic effect on the applicant and on sale levels, possible coercion by the applicant, effect on the competitive situation, and the effect on effective regulation.

Nevada states that its Las Vegas electric operation surrounds Cal-Pac's Henderson operation, and that the exchange will produce a reduction in O&M costs because Nevada will be able to utilize Cal-Pac's existing distribution center to serve the total Henderson service area and the southeast portion of the Las Vegas system. Nevada also states that its expects to save on accounting costs after the sale of the Elko system.

Cal-Pac advises that after the proposed exchange of property, it will continue providing natural gas service in Henderson with few operational changes being required, and none that will burden or adversely affect service. The separate gas crew (8 people) will remain in Henderson to serve the gas customers.

Cal-Pac states that the disposition of the Henderson property will result in no present or future burden on the operation of Cal-Pac's nearby Needles-Searchlight system. The company states that the Henderson and Needles-Searchlight systems are operationally independent. Cal-Pac advises that, in time, it will reduce costs in Elko by coordinating operations with a nearby Cal-Pac telephone operation.

The retail rates paid by Cal-Pac's Henderson customers and by Nevada's Elko customers will not be increased as a result of the exchange. Nevada will make its Las Vegas rates applicable to the Henderson area, but in the event any former customer of Cal-Pac would be charged a higher rate, Nevada will continue charging the customer at the existing rate until a subsequent rate increase application is approved by the State commission. Cal-Pac will continue to charge the Elko customers at the present Nevada rates.

Both Cal-Pac and Nevada have offered to employ all of the employees of the other affected by the exchange of facilities.

Nevada's Elko divisions obtains most of its power from Idaho Power Co. Cal-Pac will assume this contract, which runs for an additional 13 years. Cal-Pac's Henderson area is supplied in large part under a firm power contract with Nevada, the remainder being supplied under a contract with the Colorado River Commission of the State of Nevada for approximately 2 MW of power and energy. This latter contract will be assumed by Nevada.

On March 3, 1975, Nevada filed a notice of cancellation of its wholesale service rate schedule to Cal-Pac at Henderson (Docket No. E-9306), to which it had rendered since June 1, 1955. Nevada stated that it was unable to attract or raise sufficient capital to construct capacity to meet the growing requirements of its customers, including Cal-Pac, and in light of its overriding legal duty to serve its retail customers, Nevada stated it had no choice but to exercise its contractual right to terminate service to Cal-Pac at Henderson.

On May 30, 1975, the Commission suspended the notice of cancellation for 5 months until November 1, 1975. The parties entered into a stipulation on October 24, 1975, which provided for continuation of service until May 31, 1977. Hearings were held in October 1975. In an initial decision issued on December 5, 1976, the Administrative Law Judge found that Nevada's termination of service to Cal-Pac at Henderson was in the public interest. Briefs on exception were submitted. On May 18, 1977, the Secretary received a communication from the parties outlining the proposed transfer of properties and suggesting that Commission disposition of E-9306 be withheld pending receipt of the subject transfer proposal.

The applicants state that there is no connection between the proposed ex-

[1] Public notice of the application was issued on July 8, 1977. The deadline for protests or petitions to intervene was July 22, 1977. No protests or petitions to intervene have been filed.

change and the circumstances that led to Docket No. E-9306. They state that suggestions for the exchange were made by Cal-Pac, much before Docket No. E-9306 was initiated. Cal-Pac states that it has entered into the agreement to exchange its properties with Nevada freely and without coercion and has viewed the exchange as desirable for several years but found Nevada unwilling to make the exchange until recently.

Inasmuch as lack of an assured power supply by Nevada to serve Cal-Pac's Henderson area was the basis for Nevada's proposed cancellation of service to Cal-Pac, after the filing of the instant application, Nevada was asked to furnish a statement of its currently planned electric power resources for the period 1976 through 1981. These data for the 6-year period indicate that Nevada will be able to serve its load, including Henderson, with its own resources and purchases contracted for, and allowing for scheduled maintenance, Nevada's generation reserves will not drop below 20.5 percent in any month.

In 1975, data that Nevada furnished showed that its reserve would drop below WSCC (Western States Coordinating Council) standards in May 1978 and decline to 299 MW of deficiency in July 1981. The major differences between Nevada's statement at that time and at the present is in the electric load forecast; Nevada's current forecast shows a 5.42 percent compound growth rate for 1976-1981 compared with 6.37 percent estimated earlier for 1975-1981. Nevada's 1975 forecast indicated peak loads of 1,105 MW for 1976 and 1,185 for 1977. Nevada actually experienced loads of 1,060 MW and 1,147 MW, respectively.

Cal-Pac advised that it purchases all of its power supply for the Needles-Searchlight system from the Bureau of Reclamation and from Nevada under two power supply contracts that expire December 31, 1977, and December 31, 1985, respectively. The disposition of Cal-Pac's Henderson service area will have no effect on the above contracts.

The proposed exchange eliminates Cal-Pac as an electric retailer in the Las Vegas area. Cal-Pac's and Nevada's retail rates in the Henderson-Las Vegas area are comparable.

Cal-Pac was asked by our Staff whether the proposed acquisition of Henderson by Nevada would affect the competitive position of the Needles-Searchlight division. Cal-Pac advises that it has approximately 4,800 customers in the Needles portion of the Needles-Searchlight division, and 400 customers in the Searchlight portion. Cal-Pac states that since pursuant to State law, Nevada and Cal-Pac may serve retail customers only in authorized specific service areas, and since Nevada is not currently authorized to serve any retail customers in either the Searchlight or Henderson district, Cal-Pac sees no opportunity for competition. Cal-Pac notes that while Cal-Pac's Searchlight district and Nevada's Las Vegas division are adjacent, the bulk of the customers in the Searchlight district are located 100 miles away from Nevada's service area.

Nevada also contends that there is no competition presently between Nevada and Cal-Pac for potential customers in the Henderson-Needles-Searchlight areas and none is foreseen, and that the exchange of properties will not alter the present competitive situation.

Cal-Pac currently purchases its Needles-Searchlight power requirements about 40 percent from the USBR and 60 percent from Nevada. Its contract with USBR expires December 31, 1977, and will not be renewed. It is expected that next year all of the power will be purchased from Nevada, and that Cal-Pac's power expense will greatly increase due to the elimination of the low cost USBR source. As Cal-Pac's practice is to base its retail rates on costs for each area, its retail rates in this area will eventually be increased substantially.

Since the transaction contemplates a straight exchange at net original cost, the price appears to be reasonable.

The potential cost savings to both applicants appears to support the transfer with no adverse effects anticipated.

Although Nevada's past conduct, in Docket No. E-9306 might be construed as coercive, there is no direct evidence of coercion and Cal-Pac's positive statements to the contrary tend to favor approval of the transfer.

The Commission currently exercises jurisdiction over Nevada's sales to Cal-Pac and the Nevada Public Service Commission exercises jurisdiction over Cal-Pac's retail rates in the Henderson area. After the transfer, the Commission's jurisdiction will be eliminated but the Nevada Public Service Commission will continue to have retail jurisdiction. This will simplify the regulatory scheme. The substitution of Cal-Pac for Nevada in the Elko area would not appear to have any substantial effect on the regulatory scheme in that area, since we will continue to regulate Idaho Power Co.'s wholesale in that area.

In this case, the Commission finds that it can discharge its responsibilities under section 203 of the Federal Power Act without ordering a hearing.

The proposed transfer of properties offers prospects of reduction of operating expenses of both applicants; rationalizing the electric service territory of Nevada within the Las Vegas area. Cal-Pac will be able to combine the acquired electric operation in Elko with its telephone property in the area. The proposed transfer is supported by both applicants and has been approved by the Nevada Public Service Commission.

The Commission finds: (1) Applicants have made due showing in the form and manner prescribed by this Commission that the exchange of the above-described facilities between Nevada and Cal-Pac is consistent with the public interest.

(2) The Commission's approval of the applicants' proposed exchange of facilities moots the proceeding in Docket No. E-9306 and it should therefore be terminated.

(3) The Commission'a action herein moots the joint motion for expedited consideration filed by Cal-Pac and Nevada on November 29, 1977.

The Commission orders: (A) Nevada's and Cal-Pac's exchange of the above described facilities is hereby approved.

(B) Nevada and Cal-Pac shall record the proposed transaction herein authorized and the facilities and properties described above as provided in the Commission's uniform system of accounts (18 CFR 101).

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service accounts valuation, estimates, or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(D) The proceeding in Docket No. E-9306 is hereby terminated.

(E) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-497 Filed 1-9-78; 8:45 am]

[6740-02]

[Docket No. ER78-76]

SOUTHERN COMPANY SERVICES, INC.

Order accepting for Filing and Suspending Rate Schedules, Waiving Regulations, Providing for Hearing, Granting Intervention, and Establishing Procedures

DECEMBER 30, 1977.

On November 30, 1977, Southern Company Services, Inc. (Agent) submitted for filing an amendment to the Southern Company System procedures under Intercompany Interchange Contract, and new schedules showing the basis for capacity and energy transactions for the calendar year 1978. The Intercompany Interchange Contract among the affiliates

of the Southern Company[1] provides for coordinated generation of the parties, establishes the entitlements of the various parties to integrated pool capacity, and specifies charges for capacity deficiencies, pool energy, and transmission facilities equalization. The Interchange Contract is amended annually to reflect anticipated load and capacity conditions for the following calendar year.

In its application Agent states that the instant filing is made to conform with the agreement reached in the proceeding involving the calendar year 1977 filing in Docket No. ER77-86. That docket concerns the Southern Company System Intercompany Interchange Contract filed by Agent on December 1, 1976. That contract deals with the method by which the affiliates of the Southern Company account and pay for interchanges of capacity and energy between their respective systems. It governs transactions for the calendar year 1977. Because of changes in load forecast, installed generating capacity, and other changes affecting system operations of the operating companies, Agent states that it is necessary to file, from time to time, amendments to the contract and supporting schedules recognizing such changes and the effect on interchanges of capacity and energy between the operating companies.

By order issued December 27, 1976, the Federal Power Commission accepted the Interchange Contract in Docket No. ER77-86 for filing, and suspended its operation for one day, to become effective January 2, 1977, subject to refund. On December 7, 1977, Agent submitted a proposed settlement agreement on behalf of the Southern Company and the Intervenors, in Docket No. ER77-86. The Presiding Administrative Law Judge certified the proposed settlement agreement to this Commission on December 7, 1977, where it is now pending.

Because of changes in costs, installed generating capacity and other changes affecting system operations, Agent states that the current operational schedules would be inappropriate for use in 1978. Agent therefore requests an effective date of January 1, 1978, for the instant filing.

The changes contained in the amendment submitted include: (1) revisions to implement hourly billing during the calendar year 1978 in accordance with the Company's commitment in Docket No. E-8514, (2) revisions in the procedures for determining the monthly capacity requirements of each of the operating companies and the percentage reserve requirements of each of the operating companies in accordance with the Company's agreement with the parties in FERC Docket No. ER77-86, (3) revision in the procedures for determination of monthly capacity rates to delete the incorporation of a percent reserve margin in accordance with the Company's agreement with the parties in Docket No. ER77-86, (4) revision in the procedures relating to the hydro capacity so as to base such evaluation on an average water year, and (5) revision to the procedures for the treatment of delays in generating units scheduled for operation during the year.

Agent requests that the Commission waive the provision of section 35.13 of the Rules and Regulations requiring the filing of Statements A through P. Agent states that these statements have limited application to the interchange transaction and pricing mechanism contemplated by the subject filing. Agent states that the Federal Power Commission granted such a waiver in Docket No. ER77-86, supra. Based on our review of the nature of this filing, such waiver appears to be warranted.

Notice of the filing of the amendment was issued on December 9, 1977, with comments due on or before December 19, 1977. On December 19, 1977, the Municipal Electric Authority of Georgia (MEAG) filed a petition to intervene and a protest and request for a 5-month suspension and hearing.

The amendment tendered for filing by Agent on November 30, 1977, has not been shown to be just and reasonable and therefore may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. MEAG's request for a 5-month suspension period is not supported by specific allegations or facts warranting such relief. Our review of the pleadings and the filing indicates that a 1-day suspension period is warranted.

The Commission finds: (1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Federal Power Act that the Commission enter upon a hearing concerning the lawfulness of the amendment to the Southern Company System procedures under the Intercompany Contract and tendered by Southern Company Services, Inc., on November 30, 1977, establishing procedures for that hearing, and that the proposed amendment be accepted for filing, suspended, and the use thereof deferred, all as hereinafter ordered.

(2) Good cause exists to waive the Commission's filing requirements requiring the filing of Statements A through P.

(3) The participation by MEAG in this proceeding may be in the public interest.

The Commission orders: (A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act and by the Federal Power Act, particularly sections 205, 206, 301, 307, 308 and 309 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the Regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of the amendment proposed by Southern Company Services, Inc.

(B) Pending such hearing and decision thereon, the proposed amendment filed by Southern Company Services, Inc. on November 30, 1977 and identified by Southern Company Services, Inc. on November 30, 1977 and identified above is hereby accepted for filing as of January 1, 1978, suspended and the use thereof deferred until January 2, 1978, when it shall become effective subject to refund.

(C) A Presiding Administrative Law Judge to be designated by Chief Administrative Law Judge for that purpose (See, Delegation of Authority, 18 CFR § 3.5(d)), shall preside at an initial conference in this proceeding to be held on March 7, 1978, at 10 a.m. (ET) in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, D.C. 20426. Said Law Judge is authorized to establish all procedural dates, including the date for the filing of the companies' case-in-chief, and to rule upon all motions, (except petitions to intervene, motions to consolidate and sever, and motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure.

(D) The requirement for the filing of Statements A through P, contained in section 35.13(b) (iii) of the Commission's Rules and Regulations, is waived.

(E) Nothing contained herein shall be construed as limiting the rights of parties to this proceeding regarding the convening of conferences or offers of settlement pursuant to section 1.18 of the Commission's rules of practice and procedure.

(F) MEAG is hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission: *Provided, however,* That participation of intervenor shall be limited to the matters affecting asserted rights and interests specifically set forth in the petition to intervene; and *Provided, further,* That the admission of such intervenor shall not be construed as recognition by the Commission that it might be aggrieved by any orders entered in this proceeding.

(G) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

[1] Alabama Power Co., Georgia Power Co., Gulf Power Co. and Mississippi Power Co.

By the Commission.

KENNETH F. PLUMB,
Secretary.

APPENDIX A

SOUTHERN COMPANY SERVICES, INC., RATE SCHEDULE DESIGNATIONS (DOCKET NO. ER78-76)

(1) Southern Company Services Supplement No. 3 to Rate Schedule FPC No. 46—Amendment No. 1 to Procedures.
(2) Supplement No. 4 to Rate Schedule FPC No. 46—Schedules and Support Schedules.

CONCURRENCES IN (1) AND (2) ABOVE

Alabama Power Co., Supplement No. 1 to Rate Schedule FPC No. 140.
Gulf Power Co., Supplement No. 1 to Rate Schedule FPC No. 62.
Georgia Power Co., Supplement No. 1 to Rate Schedule FPC No. 796.
Mississippi Power Co., Supplement No. 1 to Rate Schedule FPC No. 120.

[FR Doc. 78-498 Filed 1-9-78; 8:45 am]

[6740-02]

[Docket No. RP74-41 (PGA78-2) (DCA78-1)]

TEXAS EASTERN TRANSMISSION CORP.

Order Accepting PGA Rate Increase for Filing Subject to Modifications

DECEMBER 30, 1977.

On November 17, 1977, Texas Eastern Transmission Corp. (Texas Eastern) filed a PGA rate increase of 3.09 cents per dekatherm (dth) in Zone A and 1.20 cents per dth in Zones B, C, and D in the commodity component of its rates.[1] The PGA rate increase reflects an increase of 7.22 cents per dth in Zone A and 5.33 cents per dth in Zones B, C, and D to track increased purchased gas costs and a uniform decrease of 4.13 cents per dth in the surcharge to reflect the credit balance in the deferred PGA account. The tariff sheets also reflect revised surcharges pursuant to section 12.4 of Texas Eastern's tariff to recover demand charge credits and have proposed effective dates of January 1, 1978.[2]

Under Texas Eastern's PGA clause in its tariff, the period used to develop its current cost of purchased gas is the 12-month period ending August 31, 1977. Texas Eastern can also adjust the current cost of purchased gas to reflect supplier rate levels as of the proposed effective date. However, the period used to determine the surcharge related to deferred purchased gas costs is the 6-month period ending August 31, 1977.

Texas Eastern has included purchased gas and related transportation costs associated with a sixty (60) day emergency purchase pursuant to § 2.68 of the Commission Rules and Regulations, 18 CFR 2.68 (1977). Texas Eastern proposes to recover all these costs through its proposed surcharge. If the Commission does not permit the recovery of $934,821 in transportation costs incurred after August 31, 1977, Texas Eastern has filed alternate tariff sheets reflecting the elimination of these costs.[3]

In support of the emergency purchase, Texas Eastern submits that it suffered a substantial reduction in offshore supplies due to hurricanes beginning on August 29, 1977. As a result thereof and in order to augment declining supplies and maintain storage inventories, Texas Eastern made the emergency purchase. Between August 31, 1977, and October 30, 1977, Texas Eastern purchased 7,869,088 Mcf at 14.65 psia at a price of $2.25 per MM Btu of gas sold. The volumes purchased limited the curtailment of service to Priorities 2 and 3. The $2.25 per MM Btu price is identical to the rate at which Texas Eastern was allowed to purchase emergency gas from Houston under the Emergency Natural Gas Act of 1977.[4]

We believe that the price paid by Texas Eastern for the emergecny purchase is one which a reasonably prudent pipeline would pay for gas under the same or similar circumstances Therefore, costs associated with this purchase should be recovered in accordance with the PGA provisions of Texas Eastern's tariff.

The one time costs associated with the 60-day emergency purchase should not be reflected in the current cost of purchased gas. Therefore, allowing Texas Eastern to adjust costs for the 12-months ending August 31, 1977, as Texas Eastern is authorized to do with the current cost of purchased gas, would be inappropriate. Because only 26,819 Mcf of emergency gas was purchased before September 1, 1977, Texas Eastern should be allowed to reflect only those costs associated with the emergency purchases which were properly included in the deferred account before that date. The balance of the costs associated with the emergency purchase from Houston should be collected under Texas Eastern's next semi-annual PGA Rate filing to be effective July 1, 1978.

In its filing Texas Eastern has tracked the effect of a pipeline supplier rate increase to be effective on January 1, 1978. By separate order the Commission is suspending this rate increase filing by United Gas Pipe Line Co. for 1 day, or until January 2, 1978, and requiring a reduction of the rates. Accordingly, Texas Eastern cannot support its proposed rate level on January 1, 1978. Any PGA rate increase by Texas Eastern should be deferred until January 2, 1978, and made subject to modification to reflect United's rates on that date. Further, Texas Eastern should be permitted to file rates to be effective January 1, 1978, to reflect costs actually incurred thereon. The Commission's action is without prejudice to Texas Eastern's filing such rates for January 1, 1978.

The Commission finds: It is appropriate and in the public interest that Texas Eastern's PGA rate increase be accepted, as modified hereinafter, effective January 2, 1978.

The Commission orders: Texas Eastern's PGA rate increase is hereby accepted effective January 2, 1978, Provided, that the PGA Rates shall reflect the pipeline supplier rates of United Gas Pipe Line Co. on January 2, 1978, and the elimination of all costs, associated with the emergency purchases from Houston, incurred after August 31, 1977. The action taken herein is based on the Commission staff's recommendation following review of Texas Eastern's filing, that Texas Eastern's emergency purchases meet the "prudent pipeline" standard.

By the Commission

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-499 Filed 1-9-78; 8:45 am]

[6740-02]

[Docket No. RP76-52]

NORTHERN NATURAL GAS CO.

Extension of Time

JANUARY 3, 1978.

On December 7, 1977, the State of Wisconsin Department of Natural Resources filed a request to extend the time for filing comments on the Draft Environmental Impact Statement (DEIS) in the above referenced proceeding, availability of which was noticed December 9, 1977, and published in the FEDERAL REGISTER December 14, 1977 (42 FR 62971).

Because availability of the DEIS was not published in the FEDERAL REGISTER until December 14, 1977, notice is hereby given that the date for filing comments on the DEIS is extended to and including January 28, 1978.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-500 Filed 1-9-78; 8:45 am]

[1] The demand component of Texas Eastern's rates have been increased by 21.4 cents per dth in Zone A and 37.8 cents per dth in Zones B, C, and D.

[2] Thirty-sixth Revised Sheet No. 14, 14A through 14D to Texas Eastern's FERC Gas Tariff Fourth Revised Volume No. 1.

[3] Alternate Thirty-sixth Revised Sheet No. 14, 14A through 14D to Texas Eastern's FERC Gas Tariff, Fourth Revised Volume No. 1.

[4] Texas Eastern also made five other small emergency purchases from independent producers at rates equal to the applicable nationwide area rates.

[6740-02]

[Docket No. E-9578]

TEXAS POWER AND LIGHT CO.

Extension of Time

JANUARY 3, 1978.

On December 20, 1977, Tex-La Electric Cooperative, Inc., filed a motion to reset the procedural dates established by Commission Order issued October 31, 1977, in the above referenced proceeding. The motion states that all parties to the proceeding, including Texas Power and Light Co., and Staff Counsel, do not object to the requested change of dates.

Upon consideration, notice is hereby given that new procedural dates are established as follows:

Filing of data requests by all parties, including Staff Counsel, March 9, 1978.
Prehearing conference, March 20, 1978.

All other procedural dates will be established in accordance with the October 31, 1977, Order.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-501 Filed 1-9-78; 8:45 am]

[6740-02]

Federal Energy Regulatory Commission

[Docket No. RM78-2 (formerly Ex Parte No. 308)]

VALUATION OF COMMON CARRIER PIPE LINES

Extension of Comment Period

AGENCY: Federal Energy Regulatory Commission.

ACTION: Extension of time.

SUMMARY: The Commission is granting an extension of time to and including February 15, 1978, for filing briefs as ordered by the Presiding Judge in this rulemaking proceeding docketed as RM78-2 (formerly Ex Parte No. 308). This extension is being granted to enable the Commission to rule on the merits of a petition filed on December 12, 1977, appealing the Judge's order.

DATES: Briefs must be received on or before February 15, 1978.

ADDRESS: Send briefs to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Kenneth F. Plumb, Secretary, 202-275-4166.

SUPPLEMENTARY INFORMATION: On December 12, 1977, the U.S. Department of Justice, State of Alaska, and Midcontinent Petroleum Product Shippers (petitioners) filed a "Petition for Administrative Review and Suspension of Procedural Dates" in this proceeding. The Commission's order of October 12, 1977, published October 26, 1977 (42 FR 56537), re- scheduled a hearing in this proceeding and directed the Presiding Judge to certify the record to the Commission for consideration of further procedures. Petitioners' filing asks the Commission to vacate the Presiding Judge's order of November 11, 1977, requiring briefs to be filed by January 16, 1978, and to direct the filing of briefs "addressed to the definition of the issues and the additional substantive and procedural steps necessary for an informed rulemaking" (Petition, p. 2).

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-597 Filed 1-9-78; 8:45 am]

[6740-02]

Federal Energy Regulatory Commission

[Docket No. ER78-139]

CANAL ELECTRIC CO.

Notice of Termination of Rate Schedule

JANUARY 5, 1978.

Take notice that on December 19, 1977, Canal Electric Co. ("Canal") tendered for filing a Notice of Termination for its currently effective FPC Rate Schedule No. 18. Canal states that said Rate Schedule consists of a unit power sales agreement effective February 1, 1976 between Canal and Central Maine Power Co. ("Central Maine") for the sale of unit power purchased by Central Maine from Canal's Unit No. 2.

Canal further states that Rate Schedule No. 18 was accepted for filing by FPC order issued June 21, 1976 in Docket No. ER76-476 and By FPC letter order dated October 1, 1976 in Docket No. ER76-856 and terminated by its own provisions on April 30, 1977. Canal has requested the Commission to waive its notice requirements pursuant to Section 35.15 of its Regulations and to permit the tendered Notice of Termination to become effective as of April 30, 1977.

According to Canal a copy of this filing has been mailed to Central Maine Power Co.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 9, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-762 Filed 1-9-78; 9:39 am]

[6740-02]

[Docket No. ER78-142]

CONNECTICUT LIGHT AND POWER CO.

Notice of Proposed Transmission Agreement

JANUARY 5, 1978

Take notice that on December 22, 1977, The Connecticut Light and Power Co. (CL&P) tendered for filing a proposed rate schedule with respect to Transmission Agreement dated November 1, 1977 between (1) CL&P, The Harford Electric Light Co. (HELCO) and Western Massachusetts Electric Co. (WMECO) and (2) Westfield Gas and Electric Department (Westfield).

CL&P states that the Transmission Agreement provides for a transmission service to Westfield during the period from November 1, 1977 to October 31, 1981.

CL&P further states that the transmission charge rate is a monthly rate equal to one-twelfth of the annual average cost of transmission service on the NU system determined in accordance with Section 13.9 (Determination of Amount of Pool Transmission Facilities (PTF) Costs) of the New England Power Pool (NEPOOL) Agreement and the uniform rules adopted by the NEPOOL Executive Commmittee, multiplied by the number of kilowatts which Westfield is entitled to receive.

CL&P requests an effective date of November 1, 1977, and therefore requests waiver of the Commission's notice requirement.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 9, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file

with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-763 Filed 1-9-78; 9:39 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[IRLG-1:002 FRL-839-0]

INTERAGENCY REGULATORY LIAISON GROUP

Intent To Develop Compatible Testing Standards and Guidelines

CROSS REFERENCE: For a document announcing agreement of the Consumer Product Safety Commission, the Environmental Protection Agency, the Food and Drug Administration, Health, Education, and Welfare Department and the Occupational Safety and Health Administration, Labor Department to work together as the Interagency Regulatory Liaison Group for the purpose of reforming the regulatory process and improving protection of workers, public health and the environment, see FR Doc. 78-474 appearing under Consumer Product Safety Commission in the notices section of this issue. Refer to the table of contents at the front of this issue under "Consumer Product Safety Commission" to find the correct page number.

[6560-01]

[FRL 833-7]

CALIFORNIA STATE MOTOR VEHICLE POLLUTION CONTROL STANDARDS

Waiver of Federal Preemption

By FEDERAL REGISTER notice on Thursday, November 10, 1977, see 42 FR 58562, I announced that I expected to grant to the State of California a waiver of Federal preemption under section 209(b) of the Clean Air Act, as amended (hereinafter the "Act"), to enforce the California evaporative emission standard applicable to 1980 and subsequent model year gasoline-powered motor vehicles except motorcycles. In that notice I stated that based on all material submitted for the record as of October 13, 1977, I could not make the determinations required for a denial of a waiver for this standard. However, a new condition for the granting of a waiver was established by the Clean Air Act Amendments of 1977. These amendments provide that I shall grant a waiver under section 209(b) of the Act if the State of California determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards. No such waiver shall be granted if I find that California's determination is arbitrary and capricious.

On September 30, 1977, the California Air Resources Board (CARB) determined that the California evaporative emission standard is at least as protective of the public health and welfare as the applicable Federal standard. This determination was subject to review at the Environmental Protection Agency (EPA) California waiver hearing of October 13, 1977. See 42 FR 45942 (September 13, 1977).

Pursuant to the FEDERAL REGISTER notice announcing the October 13 public hearing, General Motors Corp., and International Harvester Co., submitted comments in this matter. The questions raised by General Motors have been previously considered in the notice of November 10, 1977. See 42 FR 58562.

International Harvester contended that the CARB had acted in an arbitrary and capricious manner in adopting the standard and accompanying certification procedures since International Harvester believed that these regulations would require the Company to run a special evaporative emissions durability test fleet and incur excessive costs in order to certify in 1980. I have determined that International Harvester is in error. As stated in the California evaporative emission certification regulations, the Company will have to run a 1980 durability fleet only for those engine families selected for exhaust emissions durability testing.

Thus, California has determined on September 30, 1977, that its evaporative emission standard is at least as protective of the public health and welfare as the applicable Federal standard. Inasmuch as the California standard is clearly more stringent than the applicable standard, the California standard is deemed under the Act to be at least as protective of health and welfare as the comparable Federal standard. Therefore, having given due consideration to the records of the May 17, 1977, and October 13, 1977, public hearings, all material submitted for these records, and other relevant information, I find that I cannot make the determinations required for a denial of a waiver under section 209(b) of the Act, and I thereby waive application of section 209(a) of the Act to the State of California with respect to the following section of Title 13 of the California Administrative Code:

Section 1976(b), as amended November 23, 1976, and June 8, 1977, and "California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Gasoline-Powered Motor Vehicles Except Motorcycles," adopted April 16, 1975, as amended May 14, 1975, March 31, 1976, October 5, 1976, November 23, 1976, and June 8, 1977.

The above standard and procedures, as well as the record of these hearings and those documents used in arriving at this decision, are available for public inspection during normal working hours (8 a.m. to 4:30 p.m.) at the U.S. Environmental Protection Agency, Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street SW., Washington, D.C. 20460. The standard and test procedures are also available upon request from the California Air Resources Board, 1102 Q Street, Sacramento, Calif. 95812.

Dated: January 4, 1978.

BARBARA BLUM,
Acting Administrator.

[FR Doc. 78-556 Filed 1-9-78; 8:45 am]

[6560-01]

[FRL 840-2; OPP-00065]

STATE-FEDERAL FIFRA IMPLEMENTATION ADVISORY COMMITTEE (SFFIAC) WORKING GROUP ON CERTIFICATION

Meeting

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Notice of open meeting.

SUMMARY: There will be a three-day meeting of the State-Federal FIFRA Implementation Advisory Committee's Working Group on Certification beginning daily at 8:30 a.m. on Tuesday, January 31, Wednesday, February 1, and Thursday, February 2, 1978. The February 1 session will be a joint meeting with the SFFIAC Working Group on Training which is technically responsible to the Extension Committee on Organization and Policy (ECOP).

The meeting will be held at the Salishan Lodge, Gleneden Beach, Oreg., and will be open to the public; however, due to space limitations, anyone planning to attend should contact the SFFIAC Executive Secretary.

FOR FURTHER INFORMATION CONTACT:

Mr. P. H. Gray, Jr., SFFIAC Executive Secretary, Operations Division (WH-570), Office of Pesticide Programs, Room E-507, EPA, 401 M Street SW., Washington, D.C. 20460, telephone 202-755-7014.

SUPPLEMENTARY INFORMATION: This will be the seventh meeting of the Working Group on Certification under SFFIAC auspices. The purpose of the meeting is to discuss current aspects of pesticide applicator certification with the intent of reporting to the full Committee, so that the latter will be able to advise EPA on certification at its meeting. Among the topics scheduled for discussion are:

1. State funding needs for certification and training programs;

2. Concept of continuing certification, including continuing education units;

3. Renewal procedures for applicator certification;

4. Status of legislative situation as it affects certification programs;

5. Status of November SFFIAC meeting action items relating to certification; and

6. Homeowner certification.

On Wednesday, February 1, at the joint meeting, the main topics for discussion will be:

1. Coordination of training and certification programs; and

2. Continued training to meet certification requirements.

Dated: January 3, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 78-557 Filed 1-9-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 891]

COMMON CARRIER SERVICES INFORMATION

Applications Accepted for Filing

JANUARY 3, 1978.

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications, if upon further examination, it is determined they are defective and not in conformance with the Commission's Rules and Regulations or its policies.

Final action will not be taken on any of these applications earlier than 31 days following the date of this notice, except for radio applications not requiring a 30 day notice period (see §309(c) of the Communications Act), applications filed under Part 68, applications filed under Part 63 relative to small projects, or as otherwise noted. Unless specified to the contrary, comments or petitions may be filed concerning radio and section 214 applications within 30 days of the date of this notice and within 20 days for Part 68 applications.

In order for an application filed under Part 21 of the Commission's Rules (Domestic Public Radio Services) to be considered mutually exclusive with any other such application appearing herein, it must be substantially complete and tendered for filing by whichever date is earlier: (a) the close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which the subsequent application is in conflict) as having been accepted for filing. In common carrier radio services other than those listed under Part 21, the cut-off date for filing a mutually exclusive application is the close of business one business day preceding the day on which the previously filed application is designated for hearing. With limited exceptions, an application which is subsequently amended by a major change will be considered as a newly filed application for purposes of the cut-off rule. (See §1.227(b)(3) and 21.30(b) of the Commission's rules.)

For the Federal Communications Commission.

WILLIAM J. TRICARICO,
Secretary.

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

20538-CD-P-(3)-78 Pacific Northwest Bell Telephone Co. (KOA731). C.P. to replace transmitter operating on 35.26, 152.57, and 152.60 MHz located on Prospect Hill No. 1, approximately 7 miles SW of Salem, Oreg.

20539-CD-P-78 Pacific Northwest Bell Telephone Co. (KOA246). C.P. for additional facilities to operate on 454.625 MHz to be located at 2010 SW Bernard Drive, Portland, Oreg.

20540-CD-P-78 Pacific Northwest Bell Telephone Co. (KOK421). C.P. to replace transmitter operating on 152.78 MHz located on Cosmopolis Hill, 5.5 miles SE of Aberdeen, Wash.

20541-CD-P-(2)-78 The Mountain States Telephone & Telegraph Co. (KDN407). C.P. to replace transmitter, change antenna system and change frequency from 35.22 MHz to 152.84 MHz at location No. 1: 5 miles NE of Colorado Springs, Colo., and location No. 2: 17 North Weber Street, Colorado Springs, Colo.

20542-CD-P-(4)-78 The Mountain States Telephone & Telegraph Co. (KAI927) C.P. to replace transmitter, change antenna system and change frequencies from 35.38 MHz to 152.84 MHz at location No. 1: 931 14th Street, Denver, Colo.; location No. 2: 3260 South Clay, Denver, Colo.; location No. 3: 4301 East Colfax, Denver, Colo.; and location No. 4: 1595 Allison, Denver, Colo.

20543-CD-P-(3)-78 The Mountain States Telephone & Telegraph Co. (New). C.P. for a new 1-way station to operate on 152.84 MHz to be located at three (3) new sites described as: location No. 1: 52nd and Zuni, Denver, Colo.; location No. 2: 1900 Jackson Street, Golden, Colo.; and location No. 3: 16767 East Smoky Hill Road, Aurora, Colo.

20544-CD-P-(4)-78 Industrial Communications Systems, Inc. (KSV926). C.P. for additional facilities to operate on 2164.0 MHz, control at location No. 3: Saddle Peak, 4.5 miles NE of Malibu, Calif.; additional facilities to operate on 2114.0 MHz, control, at location No. 8: Oat Mountain Radio Site, Los Angeles, Calif.; additional facilities to operate on 2114.6 MHz, control at a new site described as location No. 9: 1500 West 58th Street, Los Angeles, Calif.; and additional facilities to operate on 2164.6 MHz, control at a new site described as location No. 10: 707 Wilshire Boulevard, Los Angeles, Calif.

20545-CD-P-(2)-78 Mobilfone, Inc. (KLF662). C.P. for additional facilities to operate on 152.24 MHz to be located at two (2) new sites described as location No. 4: 4.5 miles SE of Hudson, and 4.5 miles NE of Port Richey, New Port Richey, Fla.; and location No. 5: 4.2 miles SE of Brooksville, Fla.

20546-CD-P-78 Northern Illinois Radiophone & Paging Systems, Inc. (KSB590). C.P. to relocate facilities operating on 152.09 MHz to be located at 1701 South First Avenue, Maywood, Ill., location No. 1.

20547-CD-P-(2)-78 Rule Radiophone Service, Inc. (new). C.P. for a new 1-way station to operate on 152.24 MHz to be located on Hill 8821, Sherman Mountains, 8 miles east of Laramie, Wyo., location No. 1 and for control facilities to operate on 454.075 MHz to be located at 512 Grand Avenue, Laramie, Wyo., location No. 2.

20548-CD-P-78 Professional Communications, Inc. (new). C.P. for a new 1-way station to operate on 43.58 MHz to be located at No. 1 Marine Midland Center, Buffalo, N.Y.

20549-CD-P-(2)-78 East Otter Tail Telephone Co. (KWT928). C.P. to change antenna system and relocate facilities operating on 152.63 MHz and for additional facilities to operate on 152.72 MHz to be located at 3.5 miles NE of Perham, Minn.

20550-CD-P-78 Stayton Cooperative Telephone Co. (KWU299). C.P. to relocate facilities operating on 454.525 MHz to be located at McCully Mountain, approximately 1 mile SSW of Lyons, Oreg.

20551-CD-P-(2)-78 Radio Enterprises of Ohio, Inc. (KUS280). C.P. to change antenna system operating on 35.22 MHz at two (2) sites, location No. 2: 84 North State Street, Painesville, Ohio; and location No. 3: 111 Water Street, Chardon, Ohio.

20552-CD-P-78 David T. Sellers d.b.a. Town & Country Communications (KUS318). C.P. to replace transmitter; change antenna system, change frequency from 152.18 MHz to 152.03 MHz and relocate facilities to be located 5 miles North of Jasper on Highway 96, Tex.

20553-CD-P-78 Schuylkill Mobile Fone, Inc. (KGA589). C.P. to change antenna system and relocate facilities from location No. 2 operating on 454.175 MHz to be located at location No. 1: Sharp Mountain, North Manhein Twp., Pottsville, Pa.

20554-CD-P-(4)-78 Airsignal of California, Inc. (KWU255). C.P. for additional facilities to operate on 35.58 MHz, base and 72.88 MHz, control at location No. 1: Fourth and J Streets, Sacramento, Calif.; and for additional facilities to operate on 35.58 MHz at two (2) new sites described as location No. 2: 5889 Stockton Boulevard, Sacramento, Calif.; and location No. 3: 5831 Rosebud Lane, Carmichael, Calif.

20555-CD-P-78 Aircall, Inc. (KIY779). C.P. to change antenna system operating on 152.24 MHz at location No. 1: On top of Spivey Mountain, 4 miles West of Asheville, N.C.

20556-CD-P-(2)-78 Aircall, Inc. (KIY776). C.P. to change antenna system operating on 152.12 MHz and for additional facilities to operate on 152.18 Mhz to be located at Spivey Mountain, 4 miles West of Asheville, N.C.

20557-CD-P-78 Airsignal of California, Inc. (KMA267), C.P. to replace transmitter and relocate facilities operating on 2171.6 MHz to be located at a new site described as location No. 4: 1755 E Street, Fresno, Calif.

20558-CD-P-78 Professional Communications, Inc. (KTS238), C.P. to relocate facilities operating on 459.125 MHz, control

to be located at a new site described as location No. 4: 50 High Street, Buffalo, N.Y.

20559-CD-P-78 Radio Relay New York Corp. (KEC745). C.P. for additional facilities to operate on 43.22 MHz, standby at location No. 13: 20 Exchange Place, New York, N.Y.

20560-CD-P-78 Professional Communications, Inc. (new). C.P. for a new 1-way station to operate on 158.70 MHz to be located near WRRN-FM Tower, Butchers Mill Road, Warren, Pa.

20561-CD-P-(2)-78 KVET Broadcasting Co., Inc. (KWT919). C.P. for additional facilities to operate on 454.025 and 454.300 MHz to be located on Hill west of trail of Madrones Road, near Austin, Tex.

20562-CD-P-(2)-78 Central Telephone Co. (KOH273). C.P. for additional facilities to operate on 454.450 and 454.500 MHz to be located at Carson Street and Las Vegas Boulevard South, Las Vegas, Nev.

20563-CD-AL-78 The Lorain Telephone Co. (KQA649). Consent to Assignment of License from Lorain Telephone Co., Assignor to CTU Co., Assignee. Station: KQA649, Lorain, Ohio.

CORRECTIONS

20485-CD-P-(4)-78 (KFL877). Correct to add name of Licensee: Westside Communications of Tampa, Inc. All other particulars to remain as reported on PN No. 890 dated December 27, 1977.

RURAL RADIO SERVICE: MAJOR AMENDMENTS

60347-CR-P/L-77 Cameron Telephone Co. (New), Amend application to add frequency 158.07 MHz. All other particulars to remain as reported on PN No. 867, dated July 18, 1977.

5483-Cl-P/L-72 Cameron Telephone Co. (New), Amend application to add frequency 158.07 MHz. All other particulars to remain as reported on PN No. 585, dated February 28, 1972.

5589-Cl-P/L-73 Cameron Telephone Co. (New), Amend application to add frequency 158.07 MHz. All other particulars to remain as reported on PN No. 634, dated February 5, 1973.

POINT TO POINT MICROWAVE RADIO SERVICE

OK—801-CF-P-78 Southwestern Bell Telephone Co. (KSW32), 1702 Gore Street, Lawton, Okla., Lat. 34°36'30" N., Long. 098°24'48" W. C.P. to add 6034.2V MHz toward a new point of communication at Cache, Okla. on azimuth 270.4°.

OK—802-CF-P-78 Same (new), 2.2 miles WSW of Cache, Okla., Lat. 34°36'34" N., Long. 098°39'29" W. C.P. for a new station using frequencies 6286.2H MHz toward Lawton, Okla. on azimuth 90.3° and 6286.2V MHz toward Tipton, Okla. on azimuth 256.4°.

OK—803-CF-P-78 Same (new), 1.8 miles NE of Tipton, Okla., Lat. 34°31'09" N., Long. 099°06'18" W. C.P. for a new station using frequencies 6034.2H MHz towards Cache, Okla. on azimuth 76.2° and 6034.2V MHz towards Altus, Okla. on azimuth 302.5°.

OK—804-CF-P-78 Same (new), 220 N. Hudson, Altus, Okla., Lat. 34°38'23" N., Long. 099°20'04" W. C.P. for a new station using frequency 6286.2H MHz towards Tipton, Okla. on azimuth 122.4°.

KS—840-CF-P-78 Southwestern Bell Telephone Co. (KAD26), Topeka Jct., 3rd and Oakley, Topeka, Kans., Lat. 39°03'46" N., Long. 095°42'56" W. C.P. to add frequency 6004.5V MHz towards a new point of communication at Hoyt, Kans. on azimuth 13.2°.

KS—841-CF-P-78 Same (new), 2.8 miles ENE of Hoyt, Kans., Lat. 39°15'41" N., Long. 095°39'20" W. C.P. for a new station using frequencies 6256.5H MHz toward Topeka Jct., Kans. on azimuth 193.3° and 6256.5V MHz towards Holton Jct., Kans. on azimuth 346.7°.

KS—842-CF-P-78 Same (new), Holton Jct., 1.0 mile ENE of Holton, Kans., Lat. 39°27'35" N., Long. 095°42'58" W. C.P. for a new station using frequencies 6004.5H MHz towards Hoyt, Kans. on azimuth 166.7° and 6004.5V MHz toward Goff Jct., Kans. on azimuth 315.9°.

KS—843-CF-P-78 Same (new), Goff Jct., 1.75 mile SW of Goff, Kans., Lat. 39°39'05" N., Long. 095°57'25" W. C.P. for a new station using frequencies 6256.5H MHz towards Holton Jct., Kans. on azimuth 135.7° and 6256.5V MHz towards Sabetha, Kans. on azimuth 25.5°.

KS—844-CF-P-78 Southwestern Bell Telephone Co. (new), 904 Virginia Street, Sabetha, Kans., Lat. 39°54'10" N., Long. 095°48'05" W. C.P. for a new station using frequencies 6004.5H MHz towards Goff Jct., Kans. on azimuth 205.6° and 6004.5V MHz towards Hiawatha, Kans. on azimuth 103.5°.

TX—855-CF-P-78 Same (WCG240), 301 West Whaley, Longview, Tex., Lat. 32°29'59" N., Long. 094°44'29" W. C.P. to increase transmit structure height and add 6152.8V MHz towards a new point of communication at Henderson, Tex. on azimuth 188.4°.

TX—856-CF-P-78 Same (new), 0.5 mile N of Hwy 64 on Longview, Henderson, Tex., Lat. 32°10'28" N., Long. 094°47'53" W. C.P. for a new station using frequencies 6404.8H MHz towards Longview, Tex. on azimuth 8.4° and 11035.0V MHz towards Overton, Tex. on azimuth 303.4°.

WY—859-CF-MP/ML-78 The Mountain States Telephone and Telegraph Co. (KPR60), Copper Mtn., 16 miles SE of Thermopolis, Wyo., Lat. 43°26'50" N., Long. 108°01'56" W. Modification of C.P. (912-CF-P-77) and Modification of License to increase output power on frequency 2112.0V MHz toward Shoshoni, Wyo. on azimuth 194.6°.

WY—860-CF-MP/L-78 Same (WCF991), 118 Wyoming Street, Shoshoni, Wyo., Lat. 43°14'06" N., Long. 108°06'28" W. Modification of C.P. (911-CF-P-77) and License to increase output power on 2162.0V MHz towards Copper Mtn., Wyo. on azimuth 14.5°.

AL—861-CF-ML-78 American Telephone and Telegraph Co. (KIS36), 425 Grant Street, SE., Decatur, Ala., Lat. 34°36'05" N., Long 086°58'53" W. Modification of License to delete 3730V, 3810V MHz towards HuntsvilleR; 3730H, 3810H MHz towards Town Creek, and transfer to South Central Bell Telephone Co. (KIW75), Decatur, Ala. "Partial Transfer."

AL—862-CF-ML-78 South Central Bell Telephone Co. (KIW75), 425 Grant Street SE., Decatur, Ala., Lat. 34°36'05" N., Long 086°58'53" W. Modification of License to add 3730V, 3810V MHz towards HuntsvilleR; 3730H, 3810H MHz towards Town Creek, from American Telephone and Telegraph Co. (KIS36), Decatur, Ala. "Partial Transfer."

GA—845-CF-P-78 Southern Bell Telephone and Telegraph Co. (WAH553), Savannah BS, 1300 Bull Street, Savannah, Ga., Lat 32°03'44" N., Long. 081°05'51" W. C.P. to add new point of communication using frequencies 3750V, 3830V, 3910V, 3990V MHz towards Marlow, Ga. on azimuth 301.8°; and 11685V MHz towards WJCL-SVNH, Georgia on azimuth 202.2°.

GA—846-CF-P-78 Same (KIL90), 5.2 miles SE of Marlow, Ga., Lat. 32°12'03" N., Long. 081°21'38" W. C.P. to add new point of communication using frequencies 3710V, 3790V, 3870V, 3950V, 4030V, 4110V, and 4130H MHz towards Savannah BS, Georgia on azimuth 121.7°.

PA—858-CF-MP-78 The Bell Telephone Co. of Pennsylvania (WCG222), Locust, 3.5 miles NE of Blakeslee, Pa., Lat. 41°08'15" N., Long. 075°33'38" W. Modification of C.P. (1045-CF-P-77) to change station location ot the above using frequencies 11305V, 11385V MHz towards Lookout Mtn., Pa. on azimuth 318.5° and 11265V, 11345V MHz towards Rocky, Pa. on azimuth 125.5°.

ID—883-CF-P-78 The Mountain States Telephone and Telegraph Co. (KPN70), 619 Bannock Street, Boise, Idaho, Lat. 43°36'57" N., Long. 116°11'59" W. C.P. to add frequency 11285.0V MHz toward Freezeout, Idaho.

ID—884-CF-P-78 Same (KPT32), Freezeout, 2.8 miles South of Emmett, Idaho, Lat. 43°49'31" N., Long. 116°30'29" W. C.P. to add frequency 10835.0V MHz towards Boise, Idaho.

TX—885-CF-P-78 Gulf States-United Telephone Co. (new), 215 E. South Street, Overton, Tex., Lat. 32°16'26" N., Long 094°58'34" W. C.P. for a new station using frequency 11285.0V MHz towards Henderson, Tex. on azimuth 123.3°.

MS—891-CF-P-78 South Central Bell Telephone Co. (KLK82), 1002 Main Street, Columbus, Miss., Lat. 33°29'43" N., Long. 088°25'17" W. C.P. to replace transmitters and change frequency 5937.8H to 6078.6H MHz; 6056.4H to 6137.9H MHz towards West Point, Miss.

MS—892-CF-P-78 Same (KLT63), 22 South Division Street, West Point, Miss., Lat. 33°36'14" N., Long. 088°39'00" W. C.P. to replace transmitters and change frequency 6204.7H to 6330.7H; 6323.3H to 6390.0H MHz towards Starkville; 6219.5H to 6330.7H; 6338.1H to 6390.0H MHz towards Columbus.

MS—893-CF-P-78 South Central Bell Telephone Co. (KLT64), 314 Main Street, Starkville, Miss., Lat. 33°27'48" N., Long. 088°48'42" W. C.P. to increase transmit antenna structure height; move and replace antenna; replace transmitters and change frequency 5982.3H to 6078.6H MHz; 6100.0H to 6137.9H MHz towards West Point, Miss.

MI—895-CF-P-78 Michigan Bell Telephone Co. (KVU87), 4.5 miles SW. of Milford, Mich., Lat. 42°33'23" N., Long. 083°41'41" W. C.P. to add frequency 6256.5H MHz and modify the horn antenna on 6226.9V MHz (et al.) towards Pontiac C.O., Michigan on azimuth 74.4°.

MI—896-CF-P-78 Same (KVU86), Pontiac C.O. 54 N. Mill Street, Pontiac, Mich., Lat. 42°38'20" N., Long. 083°17'25" W. C.P. to add frequency 6004.5V MHz and modify the horn antenna on frequency 5974.8H MHz (et al.) towards Milford, Mich. on azimuth 254.7°.

IL—838-CF-MP-78 United Video, Inc. (KSP 98), 0.9 mile East of Effingham, Ill., Lat. 39°07'35" N., Long. 88°31'06" W. Modification of construction permit to add 6360.3H MHz toward Matoon, Ill., via power split, on azimuth 258.9°.

IL—839-CF-MP-78 United Video, Inc. (KEZ 51), 4 miles East of Schram City, Ill., Lat. 39°10'09" N., Long. 89°26'48" W. Modification of construction permit to add 6212V and 6271.4V MHz toward Carlinville, Ill., via power split, on azimuth 303.6°.

NE—888-CF-P-78 Mountain Microwave Corp. (WQR 88), Omaha TOC, 11029 I Street, Omaha, Nebr., Lat. 41°12'57" N., Long. 96°05'04" W. Construction permit to change antenna system, change receive station location, and to change frequency to 11075V and 10915V MHz toward KETV-TV, Nebraska, on azimuths 179.1° and 67.4°, respectively.

NE—889-CF-P-78 Mountain Microwave Corp. (new), KMTV Omaha, 107 Mocking Bird Drive, Omaha, Nebr., Lat. 41°12'25" N., Long. 96°04'58" W. Construction permit for new station—11645H MHz toward Omaha TOC, Nebraska, on azimuth 351.9°.

NE—890-CF-P-78 Mountain Microwave Corp. (WSM 68), KETV Omaha, 27th and Douglas Streets, Omaha, Nebr., Lat. 41°15'30" N., Long. 95°57'06" W. Construction permit to change antenna system and increase antenna structure height and to change frequency to 11245V MHz toward Omaha TOC, Nebraska.

[FR Doc. 78-583 Filed 1-9-78; 8:45 am]

[6712-01]

[Report No. I-421]

COMMON CARRIER SERVICES INFORMATION

International and Satellite Radio Applications Accepted for Filing

DECEMBER 27, 1977.

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications if, upon further examination, it is determined they are defective and not in conformance with the Commission's rules, regulations, and its policies. Final action will not be taken on any of these applications earlier than 31 days following the date of this notice. Section 309(d)(1).

For the Federal Communications Commission.

WILLIAM J. TRICARICO,
Secretary.

SATELLITE COMMUNICATIONS SERVICES

Correction—Rocky Mount Cable TV, Inc., Rocky Mount, Va. Correct the coordinates to read: Lat. 37°01'24" N., Long. 79°53'39" W.

TN—151-DSE-P/L-78 FNI Communications Co., Columbia, Tenn. Authority to construct, own, and operate a domestic communications satellite recieve-only earth station at this location. Lat. 35°36'49" N., Long. 86°59'14" W. Rec. freq.: 3700-4200 MHz. Emission 36000F9. With a 6 meter antenna.

WA—160-DSE-P-78 Yakima School District No. 7, Yakima, Wash. Authority to construct, own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 46°31'14" N., Long. 120°11'38" W. Rec. freq.: 3700-42 MHz. Emission 36000F9. With a 10 meter antenna.

NJ—161-DSE-P/L-78 Clear Television Cable Corp., Dover, Colo. Authority to construct, own, and operate a domestic communications satellite receive-only earth station at this location. Lat. 39°59'49" N., Long. 74°10'21" W. Rec. freq.: 3700-4200 MHz. Emission 36000F9. With a 6 meter antenna.

IL—162-DSE-P/L-78 Sammons Communications of Illinois, Inc., Streator, Ill. Authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 41°08'35" N. Long. 88°49'45" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 4.5 meter antenna.

TX—163-DSE-P/L-78 Community Tele-Communications, Inc., Mineral Wells, Tex. Authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 32°48'53" N., Long. 98°06'13" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 5 meter antenna.

GA—180-DSE-P/L-78 Storer Cable Communications, Inc., Albany, Ga. Authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 31°37'09" N., Long. 84°11'15" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 6 meter antenna.

MI—181-DSE-P/L-78 American Television and Communications Corp., Tawas City, Mich. Authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 44°16'39" N., Long. 83°33'40" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 5 meter antenna.

MI—182-DSE-P/L-78 Flat River Cable Services, Inc., Greenville, Mich. Authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 43°10'40" N., Long. 85°16'30" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 6 meter antenna.

TX—159-DSE-P/L-78 Lone Star Video, Inc., Champions, Tex. Authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 30°00'20" N., Long. 95°33'95" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 6 meter antenna.

NM—185-DSE-P/L-78 Community Tele-Communications, Inc., Carlsbad, N. Mex. Authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 32°25'15" N., Long. 104°14'24" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 5 meter antenna.

CA—184-DSE-ML-78 Satellite Business Systems (KD79), Los Gatos, Calif. Modification of license to change this station from a developmental to a common carrier status.

NY—183-DSE-ML-78 Satellite Business Systems (WD46), Poughkeepsie, N.Y. Modification of license to change this station from a developmental to a common carrier status.

AR—186-DSE-P/L-78 American Television Communications, Inc., El Dorado, Ark. Authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 33°14'11" N., Long. 92°38'46" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 5 meter antenna.

AL—187-DSE-P/L-78 West Alabama TV Cable Co., Inc., Winfield, Ala. Authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 33°54'10" N., Long. 87°48'28" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 5 meter antenna.

[FR Doc. 78-532 Filed 1-9-78; 8:45 am]

[6712-01]

[FCC 77-843; Docket No. 21493; File No. BR-4107]

HAPPY BROADCASTING CO., INC.

Memorandum Opinion and Order

Adopted: December 15, 1977.

Released: January 4, 1978.

In the matter of Happy Broadcasting Co., Inc., for renewal of license of Station WPWC, Quantico, Va.

1. The Commission has before it for consideration: (a) The above captioned application for renewal of license for Station WPWC, Quantico, Va., filed by Happy Broadcasting Company, Inc. (Happy), on June 2, 1975, and amended August 29, 1975, and August 10, 1976; (b) a letter filed by the station's former engineer concerning certain engineering data submitted with the application; and (c) related and responsive correspondence.

BACKGROUND

2. In an August 25, 1975, letter to the Commission, Mr. Arthur P. Dietz (Dietz), consulting engineer and signatory of the engineering section (Section II of FCC Form 303), of the 1975 WPWC renewal application, asserts that prior to signing the section's signature page he had to correct five entries on its first page which were, in Dietz's view, inaccurate.[1] Dietz contends that the certification took place in the presence of Mr. Raymond W. Woolfenden, Sr., Happy's president, after Woolfenden was made aware of the inaccurate representations.

3. One of the alleged errors involved the licensee's response to section II, question 10 regarding equipment performance tests. That question sought: (a) whether the station conducted such tests within four months of the filing of the application; (b) the date of such tests; and (c) whether the tests indicated that the station was operating in accordance with the standards of good engineering practices.[2] Dietz

[1] Dietz submitted an affidavit on June 22, 1976, verifying the matters set forth in his August 15,1975, letter to the Commission.

[2] The other alleged discrepancies involved: The licensee's failure to include its name at the top of the first page; the listing of three tubes instead of four in response to question 1; incorrect instrument readings in question 3; and the listing of a Gates model frequency monitor in response to question 5 when none was actually in use. Question 3 was amended in an August 29, 1975, letter to the Commission.

contends that he corrected the date of the last equipment test from March 10, 1975, to June 10, 1974, so that the application would accurately represent the fact that the last proof had been made on June 10, 1974.

4. Thereafter, on July 23, 1975, while reviewing the WPWC application on file with the Commission, Dietz states that he found that section II had been filed with his signature but not with his corrections. Instead, the engineer relates, was a newly typed first page containing the errors he had personally corrected. On the following day the errors were discussed personally with Mr. Woolfenden who, according to Dietz, acknowledged that the engineering information on file was not the information that the engineer had certified and agreed to correct the application "to conform to the actual facts."

5. Dietz asserts further that in a July 29, 1975, conversation with Woolfenden, he was told that after conferring with the station's communications counsel it had been decided that the discrepancies were "nothing to worry about" and that the application would not be corrected. The licensee, Dietz alleges, directed him to the station's counsel who, after being contacted, asked that a copy of the corrections be sent to the station. By letter of July 30, 1975, those corrections were supplied, Dietz resigned as the licensee's consulting engineer, the engineer advised the licensee that a copy of the letter would be sent to the Commission if the application was not timely amended to reflect the facts to which he had certified, and he asked that his certification be removed from the application. Following no action by the licensee, Dietz informed the Commission of these matters in his August 25, 1975, letter.

6. Following receipt of the letter, the Commission's Baltimore Field Office conducted an on-site inspection of the WPWC facilities on October 2, 1975. They observed a notation entered in the station's April 23, 1975, transmitter maintenance log by engineer William K. Harris that a current equipment performance test was needed and that management had been so advised.[3] During the inspection two proofs of performance were found in the station's files: June 10, 1974, and September 8, 1975.[4] The day following the inspection, WPWC's counsel notified the Baltimore office that any engineering errors contained in the renewal application on file with the Commission were the responsibility of engineer Dietz because Mr. Woolfenden was not an engineer.

7. No attempt was made by the licensee to supply any additional amendment or explanation of these engineering discrepancies. thus, the Commission issued a letter of inquiry to Happy on July 22, 1976, requesting the station to review the engineering sections of the 1975 renewal application and, if any changes were necessary, to make those corrections and explain how the errors occurred. The licensee's August 10, 1976, response asserts that the discrepancies "were caused by a secretary at the station who picked up the wrong worksheets supplied by the chief engineer." Further, the licensee urges that any errors were not intentional and they were corrected as soon as they were brought to the licensee's attention. Additionally, an amended section II, certified by Stephen J. Uurtamo, WPWC's new chief engineer, was submitted along with his statement that he was hired August 20, 1975, to conduct a proof of performance for WPWC and that the proof was completed on September 8, 1975. Mr. Uurtamo noted that he believes a proof was started in March 1975, but was never completed.

8. On November 2, 1977, Happy supplemented its earlier response to the Commission's inquiry. Licensee admits that sufficient care was not exercised in the preparation and filing of its application with the Commission and relates that after reviewing the August 10, 1976, letter with its new communications counsel it determined that the response was inadequate. In this respect, Mr. Woolfenden contends that he has "no recollection that Mr. Dietz called to my attention any errors in section II of the renewal application before it was filed." Thus, licensee's president urges that he had no personal knowledge that the information submitted by him on June 2, 1975, was not accurate. Woolfenden acknowledges that Dietz personally contacted him regarding the inaccurate application on file with the Commission, but not until July 24, 1975. He asserts that upon receipt of the July 30, 1975, letter from Dietz the matter was discussed with the station's communications counsel and the Commission was contacted. While no attempt was made to correct the March 10, 1975, proof date, the licensee observes that an amendment to question 3, meter readings, was made on August 10, 1975, in the belief that all that was needed to cure the application's problems had been provided to the Commission. However, the licensee now feels that the proof of performance discrepancy was not resolved and, to this end, offers that the error was not intentionally made and that Mr. Woolfenden did not understand what a proof of performance was.

Discussion

9. The Commission views a renewal application as more than a mere directory submission of technical readings, statistics, and exhibits that must pass muster with our renewal processing standards. Before we grant another term to a licensee, we must determine that the record supports a finding that the applicant has operated, and will continue to operate, the facility in the public interest, convenience, and necessity. Section 309(a) of the Communications Act of 1934, as amended. From a purely practical standpoint, every bit of factual data submitted by a licensee cannot be examined for truthfulness due to the great number of applications submitted to the Commission each year. Because we must rely on the licensee's good faith representations, the Commission places a strong presumption of the accuracy and truthfulness on any data or statement submitted in an application. Accordingly, the application serves as a reflection of the licensee's character. See *Jimmie H. Howell*, 65 FCC 2d 516 (1977); *Nick J. Chaconas*, 28 FCC 2d 231 (1971), reconsideration denied, 35 FCC 2d 698 (1972), affirmed 486 F. 2d 1314 (1973). It follows, therefore, that misrepresentations made to the Commission by a public trustee regarding the operation of a licensed facility results in a disservice to the public and, thus, raises serious questions as to the character qualifications of the licensee. Section 308(b) of the Communications Act of 1934, as amended.

10. Turning to the specific facts of this case, it appears that this licensee

[3] The Commission's records further indicate that by letter of May 5, 1975, Mr. Harris informed our Norfolk Field Office that he had personally warned Mr. Woolfenden about the lack of a timely proof and that he had resigned as a WPWC engineer.

[4] The WPWC inspection also revealed violations of: Section 17.50, tower painting; section 73.40(a)(14) second harmonic emission; section 73.40(b)(3)(iv), antenna and tuning house safety; section 73.52, operating below authorized power; section 73.93(c) no posted agreement with chief engineer; section 73.112(a)(1)(v), failure to log political affiliation of candidates on program log; section 73.113(a)(1)(i), failure to enter time on log when power ceases to be supplied to antenna; section 73.113(a)(1)(iv), repeated failure to log meter readings at beginning of daily operation; section 73.1201(b)(1), failure to correctly identify the station; and noncompliance with station authorization as to commencement and termination of supplying power to the antenna. An official notice of violation was issued on February 3, 1976. The licensee responded on February 20, 1976, and supplemented its response further on February 23, 1976. No notice of apparent liability was issued prior to the statutory time limitation of section 503(b)(3) of the Communications Act of 1934, as amended, and, thus, no further action was taken by the Commission on these violations.

may well have willfully or deliberately attempted to mislead the Commission or conceal facts in its initial renewal submission. The licensee subsequently has attempted to correct its renewal application's engineering defects[5] and has attempted on two separate occasions to explain those defects. However, we do not find that the record before us, even as supplemented, serves to resolve the underlying question surrounding the licensee's submission of inaccurate data in the 1975 renewal application or the licensee's prolonged failure to correct and/or explain those defects.

11. In this regard, Happy's president urges that he was unaware that a proof had not been completed and was not certain at the time just what a proof was. While the Commission does not require owners or management personnel of radio stations to be licensed engineers, each licensee has the ultimate responsibility for its technical operation and is responsible for the representations made to the Commission with respect to both the technical and nontechnical operation of its station. Although this licensee may have begun a proof in March 1975, at the time of the filing of the renewal none had been completed. Further, that failure allegedly was made known to the licensee both by engineer Harris and Dietz prior to the June 2, 1975, submission of the initial application. Even if we were to assume that Woolfenden did not understand the nature of the equipment test and, thus, the warning from the engineers, we still are confronted with Dietz's affidavit that the inaccurate data had been corrected in Woolfenden's presence prior to signing the application. Moreover, after the application was filed, the licensee made no effort to correct the proof date even though he was advised personally of the defects on July 24, 1975, and again by letter on July 30, 1975. Even after the proof was completed in September 1975, the licensee made no effort to correct the application in this respect until August 10, 1976, almost a year later.

12. Thus, we are faced with a possible misrepresentation-of-fact question centered on the filing of the licensee's technical data in the 1975 renewal application and the apparent continuation of that misrepresentation after notice was given to the licensee of the defects. Furthermore, assuming that the licensee did not engage in a misrepresentation of fact with respect to the initial filing of its application, the question still remains as to whether the licensee's subsequent actions and submissions to the Commission constituted independent misrepresentations of fact or whether the licensee was lacking in candor to the Commission. Under the circumstances, we believe an evidentiary hearing is necessitated to resolve the matter. *New Mexico Broadcasting Co., Inc.*, 54 FCC 2d 126 (1975). We believe that issue (1), specified infra, is sufficiently broad to cover all aspects of this evidentiary inquiry.

13. The other remaining question centers on whether the licensee acted reasonably in its failure to correct inaccurate data in the engineering section after Mr. Dietz had informed Mr. Woolfenden that the WPWC renewal application was in error. Section 1.65 of the Commission's rules places responsibility on each applicant to assure the continuing accuracy and completeness of information furnished in an application and requires that corrections or additions be made within 30 days of their discovery or occurrence. Here, it was well over a year after the original filing that the licensee moved to correct the data in all respects. This question as well should be explored at an evidentiary hearing and, accordingly, an appropriate issue will be designated.

CONCLUSION AND ORDER

14. In light of the above questions, we are unable to make the statutory determination that a grant of the WPWC renewal application will serve the public interest, convenience, and necessity.

15. Accordingly, *it is ordered*, That pursuant to section 309 (e) of the Communications Act of 1934, as amended, the application of Happy Broadcasting Co., Inc., for renewal of license of Station WPWC, Quantico, Va., is designated for hearing, at a time and place to be specified in a subsequent order, upon the following issues:

(1) To determine the facts and circumstances surrounding the filing of the technical data in the 1975 WPWC renewal application as well as the licensee's subsequent actions and submissions and, in light of this evidence, whether Happy Broadcasting Co., Inc., misrepresented facts or was lacking in candor to the Commission;

(2) To determine whether Happy Broadcasting, Inc., violated section 1.65 of the Commission's rules in failing to correct the technical information on file with the Commission as required; and

(3) To determine, in light of the evidence adduced under the above issues, whether the applicant has the requisite qualifications to remain a Commission licensee, and whether a grant of the application would serve the public interest, convenience and necessity.

16. *It is further ordered*, That in accordance with section 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence and the burden of proof with respect to all issues shall be upon Happy Broadcasting Co., Inc.

17. *It is also ordered*, That, to avail itself of the opportunity to be heard, Happy Broadcasting Co., Inc., pursuant to section 1.221(c) of the Commission's rules, in person or by attorney, shall within twenty (20) days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intent to appear on the date fixed for hearing and present evidence on the issues specified in this order.

18. *It is further ordered*, That Happy Broadcasting Co., Inc., shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and section 1.594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such rules, and shall advise the Commission of the publication of such notice as required by Section 1.594(g) of the rules.

For the Federal Communications Commission.

WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-580 Filed 1-9-78; 8:45 am]

[5]The amended application still incorrectly lists the station's monitored frequency as 14,299,990.5 khz (i.e., 1430 khz) when, in fact, the station is assigned to 1530 khz.

[6712-01]

[FCC 77-846; Docket No. 21494; File No. BLH-7102]

INDEPENDENT MUSIC BROADCASTERS, INC.

Memorandum Opinion and Order

Adopted: December 15, 1977.

Released: January 4, 1978.

In the matter of Independent Music Broadcasters, Inc., Radio Station WYOR, Coral Gables, Fla., for license to cover construction permit.

1. The Commission has for consideration: (a) A "Petition for Reconsideration or to Deny" filed May 4, 1976, on behalf of both WFTL Broadcasting Co., licensee of FM station WGLO, Fort Lauderdale, Fla., and WWOG, Inc., licensee of FM station WWOG, Boca Raton, Fla., directed against the action of the Chief, Broadcast Bureau of November 18, 1975, which granted a construction permit to modify the facilities of FM station WYOR, Coral Gables, Fla., (File No. BPH-9654), and against WYOR's then-pending application for covering license (File No. BLH-7102); (b) the Commission action of October 27, 1976, granting, in part, the aforementioned petition to the extent of a partial grant of the license application as provided in section 1.110 of the rules; (c) a "Petition for Reconsideration and Immediate Grant" filed December 8, 1976, on behalf of Inde-

pendent Music Broadcasters, Inc. (WYOR), directed against the partial grant of the license application; and (d) related pleadings and correspondence. Since petitioners compete with WYOR for audience and advertising revenues in southeastern Florida, we find them to have standing as parties in interest in this proceeding. *FCC* v. *Sanders Brothers Radio Station*, 309 U.S. 470 (1940).

2. Station WYOR is a pre-1962 super power[1] Class C FM station licensed to operate with an effective radiated power (ERP), of 160 kilowatts instead of the 100 kilowatts maximum prescribed in section 73.211(b) of the rules, at a height above average terrain (HAAT), of 205 feet. In its construction permit application, granted November 18, 1975, WYOR proposed, inter alia, to relocate its antenna-transmitter site and increase height above average terrain from 205 to 598 feet, with no compensating reduction in effective radiated power. Section 73.211(d) of our rules, read in connection with section 73.211(b), forbids any change in facilities by existing super power FM stations which would extend the 1mV/m contour in any direction in circumstances where super power will continue to be employed. Since a construction permit granted by the staff extended WYOR's 1 mV/m contour by 13 miles, and increased WYOR's service area by approximately 46 percent while at the same time continuing to specify super power (160 kW ERP), it clearly violated the provisions of section 73.211. For this reason, we granted the captioned application for covering license only in part, limiting effective radiated power to 100 kilowatts. This was done pursuant to section 1.110 of the rules, which provides for partial grant of any pending application grantable without hearing.

3. In support of its petition, WYOR contends that a partial grant of its license application is an unauthorized review and modification of its construction permit in contravention of section 5(d)(4) of the Communications Act of 1934, as amended, and section 1.117 of our rules.[2] This argument is not well taken. Section 1.110 of the rules is applicable to any pending application grantable without hearing. On the other hand, section 5(d)(4) of the act and 1.117 of the rules merely provide for a timely review, on our motion and without affording hearing rights, of actions taken by delegated authority. These sections do not proscribe a partial grant of a pending application. With respect to review and modification of a construction permit, section 316 of the act provides that the Commission may, after affording hearing rights modify an outstanding construction permit or license. A partial grant of a covering license application, in effect, modifies the underlying construction permit, but section 1.110 affords the very hearing rights required under section 316 of the act. Therefore, it is readily apparent that section 1.110 of our rules is fully consistent with section 5(d)(4) and 316 of the act, as well as section 1.117 of the rules.

4. Next, WYOR contends that the Commission cannot proceed against its construction permit under the provisions of section 316 without instituting similar proceedings against other stations which were permitted to relocate and maintain super power in contravention of section 73.211(d) of the rules. Specifically, WYOR refers to three instances where the staff, without consideration given to a required waiver, granted such applications to relocate and maintain super power. Therefore, WYOR asserts that our partial grant of its license application was arbitrary in that we treated its application differently than previous similar applications. We realize, of course, that we cannot arbitrarily ignore obvious precedents, and any departure from a previous standard must be accompanied by a reasoned analysis reflecting the requirements of Communications Act. *Melody Music, Inc.* v. *FCC*, 345 F. 2d 730 (1965); *Columbia Broadcasting Systems, Inc.* v. *FCC*, 454 F. 2d 1018 (1971); *Garrett* v. *FCC*, 513 F. 2d 1056 (1975). However, we do not consider inadvertent staff grants to constitute a previous Commission standard. Rather, the applicable standard is embodied in section 73.211(d) and our First Report and Order in Docket No. 14185, 33 FCC 309 (1962). In that order we recognized the inherent competitive advantage enjoyed by super power FM stations and, in addition, found that the public interest did not require a perpetuation of this advantage. In line with that finding, section 73.211(d) was adopted which forbids a change in the facilities of an existing super power station which would result in an extension of the 1 mV/m contour unless, in so doing, the power limitations set forth in section 73.211(b) are observed.[3] The Class C 100 kW power ceiling was not observed in this case; and the partial grant complained of merely rectified the earlier mistake of issuing WYOR a construction permit allowing it to retain the 160 kW ERP formerly employed in conjunction with a much lower antenna. While the partial grant (corrected as to power), did not constitute a departure from a Commission-established standard, we recognize our responsibility to bring the nonconforming stations cited by WYOR into line with the clear requirements of our rules if such corrective action is warranted by the outcome of the hearing ordered herein.

5. WYOR also advances the argument that section 73.211(d) should not be interpreted to preclude its present proposal because its proposed service and interfering contours fall well within those which would result from a maximum permissible Class C FM facility (i.e., 100 kilowatts ERP at 2,000 feet HAAT). We have repeatedly rejected this "equivalency" argument as applied to super power. As discussed in paragraph 79 of our First Report and Order, supra, comparing a given increase in height with a given increase in effective radiated power is invalid. An increase in height increases service more than it does interference while an increase in power increases interference more than it does service. The WYOR super power operation of 160 kilowatts at 598 feet unnecessarily extends the potential interference contours beyond those resulting from increasing tower height to achieve the same proposed service area. In order to avoid this possibility, section 73.211(d) proscribes the extension of the 1mV/M contour by existing super power stations. With respect to the present WYOR modification or any other FM authorization, we continue to believe that the mileage separation, power, and antenna height limitations set forth in our rules, provide the best means for a fair, orderly and efficient development of the FM broadcast service. The WYOR super power facilities were granted prior to the adoption of these allocation standards in 1962. In this connection, the grandfather rights afforded station WYOR are merely to preserve existing service. These grandfather rights do not permit station WYOR to increase its service area while disregarding section 73.211(b) of our rules, which, in fact, provides the means by which station

[1] In excess of the 100 kW ERP limit specified in section 73.211(b) of the rules.

[2] Section 5(d)(4) of the act reads, in pertinent part, as follows:

"* * * The Commission, on its own initiative, may review in whole or in part, at such time and in such manner as it shall determine, any Order, Decision, Report, or action made taken pursuant to any delegation under Paragraph (1)."

Section 1.117 of the rules reads, in pertinent part, as follows:

"(a) Within forty days after public notice is given of any action taken pursuant to delegated authority, the Commission may on its own motion order the record of the proceeding before it for review."

[3] In *Sutro Tower, Inc.*, 32 FCC 2d 826 (1972), we permitted existing super power FM stations to relocate on Mt. Sutro while maintaining the equivalent of their present service areas notwithstanding the fact that these proposals would involve the introduction of service into areas beyond their former 1 mV/m contours. However, unlike WYOR proposal, *Sutro* did not involve waiver of the maximum power ceiling or a net increase in total service area.

WYOR may further increase its service area by increasing its antenna height.[4] We see no public interest benefit in examining individual applications to determine a possible applicability of an "equivalency" standard. Indeed, the orderly implementation of established FM station assignment standards should not be undermined by the necessity of continuous case-by-case adjudication. See *Industrial Broadcasting Company* v. *FCC*, 437 F. 2d 680 (1970).

6. Finally, WYOR asserts that section 319(c) of the act requires issuance of a license pursuant to the outstanding construction permit granted with an effective radiated power of 160 kilowatts. In this regard, WYOR notes that the Commission staff had before it all relevant facts and circumstances during the processing of this application. We recognize that in situations where a permittee has constructed its facility in accordance with its outstanding construction permit, section 319(c) clearly places this applicant in a preferred position when it files a covering license application. However, section 319(c) does not automatically compel the issuance of a license in circumstances which might prove to be contrary to the public interest. *Chesapeake-Portsmouth Broadcasting Corp.*, 53 FCC 2d 60 (1975). Similarly, section 319(c) does not require us to perpetuate an inadvertent grant.

7. In a letter accompanying WYOR's petition, WYOR states that it rejects the partial grant of the license application and requests a hearing on its license application.

Accordingly, *it is ordered*, That the aformentioned "Petition for Reconsideration and Immediate Grant" is denied.

It is further ordered, That pursuant to section 316 of the Communicaions Act and section 1.110 of the rules, our action of October 27, 1976, granting, in part, the above-captioned license application is hereby vacated, and said application is designated for hearing, at a time and place to be specified in a subsequent Order, upon the following issues:

(a) To determine the facts and circumstances surrounding WYOR's efforts to upgrade its facilities in Coral Gables.

(b) To determine whether sufficient reasons exist to warrant waiver of section 73.211 of the rules.

(c) To determine, in light of the evidence adduced, whether the public interest would be better served by operation consistent with WYOR's outstanding construction permit (160 kW ERP), or with the lesser facilities (100 kW ERP), granted October 27, 1976.

It is further ordered, That pursuant to section 316(b) of the Communications Act, the Broadcast Bureau proceed with the introduction of evidence and have the burden of establishing that a partial grant of the license application, as ordered on October 27, 1976, would better serve the public interest, convenience, and necessity.

It is further ordered, That WFTL Broadcasting Co., licensee of FM station WGLO, Fort Lauderdale, Fla., and WWOG, Inc., licensee of FM station WWOG, Boca Raton, Fla., are made parties to this proceeding.

It is further ordered, That WYOR's telegraphic authority of June 24, 1976, to operate with 160 kW facilities authorized in BPH-9654, is continued pending outcome of this proceeding.

It is further ordered, That to avail themselves of the opportunity to be heard, Independent Music Broadcasters, Inc. (WYOR), and the parties respondent herein, pursuant to section 1.221(c) of the Commission's rules, in person, or by attorney, shall, within 20 days of the mailing of this order, file with the Commission, in triplicate, written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That Independent Music Broadcasters, Inc., pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and section 1.594 of the Commission's rules, shall give notice of the hearing within the time and in the manner prescribed in such rule and shall advise the Commission thereof, as required by section 1.594(g) of the rules.

For the Federal Communications Commission.[5]

WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-581 Filed 1-9-78; 8:45 am]

[4] WYOR's claim that a reduction in ERP to 100 kW would necessarily result in competitive inequality vis-a-vis other Class C FM stations in southeastern Florida is therefore without merit. Moreover, even with power reduced to 100 kW ERP, as contemplated in our partial grant, WYOR will, at the new HAAT of 598 feet, achieve a substantial increase in service area, i.e., the 1 mV/m service contour will extend 38.5 miles from the transmitter instead of the 29 miles achieved with the formerly licensed mode of operation. Stated otherwise, the power cutback from 160 kW to 100 kW will reduce the primary service radius by only about 3½ miles.

[5] Commissioner White concurring in the result.

[6712-01]

[Report No. I-423]

COMMON CARRIER SERVICES INFORMATION

International and Satellite Radio Applications Accepted for Filing

JANUARY 3, 1978.

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications if, upon further examination, it is determined they are defective and not in conformance with the Commission's rules, regulations, and its policies. Final action will not be taken on any of these applications earlier than 31 days following the date of this notice. Section 309(d)(1).

For the Federal Communications Commission.

WILLIAM J. TRICARICO,
Secretary.

SATELLITE COMMUNICATIONS SERVICES

Correction—161-DSE-P/L-78 Clear Television Cable Corp. Was listed as being located in Dover, Colo. The correct location should read: Dover, N.J.

TN—188-DSE-P/L-78 National TV Cable Co., McMinnville, Tenn. Authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 35°39'58" N., Long. 85°45'14" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 6 meter antenna.

MN—189-DSE-P/L-78 G-F Cable TV, Inc., East Grand Forks, Minn. Authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 47°57'47" N., Long. 97°03'12" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 5 meter antenna.

AK—190-DSE-P/L-78 RCA Alaska Communications, Inc., Tin City, Alaska. Authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 65°33'58" N., Long. 167°57'52" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 4.5 meter antenna.

TN—191-DSE-P/L-78 Warner-CCC, Inc., Kingsport, Tenn. Authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 36°31'35" N., Long. 82°35'13" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 6 meter antenna.

NC—192-DSE-P/L-78 American Cablevision of Carolina, Inc., Raleigh, N.C. Authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 35°48'12" N., Long. 78°37'27" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 5 meter antenna.

VA—193-DSE-P/L-78 Bayshore CATV, Inc., Accomac, Va. Authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 37°42'32" N., Long. 75°40'32" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 5 meter antenna.

NJ—194-DSE-P/L-78 Futurevision Cable Enterprised, Inc., Eatontown, N.J. Authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 40°17'31" N., Long. 70°02'59" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 5 meter antenna.

OK—196-DSE-TC-78 Atoka Cablevision Co., Atoka, Okla. Application for Consent for Transfer of Control from: Atoka Cablevision Co., to: Miley Cablevision.

MN—197-DSE-P/L-78 Metromedia, Inc., Golden Valley, Minn. Authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 44°58'59" N., Long. 93°23'28" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 10 meter antenna.

TN—200-DSE-P/L-78 Trenton TV Cable Co., Trenton, Tenn. Authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 35°58'15" N., Long. 88°55'45" W. Rec. freq: 3700-4200 MHz. Emission 36000F9. With a 5 meter antenna.

[FR Doc. 78-584 Filed 1-9-78; 8:45 am]

[6712-01]

RADIO TECHNICAL COMMISSION FOR MARINE SERVICES

Meetings

In accordance with Public Law 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

SC-65 SHIP RADAR, WASHINGTON, D.C.

Tuesday, January 24, 1978

Members of Special Committee No. 65, "Ship Radar," notice of 62d meeting,* Tuesday, January 24, 1978—1:30 p.m.* Conference Room 8210,* 2025 M Street NW., Washington, D.C.

Agenda for SC-65 Committee Meeting appears later in this notice.

SC-65 Working Group schedule. To be held at 2025 M Street NW., Washington, D.C.

Working group, Reliability; Room 8210; date Jan. 24; time, 9:30 a.m.

AGENDA

1. Call to Order; Chairman's Report; Adoption of Agenda.
2. Acceptance of SC-65 Summary Records; Appointment of Rapporteur. 1 December 1977, 15 December 1977.
3. Progress Report of Reliability Working Group.
4. Mini-meeting of: (a) BRWG on Updating Radar Specs; (b) CAWG on Evaluation.
5. Approval of response to: (a) Letter from OKI Electric Industry Co., Ltd. dated November 9, 1977. (b) Letter from Japan Radio Co. expected at year's end.
6. Other business.
7. Establishment of final meeting date.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat, phone 202-632-6490.

For the Federal Communications Commission.

WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-530 Filed 1-9-78; 8:45 am]

*NOTE.—SC-65 Meeting location is subject to change. Check at Room 8210 first.

[6712-01]

[FCC 77-864; Docket Nos. 21506, 21507; File Nos. BR-4546, BP-19, 978]

WIOO, INC. ET AL.

Memorandum Opinion and Order

Adopted: December 21, 1977.

Released: January 3, 1978.

In the matter of WIOO, Inc., Carlisle, Pa., Has: 1000 kHz, 1 kW, Day for renewal of license; Gerald M. Fried, Theodore A. Fried, James P. O'Leary and Arthur M. Sherman, d.b.a. Carlisle Broadcasting Associates, Carlisle, Pa., Req: 1000 kHz, 1 kW, Day for construction permit.

1. The Commission has before it the two above-captioned applications, which are mutually exclusive in that they seek the same facilities in Carlisle, Pa. In addition, an unresolved petition to deny the 1972 renewal application of WIOO, Inc. complains of conduct by that applicant in a separate Commission proceeding involving competing applications for a new FM station in Carlisle.[1] The petition's allegations are identical to those raised and finally resolved in the FM proceeding, and are summarized in para. 3, infra.

2. By way of background, the 1972 renewal application for the facility involved herein was deferred pending resolution of several matters in the FM proceeding. In 1975, while in deferred status, WIOO, Inc. filed a supplement to its 1972 application. The Commission regards such supplements as major amendments to pending renewal applications. Carlisle Broadcasting timely filed a competing application for the AM facility on July 1, 1975, and the Commission accepted Carlisle's application. Carlisle Broadcasting Associates, 59 FCC 2d 885 (1976). Except as indicated below, the applicants are legally, financially and technically qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

3. In addition, regarding WIOO, Inc.'s 1972 renewal application (as supplemented), we have before us the petition to deny filed by Cumberland Broadcasting Co. and its principals, as well as related pleadings, raising the licensee's conduct in the comparative FM proceeding. See WIOO, Inc., Docket No. 19468, 54 FCC 2d 692 (Rev. Bd. 1975); modified 56 FCC 2d 817 (Rev. Bd. 1975); Review denied FCC 76-892, September 28, 1976. That earlier comparative proceeding, evaluating two applications for an FM facility at Carlisle, resulted in the disqualification of WIOO, Inc. on grounds it had: (a) Knowingly violated the notarization requirements of Commission rules by submitting false jurats; and (b) had on several occasions gone well beyond the limits of permissible investigation of the competing applicant, Cumberland, in an attempt to dissuade its competitor from prosecuting its application. The Review Board concluded that the knowing and repeated violation of notarization rules in the belief that the end (raising certain matters before the administrative law judge) justifies the means is an unacceptable attitude for a Commission licensee. Similarly, the Board concluded that attempts by WIOO principals to (i) buy its competitor's transmitter site, (ii) undermine the competitor's financial qualifications through implied threats directed aganist witnesses, and (iii) influence a bank appraisal of competitor's property by itself applying for a mortgage on it, were adequate in combination to disqualify WIOO, Inc. in that FM proceeding. The cited improprieties constitute misrepresentation, abuse of Commission processes, and involvement in impermissible investigatory tactics. Accordingly, a substantial and material question of fact exists as to whether WIOO, Inc. possesses the qualifications to remain a licensee of this Commission.

4. We view the factual findings relating to licensee's qualifications in the FM proceeding as res judicata in regard to the captioned AM facility. As the Review Board decisions in the FM comparative hearing established the factual circumstances involved in these matters, only an assessment of the impact of WIOO's misconduct on its qualifications remains for the hearing authorized by the instant Order. Our specification of the standard comparative issue, infra, should not be interpreted as suggesting the outcome of this assessment.

5. Accordingly, *It is ordered*, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a

[1] In that proceeding, the licensee of WIOO and Cumberland Broadcasting Co. were mutually exclusive applicants for the FM station. Cumberland Broadcasting Co. filed the petition to deny WIOO's 1972 renewal application.

subsequent Order, upon the following issues:

(1) To determine the effect of the misconduct established in the comparative FM proceeding, Docket No. 19468, cited supra, on the basic and/or comparative qualifications of WIOO, Inc.

(2) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(3) To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

6. *It is further ordered*, That, as the factual allegations made in the petition to deny filed by Cumberland Broadcasting Co. have been resolved in the comparative FM proceeding, that petition is dismissed as moot. Should Cumberland or its principals desire to participate in this hearing, the merits of such a request shall be evaluated by the administrative law judge responsible for the hearing.

7. *It is further ordered*, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to section 1.221(c) of the Commission's Rules, in person or by attorney, shall, within twenty days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

8. *It is further ordered*, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and section 1.594 of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by section 1.594(g) of the Rules.

For the Federal Communications Commission.

WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-582 Filed 1-9-78; 8:45 am]

[6712-01]

[Docket No. 21310; RM-1847; RM-1984; RM-2742]

FM QUADRAPHONIC BROADCASTING

Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for filing comments and reply comments in a proceeding concerning FM quadraphonic broadcasting. Petitioner, Bonneville Broadcast Consultants, states the additional time is needed so that it may formulate its comments.

DATES: Comments must be received on or before December 28, 1977, and reply comments on or before January 30, 1978.[1]

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

In the matter of FM Quadraphonic Broadcasting, Docket No. 21310, RM-1847, RM-1984, RM-2742; Order extending time for filing comments and reply comments. See 42 FR 41908.

Adopted: December 22, 1977.

Released: December 27, 1977.

1. On June 22, 1977, the Commission adopted a Notice of Inquiry in the above-entitled proceeding. The dates for filing comments has expired and the date for filing reply comments is January 16, 1978.[2]

2. On December 15, 1977, Bonneville Broadcast Consultants, by counsel, requested that the time for filing comments be extended to and including December 28, 1977. Counsel states that he has been unable to formulate comments because he has been unavoidably out of his office on essential business.

3. Section 1.46 of the Rules states that extension requests must be filed seven days in advance but permits late-filed requests to be considered in cases of last-minute emergencies which could not have been anticipated by the party requesting the extension. Since counsel's absence from his office was unavoidable, and the Commission feels it would be in the public interest to have all material available to it in arriving at a decision in this matter, we are granting the request.

4. Accordingly, *It is ordered*, That the date for filing comments and reply comments in Docket 21310 are extended to an including December 28, 1977, and January 30, 1978, respectively.

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

For the Federal Communications Commission.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-545 Filed 1-6-78; 9:04 am]

[1] NOTE.—This document was received by the Office of the Federal Register on January 5, 1978 and filed January 6, 1978.

[2] By Order released August 16, 1977 (Mimeo 87835), the dates for filing comments and reply comments were extended to December 16, 1977, and January 16, 1978, respectively.

[6712-01]

[Docket No. 21284; FCC 77-824]

INQUIRY INTO THE ECONOMIC RELATIONSHIP BETWEEN TELEVISION BROADCASTING AND CABLE TELEVISION

Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Extension of time.

SUMMARY: Extension of time granted for filing all comments filed in the inquiry into the economic relationship between television broadcasting and cable television, Docket No. 21284.

DATES: Comments must be received on or before March 15, 1978, and reply comments must be received on or before May 15, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Robert J. Ungar, Cable Television Bureau, 202-632-9797.

SUPPLEMENTAL INFORMATION: In the matter of inquiry into the economic relationship between television broadcasting and cable television.

ADOPTED: December 20, 1977.

RELEASED: December 21, 1977.

By the Commission.

1. On June 23, 1977, the Commission announced its inquiry into the economic relationship between television broadcasting and cable television. The purpose of the inquiry was to gather data to enable the Commission to make more informed decisions in the years to come. Thus, the scope of the inquiry was large. Virtually all facets of the cable-broadcast interface were suggested for specific examination.

2. The Commission gave all interested parties until December 1, 1977, to file comments in the proceeding and postponed setting a date for reply comments until we had some indication of the number and complexity of comments. In an effort to stimulate a continuous flow of useful information, we specifically encouraged filings in advance of the December 1 deadline. We also announced that comments which appeared to be of particular interest might be acknowledged by public notice or even a further notice of inquiry during the pendency of the proceeding.

3. In taking this approach we were engaging in a serious effort to under-

stand rather than simply creating one more forum for adversary expression. To date, the results of our effort have been less than gratifying. By December 1, the established deadline, with the exception of studies performed by the staff, only five comments had been submitted. By November, it became apparent that a number of potential commenters would probably need some additional time. In response to general requests for extension filed by major trade organizations, the Chief of the Cable Television Bureau released an order on November 29 which extended the filing deadline until January 2, 1978. The order further directed all parties who believed they needed time beyond January 2 to file specific requests for further extension by December 15, 1977. The order directed that such requests "* * * should explain, in detail, the nature of whatever study is under way, a projected finishing date and an explanation of why additional time is needed."

4. As a result of this November 29 order, nine requests for further extensions of time have been filed. Only three of these requests fulfill the instructions in the order. The National Association of Broadcasters (NAB), the National Cable Television Association (NCTA), and the joint comments of Capital Cities Communications, Inc., McGraw-Hill Broadcasting Co., Inc., and Taft Broadcasting Co. (Capital Cities) explained the nature of their various undertakings, noted that these projects have in fact been pursued diligently since the inquiry was announced and have provided reasons why the deadline cannot be met. The Capital Cities request included a summary of a research proposal by Charles River Associates which is discussed further below. The other requests give, at best, cursory information concerning the nature of their proposals and, indeed, suggest that little or no work began until quite recently or in some cases work has not begun at all. The requests are for extensions ranging from February 1 to June 30, 1978.

5. Without minimizing the importance of the inquiry, a matter most forcefully argued in the requests for extensions, it is apparent that at its conclusion we will not have all the answers. We have sought to initiate a process for testing assumptions. Indeed, as stated in the inquiry:

> At minimum, we may only be able to establish which factors are relevant and which are not. This in itself would be useful. A more complete understanding of the economics of the cable-broadcast interface can yield many benefits. It may be shown that certain of our rules are unnecessary; it is also possible that others should be adopted, or that familiar rules should be applied to different situations. Even if no rule making proceeding ensues, we believe the information gleaned from the inquiry will be useful.

We stated also:

> It is our intention to restrict this proceeding, to the extent possible, to the collection of economic data and analysis. We are specifically not interested, for purposes of this proceeding, in arguments over burdens of proof, debate over the merits of the existing regulatory program, or in proposals for regulatory change. These matters are appropriate for consideration in other proceedings now pending or which may be commenced on specific regulatory issues during the time this proceeding is open. We do not believe it either necessary or desirable to delay specific rule change proceedings while this more generalized and longer range proceeding is in progress. This is to be a factual inquiry and a means of affording the public and the affected industries an opportunity to participate in the continuing development of analytical tools and data sources within the Commission for predicting with greater confidence the likely effects of various broadcast and cable regulatory policies.

In short there was no promise to change our regulatory program after the inquiry and none to refrain from changing it during the inquiry.

6. This is not to say the inquiry can be open-ended. Without formal and perhaps arbitrary deadlines, any Commission project, even the gathering of data, can easily lose its utility. Furthermore, it is the staff's intent to issue a report on the docket this summer in an effort to assemble for public scrutiny and comment the subjects that have been analyzed, to critique the methodology of various studies and to suggest areas of further research. Such a report will, at least, fulfill a responsibility to those who will have participated diligently in the inquiry and provide a focal point for further discussion. Thus, it appears that without placing some firm time constraints on the filings, progress in the inquiry will be curtailed.

7. For these reasons we feel impelled to set a new deadline for filing comments and have chosen March 15, 1978. In total then, parties will have had nine months to file their comments. Such a period seems ample. In addition we are taking this opportunity to set May 15, 1978, as the deadline for reply comments.

8. Special notice should be taken of the project proposed by Capital Cities et al. The study suggested by Charles River Associates is massive. If completed, the report would relate to most of the issues raised in the inquiry. Assuming that all of the Charles River Associates' plans can be brought to fruition without resorting to alternative sources of data, the projected cost would be in excess of $400,000. Although a summary of the proposal gives no indication of the length of the undertaking, it is apparent that it could take well in excess of a year if there are no complications. The broadcasters who have jointly initiated this proposal have requested an extension of time until February 1, 1978, merely to see if funds can be raised to support it. The work itself could not begin until after this date. A number of parties requesting extensions have suggested that if the Charles River Associates project is not performed, they may pursue other more limited studies of their own. Naturally, such studies have not begun.

9. The Charles River Associates proposal has been examined in detail by the staff and it is unquestionably a worthwhile undertaking. We do not believe, however, that any useful purpose would be served by granting a formal extension of time well into 1979. To do so might not only create unreasonable expectations, but also delay any collective consideration of other worthy, if less ambitious, projects. No one study will resolve finally the issues raised in the inquiry. If the Charles River Associates study is in fact undertaken we would welcome its findings in whole or in part, during the inquiry or, in connection with pertinent rulemakings, if any.

10. Accordingly, *it is ordered*, Pursuant to sections 1.415 and 1.416 of the Commission's rules, that the time for filing comments in Docket 21284 has been extended until March 15, 1978, and the time for filing reply comments is May 15, 1978.

For the Federal Communications Commission.

WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-588 Filed 1-9-78; 8:45 am]

[6720-02]

FEDERAL HOME LOAN BANK BOARD

[No. AC-46]

BRYAN BUILDING & LOAN ASSOCIATION

Notice of Approval of Conversion; Final Action

JANUARY 5, 1978.

Notice is hereby given that on January 4, 1978, the Federal Home Loan Bank Board, as the operating head of the Federal Savings and Loan Insurance Corporation, by Resolution No. 78-2, approved the application of Bryan Building & Loan Association, Bryan, Tex., for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretary of said Corporation, 1700 G Street NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Little Rock, 1400 Tower Building, Little Rock, Ark. 72201.

By the Federal Home Loan Bank Board.

RONALD A. SNIDER,
Assistant Secretary.

[FR Doc. 78-546 Filed 1-9-78; 8:45 am]

[6730-01]

FEDERAL MARITIME COMMISSION

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Notice of Certificates Revoked

Notice of voluntary revocation is hereby given with respect to certificates of financial responsibility (oil pollution) which had been issued by the Federal Maritime Commission, covering the below indicated vessels, pursuant to Part 542 of Title 46 CFR and section 311(p)(1) of the Federal Water Pollution Control Act, as amended.

Certificate No.	Owner/Operator and Vessels
01755	Hugo Stinnes Zweigniederlassung Hamburg: *Passat.*
01798	Stag Line, Ltd.: *Gloxinia.*
01807	Partenreederei M/S Sunsaxonia Christian F. Ahrenkiel: *Saxonia.*
01830	Cardon Tankers Corp.: *Fairfield Sunrise.*
01832	Aruba Tankers Corp.: *World Duke.*
01919	Aksjeselskapet Pelagos: *Pepita.*
01920	Mssrs. Svend Foyn Bruun: *Pollo.*
02638	Alcon, Ltd.: *Aquagem, Aquagrace, Aquajoy.*
02644	Alma Shipping Corp.: *Alexandria Carras, MJ Carras, Fontini Carras.*
02645	Guardian Shipping Co., Ltd.: *Pleione.*
02728	Societe Ivoirienne De Transport Maritime: *Assouba.*
02836	The Scindia Steam Navigation Co., Ltd.: *Jalagopal*
02889	Showa Kaiun K. K.: *Shogen Maru.*
02919	Neptune Navigation Corp.: *Kenosha.*
02975	Venture Shipping (Managers), Ltd.: *Noble Venture.*
03727	Continental Oil Co.: *LTC 66.*
03737	Interocean Shipping Co.: *Oswego Freedom.*
03866	M. Smits: *Louise Smits.*
03918	Mobil Shipping & Transportation Co.: *Mobil Refiner.*
03971	Korea Shipping Corp.: *Korean Exporter; Korean Trader; Korean Frontier; Korean Pioneer.*
03997	Baltika Schiffahrtsgesellschaft Reith & Co.: *Meta Reith.*
04754	Aktor Shipping Co., Ltd.: *Miss Papalios.*
04092	B. V. Bureau Wijsmuller: *Gelderland.*
04260	Atlantic Navigation Corp., Ltd.: *Paulina.*
04757	Nea Hellas Shipping Co., Ltd.: *Nea Hellas.*
04766	Astro Mandante Navegacion S.A.: *Valiant Colocotronis.*
04768	Texaco Overseas Tankship, Ltd.: *Texaco Brisbane.*
04803	Brent Towing Co., Inc.: *Arcadian 90, Arcadian 93, Arcadian 95, Arcadian 87.*
04601	American Tunaboat Association: *Balboa.*
04653	Atrodorado Compania Naviera S.A.: *Palaemon.*
04703	Yokkaichi Enyo Gyogyo K.K.: *Nanseimaru No. 25.*
04716	Jason Shipping, Inc.: *Argo Master.*
04933	The Revilo Corp.: *NBC 512, NBC 922, E.A.C. 152, E.A.C. 151, Sun State No. 5, NBC 540, Mary 120.*
04966	Marlinea Armadora S.A.: *Andros Island.*
05216	Greek Maritime Exploitation Co. Nek., Ltd.: *Marilena N.*
05255	Aiple Marine Co.: *ACO 501, ACO 502.*
05437	The Dow Chemical Co.: *TCB-309, TCB-306, TCB-302, TCB-510.*
05520	Union Carbide Corp.: *NMS-1310, CC-107.*
05608	Fekete & Co.: *Lina Christensen.*
05671	Petroleos Del Peru: *Huascaran, 9 De Octubre, Trompeteros.*
05704	Murmansk Shipping Co.: *Volkhovges, Rionges, Angarges.*
05736	Flota Cubana De Pesca: *Playitas.*
06818	Globus-Reederei G.m.b.h., Hamburg: *S.A. Komatiland.*
06877	Societe Francaise De Transports Maritimes Paris: *Willie De Bordeaux, Ville De Lyon.*
07743	Yangming Marine Transport Corp.: *Li Ming, Wei Ming.*
07837	Meandros Liners S.A.: *Drymakos.*
07863	Nea-Ephessos Maritime Corp.: *Agia Barbara.*
07880	Logicon, Inc.: *Star Shamrock.*
07889	Antiparos Shipping Co., Ltd.: *Red Sky.*
08787	Smit Internationale Zeesleep-En Bergingsbedrijf BV: *Smit Jakarta.*
08889	Companhia Portuguesa De Transportes Maritimos E.P.: *Infante Dom Henrique, Madalena, Uige, Benguela.*
08958	Campos Shipping Co., Ltd.: *Cosmaria.*
09062	Davit Transport Corp.: *Susan Maersk.*
09590	Likmar Maritime Co., Ltd.: *Irenes Pride.*
09618	Ernest C. Schindler: *T-104, B-15.*
09688	Nimar Tankers S.A.: *Macedonian.*
09701	Nipayia Maritime Co., Ltd.: *Irenes Spirit.*
09748	Spetses Shipping Corp.: *Dafra Trader.*
09773	Devon Maritime, Ltd.: *Irenes Challenge.*
09774	Interessentskapet Wind Endeavour: *Wind Endeavour.*
09870	Corco Transportation Co., Inc.: *Guayanilla.*
09891	Reidar Rods Rederi A/S: *Belita.*
09919	Compania De San Hacienda S.A.: *Pacific Rainbow.*
09988	Euro-Asian Lines (Panama) S.A.: *Young Star.*
09994	Pearl Navigation S.A.: *Eastern Pearl.*
10772	Flota Global S.A.: *Atlantic Albatross.*
10815	Consorgio Naviero Candelarias, Ltd.: *Candelarias III.*
10859	International Barges, Inc.: *Mary Lee, Marjorie B.*
10931	Hansung Shipping Co., Ltd.: *Blue Shimonoseki.*
10971	Luria Brothers & Co., Inc.: *General H. W. Butner.*
10997	Spanocean Line, Ltd.: *Kungshamn.*
11362	Spanbristol Shipping Co.: *King Edmund.*
11400	J. L. Offshore Drilling A/S: *Danwood Ice, Maya Dan.*
11438	Seagroup (Bermuda), Ltd.: *Overseas Argonaut.*
11442	Cia Naviera Catrocho S. De R.L. De C.V.: *San Jorge.*
11480	Petrostar Co., Ltd.: *Petrostar 9, Petrostar 8, Petrostar 7, Petrostar 10, Petrostar 11.*
11502	Transportes Del Mar: *Punta Brava, Isla De San Andres.*
11504	Transportes De Liquidos San Andres, Ltd.: *Jacquline.*
11537	Embaroukla Shipping Co., Ltd.: *Skamandros.*
11565	Latin Caribbean Lines Corp.: *Fortuna IV.*
11615	Naviera Devalmar, C.A.: *San Cayetano.*
11773	Golden Poppy Shipping & Navigation Corp.: *Giannini.*
11847	Rigdale Shipping Co., S.A.: *Kato.*
11944	Namyang Shipping Co., Ltd.: *Cipsa No. 8.*
11949	Blackhall Shipping Co., Ltd.: *Drina.*
12006	Feng Hwa Fishing Co., Ltd.: *Feng Hwa No. 22.*
12145	Chevron U.S.A., Inc.: *Nevada Standard.*
12149	Overseas Pioneer Navigation Corp.: *Concord Navigator.*
12239	Partsrederiet For Ms Pauline Lonborg: *Pauline Lonborg.*
12240	Lonborg Line 15: *Tobias Lonborg.*
12241	United Pacific Maritime Corp., Inc.: *Pacific Seatrade.*
12374	Bayard Line (Maldives), Ltd.: *Yukikaze Maru.*
12451	Suzanne International, Inc.: *Alice Ace.*
12646	Trans Globe Maritime, Ltd.: *Sea Condor.*
12699	The Levens Corp.: *CC 212, CC 209.*
12732	Kranaia Maritime S.A.: *Arosa.*
12805	Compagnie Generale D'Armements Maritimes: *Saint Servan.*
12832	Conrad & Victorian Bouchard: *Conrad Marie.*
12835	Literatura Shipping Co., S.A.: *Ilios.*
12878	Nitto Kaiun Sangyo K.K.: *Kyotto Maru.*
12947	Meton Tankers, Inc.: *Meton.*
13026	Tiger, Ltd.: *Monique.*

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-549 Filed 1-9-78; 8:45 am]

[6730-01]

[Independent Ocean Freight Forwarder License No. 1823]

LELAND SERVICES, INC.

Order of Revocation

The bond issued in favor of Leland Services, Inc., 10695 Southwest 87th Avenue, Miami, Fla. 33176, FMC No. 1823 was canceled effective November 3, 1977.

By letter dated October 5, 1977, Leland Services, Inc., was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1823 would be automatically revoked or suspended unless a valid surety band was filed with the Commission on or before November 3, 1977.

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4, further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

Leland Services, Inc., has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), section 5.01(d) dated August 8, 1977;

It is ordered, That Independent Ocean Freight Forwarder License No. 1823 issued to Leland Services, Inc., be returned to the Commission for cancellation.

It is further ordered, That Independent Ocean Freight Forwarder License No. 1823 be and is hereby revoked effective November 3, 1977.

It is further ordered, That a copy of this order be published in the FEDERAL REGISTER and served upon Leland Services, Inc.

LEROY F. FULLER,
Director, Bureau of Certification and Licensing.

[FR Doc. 78-547 Filed 1-9-78; 8:45 am]

[6730-01]

NEW ORLEANS STEAMSHIP ASSOCIATION

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval purausnt to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., San Francisco, Calif., and Old San Juan, P.R. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before January 20, 1978. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter), and the statement should indicate that this has been done.

NEW ORLEANS STEAMSHIP ASSOCIATION

Notice of agreement filed by:

Edward S. Bagley, Esq., Terriberry, Carroll, Yancey & Farrell, 2100 International Trade Mart, New Orleans, La. 70130.

Agreement No. T-3557, between certain members of the New Orleans Steamship Association (NOSA), is a funding agreement providing for the following assessments per long ton of cargo loaded into or unloaded from any ocean-going vessel by the participating NOSA members:

Classification A.—Bulk cargo, not packaged and loaded without mark or count—$0.0125.

Classification B.—Autos; trucks; buses; road equipment; and iron and steel billets, bars, shapes, forms, rods, etc.—$0.045.

Classification C.—Cargo not otherwise specifically provided for in either (A) or (B) directly above—$0.11.

The purpose of these assessments is to fund an obligation of the participating NOSA members resulting from a settlement with the New Orleans Locals of the International Longshoremen's Association, AFL-CIO (ILA), providing for a one-time payment of $1,557,000 to the Administrator of the NOSA ILA Pension, Welfare, Vacation, and Holiday Funds, for allocation to the Vacation and/or Holiday Funds only, in lieu of the payment of any retroactive wage increase for the period from June 1, 1977, to September 30, 1977. NOSA, on behalf of the NOSA participants to this agreement, has borrowed funds to enable it to make this payment instead of requiring each participant to make an immediate lump-sum payment, and the assessments made under this agreement shall terminate when the amount received by NOSA is sufficient to pay the principal and all interest on the loan.

By Order of the Federal Maritime Commission.

Dated: January 5, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-548 Filed 1-9-78; 8:45 am]

[4110-03]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 77F-0412]

AMERICAN CYANAMID CO.

Withdrawal of Petition for Color Additive

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces the withdrawal without prejudice of the petition proposing the safe use of a logwood for coloring nylon or silk nonabsorbable surgical sutures, USP, for use in general and ophthalmic surgery.

FOR FURTHER INFORMATION CONTACT:

Gerad L. McCowin, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d), 74 Stat. 402 (21 U.S.C. 376(d))), the following notice is issued:

In accordance with paragraph (c)(2) of § 71.6 *Withdrawal of petitions without prejudice* (21 CFR 71.6(c)(2)), Davis and Geck Division, American Cyanamid Co., Pearl River, N.Y. 10965, has withdrawn its petition (CAP 6C0114), notice of which was published in the FEDERAL REGISTER of March 17, 1976 (41 FR 11197), proposing the issuance of a regulation to provide for the safe and suitable use of a logwood for coloring nylon or silk nonabsorbable surgical sutures, USP, for use in general and ophthalmic surgery.

Dated: January 3, 1978.

HOWARD R. ROBERTS,
Acting Director,
Bureau of Foods.

[FR Doc. 78-486 Filed 1-9-78; 8:45 am]

[4110-03]

[Docket No. 76F-0063]

ASHLAND OIL, INC.

Withdrawal of Petition for Food Additives

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces the withdrawal without prejudice of the petition (FAP 5A3036), proposing safe use of ethoxylated mono- and diglycerides as an emulsifier and an antispattering agent in salad oils and cooking oils.

FOR FURTHER INFORMATION CONTACT:

John J. McAuliffe, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786 (21 U.S.C. 348(b))), the following notice is issued:

In accordance with § 171.7 *Withdrawal of petition without prejudice* of the procedural food additive regulations (21 CFR 171.7), Ashland Oil, Inc., 5200 Paul G. Blazer Memorial Parkway, Dublin, Ohio 43107, has withdrawn its petition (FAP 5A3036), notice of which was published in the FEDERAL REGISTER of March 11, 1976 (41 FR 10463), proposing that § 172.834 *Ethoxylated mono- and diglycerides* (21 CFR 172.834), be amended to provide for the safe use of ethoxylated mono- and diglycerides as an emulsifier and antispattering agent in salad oils and cooking oils.

Dated: January 3, 1978.

HOWARD R. ROBERTS,
Acting Director,
Bureau of Foods.

[FR Doc. 78-487 Filed 1-9-78; 8:45 am]

[4110-03]

[Docket Nos. 77N-0201, 76N-0295, 76N-0235; DESI 6566, 9698, 12301]

CHLORMEZANONE, MEPROBAMATE, CHLORDIAZEPOXIDE, DRUGS FOR HUMAN USE; DRUG EFFICACY STUDY IMPLEMENTATION

Followup Notice

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice requires that labeling for antianxiety drugs, including chlormezanone, meprobamate, and chlordiazepoxide, be revised to reflect the lack of systematic clinical studies

supporting their effectiveness in long-term use.

DATES: Supplements to approved new drug applications due on or before March 13, 1978.

ADDRESSES: Communications forwarded in response to this notice should be identified with the appropriate reference number, DESI 6566, 9698, or 12301, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857.

Supplements to approved new drug applications (identify with NDA number): Division of Neuropharmacological Drug Products (HFD-120), Rm. 10B-34, Bureau of Drugs.

Supplements to abbreviated new drug applications (identify as such): Division of Generic Drug Monographs (HFD-530), Bureau of Drugs.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT:

John H. Hazard, Jr., Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: As a result of a review of antianxiety drugs by the FDA Psychopharmacological Agents Advisory Committee, it was determined that there are no systematic clinical studies to indicate whether or not antianxiety drugs are effective when administered consistently over several months or in what areas (e.g., symptoms, social performance, or vocational performance), they may be effective and that their long-term use, in the absence of other measures designed to combat or alter the distressing situation or the individual's response to that situation, is unwise.

Because of this lack of long-term data, the Director of the Bureau of Drugs is now requiring that the following paragraph be placed at the end of the Indications section for all antianxiety drugs:

The effectiveness of (drug name) in long-term use, that is, more than 4 months, has not been assessed by systematic clinical studies. The physician should periodically reassess the usefulness of the drug for the individual patient.

A copy of the minutes of the meeting of the Psychopharmacological Agents Advisory Committee on February 5 and 6, 1976, is available for public examination in the office of the Hearing Clerk (HFC-20), Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857, and may be seen between the hours of 9 a.m. and 4 p.m., Monday through Friday.

The following antianxiety drugs were reviewed by the Drug Efficacy Study and conclusions on them were published in the following FEDERAL REGISTER notices. Their effective indications remain the same except for the inclusion of the above paragraph in the Indications section.

July 16, 1974 (39 FR 26055) (DESI 6566; Docket No. 77N-0201 (formerly Docket No. FDC-D-578)): Chlormezanone.

October 15, 1976 (41 FR 45603) (DESI 9698; Docket No. 76N-0295): Meprobamate.

July 6, 1976 (41 FR 27768) (DESI 12301; Docket No. 76N-0235): Chlordiazepoxide; Chlordiazepoxide hydrochloride.

This notice applies not only to the particular antianxiety drugs subject to the Drug Efficacy Study but to all antianxiety drug products that are the subject of new drug applications approved either before or after the Drug Amendments of 1962 and also to any identical, related, or similar drug product (21 CFR 310.6), whether or not it is the subject of an approved new drug application. Any person may request an opinion of the applicability of this notice to a specific drug product he manufactures or distributes by writing to Division of Drug Labeling Compliance (address given above).

Supplements containing appropriate revision of the labeling of drug products affected by this notice shall be submitted on or before March 13, 1978. The revised labeling may be put into use before approval of the supplemental new drug application, as provided for in 21 CFR 314.8 (d) and (e).

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-1053, as amended (21 U.S.C. 352, 355)), and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70).

Dated: December 28, 1977.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc. 78-488 Filed 1-9-78; 8:45 am]

[4110-03]

[Docket No. 77N-0189]

VITARINE CO., INC.

Refusal To Approve New Drug Application for Delcozine Drops

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: This notice announces that the Director of the Bureau of Drugs refuses to approve an abbreviated new drug application (ANDA), for Delcozine (phendimetrazine tartrate 35 milligrams per milliliter), Drops (ANDA 85-593), submitted by The Vitarine Co., Inc., 227-15 North Conduit Ave., Springfield Gardens, N.Y. 11413 ("Vitarine"). An opportunity for hearing was offered on the issue of the approvability of the application, and Vitarine did not request a hearing.

EFFECTIVE DATE: January 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Ronald L. Wilson, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: On January 7, 1977, Vitarine submitted an ANDA (assigned number ANDA 85-593), for the following product: Delcozine Drops containing phendimetrazine tartrate 35 milligrams per milliliter.

After being informed by FDA that an ANDA is not acceptable for the product, the firm requested, on February 28, 1977, that the application be filed over protest. On June 10, 1977 (42 FR 30002), the Director of the Bureau of Drugs, finding that an ANDA would be acceptable for the product, issued a notice of opportunity for hearing on his proposal to refuse approval of the ANDA. By failing to file a written appearance of election as provided by said notice, Vitarine elected not to avail itself of the opportunity for a hearing.

The Director of the Bureau of Drugs, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053, as amended (21 U.S.C. 355)), and under authority delegated to him (21 CFR 5.82), finds that (1) the application does not contain any reports of investigations or adequate tests, by all methods reasonably applicable, to show whether or not Delcozine Drops is safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof, and (2) upon the basis of the information submitted as part of the application, FDA has insufficient information to determine whether the drug is safe for use under such conditions.

Therefore, pursuant to the foregoing findings, approval of abbreviated new drug application 85-593 for Delcozine Drops containing 35 milligrams of phendimetrazine tartrate per milliliter is refused.

Dated: December 19, 1977.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc. 78-489 Filed 1-9-78; 8:45 am]

[4110-03]

[IRLG-1:002 FRL-839-0]

INTERAGENCY REGULATORY LIAISON GROUP

Intent To Develop Compatible Testing Standards and Guidelines

CROSS REFERENCES: For a document announcing agreement of the Consumer Product Safety Commission, the Environmental Protection Agency, the Food and Drug Administration, Health, Education, and Welfare Department and the Occupational Safety and Health Administration, Labor Department to work together as the Interagency Regulatory Liaison Group for the purpose of reforming the regulatory process and improving protection of workers, public health and the environment, see FR Doc. 78-474 appearing under Consumer Safety Commission in the notices section of this issue. Refer to the table of contents at the front of this issue under "Consumer Product Safety Commission" to find the correct page number.

[4110-08]

National Institutes of Health

BASICS IN INHALATION TOXICOLOGY

Workshop

Notice is hereby given of a Workshop on Basics in Inhalation Toxicology to be held by the Toxicology Study Section, Hyatt Regency Hotel, San Francisco, Calif., March 13, 1978, from 9 a.m. to adjournment.

Further information may be obtained from Dr. Rob S. McCutcheon, Executive Secretary, Toxicology Study Section, Westwood Building, Room 226, telephone 301-496-7570.

This workshop will be open to the public. Attendance by the public will be limited to space available.

Dated: December 30, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-412 Filed 1-9-78; 8:45 am]

[4110-08]

BIOLOGY OF AGING

Workshop

Notice is hereby given of a Workshop on Biology of Aging to be held by the Molecular Cytology Study Section and the Pathobiological Study Section, Building 31, Room 6, Bethesda, Md., March 7, 1978, from 8:30 a.m. to adjournment.

Further information may be obtained from Dr. Wendell H. Kyle, Executive Secretary, Molecular Cytology Study Section, Westwood Building, Room 222, telephone 301-496-7149, and Dr. Ellen G. Archer, Executive Secretary, Pathobiological Chemistry Study Section, Westwood Building, Room 206, telephone 301-496-7432.

This workshop will be open to the public. Attendance by the public will be limited to space available.

Dated: December 30, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Insititutes of Health.

[FR Doc. 78-413 Filed 1-9-78; 8:45 am]

[4110-08]

NATIONAL CANCER INSTITUTE

Open Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute.

These meetings will be entirely open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available. Meetings will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014, unless otherwise stated.

Mrs. Margorie F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Md. 20014, 301-496-5708, will furnish summaries of the meetings and rosters of committee members upon request.

Other information pertaining to the meeting can be obtained from the Executive Secretary indicated.

Name of committee: President's Cancer Panel.
Dates: February 7, 1978; 9:30 a.m.-adjournment.
Place: Building 31C, Conference Room 7, National Institutes of Health.
Times: Open for the entire meeting.
Agenda: To hear reports of the Chairman, President's Cancer Panel and the Director, National Cancer Program, NCI.
Executive Secretary: Dr. Richard A. Tjalma, Building 31A, Room 11A46, National Institutes of Health, 301-496-5854.
Name of Committee: Committee on Cancer Immunotherapy.
Dates: February 7-8, 1978; 9 a.m.-adjournment.
Place: Building 31C, Conference Room 9, National Institutes of Health.
Times: Open for the entire meeting.
Agency: To discuss plans for the cause and prevention program.
Executive Secretary: Dr. George M. Steinberg, Building 10, Room 4B09, National Institutes of Health, 301-496-1791.
Name of Committee: Cancer Control and Rehabilitation Advisory Committee.
Dates: February 9-10, 1978; 9 a.m.-adjournment.
Place: Building 31C, Conference Room 7, National Institutes of Health.
Times: Open for the entire meeting.
Agenda: To discuss current and projected programs of the Division of Cancer Control and Rehabilitation.
Executive Secretary: Dr. Veronica L. Conley, Blair Building, Room 7A07, National Institutes of Health, 301-427-7941.

Dated: December 30, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-414 Filed 1-9-78; 8:45 am]

[4110-08]

NATIONAL INSTITUTE OF ARTHRITIS, METABOLISM, AND DIGESTIVE DISEASES

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that the National Commission on Digestive Diseases will hold a public hearing on February 3, and a Commission meeting on February 4, 1978, in Houston, Tex. 77027, places and times listed below. The entire two days will be open to the public. Attendance by the public will be limited to space available.

The Commission will hold the public hearing February 3, 10 a.m. to 6 p.m. at the Holiday Inn-West Loop, Post Oaks Room, 3131 West Loop Freeway, South. On February 4, the Commission will hold a business meeting, 9 a.m. to 5 p.m., Afton Oaks and Live Oaks Rooms of the Holiday Inn-West Loop, to discuss the nutritional aspects of digestive diseases.

Any member of the public who wishes to appear before the Commission on February 3 shall file a written statement or detailed summary of his remarks with the Commission before January 18, 1978. Statements or summaries may be sent to Dr. Thomas P. Vogl, Executive Secretary, National Commission on Digestive Diseases, Room 6C16, the Federal Building, 7550 Wisconsin Avenue, Bethesda, Md. 20014. The time allotted to each participant will be determined by the Commission Chairman based upon the number of individuals who request an opportunity to make presentations.

Messrs. James N. Fordham or Leo E. Treacy, Office of Scientific and Technical Reports, NIAMDD, National Institutes of Health, Building 31, Room 9A04, Bethesda, Md. 20014, telephone 301-496-3583, will provide summaries of the Commission meeting.

Dated: December 30, 1977.

SUZANNE FREMEAU,
Committee Management Officer,
National Institutes of Health.

(Catalog of Federal Domestic Assistance Program No. 13.484, National Institutes of Health.)

[FR Doc. 78-415 Filed 1-9-78; 8:45 am]

[4110-02]

Office of Education

NATIONALLY RECOGNIZED ACCREDITING AGENCIES AND ASSOCIATIONS

Revisions to List

For purposes of determining eligibility for Federal assistance, pursuant to 20 U.S.C. 1141(a) and other legislation, beginning with the Veterans Readjustment Assistance Act of 1952, the U.S. Commission of Education hereby publishes revisions to the list of nationally recognized accrediting agencies and associations which he determines to be reliable authorities as to the quality of training offered by educational institutions either in a geographical area or in a specialized field, and the general scope of recognition granted to accrediting bodies.

These revisions may be added to the list previously promulgated by the Commissioner of Education on April 20, 1977, 42 FR 20507-20510, and to the revisions previously promulgated by the Commissioner on July 15, 1977, 42 FR 36558, and on September 14, 1977, 42 FR 46088.

NATIONAL INSTITUTIONAL AND SPECIALIZED ACCREDITING AGENCIES AND ASSOCIATIONS

CHANGES IN SCOPE OF RECOGNITION

Forestry.—Society of American Foresters (programs leading to a bachelor's or higher first professional degree, and related resource-oriented programs).

Librarianship.—American Library Association, Committee on Accreditation (graduate programs leading to the first professional degree).

Dated: January 3, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.

[FR Doc. 78-512 Filed 1-9-78; 8:45 am]

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

QUALIFIED JOINT BIDDERS

Extension of Time to File Statements

Under the regulations 43 CFR 3302.3-2(a), any person who wishes to submit a joint bid for an oil and gas lease under the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343) during the six months bidding period which began on November 1, 1977, must have filed no later than 45 days before that date a sworn statement of production covering the prior production period of January 1, 1977 through June 30, 1977. In order to qualify as an unrestricted joint bidder, the filer must have been able to swear to average daily production during that production period of no more than 1.6 million barrels a day of crude oil natural gas and liquified petroleum products. A FEDERAL REGISTER notice was published on December 6, 1977 (42 FR 61640) listing all the names of qualified joint bidders whose statements had been received by the Director by the time the notice was prepared.

Since that time, a number of companies who had not timely filed their statements of production have inquired as to whether an extension of time might be granted. It has now been determined that acceptance of statements of production up until the close of business on January 20, 1978 would be in the national interest and not incompatible with the purpose of the regulations. Therefore, any such sworn statements as to production during the period January 1, 1977 through June 30, 1977 which attest to average daily production of less than 1.6 million barrels of crude oil, natural gas and liquified petroleum products will be accepted by this office until the close of business on January 20, 1978 in order to qualify that person to bid jointly during the bidding period ending April 30, 1978.

Dated: January 4, 1978.

GUY R. MARTIN,
Assistant Secretary of the Interior.

[FR Doc. 78-484 Filed 1-9-78; 8:45 am]

[4310-70]

National Park Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 30, 1977. Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by January 20, 1978.

WILLIAM J. MURTAGH,
Keeper of the National Register.

MARYLAND

Howard County

Savage vicinity, *Barney, Commodore Joshua, House (Harry's Lott)*, 7912 Savage-Guilford Rd.

NEW YORK

Schenectady County

Schenectady vicinity, *Seeley Farmhouse (Little Richard's Tavern)*, 2 Freeman's Bridge Rd.

OREGON

Clackamas County

Park Place, *Straight, Hiram A., House*, 16000 S. Depot Lane.

Clatsop County

Astoria, *Hobson, John, House*, 469 Bond St.
Warrenton, *Warren, Daniel K., House*, NE 1st St. at Skipanon Dr.

Marion County

Salem, *Bush-Breyman Block (Breyman Portion)*, 141 and 147 N. Commercial St.

Multnomah County

Portland, *Old Elks Temple (Elks Temple)*, 614 SW 11th Ave.

PENNSYLVANIA

Centre County

Spring Mills, *Beck, James, Round Barn*, 3.2 mi. E of Centre Hall on SR 192.

SOUTH CAROLINA

Charleston County

Charleston, *Beth Elohim Synagogue (Kahal Kadosh Beth Elohim)*, 90 Hasell St. HABS.

Marlboro County

Clio vicinity, *McLaurin, Lamar, House*, 0.2 mi. SE of jct. of SC 83 and Rte. 40.

Union County

Union, *Central Graded School (Central School)*, 309 Academy St.

UTAH

Salt Lake County

Salt Lake City, *McDonald, J. G., Chocolate Company Building (Dixon Paper Company Building)*, 155-159 W. 300 South St.
Salt Lake City, *Whitaker, John M., House*, 975 Garfield Ave.

WYOMING

Carbon County

Medicine Bow, *Virginian Hotel*, Lots 4, 5 and 6 of Block 5.

[FR Doc. 78-374 Filed 1-9-78; 8:45 am]

[4510-28]

DEPARTMENT OF LABOR

Office of the Secretary

[TA-W-1929, 1930, and 1931]

AMERICAN MOTORS CORP., SOUTHFIELD, MICH.

Negative Determination Regarding Application for Reconsideration

On November 11, 1977, the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, the petitioner for workers and former workers of the above-mentioned firm, requested administrative reconsideration of the Department of Labor's negative determinations regarding eligibility to apply for worker adjustment assistance. The petitioner subsequently

submitted clarifying and additional information, the most recent submission being December 5, 1977. These negative determinations were published in the FEDERAL REGISTER on October 14, 1977 (42 FR 44293).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

1. If it appears, on the basis of facts not previously considered, that the determination complained of was erroneous;

2. If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

3. If, in the opinion of the certifying officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

There are two issues of substance raised by the petitioner in these cases. First, the petitioner criticizes the market segmentation approach used by the Department of Labor to analyze whether or not there are increased imports of "like or directly competitive" articles within the meaning of section 222 of the Trade Act of 1974. In its investigation, the Department of Labor had classified the Pacer as a compact and had found that imports of compacts had not increased over the relevant period. The petitioner appears to argue that the Pacer is "like" all imported cars.

The second issue concerns the criterion which the Department of Labor uses to determine whether auxiliary plants supplying component parts for automobiles (where the assembly workers have been certified) are substantially integrated into the production of those vehicles. The petitioner claims that there is no legal basis for the Department's application of this criterion to components workers.

On the first issue, the Department of Labor has reviewed the data and associated rationale submitted by the U.A.W. in its application. The Department continues to believe that its market segmentation system is an appropriate way to deal with the issue of "like or directly competitive" products in the context of the automobile industry.

The Department of Labor, in assigning the Pacer to the class of compact cars, followed the classification of a number of recognized authorities in the automotive industry. It based this classification on an amalgam of automobile characteristics.

The Department does not claim that there is no competiton between automobiles in different classes such as the compact and the subcompact. What the Department maintains, however, is that the cars in one class compete most directly with other cars within the same class. Specifically, however, the Department reaffirms its finding that imports of subcompacts are not "like or directly competitive" with the Pacer.

On the second issue, i.e., the criterion to assess whether or not components' producers are significantly integrated into the production of import-impacted automobiles, the Department of Labor believes that the petitioner has misinterpreted the purpose of the criterion. Some method is needed to deal with those cases where it is not possible to identify workers engaged in the production of components for specific automobiles, where the production of the automobiles is impacted by imports, and where there is every reason to believe that some of the unemployment or underemployment of components workers is also attributable to increased imports. Alternatives would be to deny all components workers or, as the petitioner suggests, to certify all components workers. The latter would not be consistent with the intent of Congress to exclude from coverage workers whose separations would have occurred regardless of the level of imports, such as those resulting from competition, seasonal, cyclical or technological factors. The former alternative would be unfair to component workers separated because of increased imports.

CONCLUSION

After review of the application for reconsideration and of the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decisions. The applications are therefore denied.

Signed at Washington, D.C., this 21st day of December 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning

[FR Doc. 78-564 Filed 1-9-78; 8:45 am]

[4510-28]

TA-W-2237]

BROWN SHOE CO., PITTSFIELD, ILL.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-2237: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 2, 1977, in response to a worker petition received on August 1, 1977, which was filed by the United Shoe Workers of America on behalf of workers and former workers producing men's dress shoes, loafers, and boots at the Pittsfield, Ill., plant of the Brown Shoe Co.

The notice of investigation was published in the FEDERAL REGISTER on August 19, 1977 (42 FR 41934). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Brown Shoe Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number of proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Average employment of production workers at Pittsfield declined 16 percent from 1974 to 1975 and declined 5 percent from 1975 to 1976. Employment declined 9 percent in the last six months of 1976 compared to the same period of 1975, and declined 25 percent in the first seven months of 1977 compared to the same period of 1976. All employment was terminated in August 1977 when the plant was shut down. Section 223b(1) of the Trade Act of 1974 states that certification under this section shall not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm occurred more than twelve months before the signature date of the petition, or July 25, 1976, under Title II, Chapter 2 of the Trade Act of 1974.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Production at Pittsfield declined 24 percent in quantity from 1974 to 1975 and increased 13 percent from 1975 to

1976. Production declined 19 percent in quantity in the last six months of 1976 compared to the same period of 1975, and declined 43 percent in the first seven months of 1977 compared to the same period of 1976.

All production ceased in August 1977 when the Pittsfield plant was shut down.

INCREASED IMPORTS

Imports of men's dress and casual footwear, in absolute terms, increased from 1972 to 1973, decreased from 1973 to 1974, and increased from 1974 to 1975. Imports increased 23.6 percent from 1975 to 1976, and declined 0.3 percent in the first six months of 1977 compared to the first six months of 1976. The ratios of imports to domestic production and consumption increased from 58.7 percent and 37 percent, respectively, in 1975 to 70.4 percent and 41.3 percent, respectively, in 1976. The same ratios increased from 66 percent and 39.8 percent, respectively, in the first six months of 1976 to 73.9 percent and 42.5 percent, respectively, in the first six months of 1977.

CONTRIBUTED IMPORTANTLY

An OTAA survey composed of a sampling of Brown's top retail accounts for men's shoes elicited a seventy percent response. Fourteen percent of those customers who responded shifted purchases of men's shoes from Brown Shoe to imports from 1975 to 1976.

Brown Shoe Co. is one of the largest domestic producers of footwear. In a recent report by the U.S. International Trade Commission, it was found that certain footwear articles, including men's dress and casual footwear, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing such articles. After considering other factors that may have contributed to the decline in the domestic footwear industry, the Commission concluded that imports have been the most important cause.

In the case of men's dress and casual footwear, the import penetration rate has been greater than 50 percent in each of the past five years, reaching a peak level of 73.9 percent in the first six months of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation I conclude that increases of imports like or directly competitive with men's dress shoes, loafers and boots produced at the Pittsfield, Ill., plant of the Brown Shoe Co. contributed importantly to the decline in sales or production and to the total or partial separation of the workers of that plant In accordance with the provisions of the Act, I make the following certification:

All workers at the Pittsfield, Ill., plant of the Brown Shoe Co. who became totally or partially separated from employment on or after July 25, 1976, are eligible to apply for adjustment assistance under Title II, Chapter 22, of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of December 1977.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-565 Filed 1-9-78; 8:45 am]

[4510-28]

[TA-W-2579]

CITIES SERVICE CO., MIAMI, ARIZ.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-2579: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 9, 1977, in response to a worker petition received on November 2, 1977, which was filed by the United Steel Workers of America on behalf of workers and former workers mining copper ore and performing milling operations at the Miami, Ariz., Pinto Valley operations of Cities Service Co.

The notice of investigation was published in the FEDERAL REGISTER on November 18, 1977 (42 FR 59565). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Cities Service Co., the U.S. Department of Commerce, the U.S. International Trade Commission, the U.S. Department of Interior, Metals Week, Metal Bulletin, American Metal Market, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Average employment of production workers at the Pinto Valley operation of Cities Service Co. increased from 1975 to 1976 and in the first nine months of 1977 compared to the same period in 1976. Layoffs began on July 26, 1977. No layoffs occurred during the 9 months prior to the layoffs in July 1977.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Production at the Pinto Valley operation increased from 1975 to 1976 and then declined in the first three quarters of 1977 compared to the same period in 1976.

INCREASED IMPORTS

U.S. imports of refined copper increased from 192 thousand short tons in 1972 to 203 thousand short tons and 314 thousand short tons, respectively, in 1973 and 1974. U.S. imports declined to 147 thousand short tons in 1975 before increasing to 384 thousand short tons in 1976. U.S. imports declined from 313 thousand short tons in first three quarters of 1976 to 275 thousand short tons in the first three quarters of 1977. U.S. imports increased from 101 thousand short tons in the third quarter of 1976 to 111 thousand short tons in the third quarter of 1977.

The ratio of imported refined copper to domestic production increased from 8.6 percent in 1972 to 9 percent and 15.2 percent, respectively, in 1973 and 1974. The ratio of imports to domestic production declined to 8.6 percent in 1975 before increasing to 21 percent in 1976. The ratio of imports to domestic production declined from 23.9 percent in the first six months of 1976 to 14.8 percent in the first six months of 1977.

U.S. imports of copper ore, concentrate, precipitates, and mattes increased each year from 44 thousand tons in 1973 to 89 thousand tons in 1976. The ratio of imports to domestic production increased from 2.6 percent in 1973 to 5.5 percent in 1976.

CONTRIBUTED IMPORTANTLY

While imports of refined copper had increased by 161 percent in 1976 compared to 1975, domestic demand increased at only a fraction of the rate. Inventory levels of domestic and imported copper on consignment at do-

mestic refineries in December 1976 were 31.4 percent above December 1975 levels and were 143.2 percent above December 1974 levels. Cities Sevice and other domestic producers of refined copper lost substantial sales in 1977 because of the excessive inventories of domestic and imported refined copper.

Imports of copper are affected by the differential between the domestic price of copper established by COMEX (Commodity Metal Exchange) and the price established by the LME (London Metals Exchange). When the LME price drops more than the estimated transportation costs of 5 to 8 cents per pound below the COMEX price, the demand for imported copper increases. During May and June 1977 the LME price was almost 11 cents per pound below the COMEX price and in July and August 1977 the LME price was almost 12 cents per pound below the COMEX price. At the same time, the abundant supply of copper stocks in the foreseeable future provides no reason for domestic consumers of copper to maintain ties with domestic producers for purposes of a guarantee against copper shortages. Consequently, in the third quarter of 1977, when many domestic copper producers curtailed production because of the depressed market price for copper, imports of refined copper increased 9.9 percent compared to the third quarter of 1976.

Price pressure from imported copper has reduced the ability to profitably mine domestic ore and convert it to copper concentrate and refined copper. Industry sources state that the weighted average production costs of the lowest cost domestic copper mines are 63 cents per pound. The weigthed average costs for the highest cost domestic copper mines are $1.05 per pound. Thus, with a current domestic market price of 60 cents per pound, domestic producers lose, on the average, 3 to 45 cents on each pound of copper they choose to sell.

Comments made by customers purchasing refined copper from major domestic manufacturers including Cities Service Co. substantiate the fact that increased imports have contributed to record inventory levels which have driven the price of domestic copper below the level at which many domestic firms can profitably produce copper.

Cities Service's decision to layoff workers and reduce its mining operations in August and September 1977 was based mainly on an attempt to minimize losses which the company could not avoid were it to run at normal production levels at the current market prices for copper.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with copper produced by Pinto Valley operation of Cities Service Co. contributed importantly to the decrease in company production and to the total or partial separation of the workers of the division.

In accordance with the provisions of the Act, I make the following certification:

All employees at the Miami, Ariz., property of Cities Service Co.'s Pinto Valley operation located in Miami, Ariz., who became totally or partially separated from employment on or after July 26, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974.

Signed at Washington D.C., this 30th day of December 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-566 Filed 1-9-78; 8:45 am]

[TA-W-2389]

CONTINENTAL CAN, INC., PATERSON, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2389: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on September 28, 1977, in response to a worker petition received on September 23, 1977, which was filed by the United Steelworkers of America on behalf of workers and former workers producing cans at the Paterson, N.J., plant of the Continental Can, Inc., a division of Continental Group, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on October 14, 1977 (42 FR 55315). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Continental Group, Inc., the U.S. Department of Commerce, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (3) has not been met.

Continental Can, Inc., was founded in the early 1900's. Continental Group, Inc., the holding company for Continental Can, began operations in 1976 in New York City. Continental Group, Inc., has numerous divisions producing a variety of packaging products. The Paterson, N.J., plant is part of the Steel Division and has occupied its present location at Getty Avenue since 1949.

The Paterson plant manufactures a wide variety of three piece steel cans. Aluminum is used in the manufacture of one type of can. No other types of packaging products are produced.

Imports of cans are not a separately identifiable portion of TSUSA Classifications 640.2000 and 640.2500. Industry sources estimate cans represent a small portion. Cans are generally produced near the point where they are to be filled. As a result imports of cans are negligible.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that imports of articles like or directly competitive with cans produced at the Paterson, N.J., plant of Continental Can, Inc., a division of Continental Group, Inc., did not increased as required for certification under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of December 1977.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 70-567 Filed 1-9-78; 8:45 am]

[4510-28]

[TA-W-2580]

CYPRUS PIMA MINING CO., TUCSON, ARIZ.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2580: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on November 9, 1977, in response to a worker petition received on November

2, 1977, which was filed by the United Steel Workers of America on behalf of workers and former workers mining copper ore and performing milling operations at the Tucson, Ariz., property of Cyprus Pima Mining Co.

The notice of investigation was published in the FEDERAL REGISTER on November 18, 1977 (42 FR 59565). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Cyprus Pima Mining Co., the U.S. Department of Commerce, the U.S. International Trade Commission, the U.S. Department of Interior, Metals Week, Metal Bulletin, American Metals Market, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat therof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Average employment of production workers at the Tucson, Ariz., property of Cyprus Pima Mining Co., declined form 1975 to 1976 and in the first nine months of 1977 compared to the same period in 1976. Layoffs began in January 1977 and the mine was shut down on September 27, 1977.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Cyprus Pima Mining Co.'s production was unchanged from 1975 to 1976 and then declined in the first three quarters of 1977 compared to the same period in 1976.

INCREASED IMPORTS

U.S. imports of refined copper increased from 192 thousand short tons in 1972 to 203 thousand short tons and 314 thousand short tons, respectively, in 1973 and 1974. U.S. imports declined to 147 thousand short tons in 1975 before increasing to 384 thousand short tons in 1976. U.S. imports declined from 313 thousand short tons in the first three quarters of 1976 to 275 thousand short tons in the first three quarters of 1977. U.S. imports increased from 101 thousand short tons in the third quarter of 1976 to 111 thousand short tons in the third quarter of 1977.

The ratio of imported refined copper to domestic production increased from 8.6 percent in 1972 to 9.0 percent and 15.2 percent, respectively, in 1973 and 1974. The ratio of imports to domestic production declined to 8.6 percent in 1975 before increasing to 21.0 percent in 1976. The ratio of imports to domestic production declined from 23.9 percent in the first six months of 1976 to 14.8 percent in the first six months of 1977.

U.S. imports of copper ore, concentrate, precipitates and matte increased each year from 44 thousand tons in 1973 to 89 thousand tons in 1976. The ratio of imports to domestic production increased from 2.6 percent in 1973 to 5.5 percent in 1976.

CONTRIBUTED IMPORTANTLY

While imports of refined copper had increased by 161 percent in 1976 compared to 1975, domestic demand increased at only a fraction of that rate. Inventory levels of domestic and imported copper on consignment at domestic refineries in December 1976 were 31.4 percent above December 1975 levels and were 143.2 percent above December 1974 levels. Cyprus Pima and other domestic producers of refined copper lost substantial sales in 1977 because of the excessive inventories of domestic and imported refined copper.

Imports of copper are affected by the differential between the domestic price of copper established by COMEX (Commodity Metal Exchange), and the price established by the LME (London Metals Exchange). When the LME price drops more than the estimated transportation costs of 5-8 cents per pound below the COMEX price, the demand for imported copper increases. During May and June 1977 the LME price was almost 11 cents per pound below the COMEX price and in July and August 1977 the LME price was almost 12 cents per pound below the COMEX price. At the same time, the abundant supply of copper stocks in the forseeable future provides no reason for domestic consumers of copper to maintain ties with domestic producers for purposes of a guarantee against copper shortages. Consequently, in the third quarter of 1977, when many domestic copper producers curtailed production because of the depressed market price for copper, imports of refined copper increased 9.9 percent compared to the third quarter of 1976.

Price pressure from imported copper has reduced the ability to profitably mine domestic ore and convert it to copper concentrate and refined copper. Industry sources state that the weighted average production costs of the lowest cost domestic copper mines are 63 cents per pound. The weighted average costs for the highest cost domestic copper mines are $1.05 per pound. Thus, with a current domestic market price of 60 cents per pound, domestic producers lose, on the average, 3 to 45 cents on each pound of copper they choose to sell.

Cyprus Pima's decision to layoff workers and reduce its mining operations was based mainly on an attempt to minimize losses which the company could not avoid were it to run at normal production levels at the current market prices for copper.

Comments made by customers purchasing copper from Cyprus Pima substantiate the fact that increased imports have contributed to record inventory levels which have driven the price of domestic copper below the level at which many domestic firms can profitably produce copper.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with copper produced by the Tucson, Ariz., property of the Cyprus Pima Mining Co., contributed importantly to the decrease in company production and to the total or partial separation of the workers of that firm.

In accordance with the provisions of the act, I make the following certification:

All employees at the Tucson, Ariz., property of Cyprus Pima Mining Co., who became totally or partially separated from employment on or after January 1, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of December 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 70-568 Filed 1-9-78; 8:45 am]

[4510-28]

[TA-W-2683]

SINGER CO., FRIDEN BUSINESS MACHINE DIVISION, SAN LEANDRO, CALIF.

Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 30, 1977, in re-

sponse to a worker petition received on November 21, 1977, which was filed on behalf of former workers producing calculators, billing machines, and other electronic equipment at the San Leandro, Calif., plant of the Friden Business Machine Division of the Singer Co., New York, N.Y.

The Notice of Investigation was published in the FEDERAL REGISTER on December 16, 1977 (42 FR 63488). No public hearing was requested and none was held.

During the course of the investigation, it was established that the San Leandro, Calif., plant of the Friden Business Machine Division had closed by April 1976.

A certification under section 223(b)(1) of the Trade Act of 1974 may not apply to any worker whose last total or partial separation from the firm or an appropriate subdivision of the firm occurred more than one year prior to the date of the petition. The date of the petition in this case is October 30, 1977, and thus workers separated from employment prior to October 30, 1976, are not eligible for program benefits under Title II, Chapter 2, Subchapter B of the Trade Act of 1974. The investigation is therefore terminated.

Signed at Washington, D.C., this 29th day of December 1977.

HAROLD A. BRATT,
Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-569 Filed 1-9-78; 8:45 am]

[TA-W-410]

GENERAL MOTORS CORP., SOUTH GATE, CALIF.

Revised Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223(a) of the Trade Act of 1974, the Department of Labor, on April 23, 1976, issued a denial of eligibility to apply for adjustment assistance regarding workers and former workers at the South Gate, Calif., plant of General Motors Corp.

The Notice of Denial was published in the FEDERAL REGISTER on May 4, 1976 (41 FR 18487).

Subsequent to the publication of the original determination, in the context of litigation with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (U.A.W.), the Department of Labor agreed to reinvestigate the South Gate workers' petition with respect to workers producing the Monza and that for purposes of the reinvestigation the Monza would be classified as a subcompact car, rather than a "luxury small" car.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either absolutely or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

SIGNIFICANT TOTAL OR PARTIAL SEPARATION

Although average hourly employment at South Gate was 29 percent higher in Model Year (MY) 1975 than in MY 1974, it was 23 percent and 51 percent lower in the first and second quarters respectively of MY 1975 than in the same quarters of MY 1974. Employment was negligible in January and February 1975. Layoffs also occurred in May, July, and August 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Production of the subcompact Vega and Astre fell by 85 percent in December 1974 compared to the average output of the three preceding months. There was no production in January and February 1975.

INCREASED IMPORTS

In absolute terms, imports of subcompact automobiles increased in MY 1975 by 3 percent compared to MY 1974. In the first quarter of MY 1976, subcompact imports declined 4 percent in absolute terms compared to the first quarter of MY 1975.

CONTRIBUTED IMPORTANTLY

Total imports of subcompacts from Canada and other foreign countries took a greatly increased share of the U.S. market in MY 1975. Compared to MY 1974 when subcompact imports were 115.8 percent of U.S. domestic production, MY 1975 showed a significant increase in market penetration with imports reaching 180.8 percent of domestic output. Production of the Vega and the Astre was clearly impacted by his increased import competition. Further, it is reasonable to conclude that the decline in production and employment at South Gate in December, 1974 and January and February, 1975 was not entirely accounted for by the retooling and conversion of the plant to the production of the Monza. The shift from the production of the Astre and Vega to the Monza resulted from the company's effort to compete more effectively with imports by relying on the Monza which had been generating greater demand. A major layoff of Monza workers occurred in July with lesser layoffs in May and August.

CONCLUSION

After careful review of the facts obtained in the original investigation and a review of the entire record, I conclude that increased imports of articles like or directly competitive with subcompact cars produced at the South Gate, Calif., plant of General Motors Corp. contributed importantly to the total or partial separation of the workers at the plant.

In accordance with the provisions of the Act, I make the following certification:

All workers of the General Motors Corp.'s South Gate, Calif., assembly plant who became totally or partially separated on or after November 18, 1974, and before October 1, 1975, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 28th day of December 1977

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-570 Filed 1-9-78; 8:45 am]

[4510-28]

[TA—W—2229]

HILO TRANSPORTATION AND TERMINAL CO, INC., TRUCKING DIVISION, HILO, HAWAII

NEGATIVE DETERMINATION REGARDING ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2229: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on July 26, 1977 in response to a worker petition received on July 22, 1977 which was filed by the International Longshoremen's and Warehousemen's Union on behalf of workers and former workers of the Hilo, Hawaii Trucking Division of Hilo Transportation and Terminal Co., Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on August 9, 1977 (42 FR 40287). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Hilo

Transportation and Terminal Co., Inc., C. Brewer and Co., Ltd. and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (1) has not been met.

Hilo Transportation and Terminal Co., Inc. is a wholly owned subsidiary of C. Brewer and Co., Ltd. Hilo Transportation and Terminal Co., Inc. transports sugar, molasses, fertilizer, and petroleum for C. Brewer and Co. and its other subsidiaries.

Evidence developed in the Department's investigation revealed that there was not a significant number or proportion of workers at Hilo Transportation and Terminal Co. that became totally or partially separated or were threatened to become totally or partially separated from employment at the firm.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that a significant number or proportion of the workers at the Hilo, Hawaii Trucking Division of the Hilo Transportation and Terminal Co., Inc. have not become totally or partially separated from employment at the firm as required for certification under Section 222 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of December 1977.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-571 Filed 1-9-78; 8:45 am]

[4510-28]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under title II, chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 28th day of December 1977.

HAROLD A. BRATT,
Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
George's Manufacturing Co. (workers).	Boston, Mass	Dec. 12, 1977	Dec. 7, 1977	TA-W-2,823	Women's sportswear.
Milwaukee Road (workers)	Milwaukee, Wis	Dec. 9, 1977	Dec. 6, 1977	TA-W-2,824	Transporting of freight.
Pinto Island Metals Co. (Industrial Union of Marine & Shipbuilding Workers of America).	Mobile, Ala	Dec. 12, 1977	do	TA-W-2,825	Ferrous and nonferrous metals.
Prestonsburg Shoe Co. (workers).	Prestonsburg, Ky	do	Dec. 8, 1977	TA-W-2,826	Women's nonrubber footwear.
Tim Coil & Loop Co. (workers).	South Sioux City, Nebr	Dec. 9, 1977	Dec. 5, 1977	TA-W-2,827	Antenas and transformers for stereos and radios for Zenith.
Valley Nitrogen Producers, Inc. (Oil, Chemical & Atomic Workers International Union).	Hercules, Calif	Dec. 12, 1977	Nov. 30, 1977	TA-W-2,828	Chemical fertilizers.

[FR Doc. 78-559 Filed 1-9-78; 8:45 am]

[4510-28]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether abso-

lute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing: *Provided*, Such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 27th day of December 1977.

HAROLD A. BRATT,
Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
The Anaconda Co., Anaconda Arbiter Plant (workers).	Anaconda, Mont	Dec. 9, 1977	Dec. 5, 1977	TA-W-2,810	Refined cooper cathodes for use in wirebar and various copper alloys.
Armco Steel Corp., Union Wire Rope Plant, Kansas City Works (USWA).	Kansas City, Mo	do	Dec. 7, 1977	TA-W-2,811	Wire rope, cables and bead wire (used in tires).
Bessemer & Lake Erie RR. Co. (workers).	Albion, Pa	Dec. 8, 1977	Dec. 6, 1977	TA-W-2,812	Transport iron ore to the South and coal coke to the North.
CF&I Steel Corp. (United Transportation Union).	Pueble, Colo	Dec. 6, 1977	Dec. 2, 1977	TA-W-2,813	Reinforcing rods, cables, bolts, nails, small wire and seamless tube and pipe.
Colorado & Wyoming Ry. (United Transportation Union).	do	do	do	TA-W-2,814	Transport goods into and out of the CF&I Pueblo facility.
Consolidated Rail Corp., Eastern Region, Reading Division (workers).	Reading, Pa	Dec. 9, 1977	Dec. 5, 1977	TA-W-2,815	Transports freight and passengers
Delaware & Hudson Ry. Co. (workers).	Saratoga, N.Y	do	Dec. 7, 1977	TA-W-2,816	Common carrier that transports raw materials and finished products.
Elco Dress Co., Inc. (workers).	Holyoke, Mass	Sept. 6, 1977	Aug. 26, 1977	TA-W-2,817	Women's, misses' and junior's outerwear.
Elco Dress Co., Inc. (workers), Slendertone Division.	New Bedford, Mass	do	do	TA-W-2,818	Do.
Gilmore Steel Corp., Direct Reduction Division (USWA).	Portland, Oreg	Dec. 8, 1977	Dec. 6, 1977	TA-W-2,819	Metalized pellets.
H. Margolin Co. (International Handbag, Plastic Workers Union).	Fitchburg, Mass	Dec. 13, 1977	Dec. 8, 1977	TA-W-2,820	Ladies' handbags.
Reece Corp. (workers)	Gorham, Maine	Aug. 15, 1977	Aug. 11, 1977	TA-W-2,821	Industrial sewing equipment.
Servomation Corp. Warren, Youngstown District Office (Teamsters Local Union).	Warren, Ohio	Dec. 9, 1977	Dec. 7, 1977	TA-W-2,822	Maintaining the operation and providing food for the vending machines. Also some foods for the vending machines are produced.

[FR Doc. 78-560 Filed 1-9-78; 8:45 am]

[4510-28]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing: *Provided*, Such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 21st day of December 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Astna Pipe Products Co. of Illinois, Inc. (USWA).	Chicago, Ill	Dec. 9, 1977	Dec. 7, 1977	TA-W-2,790	Steel pipe nipples and steel tubing.
Cascade steel Rolling Mills, Inc. (USWA).	McMinnville, Oreg	do	do	TA-W-2,791	Reinforcing bars, rounds, flats, and fence posts.
Central Eureka Hormigueros (workers).	Hormigueros, P.R	Dec. 8, 1977	Nov. 21, 1977	TA-W-2,792	Raw sugar.
Central Igualdad Mayaguez (workers).	Mayaguez, P.R	do	do	TA-W-2,793	Refined sugar and raw sugar.
Erie Mining Co. (USWA)	Hoyt Lakes, Minn	Dec. 15, 1977	Nov. 20, 1977	TA-W-2,794	Mining of iron ore and the production of iron pellets.
Do	Taconite, Minn	do	do	TA-W-2,795	The shipping of finished iron pellets to the railroad.
Ethan Industries (workers)	Brooklyn, N.Y	Dec. 8, 1977	Dec. 4, 1977	TA-W-2,796	Ladies' vinyl handbags.
Pall River Manufacturing Co. (company).	Pall River, Mass	Nov. 23, 1977	Nov. 21, 1977	TA-W-2,797	Ladies' garments.
Florsheim Shoe Co. (United Shoeworkers of America).	Mount Vernon, Ill	Dec. 8, 1977	Dec. 2, 1977	TA-W-2,798	Ladies' dress shoes.
Hibbing Taconite Co. (USWA).	Hibbing, Minn	Dec. 15, 1977	Nov. 20, 1977	TA-W-2,799	Iron ore pellets.
Jones & Laughlin Steel Corp., Hennepin Works (USWA).	Hennepin, Ill	Dec. 9, 1977	Dec. 7, 1977	TA-W-2,800	Cold rolled galvanized sheets and coils.
Lukens Steel Corp. (USWA)	Coatesville, Pa	do	do	TA-W-2,801	Specialty steelplate products.
Malco Textured fibers (company).	McBee, S.C	Dec. 8, 1977	Dec. 6, 1977	TA-W-2,802	Continuous manmade fibers and knitted fabrics.
Quanex Corp., Fabricating Division (USWA).	Shelby, Ohio	Dec. 9, 1977	Dec. 7, 1977	TA-W-2,803	Tubular automotive exhaust systems and related parts for new cars.
Quanex Corp. Michigan Seamless Tube Division (USWA).	South Lyon, Mich	do	do	TA-W-2,804	Seamless tubes for use in automobiles.
Tennesse Forging Steel Corp., Harriman Division (USWA).	Harriman, Tenn	Dec. 8, 1977	Dec. 1, 1977	TA-W-2,805	Structural steel shapes, both merchant special bar quality steel.
Timken Co. (USWA)	Canton, Ohio	Dec. 9, 1977	Dec. 7, 1977	TA-W-2,806	Bearing steel and tubes.
Do	Gambrinus, Ohio	do	do	TA-W-2,807	Do.
Do	Wooster, Ohio	do	do	TA-W-2,808	Do.
United States Steel Corp., Christy Park Works (USWA).	McKeesport, Pa	do	do	TA-W-2,809	Pressure vessels for storing and transporting high pressure gases, and large outside diameter steel tubing.

[FR Doc. 78-561 Filed 1-9-78; 8:45 am]

[4510-28]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing: *Provided,* Such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 14th day of December 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: (Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Best Coat Co. (workers)	Boston, Mass	Dec. 7, 1977	Dec. 3, 1977	TA-W-2,772	Men's coats.
Central Penn Manufacturing Co., Inc. (ACTWU).	Catawissa, Pa	Dec. 8, 1977	Dec. 2, 1977	TA-W-2,773	Ladies' shirts and blouses.
Crescent Glass Co., Inc. (American Flint Glass Workers Union).	Wellsburg, W. Va	Dec. 7, 1977	Nov. 10, 1977	TA-W-2,774	Glass candleholders and lamp parts.
Tennessee Forging Steel Corp. (company).	Newport, Ark	Dec. 8, 1977	Nov. 30, 1977	TA-W-2,775	Steel angles, rebars, channels and billets.
Terryslipper Corp. (United Shoeworkers of America).	Paterson, N.J	Nov. 29, 1977	Nov. 21, 1977	TA-W-2,776	Children's slippers and casual shoes.
Transitron Electronic Corp. (workers).	Wakefield, Mass	Dec. 7, 1977	Dec. 2, 1977	TA-W-2,777	Semiconductors and connectors used for all types of communication equipment.
United States Steel Corp., Johnstown Works (USWA).	Canton, Ohio	Dec. 9, 1977	Dec. 7, 1977	TA-W-2,778	All steel products.
Do	Johnstown, Pa	do	do	TA-W-2,779	Do.
United States Steel Corp., National Works (USWA).	McKeesport, Pa	do	do	TA-W-2,780	Do.
Do	Duquesne, Pa	do	do	TA-W-2,781	Do.
United States Steel Corp., New Haven Works (USWA).	New Haven, Conn	do	do	TA-W-2,782	Do.
United States Steel Corp. (USWA).	Lorain, Ohio	do	do	TA-W-2,783	Do.
United States Steel Corp., Irvin-Edgar Thompson Works (USWA).	Vandergrift, Pa	do	do	TA-W-2,784	Do.
Do	Dravosburg, Pa	do	do	TA-W-2,785	Do.
Do	Braddock, Pa	do	do	TA-W-2,786	Do.
United States Steel Corp., Clairton Works (USWA).	Clairton, Pa	do	do	TA-W-2,787	Do.
United States Steel Research Laboratory (workers).	Monroeville, Pa	Dec. 7, 1977	Nov. 18, 1977	TA-W-2,788	Researching of the steel industry for United States Steel Corp.
Vatco Manufacturing Co. (workers).	Boston, Mass	do	Dec. 5, 1977	TA-W-2,789	Slipcovers and throws for furniture.

[FR Doc. 78-562 Filed 1-9-78; 8:45 am]

[4500-28]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing: *Provided*, Such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 23, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 15th day of November 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Amberton Knitting Mills, Inc. (workers).	Jamaica, N.Y	Oct. 26, 1977	Oct. 18, 1977	TA-W-2,607	Ladies' outerwear.
The Baker Nail Co., Inc. (workers).	Framingham, Mass	Nov. 7, 1977	Oct. 31, 1977	TA-W-2,608	Nails and fasteners.
Bridon American Corp. (workers) Wire Rope Division.	Muncy, Pa	do	do	TA-W-2,609	Wire rope and wire rope products.
Delta Electric (IBEW)	Marion, Ind	Nov. 3, 1977	Oct. 19, 1977	TA-W-2,610	Components for smoke detectors.
Forest Fabrics, Inc. (workers).	New York, N.Y	Nov. 4, 1977	Nov. 1, 1977	TA-W-2,611	Convert gray goods into finished products.
Keystone Consolidated Industries, Inc. Steel Group (Independent Steel Workers Alliance).	Peoria, Ill	Nov. 7, 1977	Nov. 2, 1977	TA-W-2,612	Steel products: Melt, roll, billets, rods and wire, from steel wire: Fence, fabricated reinforcing, barbed wire, nails, and special processed wire.
Miller Shoe Co. (workers)	Dover, N.H	Oct. 31, 1977	Oct. 24, 1977	TA-W-2,613	Women's shoes.
Do	Somersworth, N.H	do	do	TA-W-2,614	Do.
St. Joseph Structural Steel Co. (International Association of Bridge, Structural & Ornamental Iron Workers).	St. Joseph, Mo	Nov. 7, 1977	Nov. 1, 1977	TA-W-2,615	Fabricating of steel.
Simon's Outerwear, Inc. (workers).	Long Island City, N.Y	do	Oct. 31, 1977	TA-W-2,616	Knitted outerwear for women.
Upper Merion & Plymouth RR. Co. (company).	Conshohocken, Pa	do	Nov. 1, 1977	TA-W-2,617	Transport raw materials and finished products within, out, and into Alan Wood Steel Co.

[FR Doc. 78-563 Filed 1-9-78; 8:45 am]

[4510-28]

[TA-W-1858]

LYNDWOOD FASHIONS, WILKES-BARRE, PA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-1858: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 22, 1977, in response to a worker petition received on that date which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing women's sportswear and dresses at Lyndwood Fashions, Wilkes-Barre, Pa.

The notice of investigation was published in the FEDERAL REGISTER on April 5, 1977 (42 FR 18156-7). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Lyndwood Fashions, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any other criteria have been met, criteria (2) and (3) have not been met.

The Department's investigation revealed that shipments in quantity at Lyndwood Fashions increased from 1975 to 1976 and from the first seven months of 1976 to the first seven months of 1977.

In January of 1977 Lyndwood changed its product mix from pre-

dominantly women's pantsuits to predominantly women's dresses. Aggregate imports of women's pantsuits, which represented approximately 90 percent of production at Lyndwood prior to January of 1977, decreased from 1975 to 1976 and from the first half of 1976 to the first half of 1977. Furthermore, aggregate imports of women's dresses, which represented approximately 90 percent of production at Lyndwood after January of 1977, decreased from the first half of 1976 to the first half of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that imports of articles like or directly competitive with women's sportswear and dresses produced at Lynwood Fashions, Wilkes-Barre, Pa., did not contribute importantly to sales declines and to the total or partial separations of workers at that firm, as required for certification under section 222 of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of December 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-572 Filed 1-9-78; 8:45 am]

[4510-28]

[TA-W-2582]

MIDLAND-ROSS CORP., CAPITOL CASTINGS DIVISION, PHOENIX, ARIZ.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-2582: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 9, 1977, in response to a worker petition received on November 2, 1977, which was filed by the United Steel Workers of America on behalf of workers and former workers producing grinding balls and castings at the Phoenix, Ariz., plants of the Capitol Castings Division of Midland-Ross Corp.

The notice of investigation was published in the FEDERAL REGISTER on November 18, 1977 (42 FR 59565). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Capitol Castings Division of Midland-Ross Corp., the U.S. Department of Commerce, the U.S. Customs Service, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion three has not been met with respect to workers at Midland Ross Corp.'s Capitol Castings Division.

The Capitol Castings Division of Midland-Ross Corp. operates three plants in Phoenix, Ariz., producing cast steel grinding balls and wear resistant iron and steel castings. Castings and grinding balls are used in mineral refineries to ground various types of ore. Capitol Castings' principal customers are the copper mining companies of the Southwest who purchase grinding balls and castings as both new and replacement parts for their refineries.

Employees of the Capitol Castings Division of Midland-Ross Corp. allege that increased imports of refined copper and the subsequent decline in production by customers of Capitol Castings contributed importantly to the separation of workers at Capitol Castings. Capitol Castings furnishes grinding balls and castings which are used by mining companies in the production of copper.

The Capitol Castings Division of Midland-Ross Corp. has no capital or financial investment in any mining company. Similarly, no mining company has a capital or financial investment in the Capitol Castings Division of Midland-Ross Corp. All facilities and equipment of the Capitol Castings Division are owned by Midland-Ross Corp.

All workers at the Capitol Castings Division of Midland-Ross Corp. are engaged in employment related to the production of grinding balls and castings and are employed by Midland-Ross Corp. Workers are not at any time under employment or supervision of any customers of the Capitol Castings Division.

Grinding balls and castings used in the production of finished copper cannot be considered like or directly competitive with the finished product, copper. It must be determined whether increased imports of articles like or directly competitive with grinding balls and castings produced at Capitol Castings have contributed importantly to the total or partial separation of the workers at that firm.

U.S. imports of grinding media, over 70 percent of which are grinding balls, increased from 12.2 thousand tons in 1972 to 15.6 thousand tons and 20.6 thousand tons, respectively, in 1973 and 1974. U.S. imports declined to 17.7 thousand tons and 13.2 thousand tons, respectively, in 1975 and 1976. The 13.2 thousand tons of imports in 1976 represents a decrease of 25.4 percent from the 1975 level of imports and is the lowest level recorded since 1972. U.S. imports of grinding media declined from 10.8 thousand tons in the first three quarters of 1976 to 10.7 thousand tons in the first three quarters of 1977, a decline of 0.9 percent.

The ratio of imported grinding media to domestic production increased from 3.9 percent in 1972 to 4.8 percent in both 1973 and 1974. The ratio of imports to domestic production declined to 4.5 percent and 3.4 percent, respectively, in 1975 and 1976.

During the first three quarters of 1977, over 88 percent of all grinding media imported into the United States entered through the Great Lakes/Canadian border ports and there is no indication that these imports affected the Southwest market which is Capitol Castings' primary service area.

Wear resistant iron and steel castings of the type used by the copper industry are not separately identifiable in the official trade statistics of the United States. According to telephone conversations with customs officials and industry sources there has been no significant import penetration of wear resistant castings into the copper producing regions of the United States.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that imports like or directly competitive with grinding balls and wear resistant castings did not increase as required under section 222(3) of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of December 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-573 Filed 1-9-78; 8:45 am]

[4510-28]

[TA-W-2501]

MARGARET DOLL CLOTHING CO., INC., FITCHBURG, MASS.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-2501: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 25, 1977, in response to a worker petition received on October 17, 1977, which was filed on behalf of workers and former workers producing doll clothes at Margaret Doll Clothing Co., Inc., Fitchburg, Mass.

The notice of investigation was published in the FEDERAL REGISTER on November 8, 1977 (42 FR 58209). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Margaret Doll Clothing Co., Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (2) has not been met.

The Department's investigation has revealed that Margaret Doll Clothing Co. produces doll clothing on a contract basis. Sales of Margaret Doll Clothing Co., in value adjusted for price changes, increased 22 percent from 1975 to 1976 and then increased 22 percent in the first ten months of 1977 when compared to the same period in 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that sales or production of doll clothes at Margaret Doll Clothing, Inc., Fitchburg, Mass., have not declined as required for certification under section 222 of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of December 1977.

JAMES F. TAYLOR.
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-574 Filed 1-9-78; 8:45 am]

[4510-28]

[TA—W—2388]

MERAMEC MINING CO., SULLIVAN, MO.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2388: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on September 27, 1977, in response to a worker petition received on that date, which was filed by the United Steelworkers of America on behalf of workers and former workers producing iron ore pellets at the Meramec Mining Co., Sullivan, Mo.

The notice of investigation was published in the FEDERAL REGISTER on October 14, 1977 (42 FR 55316). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Meramec Mining Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all four of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average number of production workers at the Meramec Mining Co., decreased in 1976 compared to 1975, and decreased during the first three quarters of 1977 compared to the same period in 1976.

The average number of weekly hours worked by production workers decreased during the first three quarters of 1977 compared to the same period in 1976.

All employees were laid off when Meramec Mining Co., was shut down on December 23, 1977.

SALES OF PRODUCTION, OR BOTH HAVE DECREASED ABSOLUTELY

Sales and production at the Meramec Mining Co., decreased in 1976 compared to 1975, and decreased during the first three quarters of 1977 compared to the same period in 1976. Production ceased when the Meramec Mining Co., was shut down on December 23, 1977.

INCREASED IMPORTS

United States imports of iron ore pellets and sinter increased from 35,701 thousand long tons in 1972 to 48,029 thousand long tons in 1974 and then decreased to 44,390 thousand long tons in 1976. During the first three quarters of 1977 imports decreased from the same period in 1976, from 32,950 thousand long tons to 26,470 long tons.

The imports to domestic shipments ratio for iron ore pellets and sinter increased from 47.4 percent in 1972 to 59.3 percent in 1975 and then decreased in 1976 to 55.5 percent. However, during the first three quarters of 1977, the ratio was 55.3 percent compared to 54.7 percent for the same period in 1976.

CONTRIBUTED IMPORTANTLY

Fifty percent of the iron ore pellets produced by the Meramec Mining Co., are shipped to the Bethlehem Steel Corp., a parent corporation of Meramec Mining Co. Imports of iron ore pellets by Bethlehem Steel Corp., increased in 1976 compared to 1975, and increased during the second and third quarters of 1977 compared to the preceeding quarters.

Aggregate imports of iron ore pellets in 1976 and the first nine months of 1977 caused excessive accumulation of inventory throughout the steel industry. The increased inventory levels resulted from decreased demand for end-

use steel products in combination with the receipt of iron ore pellets from foreign sources due to long term contract commitments.

Meramec Mining Co.'s declines in production and sales or iron ore pellets in 1976 and in the first three quarters of 1977 were a micro reflection of the problems industry-wide. Decreased demand for end-use steel products, excessive inventory and increased imports of iron ore pellets by Bethlehem Steel Corp., reduced the need for iron ore pellets produced by Meramec Mining Co. These factors were also relected in a survey of other customers of Meramec who placed high emphasis on excessive inventory levels caused by the influx of imported iron or pellets.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with iron ore pellets produced at Meramec Mining Co., Sullivan, Mo., contributed importantly to the decline in sales or production and to the total or partial separations of workers at that firm. In accordance with the provisions of the act, I make the following certification:

All workers at Meramec Mining Co., Sullivan, Mo., who became totally or partially separated from employment on or after October 28, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 3d day of January 1978.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-575 Filed 1-9-78; 8:45 am]

[4510-28]

[TA-W-1913]

OXFORD TEXTILE FINISHING CO., INC., OXFORD, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1913: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on March 28, 1977, in response to a worker petition received on March 23, 1977, which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers who dyed and finished fabric at the Oxford Textile Finishing Co., Inc., Oxford, N.J.

The Notice of Investigation was published in the FEDERAL REGISTER on April 12, 1977 (42 FR 19178). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from information provided by officials of Oxford Textile Finishing Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (4) has been met.

The Department's investigation revealed that the Oxford Textile Finishing Co., is an independent commissioned processor engaged in dyeing and finishing textile fabric for textile converters. A survey of converters, who accounted for over 70 percent of the contract work done by Oxford Textile in 1975-1976, indicated that these converters did not shift their orders for dyed and finished fabric from Oxford to foreign firms. None of the converters who reduced orders with Oxford purchased imported fabric.

Imported wearing apparel cannot be considered to be like or directly competitive with dyed and finished fabric. Imports of all types of finished fabric must be considered in determining import injury to workers producing dyed and finished fabric at Oxford Textile. Aggregate imports of finished fabric declined in each quarter of 1976 compared to the respective previous quarters and declined in the first half of 1977 compared to the first half of 1976. The ratio of imports to domestic production remained at two percent or less since 1973.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with dyed and finished fabric produced at Oxford Textile Finishing Co., Inc., Oxford, N.J., did not contribute importantly to declines in sales or production and to the total or partial separations of workers of that firm, as required for certification under section 222 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of December 1977.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-576 Filed 1-9-78; 8:45 am]

[4510-28]

[TA-W-2592]

R. C. STILL CO., INC., TUCSON, ARIZ.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2592: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on November 10, 1977, in response to a worker petition received on November 4, 1977, which was filed by three workers on behalf of workers and former workers engaged in sales operations at R. C. Still Co., Inc., Tucson, Ariz.

The notice of investigation was published in the FEDERAL REGISTER on November 18, 1977 (42 FR 59565). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of R. C. Still Co., Inc., and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

If any of the above criteria is not satisfied, a negative determination must be made.

R. C. Still Co., Inc., is a small sales organization selling special, high quality items to the major copper mines. R. C. Still Co., Inc., is not owned or controlled by a copper mine and is not involved in the production of any product(s). All employees of R. C. Still Co., Inc., are engaged exclusively in sales operations.

R. C. Stills Co., Inc., does not produce an article within the meaning of section 222(3) of the act and this Department has already determined that the performance of services are not covered by the adjustment assistance program; see Notice of Determination in "Pan American World Airways, Incorporated" (TA-W-153, 40 FR 54639). R. C. Still Co., Inc., performed a service; sales operations.

CONCLUSION

After careful review of the issues, I have determined that services of the kind provided by R. C. Still Co., Inc., Tucson, Ariz., are not "articles" within the meaning of section 222(3) of the Trade Act of 1974. Therefore, the petition for trade adjustment assistance is denied.

Signed at Washington, D.C., this 29th day of December 1977.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-577 Filed 1-9-78; 8:45 am]

[4510-28]

[TA-W-2062]

WALTER DYER LEATHER, LYNN, MASS.

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2062: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 11, 1977 in response to a worker petition received on May 11, 1977 which was filed on behalf of workers and former workers producing leather mocassins, sandals, jackets and vests at the Lynn, Mass. plant of Walter Dyer Leather.

The notice of investigation was published in the FEDERAL REGISTER on May 24, 1977 (42 FR 26481). No public hearing was requested and none was held.

The information upon which the determinations were made was obtained principally from officials of Walter Dyer Leather, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met for leather mocassins and sandals, but that the second criterion has not been met for leather garments.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment records were not available prior to 1975. Employment is maintained separately by department, and there is no actual intermingling of workers among the three departments.

The average number of production workers in the mocassin department declined 9 percent from 1975 to 1976 and declined 9 percent in the first five months of 1977 compared to the same period of 1976.

Average employment of production workers in the sandal department remained the same from 1975 to 1976, and declined 33 percent in the first five months of 1977 compared to the same period of 1976. Layoffs occurred during the third quarter of 1976.

Average employment of production workers in the leather garment department declined 26 percent from 1975 to 1976, and declined 7 percent in the first five months of 1977 compared to the same period of 1976.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales and production are equivalent for the various products.

Production data was not available prior to 1975.

Production of leather mocassins, both men's and women's, declined 20 percent in quantity from 1975 to 1976, and declined 34 percent in the first five months of 1977 compared to the first five months of 1976.

Production of leather sandals remained the same in terms of quantity from 1975 to 1976, but declined 37 percent in the last six months of 1976 compared to the same period of 1975. Production of sandals declined 14 percent in quantity in the first five months of 1977 compared to the same period of 1976.

Production of leather garments, including men's and women's jackets and vests, increased 29 percent in quantity from 1975 to 1976. Production of garments increased in each quarter of 1976 and in the first quarter of 1977 when compared to the same quarters of the previous year.

INCREASED IMPORTS

Aggregate imports of nonrubber footwear, including men's and women's leather mocassins and sandals, increased in absolute terms from 1972 to 1973, declined from 1973 to 1974, and increased from 1974 to 1975. Imports increased 22.2 percent from 1975 to 1976, and declined 5.5 percent in the first quarter of 1977 compared to the first quarter of 1976. The ratios of imports to domestic production and consumption increased from 77.2 percent and 43.6 percent, respectively, in 1975 to 87.6 percent and 46.7 percent, respectively, in 1976. The same ratios increased from 78.9 percent and 44.1 percent, respectively, in the first quarter of 1976 to 93.5 percent and 48.3 percent, respectively, in the first quarter of 1977.

Imports of leather mocassins, men's and women's, in absolute terms, increased from 1972 to 1973, declined from 1973 to 1974 and declined from 1974 to 1975. Imports increased 19.3 percent from 1975 to 1976, and declined 2.6 percent in the first half of 1977 compared to the first half of 1976.

Since aggregate domestic production of mocassins and of sandals in unavailable, the ratio of imports to domestic production can not be ascertained for either production individually.

Imports of leather coats and jackets, men's, boys', women's, misses', juniors', and children's, increased in absolute terms from 1972 to 1973, increased from 1973 to 1974 and increased from 1974 to 1975. Imports increased 53.3 percent from 1975 to 1976, and declined 8.8 percent in the first half of 1977 compared to the first half of 1976. The ratios of imports to domestic production and consumption increased from 67.1 percent and 40.4 percent, respectively, in 1975 to 81.6 percent and 45.3 percent, respectively, in 1976.

Imports of leather vests in absolute terms, increased from 1972 to 1973, increased from 1973 to 1974, and increased from 1974 to 1975. Imports increased 53.7 percent from 1975 to 1976, and declined 8.3 percent in the first half of 1977 compared to the first half of 1976. The ratios of imports to do-

mestic production and consumption increased from 67.1 percent and 40.3 percent, respectively, in 1975 to 81.8 percent and 45.4 percent, respectively, in 1976.

CONTRIBUTED IMPORTANTLY

Walter Dyer markets all of its products through six of the company's own retail stores, as well as approximately 150 small, independent leather specialty retail shops throughout the United States.

None of Walter Dyer's retail stores purchase or stock imports of any of the company's products.

An OTAA survey of 15 percent of Walter Dyer's independent customers was conducted on a random basis, since none of the customers account for more than 2 percent of the company's sales. Those customers who responded to the survey account for 10 percent of Walter Dyer's sales. None of these customers purchase imports of leather mocassins or sandals; however, those who decreased purchases from Walter Dyer from 1975 to 1976 indicated that Walter Dyer's products were not price competitive with cheaper imports in the market.

Although the import penetration rate of sandals and mocassins into the domestic market can not be separately quantified, the industry data for nonrubber footwear generally includes mocasins and sandals as well as other types of casual footwear with which mocassins and sandals are competitive. The import penetration rate for aggregate nonrubber footwear has been greater than 60 percent for the past five years. The ratio of imports of nonrubber footwear to domestic production peaked at 93.5 percent in the first quarter of 1977.

The decline in production and retail sales of Walter Dyer's mocassins and sandals can be linked to the increased imports in the domestic market in accordance with the recent findings of the U.S. International Trade Commission. After considering the various factors affecting the domestic footwear industry, the Commission concluded that certain footwear articles, including those generally competitive with mocassins and sandals, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing such articles.

In the case of leather garments, notwithstanding any import influence in the industry, production of leather jackets and vests at Walter Dyer has not been adversely affected.

The company's production of leather garments increased 29 percent in quantity from 1975 to 1976. Production increased in each quarter of 1976 and in the first quarter of 1977 when compared to the same quarters of the previous year. Sales and production are equivalent.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with leather mocassins and sandals produced at the Lynn, Mass. plant of Walter Dyer Leather contributed importantly to the total or partial separation of the workers producing those products at the plant.

In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production of leather mocassins and sandals at the Lynn, Mass. plant of Walter Dyer Leather who became totally or partially separated from employment or after May 9, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974.

I further conclude that sales and production of leather jackets and vests produced by workers in the leather garment department at the Lynn, Mass. plant of Walter Dyer Leather have not declined as required for certification under section 222 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of December 1977.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-578 Filed 1-9-78; 8:45 am]

[4510-28]

[TA-W-2328, 2329, 2330, 2331, 2332]

WEAN UNITED, VANDERGRIFT, PA., YOUNGSTOWN, OHIO, WARREN, OHIO AND CANTON, OHIO

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2328, TA-W-2329, TA-W-2330, TA-W-2331 and TA-W-2332: Investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigations were initiated on September 12, 1977 in response to worker petitions received on September 8, 1977 which were filed by the United Steelworkers of America on behalf of workers and former workers producing steel rolls at the Vandergrift, Pa. (TA-W-2328), Youngstown, Ohio, Hendricks Road (TA-W-2329), Youngstown, Ohio, Phelps Street (TA-W-2330), Warren, Ohio (TA-W-2331) and Canton, Ohio (TA-W-2332) plants of Wean United. The investigation revealed that the rolls are component parts of metal working machinery which is made by Wean United.

The Notices of Investigation were published in the FEDERAL REGISTER on October 4, 1977 (42 FR 54031). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Wean United, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (4) has not been met.

A survey of customers accounting for over 40 percent of metal working machinery and parts for metal working machinery sold by Wean United in 1976 revealed that most customers did not purchase imports. All but one of those customers reported that they did not switch to imports. Only one customer that accounted for less than 1 percent of Wean's total sales reported a marginal switch to imports.

A major portion of Wean's production is utilized in the manufacture of steel. The decline in the domestic production of steel contributed to the decline in sales and employment at Wean United. Additionally, a significant portion of Wean's product is produced for an export market. The export sales of both the industry in general and of Wean United declined significantly in the first half of 1977 compared to the like 1976 period.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the metal working machinery and parts for metal working machinery produced at the plants of Wean United as listed below have not contributed important-

ly to the decline in sales or production or to the total or partial separation of workers at those plants as required for certification under section 222 of the Trade Act of 1974:

Vandergrift, Pa.
Youngstown, Ohio; Hendricks Road
Youngstown, Ohio; Phelps Street
Warren, Ohio
Canton, Ohio

Signed at Washington, D.C., this 30th day of December 1977.

HARRY GRUBERT,
Director, Office of Foreign Economic Research.

[FR Doc. 78-579 Filed 1-9-78; 8:45 am]

[4510-26]

Occupational Safety and Health Administration

[IRLG-1:002 FRL-839-0]

INTERAGENCY REGULATORY LIAISON GROUP

Intent To Develop Compatible Testing Standards and Guidelines

CROSS REFERENCE: For a document announcing agreement of the Consumer Product Safety Commission, the Environmental Protection Agency, the Food and Drug Administration, Health, Education, and Welfare Department and the Occupational Safety and Health Administration, Labor Department to work together as the Interagency Regulatory Liaison Group for the purpose of reforming the regulatory process and improving protection of workers, public health and the environment, see FR Doc. 78-474 appearing under Consumer Product Safety Commission in the notices section of this issue. Refer to the table of contents at the front of this issue under "Consumer Product Safety Commission" to find the correct page number.

[4510-30]

NATIONAL COMMISSION FOR MANPOWER POLICY

MEETING

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770), notice is hereby given that the National Commission for Manpower Policy, in cooperation with the Employment and Training Administration of the Department of Labor, will hold a conference on the National Longitudinal Surveys of Mature Women on January 26, 1978. The conference will be held in Room N-4437 of the Department of Labor's main building at 200 Constitution Avenue NW. The conference will begin at 8:15 am and end at 5 pm.

The National Commission for Manpower Policy was established under Title V of the Comprehensive Employment and Training Act of 1973 (Pub. L. 92-302). The act charges the Commission with the broad responsibility of advising the congress, the President, the Secretary of Labor, and other Federal agency heads on national manpower issues.

The agenda will cover the following areas:

A. Summarizing what has been learned from the NLS.

B. Examining work and family roles.

C. Analyzing how women fare in the labor market.

D. Considering what policy makers need to know that research can address.

Members of the general public or other interested individuals may attend this converence and those wishing to submit written statements to the conference that are germane to the agenda may do so, provided such statements are in reproducible form and are submitted to the Director no later than two days before the conference.

Additionally, members of the general public may request to make oral statements to the conference to the extent that the time available for the meeting permits. Such oral statements must apply directly to the announced agenda items and written application must be submitted to the Director of the Commission three days before the meeting. This application shall identify the following: the name and address of the applicant; the subject of his or her presentation and its relationship to the agenda; the amount of time requested; the individual's qualifications to speak on the subject matter; and shall include a justifying statement as to why a written presentation would not suffice. The Director reserves the right to decide to what extent public oral presentation shall be permitted at the conference. Oral presentations shall be limited to statements of fact and views and shall not include any questioning of conference participants, unless these questions have been specifically approved by the Director.

Summary notes of the conference, working papers, and other documents prepared for the conference will be available for public inspection five working days after the conference at the Commission's headquarters located at 1522 K Street NW., Suite 300, Washington, D.C.

Signed at Washington, D.C., this 23d day of December, 1977.

ISABEL V. SAWHILL,
Director.

[FR Doc. 78-558 Filed 1-9-78; 8:45 am]

[7537-01]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

MEDIA ARTS ADVISORY PANEL

Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (AFI), to the National Council on the Arts will take place on January 27, 1978, from 10 a.m. to 5 p.m., in Room 1422, Columbia Plaza, 2401 E Street NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of March 17, 1977, these session will be closed to the public pursuant to subsection (c) (4), (6), and 9(B) of Section 552 of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. Robert M. Sims, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6378.

Dated: January 4, 1978.

ROBERT M. SIMS,
Administrative Officer, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

[FR Doc. 78-493 Filed 1-9-78; 8:45 am]

[7555-01]

NATIONAL SCIENCE FOUNDATION

EXECUTIVE SUBCOMMITTEE OF THE ADVISORY COMMITTEE FOR PHYSIOLOGY, CELLULAR, AND MOLECULAR BIOLOGY

Amended Notice of Meeting

The Executive Subcommittee of the Advisory Committee for Physiology, Cellular, and Molecular Biology will be meeting in Washington, D.C., on January 20, 1978. The notice of the Subcommittee meeting was published in the FEDERAL REGISTER on December 30, 1977, pg. 65332, FR Doc. 77-35141, Vol. 42, No. 251. However, the Agenda, Reason for Closing, and Authority to Close Meeting was in error.

Below is the corrected items:

Agenda: To inspect program documentation on grants and declinations in the Physiology, Cellular, and Molecular Biology Division.

Reason for closing: The meeting will deal with a review of grants and declinations in which the Subcommittee will review materials containing the names of applicant institutions and principal investigators and privileged information contained in declined proposals. This meeting will also include a review of the peer review documentation pertaining to applicants. Any non-exempt material that may be discussed at this meeting (proposals that have been awarded) will be inextricably

intertwined with the discussion of exempt material and no further separation is practical. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Director, NSF, in accordance with the provisions of section 10(d) of Pub. L. 92-463, the Federal Advisory Committee Act.

M. REBECCA WINKLER,
Acting Committee
Management Officer.

JANUARY 4, 1978.

[FR Doc. 78-513 Filed 1-9-78; 8:45 am]

[7555-01]

MATERIALS RESEARCH ADVISORY COMMITTEE

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Materials Research Advisory Committee: Condensed Matter Sciences Subcommittee.

Date and time: January 26 and 27, 1978, 9 a.m. to 5:30 p.m. each day.

Place: Room 540, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of meeting: Open.

Contact person: Dr. Lewis H. Nosanow, Section Head, Condensed Matter Sciences, Division of Materials Research, National Science Foundation, telephone 202-632-7404. Persons planning to attend should notify Mrs. Helen Norris on 202-632-7404.

Summary minutes: May be obtained from the Committee Management Coordinator, Division of Personnel and Management, Room 248, National Science Foundation, Washington, D.C. 20550.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in the condensed matter sciences.

Agenda: January 26, 1978. Background information and overview of activities in the Division bf Materials Research. Oversight review of the NSF solid State chemistry Program, including presentations by NSF staff, representatives of other agencies, and the ad hoc subcommittee for oversight of the Solid State Chemistry Program; preparation of draft report.

January 27, 1978. Discussion of FY 1978 budget allocations, and of the role of the condensed matter sciences in the activities of the Directorate for Research Applications. Completion of draft report on the Solid State Chemistry Program. Information items on national facilities monitored by the Division of Materials Research. Possible discussion of the long range outlook for the condensed matter sciences, and of instrument needs.

M. REBECCA WINKLER,
Acting Committee
Management Officer.

JANUARY 5, 1978.

[FR Doc. 78-514 Filed 1-9-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEE ON SEISMIC ACTIVITY

Meeting

The ACRS Subcommittee on Seismic Activity will hold an open meeting on January 26-27, 1978, in Room 1167, 1717 H Street NW., Washington, D.C. 20555, to discuss the problems which have arisen in the application of Appendix A, 10 CFR 100, "Seismic and Geologic Siting Criteria for Nuclear Power Plants."

In accordance with the procedures outlined in the FEDERAL REGISTER on October 31, 1977, page 56972, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a trascript is being kept, and questions may be asked only by members of the subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the designated Federal employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows: Thursday, January 26 and Friday, January 27, 1978, 8:30 a.m. until the conclusion of business on each day.

The subcommittee may meet in executive session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full committee.

At the conclusion of the executive session each day, the subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and their consultants pertinent to this review. The subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full committee.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the designated Federal employee for this meeting, Dr. Richard P. Savio, telephone 202-634-1920, between 8:15 a.m. and 5 p.m., e.s.t.

Dated: January 4, 1978.

JOHN C. HOYLE,
Advisory Committee,
Management Officer.

[FR Doc. 78-423 Filed 1-9-78; 8:45 am]

[7590-01]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS ENVIRONMENTAL SUBCOMMITTEE

Meeting

The ACRS Environmental Subcommittee will hold an open meeting on January 25-26, 1978, in Room 1046, 1717 H St. NW., Washington, D.C. 20555, to discuss measures to keep occupational radiation exposure from the nuclear fuel cycle at low values.

In accordance with the procedures outlined in the FEDERAL REGISTER on October 31, 1977, page 56972, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows: Wednesday, January 25 and Thursday, January 26, 1978 8:30 a.m. until the conclusion of business on each day.

The subcommittee may meet in executive session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full committee.

At the conclusion of the executive session each day, the subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, various industry representatives, and their consultants, pertinent to this review. The subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full committee.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the designated Federal employee for this meeting, Mr. Ragnwald Muller, telephone 202-634-1413 between 8:15 a.m. and 5 p.m., e.s.t.

Dated: January 4, 1978.

JOHN C. HOYLE,
Advisory Committee,
Management Officer.

[FR Doc. 78-424 Filed 1-9-78; 8:45 am]

[7590-01]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, LA CROSSE BOILING WATER REACTOR SUBCOMMITTEE

Meeting

The ACRS La Crosse Boiling Water Reactor (LACBWR), Subcommittee will hold an open meeting on January 26, 1978, in Room 1062, 1717 H St. NW., Washington, D.C. 20555, to review recent fuel failures at LACBWR, plans for reload cycle 5, and fuel surveillance plans.

In accordance with the procedures outlined in the FEDERAL REGISTER on October 31, 1977, page 56972, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the designated Federal employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows: Thursday, January 26, 1978, 8:30 a.m. until the conclusion of business.

The subcommittee may meet in executive session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full committee.

At the conclusion of the executive session, the subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the Dairyland Power Cooperative, and their consultants, pertinent to this review. The subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full committee.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the designated Federal employee for this meeting, Mr. Robert L. Wright, Jr., telephone 202-634-1919, between 8:15 a.m. and 5 p.m., e.s.t.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555, and at the La Crosse Public Library, 800 Main Street, La Crosse, Wis. 54601.

Dated: January 4, 1978.

JOHN C. HOYLE,
Advisory Committee,
Management Officer.

[FR Doc. 78-422 Filed 1-9-78; 8:45 am]

[7590-01]

PROGRAM FOR RESOLUTION OF GENERIC ISSUES RELATED TO NUCLEAR POWER PLANTS

Report to Congress

Notice is hereby given that in accordance with the reporting requirements of Section 210 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission has published and issued a report to Congress entitled "NRC Program for the Resolution of Generic Issues Related to Nuclear Power Plants." The release date is January 1, 1978.

The Energy Reorganization Act of 1974 was amended by Pub. L. 95-209 on December 12, 1977, to include a new section 210 as follows:

UNRESOLVED SAFETY ISSUES PLAN

SEC. 210. The Commission shall develop a plan providing for specification and analysis of unresolved safety issues relating to nuclear reactors and shall take such action as may be necessary to implement corrective measures with respect to such issues. Such plan shall be submitted to the Congress on or before January 1, 1978, and progress reports shall be included in the annual report of the Commission thereafter.

In October 1976, the Commission directed the NRC staff to develop the generic issues program described in the report, and development and implementation of the program has proceeded over the past year. The NRC program, as developed by the staff, is considerably broader than the "Unresolved Safety Issues Plan" required by section 210. It includes plans for the resolution of generic environmental issues, for the development of improvements in the reactor licensing process, and for consideration of less conservative design criteria or operating limitations in areas where present requirements may be unnecessarily restrictive or costly.

The NRC program described in the report provides for the identification of generic issues, the assignment of priorities, the development of detailed Task Action Plans, projections of dollar and manpower costs, continuous high level management oversight of task progress, and public dissemination of information related to the tasks as they progress. The report indicates that the program is expected to be fully operational by the end of February 1978 and that six of the highest priority (Category A), generic tasks are currently scheduled for completion in fiscal year 1978. One of the Category A tasks was completed in December 1977.

Interested persons may review the report at the NRC's Public Document Room, 1717 H Street NW., Washington, D.C. The report, designated NUREG-0410, may be purchased from the National Technical Information Service, Springfield, Va. 22161, at $14.50 a copy on or about January 17, 1978.

Dated at Washington, D.C., this 3d day of January 1978.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 78-411 Filed 1-9-78; 8:45 am]

[7590-01]

[Docket Nos. 50-325 and 50-324]

CAROLINA POWER & LIGHT CO.

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission), has issued Amendment No. 12 to Facility Operating License No. DPR-71 and Amendment No. 39 to Facility Operating License No. DPR-62, issued to Carolina Power & Light Company (the licensee), which revised Technical Specifications for operation of Brunswick Steam Electric Plant, Unit Nos. 1 and 2 (the facility), located in Brunswick County, N.C. The changes become effective on or before Brunswick Unit No. 2 achieves initial criticality following its first refueling outage (on or about November 26, 1977).

The amendment for Unit 1 consists of numerous changes to the Standard Technical Specifications issued in tandem with Custom Technical Specifications. The Custom Technical Specifications were used for facility operation from September 1976 to the present. The Standard Technical Specifications were not placed in effect when originally issued in order to allow a suitable trial use period. The amendment for Unit 1 eliminates inconsistencies and corrects errors discovered during the trial use period. In addition, limiting conditions for operation and surveillance requirements have been modified to be consistent with NRC Staff requirements. For Unit 2, the amendment incorporates Standard Technical Specifications

similar to those for Unit 1 for the first time.

The applications for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the applications for amendment dated August 22 and September 14, 1977, (2) Amendment No. 12 to License No. DPR-71, (3) Amendment No. 39 to License No. DPR-62, and (4) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Southport-Brunswick County Library, 109 west Moore Street, Southport, N.C. 28461. A copy of items (2), (3), and (4) may be obtained upon request addresed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 23d day of November 1977.

For the Nuclear Regulatory Commission.

ALFRED BURGER,
Acting Chief Operating Reactors Branch No. 1 Division of Operating Reactors.

[FR Doc. 78-536 Filed 1-9-78; 8:45 am]

[7590-01]

[Docket No. 50-298]

NEBRASKA PUBLIC POWER DISTRICT

Granting of Relief from ASME Section XI Inservice Inspection (Testing) Requirements

The U.S. Nuclear Regulatory Commission (The Commission), has granted relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components" to the Nebraska Public Power District (the licensee). The relief relates to the inservice inspection (testing), program for the Cooper Nuclear Station (the facility), located in Nemaha County, Nebr. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The relief is effective as of its date of issuance.

Relief is granted, on an interim basis, pending completion of a more detailed review, from compliance with certain inservice inspection and testing requirements determined to be impractical for the facility because compliance would result in hardships and unusual difficulties without a compensating increase in the level of quality or safety.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the letter granting relief. Prior public notice of this action was not required since the granting of this relief from ASME Code requirements does not involve a significant hazards consideration.

The Commission has determined that the granting of this relief will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) the request for relief dated July 29, 1977, and (2) the Commission's letter to the licensee dated December 29, 1977.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Auburn Public Library, 118 15th Street, Auburn, Nebr. 68305. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 29th day of December 1977.

For the Nuclear Regulatory Commission.

DON K. DAVIS,
Acting Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 78-537 Filed 1-9-78; 8:45 am]

[7555-02]

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

INTERGOVERNMENTAL SCIENCE, ENGINEERING, AND TECHNOLOGY ADVISORY PANEL

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Office of Science and Technology Policy announces the following meeting:

INTERGOVERNMENTAL SCIENCE, ENGINEERING, AND TECHNOLOGY ADVISORY PANEL; NATURAL RESOURCES AND ENVIRONMENT TASK FORCE

Date: January 31 and February 1, 1978.

Place: New Executive Office Building, 726 Jackson Place NW., Room 3104, Washington, D.C.

Type of meeting: Open.

Contact person: Mr. Louis H. Blair, Office of Science and Technology Policy, Executive Office of the President, telephone 202-395-4596. Anyone who plans to attend should contact Mr. Blair by January 27, 1978.

Purpose of the panel: The Intergovernmental Science, Engineering, and Technology Advisory Panel was established on November 4, 1976. The Panel is to identify State, regional and local government problems which research and technology may assist in resolving or ameliorating and to help develop policies to transfer research and development findings.

Minutes of the meeting: Executive minutes of the meeting will be available from Mr. Blair.

TENTATIVE AGENDA

1. Review of Task Force Activities to describe problem and outline possible approach for addressing 10 technical issues identified at June 27, 1977, Task Force meeting.

2. Briefing from officials of the U.S. Environmental Protection Agency (EPA) and the Department of the Interior (DOI) on Federal research activities in each of the 10 technical issues.

3. Briefings from Federal officials on selected intergovernmental research activities in EPA and DOI.

4. Discussion of Future Task Force activities and development of a work program.

WILLIAM J. MONTGOMERY,
Executive Officer, Office of Science and Technology Policy.

JANUARY 5, 1978.

[FR Doc. 78-593 Filed 1-9-78; 8:45 am]

[7555-02]

WORKING GROUP ON BASIC RESEARCH IN THE DEPARTMENT OF ENERGY

Amendment to Notice of Meeting

The Notice of Meeting for the Working Group on Basic Research in the Department of Energy published in the FEDERAL REGISTER, Volume 42, Page 64481 dated December 23, 1977, is amended as follows:

Change place of meeting from Room 3104, New Executive Office Building, 17th and Pennsylvania Avenue NW., Washington, D.C.

Room 8222C, Department of Energy, 20 Massachusetts Avenue, Washington, D.C.

WILLIAM J. MONTGOMERY,
Executive Office.

[FR Doc. 78-592 Filed 1-9-78; 8: 45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 14329; File No. SR-BSPS-77-7]

BRADFORD SECURITIES PROCESSING SERVICES, INC.

Order Approving Rule Change To Establish Reporting and Inquiry Service Concerning Missing, Lost, Stolen, or Counterfeit Securities

DECEMBER 30, 1977.

On December 15, 1977, Bradford Securities Processing Services, Inc. ("BSPS"), 80 Pine Street, New York, N.Y. 10005, submitted, pursuant to rule 19b-4 under the Securities Exchange Act of 1934 (the "Act"), a proposed rule change to establish, and set fees for, a service for reporting and making inquiries concerning missing, lost, stolen, or counterfeit securities.

In accordance with section 19(b) of the Act and rule 19b-4 thereunder, the proposed rule change was published in the FEDERAL REGISTER (42 FR 63839, December 20, 1977), and the public was invited to submit comments. Notice of the filing and an invitation for comments also appeared in Securities Exchange Act Release No. 14274, December 15, 1977. No letters of comment were received.

The Commission has reviewed the BSPS submission and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and in particular the requirements of section 17A and the rules and regulations thereunder. The Commission finds good cause to approve the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in order to enable BSPS to implement the proposed service by January 2, 1978, the date on which the inquiry provisions under 17 CFR 240.17f-1 become effective.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change contained in File No. SR-BSPS-77-7 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-478 Filed 1-9-78; 8:45 am]

[8010-01]

[Release No. 10079; 812-4226]

INSURED MUNICIPALS-INCOME TRUST, ET AL.

Application for Order To Permit an Offer of Exchange and for An Exemption

JANUARY 3, 1978.

Notice is hereby given that Insured Municipals-Income Trust (the "Municipal fund") and Investors' Corporate-Income Trust (the "Corporate fund"), both registered under the Investment Company Act of 1940 ("Act") as unit investment trusts (together referred to as the "funds"), their sponsor, Van Kampen Sauerman, Inc., and Dain, Kalman & Quail, Inc., cosponsor of the Corporate fund (collectively referred to as the "applicants"), c/o Van Kampen Sauerman, Inc., 208 South LaSalle Street, Chicago, Ill. 60604, filed an application on November 18, 1977, and amendments thereto on December 6 and 16, 1977, for an order of the Commission: (1) Pursuant to section 11(a) of the Act permitting the funds to offer their units at net asset value plus a fixed dollar sales charge pursuant to a conversion option (the "plan"), and (2) for an order pursuant to section 6(c) of the Act exempting from the provisions of section 22(d) of the Act the offer and sale of shares of the fund pursuant to the plan at a fixed and reduced sales charge. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The investment objective of each series of the Municipal fund (and those of its predecessor, the First National dual series tax-exempt bond trust) is to seek tax-exempt income and conservation of capital through an investment in tax-exempt bonds. All of such bonds are obligations issued by or on behalf of states, counties, territories or municipalities of the United States and authorities or political subdivisions thereof, the interest on which, in the opinion of counsel to the various issuers of such bonds, is exempt from all Federal income taxes under existing law. The investment objectives of the Corporate fund are preservation of capital and a high level of interest income through an investment in a diversified portfolio of taxable Corporate debt obligations. A separate Indenture is entered into each time a series of either fund is created and the bonds to comprise its portfolio are deposited with the trustee. Applicants state that with respect to each series of the Municipal fund Van Kampen Sauerman, Inc., obtains a portfolio insurance policy protecting the bonds therein against default in the payment of principal and interest from MGIC Indemnity Corp., a subsidiary of MGIC Investment Corp. In certain series, there have been or may be a bond or bonds which have been separately insured by the issuer thereof.

At the present time only one series (series 1) of the Corporate fund has been created while 18 series of the Municipal fund have been created. Units of beneficial interest in these outstanding series have been offered for sale to the public pursuant to effective registration statements filed under the Securities Act of 1933. It is anticipated that further series will be created in full compliance with the representations made here concerning the respective series now outstanding.

Each series of the Municipal and Corporate funds are presently governed by the provisions of each fund's trust indenture and agreement entered into or to be entered into in respect thereof by the sponsors and a corporation organized and doing business under the laws of the United States or a State thereof, which is authorized under such laws to exercise corporate trust powers and having at all times an aggregate capital, surplus, and undivided profits of not less than $5,00,000 in the case of the Municipal fund and $2,500,000 in the case of the Corporate fund.

Applicants propose to introduce a conversion option to certificate holders of the various series of both the Municipal fund and the Corporate fund. Under the plan, as proposed, a certificate holder wishing to dispose of his units in a series of either fund for which a secondary market is being maintained will have the option to convert his units into units of the opposite fund (Corporate into Municipal, Municipal into Corporate) of any series for which units are available for sale. Applicants state that the purpose of the plan is to provide investors in each of the funds a convenient and less costly means of transferring interests as their investment requirements change. Applicants state that the respective sponsors have indicated that they intend to maintain a market for the units of each series of the respective funds; however, there is no obligation to maintain such a market. Consequently, the respective sponsors reserve the right to modify, suspend, or terminate the plan at any time without further notice to certificate holders.

Assuming a secondary market exists and units of the opposite fund are available, a certificate holder who notifies the sponsors of his desire to ex-

ercise his conversion option will be mailed a current prospectus for each series in which the certificate holder indicates interest. The certificate holder may then select the series into which he desires his investment to be converted. The conversion transaction will operate in a manner essentially identical to any secondary market transaction, except that the applicants propose to allow a reduced sales charge for all transactions effected under the plan. Traditionally, fund units are repurchased by the sponsors and other underwriters of the funds at the aggregate offering price per unit of the underlying bonds in the respective fund, and are resold at that price per unit plus a sales charge of 4½ percent of such offering price. Applicants propose to resell units under the plan at the unit offering price of the underlying bonds of the opposite fund plus a fixed charge of $15 per unit (or about 1½ percent of such offering price at current market values). The certificate holder will receive payment for any excess funds remaining in his account after his investment in one fund is converted into full units in the opposite fund.

Conversion transactions will only be effected in whole units. To illustrate: Under the plan a holder of three units of a series in the Municipal fund with an offering price of $1,020 might seek conversion into units of a series of the Corporate fund with an offering price of $880. In this example, the certificate holder's units will total $3,060, which amount may be invested in units of the Corporate fund series. Should three units in a series of the Corporate fund be purchased the cost would be $2,685 ($2,640 for the units and a $45 sales charge). The remaining $375 would be returned to the certificate holder in cash.

Section 11(c) of the Act provides, among other things, that exchange offers involving registered unit investment trusts are subject to the provisions of section 11(a) of the Act irrespective of the basis of exchange. Section 11(a) of the Act provides, in pertinent part, that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make, or cause to be made, an offer to the holder of a security of such company or any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to an approved by the Commission.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price described in the prospectus. The sales charge described in the prospectus of each of the funds for regular secondary market purchases and sales is greater than the sales charge which would be applicable to transactions under the plan. Rule 22d-1 under the Act permits certain variations in sales charges, none of which it is alleged will be applicable to transactions under the plan.

Applicants assert that applying a sales charge of less than the customary 4½ percent in the case of plan conversions is both beneficial to investors and warranted in light of the related cost savings. Applicants state that a large portion of the customary 4½ percent sales charge is attributable to brokerage efforts to make the initial customer solicitation, and the remainder is primarily attributable to the ascertainment of the customer's financial requirements and to counselling on the respective applicant's specific product. Applicants represent that under the plan the selling effort relating to initial solicitations will be eliminated, and thus the applicants argue that the cost savings related thereto should be passed on to the participating investors.

Applicants contend, however, that some investor charge is clearly warranted at the time of conversion since a broker may well need to review his customer's financial objectives and likely will have to counsel the customer on the particular investment vehicle involved. Applicants have concluded that the proposed $15 per unit sales charge for plan conversions will not only pass through cost savings to investors but also will charge such persons a reasonable fee which is related to the periodic, professional, financial advice that it is anticipated will be furnished to them.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than January 30, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney at law by certificate) shall be filed contemporaneously with the request. As provided by rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons, who request a hearing or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-479 Filed 1-9-78; 8:45 am]

[8010-01]

[File No. 500-1]

TOTH ALUMINUM CORP.

Suspension of Trading

DECEMBER 27, 1977.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the securities of Toth Aluminum Corp., being traded on a national securities exchange or otherwise is required in the public interest and for the protection of investors;

Therefore, pursuant to section 12(k) of the Securities Exchange Act of 1934, trading in such securities on a national securities exchange or otherwise is suspended, for the period from 12 noon (e.s.t.), on December 27, 1977, through January 5, 1978.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-480 Filed 1-9-78; 8:45 am]

[8010-01]

[Release No. 34-14296; File No. SR-Amex-77-31]

AMERICAN STOCK EXCHANGE, INC.

Proposed Rule Changes

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975),

notice is hereby given that on November 14, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission proposed rule changes as follows:

STATEMENT OF TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGES

The American Stock Exchange, Inc. (the "Amex"), proposes to amend certain constitutional and rule provisions relating to the clearing of Exchange transactions. The text of the proposed rule changes is attached as Exhibit A hereto and the terms of substance are summarized in the following section of this notice.

STATEMENT OF BASIS AND PURPOSE

In a letter dated September 27, 1977, the Commission cited transaction completion rules of the self-regulatory organization that do not comply with the Act as amended by the Securities Acts Amendments of 1975. The Commission requested that the organization submit proposed rule changes to conform such rules to the Act as amended or submit further arguments concerning why no changes to the cited rules are necessary or appropriate. The proposed amendments are designed to conform the Amex rules with the provisions of the Act in line with the views expressed by the Commission. As amended, the rules require that all Exchange transactions must be compared, cleared and settled through clearing agencies registered with the Commission, but permit Exchange members who have responsibility for clearing transactions to select the clearing agency of their choice, provided such clearing agency maintains the appropriate facilities for clearing Exchange transactions or has the necessary interfacing capability to clear such transactions with other clearing agencies. In addition, the amendments eliminate references to various procedures that a clearing agency must follow and in general delete references to any specific clearing agency.

In addition to the proposed amendments, the Amex submitted by letter dated December 2, 1977, data, views, and arguments as to why it is not amending certain Amex rules cited by the Commission in its September 27, 1977 notice to the Amex pursuant to section 31(b) of the Securities Acts Amendments of 1975.

The proposed amendments are intended to facilitate the development of a national system for the clearance of securities transactions and to foster efficiencies in securities clearance and competition among registered clearing agencies, consistent with sections 6(b), 11A(c)(5), 15A(b), and 17A(a)(2) of the Act.

No comments were solicited or received with respect to the proposed rule changes.

The Exchange has determined that no burden on competition will be imposed by the proposed rule changes, but instead such rule changes will enhance competition among clearing agencies in the providing of services to broker-dealers.

On or before February 14, 1978, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before January 31, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

DECEMBER 21, 1977.

EXHIBIT A—AMEX RULES REGARDING CLEARING OF EXCHANGE TRANSACTIONS

It is proposed that the following Amex Constitution and rule provisions be amended in the manner set forth below.

Article IV, Section 4(d) is amended to read as follows:

DISTRIBUTION OF PROCEEDS

(d) Upon any transfer of a regular or options principal membership, whether made by a regular member or options principal or his legal representatives, voluntarily or by the Board in pursuance of the provisions of the Constitution, the proceeds thereof shall be applied to the following purposes and in the following order of priority, vis.

EXCHANGE CHARGES

First.—The payment of such dues, fines, assessments, contributions to the Gratuity Fund (in the case of a regular member) and charges as the Exchange shall determine are or may become due to the exchange by the member whose membership is transferred or by the member firm in which such member is a partner or by a member corporation voting stock of which is held by such member. [Clearing Corporation charges

Second.—The payment of such sums as the Exchange shall determine are or may become due to American Stock Exchange Clearing Corporation or The Options Clearing Corporation by such member, member firm or member corporation.]

NOTE.—Brackets [ ] indicate material to be deleted and italics indicate material to be added.

The Third and Fourth subparagraphs of Article IV, Section 4(d) are redesignated as the Second and Third subparagraphs.

Article IV, Section 6(g) is amended to read as follows:

PROCEEDS OF MEMBERSHIP SUBJECT TO CLAIMS

(g) The proceeds of the sale of a regular or options principal membership, the use of which has been contributed to a temporary member firm or to a temporary member corporation, shall be subject to claims of the Exchange, [the American Stock Exchange Clearing Corporation, The Options Clearing Corporation,] regular and options principal members and regular and options principal member firms and regular and options principal member corporations against such temporary member firm or temporary member corporation to the same extent as if the deceased member were living and a general partner in such temporary member firm or a holder of voting stock in such temporary member corporation who was actively engaged in the business of such corporation and devoted the major portion of his time thereto at the time of the transactions giving rise to such claims.

Article V, Section 4(e) is amended to read as follows:

MISSTATEMENTS

(e) Whenever it is adjudged in a proceeding under this Article that a member, member organization or approved person has made a misstatement, or has submitted a report or statement containing a misstatement upon a material point to the Board, to the Chairman or any other officer or representative of the Exchange, *or* to any committee of the Exchange, [or to the Board of Directors of The Options Clearing Corporation] or whenever it is adjudged in a proceeding under this Article that a member, member organization or approved person has made a misstatement upon a material point to the Exchange on his or its application for membership or for approval, such member or member organization may be suspended or expelled from membership, and the approval of such approved person may be withdrawn.

Article X, Section 2(a) is amended to read as follows:

SETTLEMENT OF EXCHANGE CONTRACTS

Sec. 2. (a) In every Exchange Contract not involving an option contract (as defined in the Rules) or the exercise thereof, delivery and payment shall be made through [National Securities Clearing Corporation as required by the By-Laws and Rules of said National Securities Clearing Corporation] *a registered clearing agency (as defined by*

rule of the Board of Governors), in accordance with the by-laws and rules of such registered clearing agency, unless otherwise stipulated in the bid or offer or it is otherwise agreed by the parties to the contract, or unless [National Securities Clearing Corporation] *such registered clearing agency,* either in the particular instance or in pursuance of its By-laws and Rules, will not act in the matter. If a party to any such contract is not a participant in [National Securities Clearing Corporation] *a registered clearing agency* entitled to clear and settle any such contract through [National Securities Clearing Corporation] *such registered clearing agency,* he shall cause the transaction to be cleared or settled for him by a member organization which is a participant in [National Securities Clearing Corporation] *a registered clearing agency.*

Article X, Section 3(b) is amended to read as follows:

EXCHANGE CONTRACTS INCLUDE RULES

Sec. 3. (b) The By-Laws and Rules of The Options Clearing Corporation and the amendments thereto adopted from time to time shall be a part of the terms and conditions of every contract which is to be cleared or settled by, or shall be made a part of the terms and conditions of every transaction submitted for settlement through, The Options Clearing Corporation, *and all such contracts shall be subject to the exercise by The Options Clearing Corporation of the powers with respect thereto vested in it by its By-Laws and Rules.*

Article XI, Section 1 is amended to read as follows:

RULES OF EXCHANGE INCLUDED IN CONTRACT TERMS

Sec. 1. The provisions of the Constitution of the Exchange and of the rules adopted pursuant thereto shall be a part of the terms and conditions of all Exchange Contracts, and all such contracts shall be subject to the exercise by the Board of Governors [, National Securities Clearing Corporation and The Options Clearing Corporation,] of the powers with respect thereto vested in [them] *it* by the Constitution and rules of the Exchange.

Rule Definition 4 is deleted in its entirety.

Rule 124(c) is amended to read as follows:

TYPES OF BIDS AND OFFERS

Rule 124. Bids and offers may specify only the following conditions:

* * * * *

REGULAR WAY

(c) "Regular way," i.e., for delivery upon the fifth business day following the day of the contract unless [the By-laws and Rules of American Stock Exchange Clearing Corporation otherwise direct or unless] modified by Rules 794 or 795;

Rule 128 is amended to read as follows:

Contract Made on Acceptance of Bid or Offer Rule 128. All bids and offers made and accepted in accordance with these Rules shall constitute binding contracts but shall be subject to the exercise by the Board of Governors of the powers in respect thereto vested in said Board by the Constitution of the Exchange, and to the Rules of the Exchange. [and said contracts shall also be subject to the exercise by American Stock Exchange Clearing Corporation, of the powers reserved to that Corporation in its By-Laws and Rules.]

Rule 389 is deleted in its entirety.

Rule 440 is amended to read as follows:

ORGANIZATIONS NOT DOING CUSTOMER BUSINESS MUST FILE A CERTIFICATE

Rule 440. Each member organization shall file with the Exchange, unless the contrary is true, a statement signed by all partners in the case of a member firm or all members in the case of a member corporation, unless for good cause show the signature of one or more such persons is waived by the Exchange, certifying that such organization does not, and will not without first withdrawing such statement, carry margin accounts, free credit balances or securities in safekeeping for customers or make cash transactions for customers involving extensions of credit by such organization to, or the receipt by such organization of securities or monies from, customers and that such organization is not a clearing member of [American Stock Exchange Clearing Corporation] *a registered clearing agency (as defined in Rule 700).*

Rule 441 is amended to read as follows:

ORGANIZATIONS DOING CUSTOMER BUSINESS MUST FILE FINANCIAL REPORTS

Rule 441. Every member organization which has not on file with the Exchange a statement made pursuant to Rule 440 and every individual member of the Exchange who is a clearing member of [American Stock Exchange Clearing Corporation] *a registered clearing agency (as defined in Rule 700),* shall file with the Exchange at such times as the Exchange may direct, a statement in a form prescribed by the Exchange of its financial condition and the condition of its accounts, including free credit balances and securities in safekeeping. The statement shall be signed by such person or persons as the Exchange may direct. The provisions of this rule shall not apply to a member organization subject to the jurisdiction of another exchange unless the American Stock Exchange so directs.

Rule 610(f) is amended to read as follows:

(f) Any controversy involving a claim not exceeding $2,000 arising out of the settlement of claims for dividends and registered bond interest [pursuant to American Stock Exchange Clearing Corporation Rule 24,] shall be submitted to and determined by a single arbitrator in accordance with the provisions of this Rule, except that such arbitrator shall be selected by the Arbitration Director from a special panel of arbitrators, designated by the Chairman and approved by the Board as provided in Rule 601, consisting of members or non-members engaged in the securities industry chosen solely to determine such claims.

Rule 700 is amended to read as follows:

Present paragraph (a) is deleted in its entirety and new paragraphs (a), (b), (c), (d), and (e) are added as follows:

[(a) In this Part IV, reference to "American Stock Exchange Clearing Corporation" shall mean the ASECC Division of National Securities Clearing Corporation.]

(a) The term "registered clearing agency" means any clearing agency duly registered with the Securities and Exchange Commission and—

(i) having the capacity to compare, clear and settle any and all securities transactions effected on the Exchange, or

(ii) having the appropriate interfacing capacity to compare, clear and/or settle securities transactions effected on the Exchange, with a clearing agency meeting the requirements of the preceding sub-paragraph. If such clearing agency does not have the appropriate interfacing capacity with respect to all such functions (comparison, clearing and settlement), or with respect to all securities admitted to dealings on the Exchange, it shall be included within the term "registered clearing agency" only to the extent of the functions or the securities as to which it does have such interfacing capacity.

(b) The term "capacity" with respect to a registered clearing agency means the facilities, the procedures and the necessary rules enabling it to carry out the functions of comparing, clearing and/or settling transactions in specific securities between clearing members.

(c) The term "rules" of a registered clearing agency means the articles of incorporation, constitution, by-laws and rules, or instruments corresponding to the foregoing, of such registered clearing agency and its related policies, practices and interpretations.

(d) The term "clearing member" means a member organization of the Exchange which is a member of a registered clearing agency and entitled to compare, clear and/or settle through such registered clearing agency contracts in securities effected on the Exchange.

(e) In this Part IV, the term "securities transactions" does not include options contracts as defined in Rule 900, but shall include securities deliverable upon the exercise of options contracts.

Present paragraphs (b) and (c) are redesignated as paragraphs (f) and (g) and present paragraph (d) is deleted in its entirety.

Rule 701 is amended to read as follows:

NON-CLEARING MEMBER

Rule 701. A member of the Exchange who is not a member of [American Stock Exchange Clearing Corporation] *a registered clearing agency,* shall cause his transactions in "cleared" securities to be cleared for him by a clearing member.

Rule 721 is amended to read as follows:

COMPARISON OF TRANSACTIONS NOT TO BE CLEARED

Rule 721. (a) Comparison of transactions in securities which are not [to be cleared through A.S.E. Clearing Corporation] *submitted to a registered clearing agency for comparison and settlement pursuant to its rules,* shall be effected in the following manner:

(1) Each selling member or member organization shall send to the office of the buyer in respect of each sale a comparison form in duplicate on the first business day following the day of the transaction, but not later than [the time prescribed by A.S.E. Clearing Corporation for the delivery

on that day of exchange tickets in respect of transactions to be cleared through A.S.E. Clearing Corporation] *1:00 p.m. on that day;*

(2) The party to whom the comparison is presented shall retain the original, if it be correct, and immediately return the duplicate duly signed;

except that transactions for delivery on the business day following the day of the contract shall be compared, in the manner prescribed herein, no later than one hour and a half after the closing of the Exchange on the day of the transaction.

The neglect or failure of a member or member organization to exchange comparison forms or to effect a comparison as provided in this paragraph (a) shall constitute a default and, except as provided in paragraph (b) of this Rule, such defaulted contract may be closed as provided in Part IV, Section 4, hereof.

(b) In the event a member or member organization is unable to effect a comparison of a bond transaction as provided in paragraph (a) of this Rule, such bond transaction shall be compared in accordance with the provisions of Rule 723 in the same manner as a transaction which was to be cleared through [the A.S.E. Clearing Corporation] *a registered clearing agency,* but which has been excluded for any reason from a clearance. [subject, however, to the following qualifications:

(1) Paragraph (1) of Rule 723 shall not be applicable to a bond transaction. When a bond transaction has been resolved on the Floor in accordance with the provisions of Rule 723, the executing broker who acted for, or gave up the name of, the member which initiated the DK Notice shall promptly forward one copy of the DK Notice, properly completed and signed, to the A.S.E. Clearing Corporation. The A.S.E. Clearing Corporation will process a DK Notice relating to a bond transaction and will issue, receive and deliver instructions to the receiving and delivering members on the basis of the information contained in such DK Notice.

(2) The Chairman, in consultation with the Senior Floor Officials shall have authority, when conditions warrant, to extend the time limits set forth in Rule 723 for delivery of, and replying to, DK Notices relating to bond transactions.]

* * * Commentary.

.01 DK Notices prepared pursuant to paragraph (b) of this Rule should reflect the information required by Commentary .01 of Rule 723 subject to the following:

(1) Shares—the number of bonds involved in the trade.

(2) Symbol—the ticker symbol of the bond which was traded, interest rate, and maturity date.

(3) Price—the price at which the bond was traded, excluding accrued interest.

(4) Remarks—for purposes of identification "BOND" should be marked in this section.

Rule 722 is deleted in its entirety and new Rule 722 is added as follows:

COMPARISON OF TRANSACTION THROUGH A REGISTERED CLEARING AGENCY

Rule 722. Unless it is stipulated in the bid or offer that a transaction is to be completed ex-clearing or it is otherwise agreed by the parties thereto, the clearing members responsible for clearing and settling a transaction in securities effected on the Exchange shall submit such transaction for comparison as follows:

(i) If both parties are clearing members of the same registered clearing agency having the capacity to effect comparisons in respect of such security, the transaction may be submitted to that registered clearing agency.

(ii) If the parties are clearing members of different registered clearing agencies which have the appropriate interfacing capacity with each other to effect comparisons in respect of such security, each party may submit the transaction to his respective clearing agency in accordance with the rules of the agency governing such interface.

(iii) If the parties are clearing members of different registered clearing agencies not having the appropriate interfacing capacity with each other to effect comparisons in respect of such security, both parties must cause the transaction to be submitted to a registered clearing agency having the capacity to effect comparisons and to clear and settle all securities transactions effected on the Exchange.

After a comparison has been effected, the clearance and/or settlement of the transaction may be completed by either party through any other registered clearing agency of his choice and of which he is a clearing member, provided such other registered clearing agency has the appropriate interfacing capacity with the registered clearing agency through which the comparison is effected to complete the clearance and/or settlement of transactions in the particular security.

Rule 723 is amended to read as follows:

Comparison of Transactions Excluded from Clearance Rule 723. Except as provided in Rule 725, a transaction which was to be cleared through [American Stock Exchange Clearing Corporation] *a registered clearing agency,* but which has been excluded for any reason from a clearance after there has been compliance with all of the rules of [the American Stock Exchange Clearing Corporation] *such registered clearing agency,* shall be compared as promptly as possible in the following manner:

* * * * *

(1) When a transaction has been resolved on the Floor in accordance with the provisions of this Rule, [the executing broker who acted for, or gave up the name of, the clearing member which initiated the DK Notice shall promptly forward one copy] *copies* of the DK Notice, properly completed and signed, [to the American Stock Exchange Clearing Corporation. The American Stock Exchange Clearing Corporation will in accordance with its Rules, process a DK Notice received pursuant to the provisions of this Rule and will, with respect to Balance Order Contracts (as defined in the Rules of the American Stock Exchange Clearing Corporation) produced on the basis of such DK Notices, issue, receive and deliver security orders to the receiving and delivering clearing members on the basis of the information contained in the DK Notice. Such security orders shall be binding and enforceable upon members and member organizations for which the American Stock Exchange Clearing Corporation acts. With respect to CNS Contracts (as defined in the Rules of the American Stock Exchange Clearing Corporation) produced on the basis of such DK Notices, the American Stock Exchange Clearing Corporation will enter such Contracts in the CNS Accounting Operation (as defined in the rules of the American Stock Exchange Clearing Corporation) for settlement in accordance with the Rules of the American Stock Exchange Clearing Corporation.] *shall be furnished to both clearing members who in turn shall be responsible for resubmitting such transaction to their respective registered clearing agencies for clearance and settlement in accordance with the rules of such clearing agencies.*

* * * * *

Rule 725 is amended to read as follows:

COMPARISON OF DK'S NOT SENT TO FLOOR

Rule 725. In the event that a transaction which was to be cleared through [American Stock Exchange Clearing Corporation] *a registered clearing agency* has been excluded for any reason from a clearance after there has been compliance with all of the Rules of [the American Stock Exchange Clearing Corporation] *such registered clearing agency* and thereafter office representatives of the two clearing members shall have resolved all questions relating to such transaction before a DK Notice has been sent by either party to its executing broker on the Floor, such transaction shall be compared as promptly as possible in the following manner:

(a) The selling clearing member shall prepare and sign a DK Notice, in form prescribed by the Exchange, and send such Notice to the buying clearing member. The buying clearing member shall, within 24 hours after receipt of the DK Notice, sign the Notice if the terms are correct *and* return one copy of the Notice to the selling clearing member. [and forward one copy of the Notice to the American Stock Exchange Clearing Corporation] *Each clearing member shall be responsible for resubmitting such transaction to its respective registered clearing agency for clearance and settlement in accordance with the rules of such clearing agency.*

[(b) The American Stock Exchange Clearing Corporation will, in accordance with its Rules, process a DK Notice received pursuant to the provisions of this Rule and will issue, receive and deliver security orders to the receiving and delivering clearing members on the basis of the information contained in the DK Notice. Such security orders shall be binding and enforceable upon members and member organizations for whom the American Stock Exchange Clearing Corporation acts.]

[(c)] (*b*) No clearing member shall be required to accept a DK Notice pursuant to the provisions of this rule unless such Notice is delivered to its office prior to 3:45 P.M. on the third business day following the trade date of the transaction to which the DK Notice relates.

20. *Rule 726* is amended to read as follows:

COMPARISON OF TRANSACTIONS NOT INCLUDED IN CLEARANCE BY ERROR

Rule 726. A transaction which has not been included in a regular clearance because of an error or omission (other than a transaction covered by Rules 723 or 725) shall be compared as promptly as possible in the following manner:

(a) If the terms of the transactions are agreed upon by two members on the Floor,

they shall complete and sign a DK Notice, in form prescribed by the Exchange [.] *and* [One] *a* copy of the Notice shall be sent to the office of each member or his clearing agent. [as the case may be, and one copy shall be sent to the American Stock Exchange Clearing Corporation] *Each clearing member shall be responsible for submitting such transaction to its respective registered clearing agency for clearance and settlement in accordance with the rules of such clearing agency.*

(b) If the terms of the transaction are agreed upon by the office representatives of two clearing members, the selling clearing member shall prepare and sign a DK Notice, in form prescribed by the Exchange, and send such Notice to the buying clearing member. The buying clearing member shall sign the DK Notice if the terms are correct, *and* return one copy of the Notice to the selling clearing member. [and forward one copy of the Notice to the American Stock Exchange Clearing Corporation] *Each clearing member shall be responsible for submitting such transaction to its respective registered clearing agency for clearance and settlement in accordance with the rules of such clearing agency.*

[(c) The American Stock Exchange Clearing Corporation will, in accordance with its Rules, process a DK Notice received pursuant to the provisions of this Rule and will issue receive and deliver security orders to the receiving and delivering clearing members on the basis of the information contained in the DK Notice. Such security orders shall be binding and enforceable upon members and member organizations for which the American Stock Exchange Clearing Corporation acts.]

21. *Rule 729* is amended to read as follows:

COMPARISON ON SELLER'S OPTION CONTRACTS AND "WHEN ISSUED" SPECIAL CONTRACTS

Rule 729. On "seller's option" transactions in stocks and bonds, and on all transactions made "when issued" or "when distributed" that are not cleared through [the A.S.E. Clearing Corporation] *a registered clearing agency,* written contracts in form approved by the Exchange shall be exchanged not later than the second business day following the transaction.

Such contracts must be signed by a member, or a general partner or a duly authorized officer of the member organization; or the member or member organization may authorize one or more employees to sign such contracts in the name of such member of member organization, with the same effect as if the name of such member or member organization had been signed under like circumstances by such member, or by a general partner or duly authorized officer of such member organization, by executing and filing with the Exchange, in the form prescribed by it, a separate power of attorney or authorization for each employee so authorized; provided, however, that such power of attorney or authorization need not be filed with this Exchange if the member or member organization is a member organization of another exchange in the City of New York having comparable requirements to which such member or member organization is subject and complies.

Before the name of any member corporation is affixed to such a contract by an officer thereof, the member corporation shall file with the Exchange in the form prescribed by it evidence that such officer has been authorized to sign such contracts on behalf of the member corporation.

When written contracts have been exchanged, only the members or member organizations whose names have been so signed thereon shall be liable.

22. *Rule 750* is amended to read as follows:

DELIVERY TIME

Rule 750. Deliveries of securities (except as provided in Rule 751 and except for securities to be delivered [to or by the American Stock Exchange Clearing Corporation in its Continuous Net Settlement System as provided in the Rules of the American Stock Exchange Clearing Corporation] *pursuant to the rules of a registered clearing agency,* which securities shall be delivered as provided in such Rules) shall be due before 11:30 A.M., unless [American Stock Exchange Clearing Corporation] *the Exchange* shall advance [or] , extend *or otherwise direct with respect to* the time within which [securities deliverable through it may be delivered, in which event the time within which other securities may be delivered shall thereby be similarly advanced or extended] *such deliveries shall be due.*

23. *Rule 752* is amended to read as follows:

Failure to Deliver

Rule 752. If securities [due on any particular day are not delivered within the time specified in Rules 750, 751 or 759, the contract, if it is included in the Continuous Net Settlement System of the American Stock Exchange Clearing Corporation, may be closed as provided in the Rules of the American Stock Exchange Clearing Corporation; otherwise] *which are to be delivered pursuant to Rule 750 or Rule 751 are not so delivered,* the contract may be closed as provided in Section 4 hereof. If not so closed, and in the absence of any notice or agreement, the contract shall continue without interest until the following business day; but in every *such* case of non-delivery of securities, [except the non-delivery of securites in the Continuous Net Settlement System of the American Stock Exchange Clearing Corporation (the liability in respect of which shall be accounted for under the Rules of the American Stock Exchange Clearing Corporation)] the party in default shall be liable for any damages which may accrue thereby. All claims for such damages shall be made promptly.

24. *Rule 753* is amended to read as follows:

Payment on Delivery

Rule 753. In all deliveries of securities *other than securities deliverable pursuant to the rules of a registered clearing agency,* the party delivering shall have the right to require the purchase money to be paid upon delivery. If delivery is made by transfer, payment may be required at time and place of transfer. [provided, however, that payment shall not be made through American Stock Exchange Clearing Corporation except in conformity with its By-Laws and Rules and unless said By-Laws and Rules so provide.]

25. *Rule 754* is amended to read as follows:

Acceptance of Deliveries in Units of Trading

Rule 754. Except for contracts [included in the Continuous Net Settlement System of the American Stock Exchange Clearing Corporation] *to be settled pursuant to the rules of a registered clearing agency,* the buyer shall accept any portion of a lot of securities contracted for or due on a security balance if tendered in lots of one trading unit or multiples thereof, or in smaller amounts aggregating the amount sold, and may buy in the undelivered portion as provided in Section 4 hereof; but on sales made "Seller's Option" the buyer shall not be required, within the time specified in the option, to accept a portion of a lot of securities contracted for. [Any undelivered portion of a contract included in the Continuous Net Settlement System of the American Stock Exchange Clearing Corporation may be bought in as provided in the Rules of the American Stock Exchange Clearing Corporation.]

A contract in an odd lot shall be settled by the delivery of a certificate for the exact amount of the odd lot or certificates for lesser amounts aggregating the amount of the odd lot, except [as otherwise prescribed in the By-Laws and Rules of American Stock Exchange Clearing Corporation] *contracts to be settled pursuant to the rules of a registered clearing agency.*

26. *Rule 755* is amended to read as follows:

Stamp Tax Tickets

Rule 755. Each delivery of securities subject to tax on transfer or sale must be accompanied by a sales ticket stamped in accordance with the regulations of the [United States and/or the State of New York, as required by law] *applicable jurisdiction;* [except that in the case of securities cleared by or deliverable through American Stock Exchange Clearing Corporation, sales tickets so stamped shall be delivered in accordance with its By-Laws and Rules] *provided, however, that as to securities delivered pursuant to the rules of a registered clearing agency, the rules of such clearing agency shall govern the payment of any such tax, unless otherwise provided by law.*

27. *Rule 757* is deleted in its entirety.

28. *Rule 758* is amended to read as follows:

"FAIL TO DELIVER" TICKET

Rule 758. If delivery on a contract has not been made on due date, other than a contract which has been [included in the Continuous Net Settlement System of the American Stock Exchange Clearing Corporation] *accepted for settlement by a registered clearing agency and such clearing agency has assumed responsibility for payment and delivery, as the case may be* either the buyer or the seller may, while such contract remains open, send to the other party, in duplicate, a "fail to deliver" confirmation.

When a "fail to deliver" confirmation is sent to a member, member firm or member corporation the party to whom the confirmation is presented shall retain the original, if it be correct, and promptly return the duplicate stamped and initialed.

29. *Rule 761* is amended to read as follows:

POWER OF SUBSTITUTION

Rule 761. When the name of an individual or member organization has been inserted in an assignment, as attorney, a power of substitution shall be executed in blank by such attorney.

When the name of an individual or member organization has been inserted in a power of substitution, as substitute attorney, a new power of substitution shall be executed in blank by such substitute attorney.

When the name of a registered clearing agency or *nominee thereof has been inserted in an assignment, as attorney, or in a power of substitution, as substitute attorney, a power of substitution shall be executed in blank by such registered clearing agency or nominee thereof.*

* * * Commentary

Form 1 to these rules is the approved form for a power of substitution to be used when an attorney has been designated in an assignment.

Rule 765 is amended to read as follows:

ASSIGNMENTS—BY MEMBER ORGANIZATION

Rule 765.

Member firms—By authorized persons

(a) A member firm may authorize one or more persons who are its employees, or who are officers or employees of [the A. S. E. Clearing Corporation or of National Securities Clearing Corporation] *a registered clearing agency,* to assign registered securities in the name of such member firm and to guarantee assignments, with the same effect as if the name of such member firm had been signed under like circumstances by one of its partners by executing and filing with the Exchange, in the form prescribed by it, a separate power of attorney for each person so authorized.

Member corporations—By authorized persons

(b) A member corporation may authorize one or more of its officers, or one or more other persons who are either its employees or who are officers or employees of [the A.S.E. Clearing Corporation or of National Securities Clearing Corporation] *a registered clearing agency,* to assign registered securities in the name of the member corporation and on its behalf and to guarantee assignments, by filing with the Exchange, in the form prescribed by it, a certified copy of resolutions of its board of directors, authorizing such person or persons to act.

Members and member organizations—Use of facsimile signature

(c) A member or member organization may assign securities registered in his or its name, and may execute powers of substitution, by means of a mechanically reproduced facsimile signature, provided the member or member organization shall have (1) executed and filed with the Exchange, in the form prescribed by it, an agreement with respect to the use of such facsimile signature, (2) filed with the Exchange, in the case of a member corporation, a certified copy of resolutions of the board of directors of such member corporation, in the form prescribed by the Exchange, authorizing the execution and filing with the Exchange of such agreement, and (3) complied with such other requirements as may be prescribed by the Exchange in connection with the use of facsimile signatures. [A.S.E. Clearing Corporation] *Registered Clearing Agency*—Use of facsimile signature

(d) [The A. S. E. Clearing Corporation] *A registered clearing agency* may execute powers of substitution by means of a mechanically reproduced fascimile signature of an officer of [the A. S. E. Clearing Corporation] *such registered clearing agency,* provided such corporation shall have (1) executed and filed with the Exchange, in the form prescribed by it, an agreement with respect to the use of such facsimile signature, (2) filed with the Exchange a certified copy of resolutions of the board of directors of such corporation, in the form prescribed by the Exchange, authorizing the execution and filing with the Exchange of such agreement, and (3) complied with such other requirements as may be prescribed by the Exchange in connection with the use of facsimile signatures.

Member of New York Stock Exchange—Filing of documents

(e) A member organization of the American Stock Exchange which is a member of [the A. S. E. Clearing Corporation] *a registered clearing agency* and is also a member organization of the New York Stock Exchange, and has filed with the New York Stock Exchange the appropriate forms required pursuant to the rules of that exchange to authorize officers or employees of the member organization to assign securities and to guarantee assignments, is not required to file with the American Stock Exchange the forms required by paragraph (a) or (b) of this Rule with respect to the authorization of such officers or employees.

(f) A member or member organization of the American Stock Exchange who or which is a member organization of the New York Stock Exchange and has filed with the New York Stock Exchange the appropriate forms required pursuant to the rules of that exchange to authorize the use of a particular facsimile signature, is not required to file with the American Stock Exchange the forms required by paragraph (c) of this Rule with respect to the use of such signature.

[(g) The Stock Clearing Corporation of the New York Stock Exchange may execute powers of substitution by means of a mechanically reproduced facsimile signature of an officer of the Stock Clearing Corporation, provided such corporation shall have (1) executed and filed with the New York Stock Exchange, in the form prescribed by it, an agreement with respect to the use of such facsimile signature, (2) filed with the New York Stock Exchange, in the form prescribed by it, a certified copy of resolutions of the Board of Directors of such corporation authorizing the execution and filing with the New York Stock Exchange of such agreement, and (3) complied with such other requirements as may be prescribed by the New York Stock Exchange in connection with the use of facsimile signatures.]

[(h)] *(g)* A nominee of [Central Certificate Service] *a registered clearing agency* may assign securities registered in the name of such nominee, and may execute powers of substitution, by means of a mechanically reproduced facsimile signature, provided [Central Certificate Service] *such registered clearing agency* shall have (1) executed and filed with the [New York Stock] Exchange, in the form prescribed by it, an agreement with respect to the use of such facsimile signature, (2) filed with the [New York Stock] Exchange, in the form prescribed by it, a certified copy of resolutions of the Board of Directors of [Central Certification Service] *such registered clearing agency* authorizing the execution and filing with the [New York Stock] Exchange of such agreement, and (3) complied with such other requirements as may be prescribed by the [New York Stock] Exchange in connection with the use of facsimile signatures.

[(i) National Securities Clearing Corporation may execute powers of substitution by means of a mechanically reproduced facsimile signature of an officer of National Securities Clearing Corporation, provided such corporation shall have (1) executed and filed with the Exchange, in the form prescribed by it, an agreement with respect to the use of such facsimile signature, (2) filed with the Exchange a certified copy of resolutions of the board of directors of such corporation, in the form prescribed by the Exchange, authorizing the execution and filing with the Exchange of such agreement, and (3) complied with such other requirements as may be prescribed by the Exchange in connection with the use of facsimile signatures.]

* * * Commentary

Forms, resolutions and information as to detailed procedures under this Rule may be obtained on request from the Securities Division of the Exchange.

Rule 774 is amended to read as follows:

SIGNATURE GUARANTEE

Rule 774. The signature to an assignment of a certificate which is not in the name of a member or a member organization, or is not in the name of a nominee of [Depository Trust Company] *a registered clearing agency* shall be guaranteed by a member or member organization or by a commercial bank or trust company, [which bank or trust company either (a) is organized under the laws of the United States or of the State of New York and has its principal office in the vicinity of the Exchange or (b) does not have its principal office in the vicinity of the Exchange but is a National Bank or other member of the Federal Reserve System and] *or such other entity* whose signatures are on file with and acceptable to the transfer agent for the security. Each signature to a power of substitution executed by other than a member or a member organization or [the A.S.E. Clearing Corporation or the Stock Clearing Corporation of the New York Stock Exchange or National Securities Clearing Corporation or a nominee of Depository Trust Company] *an entity approved pursuant to Rule 765 and whose signatures are on file with and acceptable to the transfer agent* shall be guaranteed in like manner.

[. Commentary

.10 "Vincinity of the Exchange"—The Exchange has determined that the words "vicinity of the Exchange" shall mean that part of the Borough of Manhattan, City of New York, located south of Chambers Street.]

Rule 781 is amended to read as follows:

INSOLVENCY

Rule 781. When announcement is made of the suspension of a member or member organization pursuant to the provisions of Article V, Sec. 3, of the Constitution, members

and member organizations having Exchange contracts with the suspended member or member organization shall without unnecessary delay proceed to close the same on the Exchange or in the best available market, except insofar as the By-Laws and Rules of [American Stock Exchange Clearing Corporation] *a registered clearing agency*, are applicable and provide the method of closing; provided, however, that upon any such suspension the Board may, in its discretion, suspend the mandatory close-out provisions of this rule and may, in its discretion, reinstate such provisions at such time as it may determine. Should a contract not be closed when required to be closed by this rule, the price of settlement for the purpose of Article IV, Section 4(d) of the Constitution shall be fixed by the price current at the time when such a contract should have been closed under this Rule.

Rule 783 is amended to read as follows:

NORMAL BUY-INS

Rule 783. A contract in securities admitted to dealings on the Exchange, (other than a contract which has been [included in the Continuous Net Settlement System of the American Stock Exchange Clearing Corporation] *accepted for settlement by a registered clearing agency and such clearing agency has assumed responsibility for payment and delivery, as the case may be*), which has not been fulfilled according to the terms thereof, may be closed pursuant to the following procedures:

* * * * *

Rule 784 is amended to read as follows:

MANDATORY CLOSING OF FAILS

Rule 784. (a) A contract in securities admitted to dealings on the Exchange (other than a contract which has been [included in the Continuous Net Settlement System of the American Stock Exchange Clearing Corporation] *accepted for settlement by a registered clearing agency and such clearing agency has assumed responsibility for payment and delivery, as the case may be*), which has not been fulfilled in accordance with its terms for a period of twenty business days after the original due date for delivery shall be resolved pursuant to the following procedures:

(1) A notice of intention to close the contract shall be delivered (in quadruplicate) to the member organization in default at or before 1:00 p.m. on the twenty-first business day after the original due date of the contract. Such twenty-first business day shall, for the purpose of this Rule, be referred to as the effective date of notice. A copy of the [ASE Clearing Corporation balance order, security order,] *signed comparison, receive or deliver order issued by a registered clearing agency*, bond order or bond memorandum, must accompany the notice when delivered. If none of these documents is available, other evidence of the contract must accompany the notice. A fifth copy of the notice of intention shall be delivered to the Market Operations Division of the American Stock Exchange, before 1:00 p.m. on the same day.

(2) The member organization receiving the notice of intention must indicate on the copies of the notice its position with respect to the resolution of the item and then return, to the initiating member organization, a copy thereof signed by a member, officer or authorized representative of such member organization, no later than 1:00 p.m. on the third business day after the effective date of notice. A copy of the response must be filed by the defaulting member organization with the Market Operations Division no later than 1:00 p.m. on the same day. (See Rule 785—Retransmission of Notice).

(3) If the notice of intention is returned to the initiating party "DK'd" or if the notice is not returned duly signed when due, the initiating party shall itself close the contract forthwith by buying or selling the securities involved through its own Floor representative. A party which has returned a notice "DK'd" or has failed to return the notice duly signed when due may not thereafter seek to fulfill the contract by delivering or requiring delivery of the securities if the contract has been closed by the initiating party. The closing of a contract by the initiating member organization as herein provided shall not preclude it from recovering any resulting damages from the defaulting party.

(4) If the notice of intention is returned duly signed, with an indication that the contract is known but that delivery cannot be made, and the contract is one which [the ASE Clearing Corporation] has *been* designated as acceptable for clearance as a fail item *by a registered clearing agency of which both parties are clearing members (or by different registered clearing agencies having an appropriate interfacing capacity to handle fail items)*, it shall be submitted for clearance, by the defaulting member organization, in accordance with the [instructions] *rules* of [the ASE Clearing Corporation] *such registered clearing agency* relating to fail items.

(5) If the notice of intention is returned duly signed, with an indication that the contract is known by that delivery cannot be made, and the contract is one which [the ASE Clearing Corporation] has *not been* designated as [un]acceptable for clearance as a fail item *by a registered clearing agency of which both parties are clearing members (or by different registered clearing agencies having an appropriate interfacing capacity to handle fail items)*, the initiating member shall close such contract pursuant to the procedures outlined in paragraphs (b), (c), (d) and (e) of Rule 783.

* * * * *

* * * Commentary.

* * * * *

.03 Paragraph (a)(4) of the Rule requires that, if the notice of intention is returned duly signed with an indication that the contract is known but that delivery cannot be made, the defaulting member organization must submit copies of the "fail add by seller" notice to the [Clearing Corporation] *appropriate registered clearing agency.* Copies I and II of such notice should be *used for this purpose and should be* submitted [to the Input Department of the Clearing Corporation] *in accordance with the rules of such registered clearing agency applicable to fail items*, [by 11:00 a.m. on] *but in any event should be submitted on or before* the fourth business day after the effective date of notice. [The Clearing Corporation will key punch Copy I as a fail add by seller and will redirect Copy II therof to the initiating member organization.] (*While the rules of the registered clearing agencies through which fail items may be handled may vary, it is anticipated that the procedures will in general be as follows. Copy I of such notice will be utilized by the clearing agency as input for the clearance of the fail item and Copy II thereof will be directed to the initiating member organization.* All fail items will thereafter be listed and submitted to the parties on separate supplemental contract lists which will carry the original settlement value and the new settlement price. The difference will represent the amount of the cash adjustment that will be debited or credited, accordingly, to the accounts of the member organization. The fail items will thereafter be included in the regular clearance operation.)

.04 Paragraph (a)(5) requires that contracts which are designated as unacceptable for clearance must be closed. The procedure to be followed shall be the same as that followed in paragraphs (b), (c), (d) and (e) of Rule 783. Examples of contracts which *normally* are inacceptable for clearance *as fail items* include bond contracts, odd lot contracts where a specialist clearing agent is not involved and contracts involving securities which have not at the time been integrated into the fail clearance procedures of [the Clearing Corporation] *any registered clearing agency* under Rule 784.

* * * * *

Rule 785 is amended to read as follows:

RETRANSMISSION OF NOTICE

Rule 785. Every member, member firm or member corporation who is notified that a contract is to be closed for his account because of non-delivery, including such a notice under the Rules of [American Stock Exchange Clearing Corporation] *a registered clearing agency that an obligation of the member or member organization to deliver securities to the clearing agency or under its rules is to be closed out for his or its own account*, shall immediately re-transmit notice thereof to any other member, member firm or member corporation from whom the securities involved are due. Every such re-transmitted notice shall be in writing, and shall be delivered at the office of the member, member firm or member corporation to whom it is addressed; it shall state the date of the contract upon which the securities are due from such member, member firm or member corporation, the maturity date and the price of such contract, and the name of the member, member firm or member corporation who has given the original order to close.

Rule 787 is amended to read as follows:

LIABILITY WHERE CONTRACT CLOSED

Rule 787. The closing of a contract pursuant to these rules, or the rules of [the American Stock Exchange Clearing Corporation] *a registered clearing agency*, shall be for the account and liability of each succeeding party in interest in such contract, and, in case notice that such contract will be closed has been re-transmitted as provided in Rule 785, shall also close all contracts in respect of which such re-transmitted notice shall have been delivered prior to the closing.

If such re-transmitted notice is sent by a member, member firm or member corporation before the contract has been closed, but is not received until after such closing, the member, member firm or member corporation who sent the same may immediately re-establish, by a new sale, the contract with respect to which such notice has been given.

Any money difference resulting from the closing of a contract, or from the re-establishment of a contract as herein provided, shall be paid not later than 3:30 P.M. on the following business day, to the member, member firm or member corporation entitled to receive the same.

Rule 788 is amended to read as follows:

NOTICE OF CLOSING

Rule 788. When a contract (other than a contract [which has been included in the Continuous Net Settlement System of the American Stock Exchange Clearing Corporation] *the close-out of which is governed by the rules of a registered clearing agency*) has been closed the member, member firm or member corporation who closed the same, or who gave the order to close the same, shall immediately notify the member, member firm or member corporation for whose account the contract was closed. The member, member firm or member corporation receiving such a notification or receiving notification that a contract has been closed under the Rules of [the American Stock Exchange Clearing Corporation] *a registered clearing agency*, shall immediately notify each succeeding party in interest, and other members, member firms or member corporations to whom re-transmitted notice, as provided for in Rule 785, has been sent. Statements of resulting money differences, if any, shall also be made immediately.

Rule 791 is deleted in its entirety.

Rule 792 is amended to read as follows:

SECURITIES TRANSFERRING OUT OF TOWN

Rule 792. If the seller of a security, the transfer office for which is not in New York, makes a tender of a security which is not a good delivery, and the buyer refuses to give to the seller a name for transfer, the seller may be bought in only at the discretion of a Floor Official, after submission to such Official of satisfactory proof in writing that tender by the seller had actually been made. This Rule shall not apply to [clearing house balances] *Deliveries of securities made pursuant to the rules of a registered clearing agency.*

Rule 793 is deleted in its entirety.

Rule 794 is amended to read as follows:

"BUY-INS" ON SECURITIES LOCATED OUT OF TOWN

Rule 794. If satisfactory evidence is submitted to the Exchange that a sale for long account was made involving securities located outside the City of New York and in the United States, no buy-ins will be permitted for seven days from the date of such sale; if made involving securities located in Canada, no buy-ins will be permitted for ten days from the date of such sale; and if made involving securities located in Europe, no buy-ins will be permitted for two weeks from the date of such sale. If satisfactory evidence is submitted to the Exchange that notwithstanding due diligence securities sold for long account and located outside the City of New York have not been, or may not be, made available for delivery within the above specified periods, buy-ins therefore may, in the discretion of a Floor Official, be further postponed. The buyer may, however, demand a deposit of 10 percent of the total amount involved in the transaction and such deposit shall be made promptly by the seller. This rule does not apply to "cash" or "next day" contracts, convertible securities, rights, subscription warrants or script on which a privilege exists at the time of the purchase or at the date of delivery or to securities which have been called for redemption. This rule also does not apply to [security balances of the American Stock Exchange Clearing Corporation] *Deliveries which are governed by the rules of a registered clearing agency.*[and in respect thereof buy-ins shall be permitted until delivery.]

Rule 795 is amended to read as follows:

"BUY-INS" WHERE SECURITIES IN TRANSFER

Rule 795. If satisfactory evidence is submitted to the Exchange that securities are in transfer in New York City, no buy-ins will be permitted for four (4) days from the date of the transaction. If satisfactory evidence is submitted to the Exchange that securities are in transfer outside New York City, no buy-ins will be permitted for seven (7) days from the date of the transaction. If satisfactory evidence is submitted to the Exchange that notwithstanding due diligence securities in transfer in New York or elsewhere have not been, or may not be, made available for delivery within the above specified periods, buy-ins therefore may, in the discretion of a Floor Official, be further postponed. The buyer may, however, demand a deposit of 10 percent of the total amount involved in the transaction and such deposit shall be made promptly by the seller. This rule does not apply to "cash" or "next day" contracts, convertible securities, rights, subscription warrants or scrip on which a privilege exists at the time of the purchase or at the date of delivery or to securities which have been called for redemption. This rule also does not apply to [security balances of the American Stock Exchange Clearing Corporation] *deliveries which are governed by the rules of a registered clearing agency.*[and in respect thereof buy-ins shall be permitted until delivery.]

Rule 797 is deleted in its entirety.

Rule 810 is amended to read as follows:

DEPOSITS ON CONTRACTS

Rule 810. In the case of all Exchange contracts which are to be cleared or settled through [American Stock Exchange Clearing Corporation] *a registered clearing agency*, except contracts for the borrowing and loan of securities, and except contracts [included in the Continuous Net Settlement system of the American Stock Exchange Clearing Corporation] *as to which marks-to-the-market are governed by the rules of a registered clearing agency*, if the market value of the subject of the contract is above or below the contract price, the party, who by reason of the change in market value is partially unsecured, may demand from the other party the difference between the contract price and the market price and such difference shall bear interest at the current renewal rate for call loans, but the other party instead of complying with such demand or after complying therewith may elect to make deposit in cash with [American Stock Exchange Clearing Corporation] *a registered clearing agency specified by the party making such demand if permitted by the rules of such clearing agency* [in the manner prescribed by its By-Laws and Rules], in which case any difference already paid to the other party shall be released.

Rule 813 is amended to read as follows:

DEPOSITS ON DUE BILLS

Rule 813. The holder of a due bill may require the maker of the due bill to deposit the full amount due thereon with [American Stock Exchange Clearing Corporation] *a registered clearing agency designated by the holder of the due bill*, if said [corporation] *registered clearing agency* either in the particular instance or in pursuance of its By-Laws and Rules shall agree to act and where said due bill is for securities or for rights, the holder may require the deposit of the market value thereof and either the holder or maker of said due bill may require that it shall thereafter be kept marked to the market.

DEPOSITING IN TRUST COMPANY

If [American Stock Exchange Clearing Corporation] *the registered clearing agency* shall decline to act either in the particular instance or in pursuance of its By-Laws and Rules, or, if the holder of the due bill so elects, such holder may require the maker of the due bill to deposit in a Trust Company the full amount due thereon payable to the joint order of both parties. When said due bill covers a dividend other than a cash dividend, the holder thereof may require the deposit of the market value thereof, which deposit, on demand, from either party, may from time to time be adjusted in the manner theretofore set forth.

[DEPOSIT BY NON-CLEARING MEMBER

If the party making a deposit with American Stock Exchange Clearing Corporation, he shall cause the deposit to be made defined in the By-Laws and Rules of American Stock Exchange Clearing Corporation he shall cause the deposit to be made for him by a Clearing Member. The cash so deposited with American Stock Exchange Clearing Corporation shall be held by it subject to its By-Laws and Rules.]

Rule 814 is amended to read as follows:

HOURS OF CALL

Rule 814. All demands for the difference between the contract price and the market price or for deposits on due bills [made in accordance with the By-Laws and Rules of American Stock Exchange Clearing Corporation], and all other demands for mutual cash deposits or for differences, shall be made during the hours during which the Exchange is open for business, shall be in writing and shall be delivered at the office of the party upon whom the demand is made and shall be complied with immediately.

When demand is made for a mutual deposit, such deposit must be made not later than one hour after the call, except that if called after 2:00 P.M. it must be made at or

before 10:30 A.M. of the following business day.

Rule 850 is amended to read as follows:

SECTION 7. RECLAMATION

Rule 850. Reclamation by reason of the fact that the security delivered has a minor irregularity must be made within ten days from the day of delivery. [The return delivery of a security with such an irregularity may be made during the time schedule for reclamation, as established by the American Stock Exchange Clearing Corporation.] Upon return delivery, the delivering party must immediately give the party presenting it either the security in proper form for delivery, or pay the market price of the security, and assume all liability for non-delivery.

Rule 861 is amended to read as follows:

SETTLEMENT OF LOANS

Rule 861. An agreement between members, member firms and member corporations for the loan of cleared securities made before 4:30 P.M. on any business day shall be called, and delivery and payment of the amount involved shall be made, through [American Stock Exchange Clearing Corporation] *the respective registered clearing agencies of which the parties thereto are clearing members (provided the rules of such clearing agency provide therefor)*, unless otherwise agreed by the parties; and the return of loans of cleared securities between members, member firms and member corporations shall be cleared, and re-delivery and re-payment shall be made, [through said Corporation] *in the same manner*, unless otherwise agreed between the parties.

Rule 931 is deleted in its entirety.

[FR Doc. 78-601 Filed 1-9-78; 8:45 am]

[8010-01]

[File No. 1-2660]

COMMUNITY PUBLIC SERVICE CO.

Notice of Application To Withdraw From Listing and Registration

JANUARY 3, 1978.

The above-named issuer has filed an application with the Securities and Exchange Commission, pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The common stock of Community Public Service Company ($10 par value) has been listed for trading on the Amex since May 1, 1963. The New York Stock Exchange, Inc. ("NYSE") approved the company's application for listing of its common stock on December 1, 1977. Trading in such stock on the NYSE commenced at the opening of business on December 1, 1977, and concurrently therewith the stock was supended from trading on the Amex. In making the decision to withdraw its common stock from listing on the Amex, the company considered the direct and indirect costs and expenses attendant on maintaining the dual listing on both excahnges. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

This application relates solely to the withdarwal from listing and registration on the Amex and shall have no effect upon the continued listing of such common stock on the NYSE. The Amex has posed no objection in this matter.

Any interested person may, on or before January 27, 1978, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission will, on the basis of the application and any other information submitted to it, issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-598 Filed 1-9-78; 8:45 am]

[8010-01]

[811-1982]

REDMOND GROWTH FUND, INC.

Filing of Application for Order Pursuant to Section 8(f) of the Investment Company Act of 1940 Declaring That Company Has Ceased To Be an Investment Co.

JANUARY 4, 1978.

Notice is hereby given that Redmond Growth Fund, Inc. (the "Fund") 1750 Pennsylvania Avenue, Washington, D.C. 20006, registered under the Investment Company Act of 1940 ("Act") as an open-end, nondiversified management investment company, filed an application on December 8, 1977, pursuant to section 8(f) of the Act, for an order of the Commission declaring that the Fund has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Fund was organized on October 14, 1969, under the laws of the State of Delaware, with an authorized capital stock of 3,000,000 shares of common stock having a par value of 25 cents per share. It registered under the Act on December 15, 1969, and also filed a registration statement under the Securities Act of 1933 on Form S-5 covering shares of common stock on that same date (File No. 2-35671). This registration statement was declared effective on July 31, 1970, and the Fund commenced a public offering of shares of its common stock on the date. As of December 1, 1977, the Fund had no outstanding or unclaimed shareholder accounts and no shares of its common stock outstanding.

After being informed by the Fund's investment adviser (J. W. Redmond & Co.) that the size of the Fund and the amount of advisory fees payable to it under the terms of the investment advisory agreement did not make it economically feasible for it to continue to act as investment adviser to the Fund, and after considering various alternatives (including specific reorganization proposals) the Board of Directors of the Fund determined that it would be in the best interest of the Fund's shareholders if the Fund were dissolved and completely liquidated. Accordingly, on March 1, 1977, the Board of Directors approved a proposed Plan of Dissolution and Complete Liquidation (the "Plan") calling for the Fund to dissolve, for the Fund to convert its securities portfolio into cash or cash equivalents, and after paying or providing for all of its liabilities for the Fund to distribute its remaining assets to the shareholders; and recommended that the Plan be submitted to the shareholders. At a Special Meeting of shareholders held on May 12, 1977, the Plan was approved by the holders of more than a majority of the common shares of the Fund. The investment advisory agreement between the Fund and J. W. Redmond & Co. was terminated as of the close of business on May 12, 1977. On May 13, 1977, a Certificate of Dissolution was filed with the Secretary of State of the State of Delaware and dissolution of the Fund was thereby effected. Thereafter, the Fund proceeded to convert its entire securities portfolio into cash and cash equivalents in accordance with the terms of the Plan.

As of May 27, 1977, the Fund's entire portfolio of securities had been converted into cash and cash equivalents in accordance with the Plan. Except for a reserve which has been established to cover the final dissolution expenses of the Fund, all Fund assets have been distributed to Fund shareholders. In addition, all of the Fund's liabilities have been paid or provided for. Furthermore, it has been ascertained that there is no litigation concerning the Fund currently pending.

In conjunction with considering the Plan the Fund's Board of Directors established a reserve to cover expenses expected to be incurred by the Fund in connection with the consideration and pursuit of various reorganization and/or dissolution proposals. The Plan provides that in the event there are any funds remaining in the reserve after all of the Fund's expenses have been satisfied, a final distribution will be made pro rata out of such funds to each shareholder of record as of May 27, 1977. As of December 1, 1977, the amount remaining in such reserve was $9,503 net of accrued expenses. The Fund's management represents that it has no reason to believe that the amount remaining in the reserve will not be sufficient to cover expected additional wind-up expenses, and that it is uncertain whether there will be any enexpended funds available for a final distribution. In the event no such final distribution is made, shareholders of record as of May 27, 1977, will be so notified.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission on its own motion or upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order, which may be made upon appropriate conditions if necessary for the protection of investors, and upon the taking effect of such order the registration of such company shall cease to be in effect.

Notice is hereby given that any interested person may, not later than January 30, 1978, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit, or in case of any attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-599 Filed 1-9-78; 8:45 am]

[8010-01]

[File No. 1-5298]

WABASH, INC.

Notice of Application To Withdraw From Listing and Registration

JANUARY 3, 1978.

The above-named issuer has filed an application with the Securities and Exchange Commission, pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The common stock of Wabash, Inc. (no par value), has been listed for trading on the Amex since November 1, 1966. The New York Stock Exchange, Inc. ("NYSE"), approved the company's application for listing of its common stock on October 17, 1977. Trading in such common stock on the NYSE commenced on October 28, 1977, and concurrently therewith such stock was suspended from trading on the Amex. In making the decision to withdraw its common stock from listing on the Amex, the company considered the direct and indirect costs and expenses incident to maintaining the dual listing on both exchanges. The company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

This application relates solely to the withdrawal from listing and registration on the Amex and shall have no effect upon the continued listing on such common stock on the NYSE. The Amex has posed no objection in this matter.

Any interested person may, on or before January 29, 1978, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission will, on the basis of the application and any other information submitted to it, issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-600 Filed 1-9-78; 8:45 am]

[8025-01]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 30, Rev. 15; Amdt. 17]

DELEGATION TO CONDUCT PROGRAM

Activities in Field Offices

Delegation of authority No. 30, revision 15, republished in the FEDERAL REGISTER on February 25, 1976 (41 FR 8240), as amended (41 FR 16234, 17829, 28049, 36702, 47610, 50883; 42 FR 56990, 59153, 61347; and 43 FR 55, is hereby further amended to increase the approval authority for certificates of competency.

Accordingly, delegation of authority No. 30, revision 15, part VI, section A, is amended as set forth below:

PART VI—PROCUREMENT ASSISTANCE PROGRAM (PA)

SECTION A—CERTIFICATE OF COMPETENCY APPROVAL AUTHORITY

1. With the exception of re-referred cases, to approve applications for certificates of competency up to but not exceeding $500,000 bid value received from small business concerns located within the geographical jurisdiction:

(a) Regional Director.

(b) Assistant Regional Director for Procurement Assistance.

(c) District Directors, New York and Newark District offices (DO's) only (not exceeding $100,000).

(d) Assistant District Directors for Procurement Assistance New York and Newark DO's only (not exceeding $100,000).

* * * * *

Effective date: January 10, 1978.

Dated December 29, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-533 Filed 1-9-78; 8:45 am]

[4710-02]

DEPARTMENT OF STATE

Agency for International Development

BOARD FOR INTERNATIONAL FOOD AND AGRICULTURAL DEVELOPMENT

Meeting; Correction

In 42 FR 63984, December 21, 1977, AID announced a meeting of the Board for International Food and Agricultural Development to be held on

January 9, 1978. The purpose of this notice is to indicate that the date of the meeting has been changed to January 26, 1978.

Dated: January 3, 1978.

ERVEN J. LONG,
Federal Officer, Board for International Food and Agricultural Development.

[FR Doc. 70-540 Filed 1-9-78; 8:45 am]

[4810-22]

DEPARTMENT OF THE TREASURY

Customs Service

[054578]

CIBA-GEIGY CORP.

Receipt of Petition To Revoke Duty-Free Treatment for Technical Chlorobenzilate Imported From Israel

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

ACTION: Notice of receipt of American manufacturer's petition.

SUMMARY: The Customs Service has received a petition from an American manufacturer of chemicals requesting that Technical Chlorobenzilate not be granted free entry under the Generalized System of Preferences (GSP) when imported from Israel. The petitioner does not believe that the product meets the value-added requirements set forth in the law for duty-free treatment under GSP.

DATE: Interested persons may comment on this petition, and comments must be received on or before: February 9, 1978.

ADDRESS: Comments may be addressed to the Commissioner of Customs, Attention: Special Projects and Programs Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Ronald W. Gerdes, Attorney, Special Projects and Programs Branch, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5786.

SUPPLEMENTAL INFORMATION:

BACKGROUND

A petition has been filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), by Ciba-Geigy Corp. of Ardsley, N.Y., an American manufacturer of chemicals. The petitioner requests that Technical Chlorobenzilate not be granted free entry under the Generalized System of Preferences (GSP) when imported from Israel. The petitioner believes that the product does not meet the "value-added" requirements to qualify for free entry under GSP.

Under section 503 of the Trade Act of 1974 (19 U.S.C. 2463), in order to qualify for duty-free entry under the Generalized System of Preferences, 35 percent of the final appraised value of the merchandise must consist of either direct costs of processing operations performed in the beneficiary developing country or of materials produced in the beneficiary developing country. The petitioner indicates that in his view the products in question should be classified under item 405.15 of the Tariff Schedules of the United States with appraised value based on the American Selling Price. The petitioner further indicates that as a producer of these materials in the United States it has supplied information as to the domestic selling price for the merchandise to the Area Director of Customs of the New York Seaport. The petitioner then describes the manufacturing process for the goods and indicates that on the best information at its disposal the raw materials for the manufacture of the goods, namely dichlorobenzil and diethylsulfate, are imported into Israel. It does not appear that any substantial amount of materials, which could be considered to have been produced in Israel, are used in the manufacture of the product. Additionally, based upon petitioner's knowledge of the production process, petitioner does not believe that the "direct costs of processing operations" are sufficient to reach 35 percent of the American Selling Price for the merchandise.

This notice is being published in accordance with § 175.21(a) of the Customs Regulations (19 CFR 175.21(a)).

COMMENTS

Under § 175.21(b) of the Customs Regulations copies of the submitted petition are available for public inspection by interested parties. Copies may be obtained during regular business hours from Mr. Ronald W. Gerdes, Attorney, Special Projects and Programs Branch, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5786.

G. R. DICKERSON,
Acting Commissioner of Customs.

[FR Doc. 78-534 Filed 1-9-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[Notice No. 562]

ASSIGNMENT OF HEARINGS

JANUARY 5, 1978.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

FD 28464, Louisville & Nashville Railroad Co. construction of connecting track over Grand Trunk Western Railroad Co. at Munster, Lake County, Ind. and FD 27972, Louisville & Nashville Railroad Co.—trackage rights—over Grand Trunk Western Railroad Co., South Bend Subdivision, between Munster, Lake County, Ind., and Thornton Junction, Cook County, Ill., now assigned March 6, 1978, at South Holland, Ill., is cancelled and reassigned for March 6, 1978 (1 week) at Dalton, Ill. and will be held at the Dalton Municipal Building, Council Room, 14014 Park Avenue.

MC 143488 (Sub-No. 1), Doonan Truck & Equipment, Inc., now being assigned February 14, 1978 (2 days), at Kansas City, Mo., in a hearing room to be later designated.

MC 143112, Western Kansas Express, Inc., now being assigned for continued hearing on the 22d day of February 1978 (2 days), at Wichita, Kans. in a hearing room to be later designated.

AB 12 (Sub-No. 20), Southern Pacific Transportation Co.—abandonment of its line of railroad—in Victoria, Goliad, Bee, San Patricio, Jim Wells, Brooks, and Hidalgo Counties, Tex.

FD 28024 Southern Pacific Transportation Co.—trackage rights—over Missouri Pacific Railroad Co. between Harlingen and Placedo, in Cameron and Victoria Counties, Tex. and FD 28078 Southern Pacific Transportation Co.—construction and operation between lines of Missouri Pacific Railroad Co. and the Texas Mexican Railway Co. at Robstown, Nueces County, Tex., now being assigned for continued hearing February 27, 1978 (1 week), at Alice, Tex., in a hearing room to be later designated.

MC 5623 (Sub-No. 33), Arrow Trucking Co., now being assigned February 22, 1978 (1 day), for hearing in Dallas, Tex., in a hearing room to be later designated.

MC 74321 (Sub-No. 131), B. F. Walker, Inc., now being assigned February 23, 1978 (1 day), for hearing in Dallas, Tex., in a hearing room to be later designated.

MC 83835 (Sub-No. 145), Wales Transportation, Inc., now being assigned February 24, 1978 (1 day), for hearing at Dallas, Tex., in a hearing room to be later designated.

MC 117851 (Sub-No. 23), John Cheeseman Trucking, Inc., now assigned February 14, 1978, at Washington, D.C., is postponed to February 15, 1978, at the Offices of the Interstate Commerce Commission in Washington, D.C.

MC 141641 (Sub-No. 6), Wilson Certified Express, Inc., now being assigned March 7, 1978 (1 day), for hearing in Chicago, Ill., in a hearing room to be later designated.

MC 107515 (Sub-No. 1040), Refrigerated Transport Co., Inc., now being assigned March 8, 1978 (1 day), for hearing in Chicago, Ill., in a hearing room to be later designated.

MC-F-13172 C. P. Brown and I. C. Hemmings—Control—Chicago Express Co., Inc., and MC 68656 (Sub-No. 3), Chicago Express Co., Inc., now being assigned March 9, 1978 (2 days), for hearing in Chicago, Ill., in a hearing room to be later designated.

AB (Sub-No. 42), Illinois Central Gulf Railroad Co. abandonment in Green, Monroe, Brown, Johnson, Morgan, and Marion Counties, Ind., now being assigned March 13, 1978 (1 week), for hearing in Indianapolis, Ind., in a hearing room to be later designated.

MC 133095 (Sub-No. 157), Texas Continental Express, Inc., now assigned January 17, 1978, at Albuquerque, N. Mex., will be held in Room 1410, Federal Building, 517 Gold Avenue SW.

MC 83835 (Sub-No. 144), Wales Transportation, Inc., now assigned January 19, 1978, at Dallas, Tex., will be held in the Baker Hotel, Roman Room, 1400 Commerce Street.

MC 57697 (Sub-No. 7), Lester Smith Trucking, Inc., now being assigned March 8, 1978 (3 days), at Denver, Colo., in a hearing room to be later designated.

MC 114632 (Sub-No. 120), Apple Lines, Inc., now being assigned March 6, 1978 (2 days), at Denver, Colo., in a hearing room to be later designated.

MC 115826 (Sub-No. 272), W. J. Digby, Inc., now being assigned February 22, 1978 (1 day), at Denver, Colo., in a hearing room to be later designated.

MC-F-13020, Gray Moving & Storage, Inc.—purchase—American Security Van Lines and MC 112070 (Sub-No. 14), Gray Moving & Storage, Inc., now being assigned March 1, 1978 (3 days), at Denver, Colo., in a hearing room to be later designated.

MC 58035 (Sub-No. 12), Trans-Western Express, Ltd., now assigned January 17, 1978, at Denver, Colo., will be held in Division 2, Court of Appeals, 1961 Stout Street.

MC 134467 (Sub-No. 21), Polar Express, Inc., now assigned January 19, 1978, at Denver, Colo., will be held in Division 2, Court of Appeals, 1961 Stout Street.

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

[FR Doc. 78-554 Filed 1-9-78; 8:45 am]

[7035-01]

[Finance Docket No. 28620]

CHICAGO, MADISON & NORTHERN RAILWAY CO.

Acquisition and Operation—Over the Illinois Central Gulf Railroad Co. in Stephenson County, Ill., and Green and Dane Counties, Wis.

Chicago, Madison & Northern Railway Co., Suite 900, 16 North Carroll Street, Madison, Wis. 53701, represented by Mr. John F. Jenswold, President, Chicago, Madison & Northern Railway Co., Suite 900, 16 North Carroll Street, Madison, Wis. 53701, hereby give notice that on the 3d day of November 1977, as supplemented, December 8, 1977, it filed with the Interstate Commerce Commission at Washington, D.C., an application under section 1(18) of the Interstate Commerce Act for an order approving and authorizing the acquisition and operation of a line of railroad presently owned and operated by the Illinois Central Gulf Railroad Co. in the States of Illinois and Wisconsin, from Freeport, Ill., northward to Madison, Wis., which application is assigned Finance Docket No. 28620.

Applicant proposes to acquire and operate a line of railroad presently operated by the Illinois Central Gulf Railroad Co. in the County of Stephenson, State of Illinois, and in the Counties of Green and Dane, Wis., a distance of approximately 60 miles.

This application is made contingent upon the issuance of an appropriate certificate of public convenience and necessity by the Commission in Docket No. AB-43 (Sub-No. 28) of the Illinois Central Gulf Railroad Co. to abandon its line of railroad from railroad milepost 2.5 near Freeport, Ill., to milepost 61.37 at Madison, Wis., a distance of 58.87 miles in Stephenson County, Ill., and Green and Dane Counties, Wis.

In the opinion of the applicant, the granting of the authority sought will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), Implementation—National Environmental Policy Act, 1969, 352 ICC 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See Implementation—National Environmental Policy Act, 1969, supra at p. 487.

Pursuant to the provisions of the Interstate Commerce Act, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, D.C. 20423, and the aforementioned counsel for applicant, within 30 days after date of first publication in a newspaper of general circulation. Any interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

Chicago, Madison & Northern Railway Co.

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

[FR Doc. 78-555 Filed 1-9-78; 8:45 am]

[7035-01]

FOURTH SECTION APPLICATIONS FOR RELIEF

JANUARY 5, 1978.

These applications for long- and short-haul relief have been filed with the ICC.

Protests are due at the ICC on or before January 25, 1978.

FSA No. 43485, Traffic Executive Association-Eastern Railroads, Agent's E.R. No. 3061, rail rates on fertilizers and fertilizer compounds, between points in official territory, in Sup. 138 to its tariff E-2009-I, ICC C-1008, to become effective February 4, 1978. Grounds for relief, revised rate structure.

FSA No. 43486, Bangor and Aroostook Railroad Co., on property moving on rail class and commodity rates, between points in Maine on the one hand, and points in the United States and Canada, on the other. Grounds for relief, abandonment of segment of railroad.

By the Commission.

H. G. HOMME, Jr.
Acting Secretary.

[FR Doc. 78-551 Filed 1-9-78; 8:45 am]

[7035-01]

[AB 43 (Sub-No. 26)]

ILLINOIS CENTRAL GULF RAILROAD CO.

Abandonment Near Hardwood, La., and Woodville, Miss., in West Feliciana Parish, La., and Wilkinson County, Miss.

DECEMBER 29, 1977.

The Commission's Section of Energy and Environment has prepared an addendum to the environmental threshold assessment survey for the above-entitled proceeding to reflect the results of staff consultations with the Advisory Council on Historic Preservation. The addendum recommends two conditions which would protect the historic integrity of the rail right-of-way should the abandonment be authorized.

Copies of the addendum are available upon request to the Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7011.

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

[FR Doc. 78-552 Filed 1-9-78; 8:45 am]

[7035-01]

[AB 9 (Sub-No. 9)]

ST. LOUIS-SAN FRANCISCO RAILWAY CO.

Abandonment Near East Lynne and Bolivar in Cass, Johnson, Henry, St. Clair, Hickory, and Polk Counties, Mo.

DECEMBER 27, 1977.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the St. Louis-San Francisco Railway Co., of its line between East Lynne and Bolivar, Mo., a distance of 109.32 miles, if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment.

It was concluded, among other things, that (1) abandonment of the line will obviate the need to relocate four segments of the right-of-way, totaling 16.22 miles, which will be inundated by the U.S. Army Corps of Engineers' Harry S. Truman Dam and Reservoir project; (2) diversion of rail traffic to motor carrier would not result in a significant increase in energy consumption, air pollution, or noise levels; (3) abandonment would not have a serious adverse impact on rural and community development, so there are no indications of definite development plans to be affected; and (4) the right-of-way is suitable for use for other public purposes.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, telephone 275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before February 1, 1978.

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the environmental issues in the proceeding and does not purport to resolve the issue of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

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

[FR Doc. 78-553 Filed 1-9-78; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

CONTENTS

[6320-01]

1

CIVIL AERONAUTICS BOARD.

Notice of addition of item to the January 11, 1978 meeting; M-92, amdt. 2 01/05/78.

TIME AND DATE: 10 a.m., January 11, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 3a. Docket 30552, Air Manila Renewal Application (OGC, BIA).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: The Board's public target date on this item is January 15, 1978. So that the Board can consider this item in a timely manner, the following Members have voted that agency business requires the addition of this item to the agenda of January 11, 1978 and that no earlier announcement of this addition was possible:

Chairman Alfred E. Kahn
Acting Vice Chairman G. Joseph Minetti
Member Richard J. O'Melia
Member Lee R. West
Member Elizabeth E. Bailey

[S-45-78 Filed 1-6-78; 3:52 pm]

[6320-01]

2

CIVIL AERONAUTICS BOARD.

Notice of deletion of item from the January 5, 1978 meeting; M-91, amdt. 2. 1/4/78.

TIME AND DATE: 10 a.m., January 5, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 6. Docket 29952, Pan American's application for New York-Dallas/Ft. Worth fill-up authority (Memo No. 6980-G, BOR).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Pan American has advised BOR staff by phone that it intends to file an application shortly seeking to suspend service on its New York-Dallas/Ft. Worth-Honolulu route. This filing will moot the staff's recommended action in Memo No. 6980-G (Pan American's application for New York-Dallas/Ft. Worth fill-up authority). Accordingly, the following Board Members have voted that agency business requires the deletion of Item 6 from the January 5 agenda and that no earlier announcement of this deletion was possible:

Chairman Alfred E. Kahn
Vice Chairman Richard J. O'Melia
Member G. Joseph Minetti
Member Lee R. West
Member Elizabeth E. Bailey

[S-46-78 Filed 1-6-78; 3:52 pm]

[6355-01]

3

CONSUMER PRODUCT SAFETY COMMISSION.

LOCATION: 3rd Floor Hearing Room, 1111 18th St., NW., Washington, D.C.

TIME AND DATE: January 12, 1978, 9:30 a.m.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Matchbook Certification Regulation.* At this meeting, the Commission will consider specific issues related to a proposed matchbook certification regulation. The regulation proposes to establish requirements for certification for matchbooks subject to the Safety Standard for Matchbooks (16 CFR 1202; 42 FR 22656).

2. *Sleepwear Modifications.* The Commission will consider issues related to finalizing amendments to the standards for the flammability of children's sleepwear sizes 0-6X (FF 3-71) and 7-14 (FF 5-74). The Commission proposed these amendments on October 26, 1977 (42 FR 56568).

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Sheldon D. Butts, Assistant Secretary, suite 300, 1111 18th St. NW., Washington, D.C. 20207 (202-634-7700)

[S-43-78 Filed 1-6-78; 2:28 pm]

[1410-01]

4

COPYRIGHT ROYALTY TRIBUNAL.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 42 FR 62019, December 8, 1977.

PREVIOUSLY ANNOUNCED DATE AND TIME OF MEETING: Monday, January 30, 1978, 10 a.m. and Tuesday, January 31, 1978, 10 a.m.

CHANGES IN MEETING: The hearings scheduled for January 30 and 31 have been postponed and are rescheduled commencing on Tuesday, March 7, 1978, at 10 a.m.

CONTACT PERSON FOR MORE INFORMATION:

Thomas C. Brennan, Chairman, Copyright Royalty Tribunal, 202-653-5175.

THOMAS C. BRENNAN,
Chairman.

[S-42-78 Filed 1-6-78; 2:28 am]

[6712-01]

5

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: Follows 9:30 a.m. Open Commission Meeting, Thursday, January 12, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Closed Commission Meeting.

MATTERS TO BE CONSIDERED:

Agenda, item No., and subject

General—1 (69790)—Application for review of ruling which partially denied the Freedom of Information Act request filed by Xerox Corp. relating to procurement action RFP 77-34 (FOIA Control No. 7-96).

Complaints and Compliance—1 (69753)—Results of investigation into the operations of KVTT(FM), Dallas, Tex.

Complaints and compliance—2 (69785)—Appeal of an Administrative Law Judge order compelling an immunized witness to

testify in the payola/plugola hearings (Docket No. 16648).

Hearing—1 (69779)—Application for review in the Syracuse, New York UHF Television proceeding (Docket No. 20599) submitted by the Chief, Broadcast Bureau.

Hearing—2 (69781)—Motion for oral argument filed by Radio Stamford, Inc. in the Stamford, Conn., standard broadcast comparative renewal proceeding (Docket Nos. 19872 and 19873).

Hearing—3 (69792)—Application for review in the Cicero, Ill. standard boradcasting proceeding (Docket Nos. 21247-53).

Hearing—4 (69794)—Motion to amend the application of Folkways Broadcasting Co., Inc., in the Harriman, Tenn., FM proceeding (Docket No. 18912).

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC Public Information Office, telephone No. 202-632-7260.

Issued: January 5, 1978.

[S-35-78 Filed 1-6-78; 9:01 am]

[6712-01]

6

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE OF MEETING: 9:30 a.m., Wednesday, January 11, 1978.

PLACE: Room 856, 1919 M Street, NW., Washington, D.C.

STATUS: Special Open Commission Meeting.

MATTERS TO BE CONSIDERED:

Agenda, item No., and subject

Common Carrier—1 (83900)—Application of AT&T, et al. for submarine cables between the continental United States, Puerto Rico/Virgin Islands, Venezuela and Brazil (File Nos. I-P-C-5, I-P-C-5-A and S-C-L-47).

Common Carrier—2—AT&T Transmittal No. 12790, reducing rates for Dataphone Digital service (DDS), AT&T Tariff FCC No. 267, at 2.4, 4.8, 9.6 and 56 kilobits per second.

Common Carrier—3—Modification of procedures in Docket No. 20814 investigation into AT&T's Multi-Schedule Private Line (MPL) tariff.

Common Carrier—4—Recommendations on the Fee Refund Program.

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC Public Information Officer, telephone No. 202-632-7260.

Issued: January 5, 1978.

[S-36-78 Filed 1-6-78; 9:01 am]

[6712-01]

7

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: Follows 9:30 a.m. Special Open Meeting Wednesday, January 11, 1978.

PLACE: Room 856, 1919 M Street, NW., Washington, D.C.

STATUS: Open Commission Meeting.

MATTERS TO BE CONSIDERED:

Agenda, item No., and subject

General—1 (83835)—Amendment of Part 15 of the Commission's rules to prohibit manufacture of UHF receivers, after May 1, 1979, with noise figures in excess of 14 dB (Docket No. 21010).

General—2 (84022)—Inquiry from Microwave Associates, Burlington, Mass.: Does sale of earth satellite receivers to private individuals for reception of broadcast satellites signals violate Section 605 of the Communications Act?

Safety and Special Radio Services—1 (83987)—Simplification of the licensing and call sign assignment systems in the Amateur Radio Service (Docket No. 21135).

Safety and Special Radio Services—2 (83990)—Amendment of Part 87 of the Commission's rules to permit an additional advisory station at landing areas to separate helicopter and fixed-wing aircraft.

Assignment of License and Transfer of Control—1 (84096)—Applications to exchange ownership of TV Stations in Washington, D.C. (WJLA) and Oklahoma City, Okla. (KOCO) and petitions to deny the transfer.

Common Carrier—1 (83997)—Amendment of Section 61.72 of the Commission's rules to delete the requirement of posting tariffs in toll centers.

Common Carrier—2 (83999)—Amendment of Sections 63.54 and 64.601 of the Commission's rules concerning interrelationships between common carriers and cable television facilities.

Common Carrier—3 (84026)—Memorandum Opinion and Order to Show Cause why the Commission should not revoke the license of Seaway Communications, Ship Bottom, N.J. (DPLMRS Station KUS413).

Common Carrier—4 (84028)—Modification of depreciation rates for General Telephone Co. of The Southeast, New York Telephone Co., Northwestern Bell, et al.

Cable Television—1 (83824)—Petitions for stay of the Commission decision in *Vanhu, Inc.* (Seattle, Wash.) filed by United Community Antenna Systems, Inc.; and Tele-Vue Systems, Inc. and KIRO, Inc's objections.

Cable Television—2 (84017)—Petition for waiver of Section 78.11(a) of the Commission's rules in the Cable Television Relay Service (CARS), filed by Bend Community Antenna Co. on October 19, 1977.

Cable Television—3 (84060)—Reconsideration of Report and Order dealing with use of predicted field strength contours for cable television regulation, and expanding carriage of UHF stations on cable systems (Docket No. 20496).

Cable Television—4 (84062)—Petition for special relief, filed by CPI, operator of a cable television system serving North Little Rock and Sherwood, Ark. and opposition pleadings filed by Combined Communications Corp., (KARK-TV), and Leake TV, Inc., (KATV), both of Little Rock, Ark.

Cable Television—5 (84064)—Petition for partial reconsideration, filed by Clearview TV Cable of Enumclaw, Inc., Enumclaw, Wash., (CSR-948).

Cable Television—6 (84066)—Petition for reconsideration (CSR-1164), filed by Televents, Inc., Lafayette, Calif., regarding waiver of signal carriage rules and opposition pleadings filed by Miami Valley Broadcasting (KTVU), Oakland, Calif., and KQED, Inc., (KQEC) San Francisco, Calif.

Cable Television—7 (84068)—Petition filed by Concerned Citizens Coalition for Open Media of Worcester to deny Telepromter's application for a cable television system in Worcester, Mass.

Cable Television—8 (84079)—Petition for reconsideration; filed by Blytheville TV Cable Co., Blytheville, Ark. and opposition pleading filed by KAIT-TV, Jonesboro, Ark.

Cable Television—9 (84081)—Petition, filed by Texas Community Antennas, Inc. (Nacogdoches Cable TV), directed against the Commission's decision in Texas Community Antennas, Inc. FCC 77-131, 63 FCC 2d 339 (1977).

Renewal—1 (84073)—Analysis of employment information submitted By Colorado broadcast stations subject to the Commission's inquiry regarding NOW's informal objection.

Aural—1 (83803)—Applications for construction permits for new broadcast stations in California Filed by Baker-Smith Communications Co. (Burbank), and A.W.A.R.E. Communicators, Inc., Lotus Communications Corp., Foothill Broadcasting Corp., (Pasadena).

Aural—2 (84001)—Application for FM broadcast construction permit filed by KDHL, Inc., Faribault-Northfield, Minn.; and petition to dismiss the application.

Aural—3 (84071)—Application of Fred H. Baker (Megamedia), KISR-FM, Fort Smith, Ark., for construction permit and request for waiver of Section 73.207 of the Commission's rules.

Aural—4 (84075)—Application for construction permit for new station at Grass Valley, Calif. filed by Nevada County Broadcasters. (BP-20079) and petition to deny filed by Portland Broadcasters, Inc.

Aural—5 (84077)—Applications for major changes in the facilities of KZSU, Stanford, Calif. (BPED-2049) and KFJC, Los Altos Hills, Calif. (BPED-2195), both noncommercial educational FM stations.

Aural—6 (84083)—Application for noncommercial educational FM construction permit filed by The University of Massachusetts, Boston, Mass. (BPED-1807).

Aural—7 (84085)—Application for construction permit for new commercial FM station in Bozeman, Mont., filed by Burt H. Oliphant (BPH-9670), Western Media, Inc. (BPH-9772), and Northern Sun Corp. (BPH-9841).

Aural—8 (84093)—Application for review of grant of KLUC Broadcasting Co. (KLUC) North Las Vegas, Nev. (BP-20253).

Complaints and Compliance—1 (83888)—Request for a declaratory ruling clarifying the phrase "program or any part thereof" in Section 325(a) of the Communications Act.

Complaints and Compliance—2 (84087)—Application for review, filed by WELK, Inc., Charlottesville, Va., of a May 18, 1977 denial of its petition to eliminate or reduce forfeiture.

Complaints and Compliance—3 (84089)—Application for review, filed by Tri-State (KVDB) Sioux Center, Iowa of a Septem-

ber 20, 1977 Broadcast Bureau order assessing a forfeiture.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC Public Information Officer, telephone No. 202-632-7260.

Issued: January 4, 1978.

[S-37-78 Filed 1-6-78; 9:01 am]

[6210-01]

8

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 60, January 3, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Thursday, January 3, 1978.

CHANGES IN THE MEETING: Addition of the following closed item to the meeting: Personnel appointments within the Board's staff.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

JANUARY 5, 1978.

[S-38-78 Filed 1-6-78; 10:26 am]

[4910-58]

9

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 9:30 a.m., Thursday, January 12, 1978.

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Special Investigation Report.*—An Overview of a Bulk Gasoline Delivery Fire and Explosion, Gadsden, Ala.

2. *Pipeline Accident Report.*—Consolidated Gas Supply Corp., Propane Pipeline Rupture and Fire, Ruff Creek, Pa., July 20, 1977.

3. *Marine Accident Report.*—Tank Barge B-924 Fire and Explosion with Loss of Life at Greenville, Miss., November 13, 1975.

CONTACT PERSON FOR MORE INFORMATION:

Sharon Flemming, 202-426-8860.

[S-40-78 Filed 1-6-78; 11:38 am]

[4410-01]

10

UNITED STATES PAROLE COMMISSION.

National Commissioners (the Commissioners presently maintaining offices at Washington, D.C. Headquarters).

TIME AND DATE: Tuesday, January 17, 1978; 9:30 a.m.

PLACE: Room 338, Federal Home Loan Bank Board Building, 320 First Street NW., Washington, D.C. 20537.

STATUS: Closed—Pursuant to 5 U.S.C. 552(b)(10) and 28 CFR 16.205(b)(1).

MATTERS TO BE CONSIDERED: Referrals from regional directors of approximately 10 cases in which inmates of Federal Prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION:

Lee H. Chait, Analyst, 202-724-3094.

[S-39-78 Filed 1-6-78; 2:28 pm]

[7710-12]

11

U.S. POSTAL SERVICE, BOARD OF GOVERNORS.

NOTICE OF VOTE TO CLOSE A MEETING

On January 5, 1978, the Board of Governors of the U.S. Postal Service unanimously voted to close to public observation a portion of its meeting currently scheduled for February 7, 1978. Each of the members of the Board voted in favor of partially closing the meeting, which is expected to be attended by the following persons: Governors Wright, Holding, Ching, Codding, Hardesty, and Robertson; Postmaster General Bailar; Deputy Postmaster General Bolger; Secretary to the Board Cox; and Senior Assistant Postmaster General (Employee and Labor Relations) Conway.

The portion of the meeting to be closed will consist of a discussion of the Postal Service's possible strategies and positions in anticipated collective bargaining negotiations involving parties to the 1975 National Agreement between the Postal Service and four labor organizations representing certain postal employees, which is scheduled to expire in July of 1978.

The Board of Governors is of the opinion that public access to any discussion of possible strategies that Postal Service management may decide to adopt, or the positions it may decide to assert, in any collective bargaining sessions that may take place would be likely to frustrate action to carry out those strategies or assert those positions successfully. In making this determination, the Board is aware that the effectiveness of the collective bargaining process in labor-management relations has traditionally depended on the ability of the parties to prepare strategies and formulate positions without prematurely disclosing them to the opposite party. The public has a particular interest in the integrity of this process as it relates to the Postal Service, since the outcome of the negotiations between the Postal Service and the various postal unions, and consequently the cost, quality and efficiency of postal operations, may be adversely affected if the process is altered.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, the portion of the meeting to be closed is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. § 552b(b)), because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under chapter 12 of title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of title 39, United States Code. The Board has determined further that, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, code of Federal Regulations, the discussion is exempt, because it is likely to disclose information the premature disclosure of which is likely to frustrate significantly proposed Postal Service action. Finally, the Board of Governors has determined that the public has an interest in maintaining the integrity of the collective bargaining process and that the public interest does not require that the Board's discussion of its possible collective bargaining strategies and positions be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the U.S. Postal Service has certified that in his opinion the portion of the meeting to be closed may properly be closed to public observation, pursuant to sections 552b(c)(3) and 552b(c)(9)(B) of title 5 and section 410(c)(3) of title 39, United States Code, and sections 7.3(c) and 7.3(i) of title 39, Code of Federal Regulations.

LOUIS A. COS.
Secretary.

[S-39-78 Filed 1-6-78; 10:26 am]

[7910-01]

12

THE RENEGOTIATION BOARD.

DATE AND TIME: Tuesday, January 17, 1978; 10 a.m.

PLACE: Conference Room, 4th Floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Matters 1 through 3 are open to the public; status is not applicable to matters 4 and 5.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of meeting held January 10, 1978, and other Board meetings, if any.

2. Recommended Clearances Without Assignment (List No. 1892):

A. P. R. Mallory Co., Inc., fiscal year ended December 31, 1975.

B. Fansteel, Inc., fiscal years ended December 31, 1974 and 1975.

C. Varian Associates, fiscal years ended September 30, 1974 and 1975.

D. Etowah Manufacturing Co., fiscal years ended December 31, 1972, 1973, 1974, and 1975.

D-1. Dixie Tool & Die Co., fiscal years ended June 30, 1973, 1974, and 1975.

D-2. Alabama Tool Co., fiscal years ended December 31, 1973, 1974, and 1975.

E. Union Carbide Corp., fiscal years ended December 31, 1974, and 1975.

E-1. Union Carbide U.K. Ltd., fiscal years ended December 31, 1974, and 1975.

E-2. Union Carbide Canada Ltd., fiscal years ended December 31, 1974, and 1975.

E-3. Union Carbide Deutchland GMBH, fiscal years ended December 31, 1974, and 1975.

3. Special Accounting Agreement:

A. Security Pacific National Bank, fiscal years ended December 31, 1971, through 1975.

B. Security Pacific Leasing Co., fiscal year ended December 31, 1975.

C. Security Pacific National Leasing, Inc., fiscal years ended December 31, 1973, 1974, and 1975.

4. Approval of Agenda for meeting to be held January 31, 1978.

5. Approval of Agenda for other meetings, if any.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, Washington, D.C. 20446, 202-254-8277.

Dated: January 6, 1978.

GOODWIN CHASE,
Chairman.

[S-44-78 Filed 1-6-78; 3:52 pm]

[8120-01]

13

TENNESSEE VALLEY AUTHORITY. (Meeting No. 1187.)

TIME AND DATE: 10:30 a.m., Thursday, January 12, 1978.

PLACE: Conference Room B-32, West Tower, 400 Commerce Avenue, Knoxville, Tenn.

STATUS: Open.

MATTERS TO BE CONSIDERED:

A—Personnel Actions.—1. Change of status, Nathaniel B. Hughes, Jr., from Assistant Manager to Manager of the Office of Power, Chattanooga, Tenn.

B—Consulting and Personal Service Contracts, None.

C—Purchase Awards.—1. Amendment to contract 70P60-92203 with General Electic Co., Chattanooga, Tenn., for spare parts for Browns Ferry Nuclear Plant.

2. Req. No. 5574-27, Rental of IBM equipment for any TVA project or warehouse.

3. Req. No. 54-3371 (partial reissue), indefinite quantity term contract for carbon steel, warehouse quantities for any TVA nuclear project.

4. Req. No. 558532, Indefinite quantity term contract for pine and oak lumber for proposed Phipps Bend Nuclear Plant.

5. Req. No. 822080, Requirement contract for metal cable trays and fittings for Hartsville and Phipps Bend Nuclear Plants.

6. Req. No. 823057, Prestressed concrete water pipe for proposed Yellow Creek Nuclear Plant.

7. Req. No. 822326, 550- and 169-kV power circuit breakers for proposed Phipps Bend Nuclear Plant.

8. Req. No. 540503, Indefinite quantity term contract for computer and related services for the Computing Services Branch.

9. Req. No. 554789, Rear-end dump trucks for construction pool equipment.

10. Amendment to contract 75k61-86227-2 with Bristol Steel & Iron Works, Inc., Bristol, Va., for structural steel containment vessels for Hartsville and Phipps Bend Nuclear Plants.

11. Req. No. 539668, Receiving, transporting, storing and installing nuclear steam system supply components for proposed Phipps Bend Nuclear Plant.

12. Sales invitation No. 3738, Sale of scrap stator colls, cupro-nickel, and ACSR located at Cherokee Hydro, Kingston and Widows Creek Steam Plants.

D—Project Authorizations.—1. No. 3294, Electrostatic precipitators for Paradise Steam Plant Units 1-3.

2. No. 2967.3, Installation of supervisory control masters in the Wilson Hydro and South Nashville, Tenn., area dispatch and control centers and remote supervisory control terminals at various 500-kV and 161-kV substations.

3. No. 3296, Construction equipment maintenance center for construction equipment major component repairs and selected equipment overhauls.

E—Fertilizer Items, None.

F—Power Items.—1. Lease and amendatory agreement with Cherokee Electric Cooperative, Centre 46-kV substation.

2. Lease and amendatory agreement with city of Knoxville, Tenn., Knox, Lonsdale, and North Knoxville 161-kV substations.

3. Lease and amendatory agreement with the city of Athens, Tenn., Englewood and South Athens 69-kV substations.

4. New power contract with the city of Albertville, Ala.

5. New power contract with the Metropolitan Government of Nashville and Davidson County, Tenn.

6. Change in funding authority in exploration and milling agreement with Federal-American Partners, uranium properties in Gas Hills area of Wyoming.

7. Agreement with Electric Power Research Institute, Inc., research project relating to nitrogen oxide control for coal-fired boilers.

G—Real Property Transactions.—1. Grant of 40-year recreation easement to the town of Big Sandy, Tenn., affecting 14.1 acres of Kentucky Reservoir land in Benton County, Tenn., tract XTGIR-62E.

2. Grant of permanent easement to the State of Tennessee for state governmental purposes affecting TVA's Nashville Power Service Center property in Davidson County, Tenn.

3. Filing of condemnation suits.

H—Unclassified.—1. Resolution relating to settlement agreement with Daugherty & Daugherty Construction, Inc., contract dispute proceeding.

2. Letter agreement with The Commonwealth of Virginia, Commission of Game and Inland Fisheries, relating to study of endangered mollusks.

3. Supplemental agreement with State of Alabama for conduct of an orphan mine reclamation demonstration.

4. Supplemental agreement among TVA, Tennessee Department of Education, and local school systems in the Hartsville Nuclear Plants project area.

Dated: January 5, 1978.

CONTACT PERSON FOR MORE INFORMATION:

John Van Mol, Director of Information, or a member of his staff can respond to requests for Information about this meeting. Call 615-632-3257, Knoxville, Tenn. Information is also available at TVA's Washington Office, 202-566-1401.

[S-34-78 Filed 1-6-78; 9:01 am]

federal register

TUESDAY, JANUARY 10, 1978
PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

■

HEALTH MANPOWER SHORTAGE AREAS

Criteria for Designation

[4110-83]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 5—DESIGNATION OF HEALTH MANPOWER SHORTAGE AREAS

Establishment of Criteria

AGENCY: Public Health Service, HEW.

ACTION: Interim-Final Regulations.

SUMMARY: These regulations establish criteria for designation of health manpower shortage areas pursuant to section 332 of the Health Professions Educational Assistance Act of 1976. Entities in these areas will be eligible to apply for assignment of National Health Service Corps personnel. These areas will also be eligible service areas for Public Health Service scholarship and loan repayment programs, and will be used in connection with other Public Health Service programs.

DATES: These regulations are effective immediately. As discussed below, comments on the regulations are invited, but must be received on or before February 24, 1978 in order to be considered.

ADDRESSES: Written comments, preferably in triplicate, should be addressed to the Director, Bureau of Health Manpower, Health Resources Administration, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782. All comments received will be available for public inspection and copying at the Office of Program Operations, Bureau of Health Manpower, Room 4-22, at the above address, weekdays (Federal holidays excepted), between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT:

Richard C. Lee, Chief, Shortage Area Designation Section, Manpower Analysis Branch, Bureau of Health Manpower, Room 4-41, at the above address, telephone 301-436-6764.

SUPPLEMENTARY INFORMATION: On October 12, 1976, a new section 332 entitled "Designation of Health Manpower Shortage Areas" was added to the Public Health Service Act (42 U.S.C. 254e), by Pub. L. 94-484, the Health Professions Educational Assistance Act of 1976. This section required that the Secretary of Health, Education, and Welfare establish, by regulation, criteria for the designation of health manpower shortage areas and, subsequently designate areas based upon these criteria. Public or nonprofit entities in (or with a demonstrated interest in), the areas designated pursuant to these criteria will be eligible to apply for the assignment of members of the National Health Service Corps to provide health services in or to the areas (see section 333(a) of the Public Health Service Act). These areas will also be the eligible service areas for PHS scholarship and loan repayment programs (see sections 735(c), 741(f), 751, and 759 of the Act). The areas designated under these regulations thus will supersede the lists of areas previously designated under sections 329(b) and 741(f) of the Public Health Service Act. These areas will also be used for other purposes under the Public Health Service Act (see sections 788(a), 788(f), 822 of the Act).

As required by section 332(b), the regulations set forth below include criteria for the designation of areas, population groups, medical facilities, and other public facilities as health manpower shortage areas. As also required, practitioner-to-population ratios, infant mortality rates, health status, access to health services, other indicators of need, and the percentage of physicians who are foreign medical graduates have been considered as factors in establishing these criteria.

The criteria for designation of health manpower shortage areas have been developed separately according to the type of health manpower for which a shortage may be indicated. The types of manpower shortage areas for which criteria are being included at the present time are:

A. Areas with shortages of primary medical care manpower;

B. Areas with shortages of dental manpower;

C. Areas with shortages of psychiatric manpower;

D. Areas with shortages of vision care manpower;

E. Areas with shortages of podiatric manpower;

F. Areas with shortages of pharmacy manpower; and

G. Areas with shortages of veterinary manpower.

The above types of health manpower are those which are currently available for placement by the National Health Service Corps (as a result of recruitment activities and scholarship programs), and/or are currently eligible for health professions student loan cancellation and repayment programs under the Public Health Service Act. The possibility that there exist significant shortages of other types of health manpower is currently being explored, and criteria for other types of health manpower shortage may be developed in the future and included within part 5.

Criteria contained in the regulations have been chosen so as to identify geographic areas, population groups, and facilities with severe manpower shortages; shortages of a severity that justifies the use of Federal resources for their alleviation. These criteria do not represent adequacy levels, so there may be many areas which do not meet these criteria and yet have inadequate health manpower. The Department has prepared a report setting forth, in more detail, the statistical and programatic basis for the criteria included in part 5. Interested persons can obtain a copy of that report at the address listed above.

The criteria include methods for comparing the degree of shortage of any two areas designated as having a particular type of shortage. This is required for implementation of section 333(c)(1) of the act, which requires that the Secretary give priority to those applications for National Health Service Corps personnel which would result in assignment of Corps personnel to "an area, population group, medical facility, or other public facility with the greatest health manpower shortage, as determined under criteria established under section 332(b)."

The regulations also spell out the procedures for designation of areas using these criteria, including consideration of the recommendations of health systems agencies, State health planning and development agencies, and Governors, as required by the statute.

The Department has prepared a preliminary list of possible health manpower shortage areas for review by appropriate agencies under the regulations. Immediately upon publication of these regulations, the review procedures detailed therein will be initiated. In approximately 90 days, the resulting first list of health manpower shortage areas under section 332 will be designated and published in the FEDERAL REGISTER. As noted in the regulations, any agency or individual may recommend the designation of a particular geographic area, population group, or facility as a health manpower shortage area. Such recommendations may be sent to the Chief, Shortage Area Designation Section, Manpower Analysis Branch, at the address above.

In light of the statutory deadlines for publication of these regulations and for the designation of areas, and the fact that implementation of other programs under the Public Health Service Act is dependent upon these designations, the Secretary has determined that good cause exists for the notice, public participation and delayed effective date requirements of 5 U.S.C. 553 not to be followed in connection with the publication of part 5. However, in accordance with the Secretary's policy in obtaining public participation, comments will be accepted on this interim rule at the above listed

address for a 45-day period. After consideration of these comments, the Secretary will republish the rules in part 5, revised as appropriate based upon consideration of the public comments received.

Accordingly, 42 CFR is amended, effective immediately, by adding thereto a new part 5 as set forth below.

NOTE.—The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: September 26, 1977.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: December 21, 1977.

JOSEPH A. CALIFANO, Jr.,
Secretary.

Sec.
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Appendix G. Criteria for Designation of Areas Having Shortages of Veterinary Manpower.

AUTHORITY: Section 215 of the Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); Section 332 of the Public Health Service Act, 90 Stat. 2770-2772 (42 U.S.C. 254e).

§ 5.1 Purpose.

Section 332(b) of the Public Health Service Act (42 U.S.C. 254e) requires the Secretary to establish criteria for the designation of geographic areas, population groups, medical facilities, and other public facilities, in the States, as health manpower shortage areas. The purpose of this Part is to comply with this requirement.

§ 5.2 Definitions.

For purposes of this Part:

(a) "Act" means the Public Health Service Act, as amended.

(b) "Health manpower shortage area" means (1) An urban or rural area (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services) which the Secretary determines has a shortage of health manpower, (2) a population group which the Secretary determines has such a shortage, or (3) a public or nonprofit private medical facility or other public facility which the Secretary determines has such a shortage.

(c) "Health service area" means a health service area whose boundaries have been designated by the Secretary, pursuant to section 1511 of the Act, for purposes of health planning activities.

(d) "Health systems agency" or "HSA" means the health systems agency designated, pursuant to section 1515 of the Act, to carry out health planning activities for a given health service area.

(e) "Medical facility" means a facility for the delivery of health services and includes: (1) a community health center, public health center, outpatient medical facility, or community mental health center; (2) a hospital, State mental hospital, facility for long-term care, or rehabilitation facility; (3) a migrant health center, or an Indian Health Service facility; (4) facilities for delivery of health services to U.S. penal and correctional institutions under section 323 of the Act or to State correctional institutions; (5) a Public Health Service medical facility used in connection with the delivery of health services under sections 321, 322, 324, 325, 326, or Part D of Title III of the Act; or (6) other Federal medical facilities.

(f) "Metropolitan area" means an area which has been designated by the Office of Management and Budget as a standard metropolitan statistical area (SMSA). All other areas are "non-metropolitan areas".

(g) "Poverty level" means the poverty level as defined by the Bureau of the Census, using the poverty index adopted by a Federal Interagency Committee in 1969, and updated each year to reflect changes in the Consumer Price Index.

(h) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

(i) "State" includes, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(j) "State health planning and development agency" or "SHPDA" means the State health planning and development agency designated pursuant to section 1521 of the Act.

§ 5.3 Procedures for designation of health manpower shortage areas.

(a) *General.* (1) Using data available to the Department and based upon the criteria in the Appendices to this Part, the Department will prepare a preliminary list (by State and health service area) of possible health manpower shortage areas. Relevant portions of this list will then be forwarded to the appropriate HSA, SHPDA, and Governor with a request that they review the preliminary list and offer their recommendations, if any, within 60 days, as to which geographic areas, population groups, and facilities in areas under their jurisdiction should be designated.

(2) In addition, any agency or individual may recommend to the Secretary the designation of a particular geographic area, population group or facility as a health manpower shortage area. Such individual recommendations will be forwarded to the appropriate HSA, SHPDA, and Governor, for review and recommendation within 30 days.

(3) In each case where the designation of a public facility (including a Federal medical facility) is under consideration, the Secretary will give written notice of such proposed designation to the chief administrative officer of such facility and request comments within 30 days with respect to such designation.

(4) After considering these recommendations and comments, the Secretary will designate health manpower shortage areas and publish a list of such areas in the FEDERAL REGISTER.

(b) *Revisions.* (1) The list of designated areas will be reviewed annually and revised, as necessary, in accordance with the procedures outlined in paragraph (a) of this section. The revised list will then be published in the FEDERAL REGISTER.

(2) During the period between revisions, requests for specific revisions relating to particular geographic areas, population groups, or facilities will be reviewed on a case-by-case basis, in accordance with the procedures in paragraphs (a) (2) and (3) of this section. A notice will be published periodically in the FEDERAL REGISTER updating the list of designated areas based upon such requests.

§ 5.4 Notification of designation.

The Secretary will give written notice of the designation (or withdrawal of designation) of a health manpower shortage area, not later than 60 days from the date of such designation (or withdrawal of designation) to:

(a) The Governor of each State in which the area, population group, medical facility, or other public facility so designated is in whole or in part located.

(b) Each health systems agency for a health service area which includes all or any part of such area, population group, medical facility, or other public facility so designated.

(c) The State health planning and development agency for each State in which the area, population group, medical facility, or other public facility so designated is in whole or in part located.

(d) Appropriate public or nonprofit private entities which are located in or which have a demonstrated interest in the area so designated.

APPENDIX A.—CRITERIA FOR DESIGNATION OF AREAS HAVING SHORTAGES OF PRIMARY MEDICAL CARE MANPOWER[1]

PART I—GEOGRAPHIC AREAS

A. *Criteria*

A geographic area will be designated as having a shortage of primary medical care manpower if the following three criteria are met:

1. The area is a rational area for the delivery of primary medical care services.

2. One of the following conditions prevails within the area:

(a) The area has a population-to-primary care physician ratio of at least 3,500:1; or

(b) The area has a population-to-primary care physician ratio of less than 3,500:1 but greater than 3,000:1 and has either unusually high needs for primary medical care services or insufficient capacity of existing primary care providers.

3. Primary medical care manpower in contiguous areas are overutilized, excessively distant, or inaccessible to the population of the area under consideration.

B. *Methodology*

In determining whether an area meets the criteria established by paragraph A of this Part, the following methodology will be used:

1. *Rational Areas for the Delivery of Primary Medical Care Services.* (a) The following areas will be considered rational areas for the delivery of primary medical care services:

(i) A county, or a group of contiguous counties whose population centers are within 30 minutes travel time of each other.

(ii) A portion of a county, or an area made up of portions of more than one county, whose population, because of topography, market or transportation patterns, distinctive population characteristics or other factors, has limited access to contiguous area resources, as measured generally by a travel time greater than 30 minutes to such resources.

(iii) Established neighborhoods and communities within urbanized areas which display a strong self-identity (as indicated by a homogeneous socioeconomic or demographic structure and/or a tradition of interaction or intradependency), have limited interaction with contiguous areas, and which, in general, have a minimum population of 20,000.

(b) The following distances will be used to estimate distances corresponding to 30 minutes travel time:

(i) Under normal conditions with primary roads available: 20 miles.

(ii) In mountainous terrain or in areas with only secondary roads available: 15 miles.

(iii) In flat terrain or in areas connected by interstate highways: 25 miles.

Within inner portions of metropolitan areas, the large variations in the scope of public transportation systems and traffic conditions do not permit standard mileage figures to be specified. In these areas, information on the public transportation system will be used to determine the distance corresponding to 30 minutes travel time.

2. *Population Count.* The population count used will be the total permanent resident civilian population of the area, excluding inmates of institutions, with the following adjustments, where appropriate:

(a) Adjustments to the population for the differing health service requirements of various age-sex population groups will be computed using the table below of visit rates for 12 age-sex population cohorts. The total expected visit rate will first be obtained by multiplying each of the 12 visit rates in the table by the size of the area population within that particular age-sex cohort and adding the resultant 12 visit figures together. This total expected visit rate will then be divided by the U.S. average per capita visit rate of 5.1, to obtain the adjusted population for the area.

AGE GROUPS

Sex	Under 5	5-14	15-24	25-44	45-64	65 and over
Male	7.3	3.6	3.3	3.6	4.7	6.4
Female	6.4	3.2	5.5	6.4	6.5	6.8

(b) The effect of transient populations on the need of an area for manpower will be taken into account as follows:

(i) Seasonal tourist populations will be included in an area's population with a weight of 0.5, as computed according to the following formula: Effective tourist population = .5 x (proportion of year tourists are present in area) x (average daily number of tourists during portion of year that tourists are present).

(ii) The migrant population will be included in an area's population, as computed according to the following formula: Effective migrant population = (proportion of year migrants are present in area) x (average daily number of migrants during portion of year that migrants are present).

3. *Counting of Primary Care Practitioners.* (a) All non-Federal doctors of medicine (M.D.) and doctors of osteopathy (D.O.) providing direct patient care who practice principally in one of the four primary care specialties—general or family practice, general internal medicine, general pediatrics, and obstetrics and gynecology—will be counted. Those physicians engaged solely in administration, research, and teaching will be excluded. Hospital-based primary care physicians will be included to the extent that they provide ambulatory services and first-contact care. Adjustments for the following factors will be made in counting physicians, however:

(i) Interns and residents will be counted as .5 full-time equivalent (FTE) physicians to reflect the fact that a large portion of their time is spent in training.

(ii) Foreign medical graduates (i.e., graduates of medical programs outside the U.S.) who do not have a stable immigration status (i.e., U.S. citizenship or a permanent visa) will be excluded from physician counts since their future availability to help provide medical care to the area's population is uncertain.

(iii) Foreign medical graduates who have a stable immigration status, but are not fully licensed to practice medicine will be counted as 0.5 FTE physicians to reflect their practice limitations and time spent in training.

(b) Practitioners who are semi-retired, who operate a reduced practice due to infirmity or other limiting conditions, or who are available to the population of an area only on a part-time basis will be discounted through the use of full-time equivalency figures. A 40-hour work week will be used as the standard for determining full-time equivalents in such cases. For practitioners working less than a 40-hour week, every four (4) hours (or ½ day) spent providing patient care, in either ambulatory or inpatient settings, will be counted as 0.1 FTE (with numbers obtained for FTEs rounded to the nearest 0.1 FTE), and each physician providing patient care 40 or more hours a week will be counted as 1.0 FTE physician.

(c) In some cases, physicians located within an area may not be accessible to the population of the area under consideration. Allowances for physicians with restricted practices will be made, on a case-by-case basis. Examples of such restricted practices include refusal to accept certain types of patients or to accept Medicaid reimbursement.

(d) Nurse practitioners and physician's assistants also make important contributions to the provision of primary medical care services. While national equivalency figures for taking the availability of nurse practitioners and physician's assistants into account are not included here because of variations in their responsibilities across States and regions, their contribution to the supply of primary care services in individual areas will be considered where appropriate data are available.

4. *Determination of Unusually High Needs for Primary Medical Care Services.* An area will be considered as having unusually high needs for primary medical care services if at least one of the following criteria is met:

(a) The area has more than 100 births per 1,000 women aged 15-44, or more than 40 births per 1,000 women aged 13-17.

(b) The area has more than 20 infant deaths per 1,000 live births.

(c) More than 30 percent of the population (or of all households) have incomes below the poverty level.

5. *Determination of Insufficient Capacity of Existing Primary Care Providers.* An area's existing primary care providers will be considered to have insufficient capacity if at least two of the following criteria are met:

(a) More than 8,000 office or outpatient visits per year per FTE primary care physician serving the area.

(b) Unusually long waits for appointments for routine medical services (i.e., more than 7 days for established patients and 14 days for new patients).

(c) Excessive average waiting time at primary care providers (longer than one hour

[1] Primary medical care manpower as used here includes nurse practitioners and physician's assistants as well as primary care physicians.

where patients have appointments or two hours where patients are treated on a first-come, first-served basis).

(d) Evidence of excessive use of emergency room facilities for routine primary care.

(e) A substantial proportion (⅔ or more) of the area's physicians do not accept new patients.

(f) Abnormally low utilization of health services, as indicated by an average of 2.0 or less office visits per year on the part of the area's population.

6. *Contiguous Area Considerations.* Primary care manpower in areas contiguous to an area being considered for designation will be considered excessively distant, overutilized or inaccessible to the population of the area under consideration if one of the following conditions prevails in each contiguous area:

(a) Primary care manpower in the contiguous area are more than 30 minutes travel time from the center of the area being considered for designation (measured in accordance with paragraph B.1(b) of this Part).

(b) Contiguous area population-to-FTE primary care physician ratios are in excess of 2,500:1, indicating that contiguous areas cannot be expected to help alleviate the shortage situation in the area being considered for designation.

(c) Primary care manpower in contiguous areas are inaccessible to the population of the area under consideration because of specified access barriers, such as:

(i) Significant differences between the demographic (or socio-economic) characteristics of the area under consideration and those of the contiguous area, indicating that the population of the area under consideration may be effectively isolated from nearby resources. Such isolation could be indicated, for example, by an unusually high proportion of non-English-speaking persons.

(ii) The area's population lacks economic accessibility to contiguous area resources. For those areas where a very high proportion of the population is poor (i.e., where more than 30 percent of the population or of the households have incomes below the poverty level), failure of a substantial majority of contiguous area providers to accept Medicaid will be taken to indicate such economic inaccessibility. Contiguous areas where the ratio of poverty population to number of primary care physicians accepting Medicaid is higher than 2,500:1 will then be assumed to have no excess capacity which can relieve the shortage in the area under consideration.

C. *Determination of Degree of Shortage*

The degree of shortage of a given geographic area, designated as having a shortage of primary medical care manpower, will be determined using the following procedure:

1. *Grouping of Areas.* Designated areas will first be assigned to groups, based on the ratio (R) of population to number a full-time equivalent primary care physicians and the presence or absence of unusually high needs for primary medical care services or insufficient capacity of existing primary care providers, according to the following table:

	High needs or insufficient capacity not indicated	High needs or insufficient capacity indicated
Group 1	No physicians	No physicians; or R > 5,000.
Group 2	R > 5,000	5,000 > R > 4,000.
Group 3	5,000 > R > 4,000	4,000 > R > 3,500.
Group 4	4,000 > R > 3,500	3,500 > R > 3,000.

All group 1 areas will be assumed to have a greater shortage than all group 2 areas; all group 2 areas will be assumed to have a greater shortage than all group 3 areas, etc.

2. *Relative Shortage within a Group.* In comparing any two areas within each group as defined above, the area with the larger population will be assumed to have the greater shortage.

PART II—POPULATION GROUPS

A. *Criteria.*

The following population groups will be designated as having a shortage of primary medical care manpower:

(1) Those American Indians and Alaska Natives who are members of Indian tribes (as defined in section 4(d) of Pub. L. 94-437, the Indian Health Care Improvement Act of 1976);

(2) Other American Indians (as defined in section 4(c) of Pub. L. 94-437), migrant populations, and other population groups within particular geographic areas will be designated if the following criteria are met:

(a) Access barriers prevent the population group from use of the area's primary medical providers (such as refusal of practitioners to accept certain types of patients or refusal to accept Medicaid reimbursement); and

(b) The ratio (R) of the number of persons in the population group to the number of FTE primary care physicians serving the population group, and practicing within 30 minutes travel time of the center of the area where the population group resides, is at least 3,500:1 (3,000:1, where unusually high needs for health services exist in the population group, as determined in accordance with paragraph B.4 of Part I of this Appendix). The population of the group is to be counted in accordance with paragraph B.2 of Part I of this Appendix, except that for migrant populations in high impact areas (as defined in section 319(a)(5) of the Act), the average number of migrants in the area during the period of highest impact will be used.

B. *Determination of Degree of Shortage*

The degree of shortage of a given population group, designated as having a shortage of primary care manpower, will be determined as follows:

1. The population group will first be assigned to a degree-of-shortage grouping as in Paragraph C of Part I of this Appendix, based on the ratio (R) of the group's population to the number of primary care physicians serving it, together with the presence or absence of unusually high needs for primary medical care services among the population group.

2. In comparing any two population groups within a degree-of-shortage grouping, or in comparing a designated population group with a designated area within the same grouping, the area or population group with the larger population will be assumed to have the greater shortage. (In the case of Indian tribes, the population figure used will be that population served by each Indian Health Service (IHS) facility which requires staffing.)

PART III—FACILITIES

A. *Federal and State Correctional Institutions*

1. *Criteria.* Medium to maximum security Federal and State correctional institutions will be designated as having a shortage of primary medical care manpower if both the following criteria are met:

(a) The institution has at least 250 inmates.

(b) The ratio of the number of internees per year to the number of FTE primary care physicians serving the institution is at least 1,000:1. (The number of internees is the number of inmates present at the beginning of the year plus the number of new inmates entering the institution during the year, including those on short sentences who left before the end of the year.)

2. *Determination of Degree of Shortage.* The degree of shortage of a given correctional institution, designated as having a shortage of primary care medical manpower, will be determined as follows:

(a) *Grouping of correctional institutions.* Correctional institutions will first be grouped as follows, based on number of inmates and/or the ratio (R) of internees to primary care physicians:

Group 1—Institutions with 500 or more inmates and no physicians.

Group 2—Institutions with 250-499 inmates and no physicians; or with any number of inmates and R>2,000.

Group 3—Institutions with 2,000> R>1,000.

(b) *Relative shortage within a group.* In comparing any two institutions within a given group, the institution with the larger number of internees will be assumed to have the greater shortage.

B. *Public or Non-profit Private Medical Facilities*

1. *Criteria.* Public or nonprofit private medical facilities will be designed as having a shortage of primary medical care manpower if:

(a) The facility is providing primary medical care services to an area or population group designated as having a primary care manpower shortage; and

(b) The facility has insufficient capacity to meet the primary care needs of that area or population group.

2. *Methodology.* In determining whether public or nonprofit private medical facilities meet the criteria established by paragraph B.1 of this Part, the following methodology will be used:

(a) *Provision of Services to a Designated Area or Population Group.* A facility will be considered to be providing services to a designated area or population group if either:

(i) A majority of the facility's primary care services are being provided to residents of designated primary care manpower shortage areas or to population groups designated as having a shortage of primary care manpower; or

(ii) The population within a designated primary care shortage area or population group has reasonable access to primary care services provided at the facility. Such reasonable access will be assumed if the population lies within 30 minutes travel time of the facility and non-physical barriers (relating to demographic and socioeconomic characteristics of the population) do not prevent the population from receiving care at the facility.

Indian Health Service facilities and migrant health centers (as defined in section

319(a)(1) of the Act) are assumed to be meeting this requirement.

(b) *Insufficient capacity to meet primary care needs.* A facility will be considered to have insufficient capacity to meet the primary care needs of a designated area or population group if at least two of the following conditions exist at the facility:

(i) There are more than 8,000 outpatient visits per year per primary care physician on the staff of the facility.

(ii) There is excessive usage of emergency room facilities for routine primary care.

(iii) Waiting time for appointments is more than 7 days for established patients and/or more than 14 days for new patients seeking routine health services.

(iv) Waiting time at the facility is longer than one hour where patients have appointments or two hours where patients are treated on a first-come, first-served basis.

Indian Health Service facilities will be considered to have insufficient capacity if the staffing requirements established by the Indian Health Service are not met.

3. *Determination of Degree of Shortage.* The degree of shortage of a medical facility designated as having a shortage of primary medical care personnel will be determined as follows:

(a) *Grouping of areas.* Medical facilities will be grouped as in Paragraph C of Part 1 of this Appendix, in the same groupings as the designated area or population group which they serve.

(b) *Relative shortage within a group.* In comparing a facility with other designated facilities, areas, or population groups within the same grouping, the population figure used for the facility shall be that of the population of the designated area or population group which the facility serves. The area, population group, or facility with the larger population or service population will then be assumed to have the greater shortage.

APPENDIX B.—CRITERIA FOR DESIGNATION OF AREAS HAVING SHORTAGES OF DENTAL MANPOWER

PART I—GEOGRAPHIC AREAS

A. *Criteria*

A geographic area will be designated as having a dental manpower shortage if the following three criteria are met:

1. The area is a rational area for the delivery of dental services.

2. One of the following conditions prevails in the area:

(a) The area has a population-to-dentist ratio of at least 5,000:1, or

(b) The area has a population-to-dentist ratio of less than 5,000:1 but greater than 4,000:1 and has either unusually high needs for dental services or insufficient capacity of existing dental providers.

3. Dental manpower in contiguous areas are overutilized, excessively distant, or inaccessible to the population of the area under consideration.

B. *Methodology*

In determining whether an area meets the criteria established by paragraph A of this Part, the following methodology will be used:

1. *Rational Areas for the Delivery of Dental Services.* (a) The following areas will be considered rational areas for the delivery of dental services:

(i) A county, or a group of several contiguous counties whose population centers are within 40 minutes travel time of each other.

(ii) A portion of a county (or an area made up of portions of more than one county) whose population, because of topography, market or transportation patterns, distinctive population characteristics, or other factors, has limited access to contiguous area resources, as measured generally by a travel time of greater than 40 minutes to such resources.

(iii) Established neighborhoods and communities within urbanized areas which display a strong self-identity (as indicated by a homogenous socioeconomic or demographic structure and/or a tradition or interaction or intradependency), have limited interaction with contiguous areas, and which, in general, have a minimum population of 20,000.

(b) The following distances will be used to estimate distances corresponding to 40 minutes travel time: (i) Under normal conditions with primary roads available: 30 miles.

(ii) In mountainous terrain or in areas with only secondary roads available: 20 miles.

(iii) In flat terrain or in areas connected by interstate highways: 35 miles.

Within inner portions of metropolitan areas, the large variations in the scope of public transportation systems and traffic conditions do not permit standard mileage figures to be specified. In these areas, information on the public transportation system will be used to determine the distance corresponding to 40 minutes travel time.

2. *Population Count.* The population count used will be the total permanent resident civilian population of the area, excluding inmates of institutions, with the following additions to take into account the effect of transient populations, where appropriate:

(a) Seasonal tourist populations will be included in an area's population with a weight of 0.5, as computed according to the following formula: Effective tourist population=.5×(proportion of year tourists are present in area)×(average daily number of tourists during portion of year that tourists are present).

(b) The migrant population will be included in an area's population, as computed according to the following formula: Effective migrant population=(proportion of year migrants are present in area)×(average daily number of migrants during portion of year that migrants are present).

3. *Counting of Dental Practitioners.* (a) All non-Federal dentists providing patient care will be counted, except in those urban areas where it is shown that specialists (those dentists not in general practice or pedodontics) are serving a larger metropolitan area and are not addressing the general dental care needs of the area under consideration.

(b) Full-time equivalent (FTE) figures will be used to reflect productivity differences among dental practices based on the age of the dentists, the number of auxiliaries employed, and the number of hours worked per week. In general, the number of FTE dentists will be computed using weights obtained from the matrix in Table 1, which is based on the productivity of dentists at various ages, with different numbers of auxiliaries, as compared with the average productivity of all dentists. For the purposes of these determinations, an auxiliary is defined as any non-dentist staff employed by the dentist to assist in operation of the practice.

TABLE 1.—*Equivalency weights, by age and number of auxiliaries*

	<55	55-59	60-64	65+
No auxiliaries	.85	.70	.60	.45
1 auxiliary	1.00	.90	.80	.65
2 auxiliaries	1.15	1.05	1.00	.75
3 auxiliaries	1.40	1.20	1.05	1.00
4 or more auxiliaries	1.45	1.45	1.25	1.20

If information on the number of auxiliaries employed by the dentist is not available, Table 2 may be used to compute the number of fulltime equivalent dentists.

TABLE 2.—*Equivalency weights, by age*

Age	<55	55-59	60-64	65+
Equivalency weights	1.15	.90	.75	.58

The number of equivalent dentists within a particular age group (or age/auxiliary group) will be obtained by multiplying the number of dentists within that group by its corresponding equivalency weight. The total supply of equivalent dentists within an area is then computed as the sum of those dentists within each age (or age/auxiliary) group.

(c) The equivalency weights specified in Tables 1 and 2 assume that dentists within a particular group are working full-time (40 hours per week). Where appropriate data are available, adjusted equivalency figures for dentists who are semi-retired, who operate a reduced practice due to infirmity or other limiting conditions or who are available to the population of an area only on a part-time basis will be used to reflect the reduced availability of such dentists. In computing such equivalency figures, every 4 hours (or ½ day) spent in the dental practice will be counted as 0.1 FTE, except that each dentist working more than 40 hours a week will be counted as 1.0. The count obtained for a particular age group of dentists will then be multiplied by the appropriate equivalency weight from Table 1 or 2 to obtain a full-time equivalent figure for dentists within that particular age or age/auxiliary category.

4. *Determination of Unusually High Needs for Dental Services.* An area will be considered as having unusually high needs for dental services if at least one of the following criteria is met:

(a) More than 30 percent of the population (or of all households) have incomes below the poverty level.

(b) The area does not have a fluoridated water supply.

5. *Determination of Insufficient Capacity of Existing Dental Care Providers.* An area's existing dental care providers will be considered to have insufficient capacity if any of the following criteria are met:

(a) More than 5,000 visits per year per FTE dentist serving the area.

(b) Unusually long waits for appointments for routine dental services (i.e., more than 6 weeks).

(c) A substantial proportion (⅔ or more) of the area's dentists do not accept new patients.

6. *Contiguous Area Considerations.* Dental manpower in areas contiguous to an area being considered for designation will be considered excessively distant, overutilized or inaccessible to the population of the area under consideration if one of the following conditions prevails in each contiguous area:

(a) Dental manpower in the contiguous area are more than 40 minutes travel time from the center of the area being considered for designation (measured in accordance with paragraph B.1.(b) of this Part).

(b) Contiguous area population-to-FTE dentist ratios are in excess of 3,000:1, indicating that resources in contiguous areas cannot be expected to help alleviate the shortage situation in the area being considered for designation.

(c) Dental manpower in contiguous areas are inaccessible to the population of the area under consideration because of specified access barriers, such as:

(i) Significant differences between the demographic (or socioeconomic) characteristics of the area under consideration and those of the contiguous area, indicating that the population of the area under consideration may be effectively isolated from nearby resources. Such isolation could be indicated, for example, by an unusually high proportion of non-English-speaking persons.

(ii) The area's population lacks economic accessibility to contiguous area resources, particularly those areas where a very high proportion of the population is poor (i.e., where more than 30 percent of the population or of the households have incomes below the poverty level).

C. *Determination of Degree of Shortage*

The degree of shortage of a given geographic area, designated as having a shortage of dental manpower, will be determined using the following procedure:

1. *Grouping of Areas.* Designated areas will first be assigned to groups, based on the ratio (R) of population to number of full-time equivalent dentists and the presence or absence of unusually high needs for dental services or insufficient capacity of existing dental care providers, according to the following table:

	High needs or insufficient capacity not indicated	High needs or insufficient capacity indicated
Group 1	No dentists	No dentists; or R > 8,000.
Group 2	R > 8,000	8,000 > R > 6,000 .
Group 3	8,000 > R > 6,000	6,000 > R > 5,000 .
Group 4	6,000 > R > 5,000	5,000 > R > 4,000 .

All group 1 areas will be assumed to have a greater shortage than all group 2 areas; all group 2 areas will be assumed to have a greater shortage than all group 3 areas, etc.

2. *Relative Shortage within a Group.* In comparing any two areas within each group as defined above, the area with the larger population will be assumed to have the greater shortage.

PART II—POPULATION GROUPS

A. *Criteria*

The following population groups will be designated as having a shortage of dental manpower:

1. Those American Indians and Alaska Natives who are members of Indian tribes (as defined in section 4(d) of Pub. L. 94-437, the Indian Health Care Improvement Act of 1976);

2. Other American Indians (as defined in section 4(c) of Pub. L. 94-437), migrant populations, and other population groups within particular geographic areas will be designated if both of the following criteria are met:

(a) Access barriers prevent the population group from use of the area's dental providers (such as refusal of practitioners to accept certain types of patients); and

(b) The ratio (R) of the number of persons in the population group to the number of FTE dentists serving the population group, and practicing within 40 minutes travel time of the center of the area where the population group resides, is at least 5,000:1 (4,000:1, where unusually high needs for dental services exist in the population group, as determined in accordance with paragraph B.4 of Part I of this Appendix). The population of the group is to be counted in accordance with paragraph B.2 of Part I of this Appendix, except that for migrant populations in high impact areas (as defined in section 319(a)(5) of the Act), the average number of migrants in the area during the period of highest impact will be used.

B. *Determination of Degree of Shortage*

The degree of shortage of a given population group, designated as having a shortage of dental manpower, will be determined as follows:

1. The population group will first be assigned to a degree-of-shortage grouping as in paragraph C of Part I of this Appendix, based on the ratio (R) of the group's population to the number of dentists serving it, together with the presence or absence of unusually high needs for dental services among the population group.

2. In comparing any two population groups within a degree-of-shortage grouping, or in comparing a designated population group with a designated area within the same grouping, the area or population group with the larger population will be assumed to have the greater shortage. (In the case of Indian tribes, the population figure used will be that population served by each I.H.S. facility which requires staffing.)

PART III—FACILITIES

A. *Federal and State Correctional Institutions*

1. *Criteria.* Medium to maximum security Federal and State correctional institutions will be designated as having a shortage of dental manpower if both of the following criteria are met:

(a) The institution has at least 250 inmates.

(b) The ratio of the number of internees per year to the number of FTE dentists serving the institution is at least 1,500:1. (The number of internees is the number of inmates present at the beginning of the year plus the number of new inmates entering the institution during the year, including those on short sentences who left before the end of the year.)

2. *Determination of Degree of Shortage.* The degree of shortage of a given correctional institution, designated as having a shortage of dental manpower, will be determined as follows:

(a) *Grouping of Correctional Institutions.* Correctional institutions will first be grouped as follows, based on number of inmates and/or the ratio (R) of internees to dentists: Group 1—Institutions with 500 or more inmates and no dentists; Group 2—Institutions with 250-499 inmates and no dentists; or with any number of inmates and R>3,000; Group 3—Institutions with 3,000 > R>1,500.

(b) *Relative Shortage within a Group.* In comparing any two institutions within a given group, the institution with the larger number of internees will be assumed to have the greater shortage.

B. *Public or Non-profit Private Facilities*

1. *Criteria.* Public or nonprofit private facilities providing general dental care services will be designated as having a shortage of dental manpower if both of the following criteria are met: (a) The facility is providing general dental care services to an area or population group designated as having a dental manpower shortage; and (b) The facility has insufficient capacity to meet the dental care needs of that area or population group.

2. *Methodology.* In determining whether public or nonprofit private facilities meet the criteria established by paragraph B.1 of this Part, the following methodology will be used:

(a) *Provision of Services to a Designated Area or Population Group.* A facility will be considered to be providing services to a designated area or population group if either: (i) A majority of the facility's dental care services are being provided to residents of designated dental manpower shortage areas or to population groups designated as having a shortage of dental manpower; or (ii) The population within a designated dental shortage area or population group has reasonable access to dental services provided at the facility. Such reasonable access will be assumed if the population lies within 40 minutes travel time of the facility and non-physical barriers (relating to demographic and socioeconomic characteristics of the population) do not prevent the population from receiving care at the facility. Indian Health Service facilities and migrant health centers (as defined in section 319 (a)(1) of the Act) are assumed to be meeting this requirement.

(b) *Insufficient Capacity to Meet Dental Care Needs.* A facility will be considered to have insufficient capacity to meet the dental care needs of a designated area or population group if either of the following conditions exists at the facility: (i) There are more than 5,000 outpatient visits per year per dentist on the staff of the facility. (ii) Waiting time for appointments is more than 6 weeks for routine dental services. Indian Health Service facilities will be considered to have insufficient capacity if the staffing requirements established by the Indian Health Service are not met.

3. *Determination of Degree of Shortage.* The degree of shortage of a facility designated as having a shortage of dental manpower will be determined as follows: (a) Facilities will be grouped as in paragraph C.1 of Part I of this Appendix, in the same groupings as the designated area or population group which they serve. (b) In comparing a facility with other designated facilities, areas, or population groups within the same grouping, the population figure used for the facility shall equal that proportion of the population of the designated area or population group which the facility serves. The area, population group, or facility with the larger population or service population will then be assumed to have the greater shortage.

APPENDIX C—CRITERIA FOR DESIGNATION OF AREAS HAVING SHORTAGES OF PSYCHIATRIC MANPOWER

PART 1—GEOGRAPHIC AREAS

A. *Criteria*

A geographic area will be designated as having a shortage of psychiatric manpower if the following three criteria are met:

1. The area is a rational area for the delivery of psychiatric services.

2. One of the following conditions prevails within the area:

(a) The area has a population-to-psychiatrist ratio of at least 30,000:1; or

(b) The area has a population-to-psychiatrist ratio of less than 30,000:1 but greater than 20,000:1 and has unusually high needs for mental health services.

3. Psychiatric manpower in contiguous areas are overutilized, excessively distant or inaccessible to residents of the area under consideration.

B. *Methodology*

In determining whether an area meets the criteria established by paragraph A of this part, the following methodology will be used:

1. *Rational Areas for the Delivery of Psychiatric Services.* (a) The following areas will be considered rational areas for the delivery of psychiatric services:

(i) An established mental health catchment area, as designated by the State Health Planning and Development Agency in consultation with the State's mental health authority, under the general criteria set forth in section 238 of the Community Mental Health Centers Act.

(ii) A portion of an established mental health catchment area whose population, because of topography, market or transportation patterns, distinctive population characteristics, or other factors, has limited access to psychiatric resources in the rest of the catchment area, as measured generally by a travel time of greater than 40 minutes to such resources.

(iii) A county or metropolitan area which contains more than one mental health catchment area, where data are unavailable by individual catchment area.

(b) The following distances will be used to estimate distances corresponding to 40 minutes travel time:

(i) Under normal conditions with primary roads available: 30 miles.

(ii) In mountainous terrain or in areas with only secondary roads available: 20 miles.

(iii) In flat terrain or in areas connected by interstate highways: 35 miles.

Within inner portions of metropolitan areas, the large variations in the scope of public transportation systems and traffic conditions do not permit standard mileage figures to be specified. In these areas, information on the public transportation system will be used to determine the distance corresponding to 40 minutes travel time.

2. *Population Count.* The population count used will be the total permanent resident population of the area, excluding inmates of institutions.

3. *Counting of Psychiatrists.* (a) All nonfederal psychiatrists providing patient care (direct or other, including consultation and supervision), in ambulatory or other short-term care settings to residents of the area more than one-half day per week will be counted. Those psychiatrists engaged solely in administration, research, and teaching will be excluded. Adjustments for the following factors will be made:

(i) Psychiatric residents will be counted as .5 FTE psychiatrists to reflect the fact that a large portion of their time is training.

(ii) Foreign medical graduates (i.e., graduates of medical programs outside the U.S.), in psychiatry who do not have a stable immigration status (i.e., U.S. citizenship or a permanent visa), will be excluded from psychiatrist counts since their future availability to help provide psychiatric care to the area's population is uncertain.

(iii) Foreign medical graduates in psychiatry who have a stable immigration status but are not fully licensed to practice medicine will be counted as .5 FTE psychiatrists to reflect their practice limitations and time spent in training.

(b) Psychiatrists who are semi-retired, who operate a reduced practice due to infirmity or other limiting conditions, or who are available to the population of an area only on a part-time basis will be discounted through the use of full-time equivalency figures. A 40-hour work week will be used as the standard for determining full-time equivalents in such cases. For practitioners working less than a 40-hour week, every 4 hours (or ½ day), spent providing patient care services should be counted as 0.1 FTE, and each psychiatrist providing patient care 40 or more hours a week should be counted as 1.0 FTE psychiatrist.

(c) In some cases, psychiatrists located within an area may not be accessible to the general population of the area under consideration. Allowances for psychiatrists working in restricted facilities will be made on a case-by-case basis. Examples of such restricted practices include staff positions in correctional institutions, youth detention facilities, residential treatment centers for emotionally disturbed or mentally retarded children, and inpatient units of State or county mental hospitals.

(d) In cases where there are mental health facilities or institutions providing both inpatient and outpatient services, those psychiatrists assigned to outpatient or other short-term care units will be counted. If the psychiatric staff is not specifically allocated to one service or the other, the number of psychiatrists in short-term care will be estimated on the basis of the relative workload in each type of setting.

(e) Other physicians and other types of manpower (such as clinical psychologists, social workers, psychiatric nurses, alcoholism and drug abuse counselors, and other mental health workers), also make important contributions to the supply of alcohol, drug abuse, and mental health services and may reduce the need for psychiatrists. National equivalency value for their contributions are not included here, however, because of variations in their responsibilities across States and because of data inadequacies. Their contributions to the supply of psychiatric services will be taken into account when appropriate data and equivalency values become available.

4. *Determination of Unusually High Needs for Psychiatric Services.* An area will be determined to have an unusually high need for psychiatric services if two or more of the following criteria are met:

(a) 30 percent of the population (or of all households), have income below the poverty level, or the area has been designated as a poverty area in accordance with section 242 of the Community Mental Health Centers Act.

(b) A youth dependency ratio (ratio of children under 18 to population 18–64), in excess of 60 percent.

(c) An aged dependency ratio (ratio of persons aged 65 and over to population 18–64), in excess of 25 percent.

(d) A high prevalence of alcoholism in the population, as indicated by a relative prevalence of alcoholism problems which exceeds that in 75 percent of all catchment areas (or other complete set of areas for which the prevalence index is computed), using the index of relative alcoholism prevalence developed by the National Institute on Alcohol Abuse and Alcoholism for the purposes of allotting funds under 42 U.S.C. 4571.

(e) A high prevalence of drug abuse in the population, as indicated by a relative prevalence of drug abuse which exceeds that in 75 percent of all metropolitan areas for which appropriate data are available, using the Heroin Problem Index developed by the National Institute on Drug Abuse.

5. *Contiguous Area Considerations.* Psychiatric manpower in areas contiguous to an area being considered for designation will be considered excessively distant, overutilized or inaccessible to the population of the area under consideration if one of the following conditions prevails in each contiguous area:

(a) Mental health manpower in the contiguous area are more than 40 minutes travel time from the center of the area being considered for designation (measured in accordance with paragraph B.1(b) of this part).

(b) Contiguous area population-to-psychiatrist ratios are in excess of 20,000:1, indicating that mental health manpower in contiguous areas cannot be expected to help alleviate the shortage situation in the area for which designation is being considered.

(c) Psychiatric manpower in contiguous areas are inaccessible to the population of the requested area because of geographic, cultural, language, or other barriers, or because of residency restrictions of programs or facilities providing such manpower.

C. *Determination of Degree of Shortage*

The degree of shortage of a given geographic area, designated as having a shortage of psychiatric manpower, will be determined using the following procedure:

1. *Grouping of Areas.* Designated areas will first be assigned to groups, based on the ratio (R) of population to number of FTE psychiatrists and the presence or absence of unusually high needs for mental health services, according to the following table:

	High needs not indicated	High needs indicated
Group 1	No psychiatrist	No psychiatrist.
Group 2	R > 050,000	R > 40,000.
Group 3	50,000 > R > 40,000	40,000 > R > 30,000.
Group 4	40,000 > R > 30,000	30,000 > R > 20,000.

All group 1 areas will be assumed to have a greater shortage than all group 2 areas, all group 2 areas will be assumed to have a greater shortage than all group 3 areas, etc.

2. *Relative Shortage within a Group.* In comparing any two areas within a group as defined above, the area with the larger population will be assured to have the greater shortage.

PART II—POPULATION GROUPS

A. *Criteria.*

Population groups within particular catchment areas will be designated as

having a psychiatric manpower shortage if the following conditions prevail:

(a) Access barriers prevent the population group from using those mental health resources which are present in the area, and

(b) The ratio (R) of the number of persons in the population group to the number of FTE psychiatrists serving the population group, and practicing within 40 minutes travel time of the center of the area where the population group resides, is at least 30,000:1 (20,000:1 where unusually high needs for psychiatric services are indicated).

B. *Determination of Degree of Shortage*

The degree of shortage of a given population group, designated as having a shortage of psychiatric manpower, will be determined as follows:

1. The population group will first be assigned to groupings as in paragraph C.1 of Part I of this Appendix, based on the ratio (R) of the group's population to the number of FTE psychiatrists serving it, together with the presence or absence of unusually high needs for psychiatric services among the population group.

2. In comparing any two population groups within a degree-of-shortage grouping, or in comparing a designated population group with a designated area within the same grouping, the area or population group with the larger population will be assumed to have the greater shortage.

PART III—FACILITIES

A. *Federal and State Correctional Institutions and Youth Detention Facilities*

1. *Criteria.* Medium to maximum security Federal and State correctional institutions for adults or youth, and youth detention facilities, will be designated as having a shortage of psychiatric manpower if both of the following criteria are met:

(a) The institution has at least 250 inmates; and

(b) The ratio of the number of internees per year to the number of FTE psychiatrists serving the institution is at least 2,000:1. (The number of internees is the number of inmates or residents present at the beginning of the year, plus the number of new inmates or residents entering the institution during the year, including those who left before the end of the year.)

2. *Determination of Degree of Shortage.* The degree of shortage of a given correctional institution or youth detention facility, designated as having a shortage of psychiatric manpower, will be determined as follows:

(a) *Grouping of Facilities.* Correctional facilities and youth detention facilities will first be assigned to groups, based on the number of inmates and/or the ratio (R) of internees to FTE psychiatrists, as follows:

Group 1—Facilities with 500 or more inmates or residents and no psychiatrist.

Group 2—Other facilities with no psychiatrist; and facilities with 500 or more inmates or residents and R>3,000.

Group 3—All other facilities.

(b) *Determination of Degree of Shortage.* In comparing any two facilities within a group as defined above, the facility with the larger number of inmates or residents will be assumed to have the greater shortage.

B. *State and County Mental Hospitals*

1. *Criteria.* A State or county hospital will be designated as having a shortage of psychiatric manpower if both of the following criteria are met:

(a) The mental hospital has an average daily inpatient census of at least 100; and

(b) The number of workload units per FTE psychiatrist available at the hospital exceeds 600, where workload units are calculated using the following formula:

Total workload units = average daily inpatient census + 2 × (number of inpatient admissions per year) + 0.5 × (number of admissions to day care and outpatient services per year).

2. *Determination of Degree of Shortage.* The degree of shortage of a given State or county mental hospital, designated as having a shortage of psychiatric manpower, will be determined as follows:

(a) *Grouping of Facilities.* State or county mental hospitals will first be assigned to groups based on the ratio (R) of workload units to number of FTE psychiatrists, as follows:

Group 1—No psychiatrists, or R>1,800.

Group 2—1,800>R>1,200.

Group 3—1,200>R>600.

(b) *Relative Shortage Within a Group.* In comparing any two facilities within a group as defined above, the facility with the larger number of workload units will be assumed to have the greater shortage.

C. *Community Mental Health Centers and Other Public or Nonprofit Private Facilities*

1. *Criteria.* A community mental health center (CMHC), authorized by Pub. L. 94-63, or other public or nonprofit private facility providing alcohol, drug abuse, or mental health services to an area or population group, will be designated as having a shortage of psychiatric manpower if the facility is providing or is responsible for providing psychiatric services to an area or population group designated as having a psychiatric manpower shortage.

2. *Methodology.* In determining whether CMHCs or other public or nonprofit private facilities meet the criteria established in paragraph C.1 of this Part, the following methodology will be used:

(a) *Provision of Services to a Designated Area or Population Group.* The facility will be considered to be providing services to a designated area or population group if either:

(i) A majority of the facility's psychiatric services are being provided to residents of designated psychiatric manpower shortage areas or to population groups designated as having a shortage of psychiatric manpower; or

(ii) The population within a designated psychiatric shortage area or population group has reasonable access to psychiatric services provided at the facility. Such reasonable access will be assumed if the population lies within 40 minutes travel time of the facility and nonphysical barriers (relating to demographic and socio-economic characteristics of the population) do not prevent the population from receiving care at the facility.

(b) *Responsibility for Provision of Services.* This condition will be considered to be met if the facility, by Federal or State statute, administrative action or contractual agreement, has been given responsibility for providing and coordinating a wide range of alcohol, drug abuse and/or mental health services for the area or population group, consistent with applicable State plans.

3. *Determination of Degree of Shortage.* The degree of shortage of a CMHC or other public or nonprofit private facility designated as having a shortage of psychiatric manpower shall be determined using the following procedure:

(a) Facilities will be grouped as in paragraph C.1 of Part I of this Appendix, in the same groupings as the designated area or population group which they serve.

(b) In comparing a facility with other designated facilities, areas, or population groups within the same grouping, the population figure used for the facility shall equal that proportion of the population of the designated area or population group which the facility serves. The area, population group, or facility with the larger population or service population will then be assumed to have the greater shortage.

APPENDIX D.—CRITERIA FOR DESIGNATION OF AREAS HAVING SHORTAGES OF VISION CARE MANPOWER

PART I—GEOGRAPHIC AREAS

A. *Criteria*

A geographic area will be designated as having a shortage of vision care manpower if the following three criteria are met: 1. It is a rational area for the delivery of vision care services. 2. The estimated number of optometric visits supplied by vision care manpower in the area is less than the estimated requirements of the area's population for such visits, and the amount of this difference, that is, the computed optometric visit shortage, is at least 1,500 visits. 3. Optometric manpower in contiguous areas are excessively distant, overutilized, or inaccessible to the population of the area under consideration.

B. *Methodology*

In determining whether an area meets the criteria established by Paragraph A of this Part, the following methodology will be used:

1. *Rational Areas for the Delivery of Vision Care Services.* (a) The following areas will be considered rational areas for the delivery of vision care services: (i) A county, or a group of contiguous counties whose population centers are within 40 minutes travel time of each other; (ii) A portion of a county (or an area made up of portions of more than one county) whose population, because of topography, market or transportation patterns, or other factors, has limited access to contiguous area resources, as measured generally by a travel time of greater than 40 minutes to such resources.

(b) The following distances will be used to estimate distances corresponding to 40 minutes travel time: (i) Under normal conditions with primary roads available: 30 miles. (ii) In mountainous terrain or in areas with only secondary roads available: 20 miles. (iii) In flat areas or in areas connected by interstate highways: 35 miles. Within inner portions of metropolitan areas, the large variations in the scope of public transportation systems and traffic conditions do not permit standard mileage figures to be specified. In these areas, information on the public transportation system will be used to determine the distance corresponding to 40 minutes travel time.

2. *Determination of Estimated Requirement for Optometric Visits.* The number of optometric visits required by an area's population will be estimated by multiplying each of the following visit rates by the size of the population within that particular age group and then adding the 6 figures obtained together:

ANNUAL NUMBER OF OPTOMETRIC VISITS REQUIRED PER PERSON, BY AGE

Age	Under 20	20-29	30-39	40-49	50-64	65 and over
Number of visits	0.11	0.20	0.24	0.35	0.41	0.48

(3) *Determination of Estimated Supply of Optometric Visits.* The estimated supply of optometric services will be determined by use of the following formula: Optometric visits supplied = 3,000 × (optometrists under 65), + 2,000 × (optometrists 65 and over), + 1,500 × (opthalmologists).

(4) *Determination of Size of Shortage.* Size of shortage (in number of optometric visits) will be computed as follows: Optometric visit shortage = visits required − visits supplied.

(5) *Contiguous Area Considerations.* Vision care manpower in areas contiguous to an area being considered for designation will be considered excessively distant, overutilized or inaccessible to the population of the area if one of the following conditions prevails in each contiguous area: (a) Vision care manpower in the contiguous area are more than 40 minutes travel time from the center of the area being considered for designation (measured in accordance with paragraph B.1(b) of this Part). (b) The estimated requirement for vision care services in the contiguous area exceeds the estimated supply of such services there, based on the requirements and supply calculations previously described. (c) Resources in contiguous areas are inaccessible to the population of the area because of specified access barriers (such as economic or cultural barriers).

C. *Determination of Degree of Shortage*

The degree of shortage of a given geographic area or population group, designated as having a shortage of optometric manpower, will be determined using the following procedure:

1. *Grouping of Areas and Population Groups.* Designated areas (and population groups) will first be assigned to groups, based on the proportion of the requirement for optometric visits which is being supplied in the area or group, as follows: Group 1—Areas or groups with no optometric visits being supplied (i.e., with no optometrists or ophthalmologists). Group 2—Areas or groups where the ratio of optometric visits supplied to optometric visits required is less than 0.5. Group 3—Areas or groups where the ratio of optometric visits supplied to optometric visits required is between 0.5 and 1.0. All group 1 areas (and population groups) will be assumed to have a greater shortage than all group 2 areas, and all group 2 areas will be assumed to have a greater shortage than all group 3 areas.

2. *Relative Shortage within a Group.* In comparing any two areas within each group as defined above, the area with the larger computed shortage of optometric visits will be assumed to have the greater shortage.

PART II—POPULATION GROUPS

A. *Criteria*

Population groups within particular geographic areas will be designated if the following criteria are met: (a) Members of the population group do not have access to the optometric resources within the area (or in contiguous areas) because of nonphysical access barriers (such as economic or cultural barriers). (b) The estimated supply of optometric services available to the members of the population group (as determined under paragraph B.3 of Part I of this Appendix) is less the estimated number of visits required by that group (as determined under paragraph B.2 of Part I of this Appendix), and the amount of the difference, that is, the computed shortage, is at least 1,500 visits.

B. *Determination of Degree of Shortage*

The degree of shortage of a given population group will be determined in the same way as described for areas in paragraph C of Part I of this Appendix.

APPENDIX E—CRITERIA FOR DESIGNATION OF AREAS HAVING SHORTAGES OF PODIATRIC MANPOWER

PART I—GEOGRAPHIC AREAS

A. *Criteria*

A geographic area will be designated as having a shortage of podiatric manpower if the following three criteria are met: 1. The area is a rational area for the delivery of podiatric services. 2. The area's ratio of population to foot care practitioners is at least 28,000:1, and the computed podiatrist shortage to meet this ratio is at least 0.5, that is, rounds off to a need for at least one additional podiatrist. 3. Podiatric manpower in contiguous areas are overutilized, excessively distant, or inaccessible to the population of the area under consideration.

B. *Methodology*

In determining whether an area meets the criteria established by paragraph A of this Part, the following methodology will be used:

1. *Rational Areas for the Delivery of Podiatric Services.* (a) The following areas will be considered rational areas for the delivery of podiatric services: (i) A county or a group of contiguous counties whose population centers are within 40 minutes travel time of each other. (ii) A portion of a county, or an area made up of portions of more than one county, whose population, because of topography, market or transportation patterns or other factors has limited access to contiguous area resources, as measured generally by a travel time of greater than 40 minutes from its population center to such resources.

(b) The following distances will be used to estimate distances corresponding to 40 minutes travel time: (i) Under normal conditions with primary roads available: 30 miles. (ii) In mountainous terrain or in areas with only secondary roads available: 20 miles. (iii) In flat areas or in areas connected by interstate highways: 35 miles. Within inner portions of metropolitan areas, the large variations in the scope of public transportation systems and traffic conditions do not permit standard mileage figures to be specified. In these areas information on the public transportation system will be used to determine the area corresponding to 40 minutes travel time.

2. *Population Count.* The population count used will be the total permanent resident civilian population of the area, excluding inmates of institutions, adjusted by the following formula to take into account the differing utilization rates of podiatric services by different age groups within the population.

Adjusted population = total population × (1 + 2.2 × (percent of population 65 and over) × 0.44 × (percent of population under 17)).

3. *Counting of Foot Care Practitioners.* (a) All podiatrists providing patient care will be counted. However, in order to take into account productivity differences in podiatric practices associated with the age of the podiatrists, the following formula will be utilized:

Number of FTE podiatrists = 1.0 × (podiatrists under age 55) + 0.8 × (podiatrists age 55 and over).

(b) In order to take into account the fact that orthopedic surgeons and general and family practitioners devote a percentage of their time to foot care, the total available foot care practitioners will be computed as follows:

Number of foot care practitioners = number of FTE podiatrists + 0.15 × (number of orthopedic surgeons) + 0.02 × (number of general and family practitioners).

4. *Determination of Size of Shortage.* Size of shortage (in number of FTE podiatrists) will be computed as follows:

Podiatrist shortage = adjusted population/28,000 − number of foot care practitioners.

5. *Contiguous Area Considerations.* Podiatric manpower in areas contiguous to an area being considered for designation will be considered excessively distant, overutilized or inaccessible to the population of the area under consideration if one of the following conditions prevails in each contiguous area: (a) Podiatric manpower in the contiguous area are more than 40 minutes travel time from the center of the area being considered for designation. (b) Population-to-foot care practitioner ratios in contiguous areas are in excess of 20,000:1, indicating that contiguous area podiatric manpower cannot be expected to help alleviate the shortage situation in the area for which designation is requested. (c) Podiatric manpower in contiguous areas are inaccessible to the population of the area under consideration because of specified access barriers (such as economic or cultural barriers).

C. *Determination of Degree of Shortage*

The degree of shortage of a given geographic area, designated as having a shortage of podiatric manpower, will be determined using the following procedure:

1. *Grouping of Areas.* Designated areas will first be assigned to groups, based on the ratio (R) of adjusted population to number of foot care practitioners, as follows: Group 1—Areas with no foot care practitioners or areas with R > 50,000 and no podiatrists. Group 2—Other areas with R > 50,000. Group 3—Areas with 50,000 > R > 28,000. All group 1 areas will be assumed to have greater shortage than all group 2 areas, and all group 2 areas will be assumed to have greater shortage than all group 3 areas.

2. *Relative Shortage within a Group.* In comparing any two areas within each group as defined above, the area with the larger adjusted population will be assumed to have the greater shortage.

APPENDIX F—CRITERIA FOR DESIGNATION OF AREAS HAVING SHORTAGES OF PHARMACY MANPOWER

PART 1—GEOGRAPHIC AREAS

A. *Criteria*

A geographic area will be designated as having a shortage of pharmacy manpower if the following three criteria are met: 1. It is a rational area for the delivery of pharmacy services. 2. The number of pharmacists serving the area is less than the estimated requirement for pharmacists in the area, and the computed pharmacist shortage is at least .5, that is, rounds off to a need for at least one additional pharmacist. 3. Pharmacists in contiguous areas are overutilized or excessively distant from the population of the area under consideration.

B. *Methodology*

In determining whether an area meets the criteria established by paragraph A of this Part, the following methodology will be used:

1. *Rational Areas for the Delivery of Pharmacy Services.* (a) The following areas will be considered rational areas for the delivery of pharmacy services: (i) A county, or a group of contiguous counties whose population centers are within 30 minutes travel time of each other; and (ii) A portion of a county, or an area made up of portions of more than one county, whose population, because of topography, market or transportion patterns or other factors, has limited access to contiguous area resources, as measured generally by a travel time of greater than 30 minutes to such resources.

(b) The following distances will be used to estimate distances corresponding to 30 minutes travel time: (i) Under normal conditions with primary roads available: 20 miles. (ii) In mountainous terrain or in areas with only secondary roads available: 15 miles. (iii) In flat terrain or in areas connected by interstate highways: 25 miles. Within inner portions of metropolitan areas, the large variations in the scope of public transportation systems and traffic conditions do not permit standard mileage figures to be specified. In these areas, information on the public transportation system will be used to determine the area corresponding to 30 minutes travel time.

2. *Counting of Pharmacists.* All active pharmacists within the area will be counted, except those engaged in teaching, administration, or pharmaceutical research.

3. *Determination of Estimated Requirement for Pharmacists.*

(a) *Basic estimate.* The basic estimated requirement for pharmacists will be calculated as follows: Basic pharmacist requirements = .15 × (resident civilian population/1000) + .035 × (total number of physicians engaged in patient care in the area).

(b) *Adjusted estimate.* For areas with less than 20,000 persons, an adjustment is made to the basic estimate to compensate for the lower expected productivity of small practices. Therefore,

(i) For areas with less than 20,000 persons: Estimated pharmacist requirement = (2 − population/20,000) × basic pharmacist requirement.

(ii) For areas with 20,000 or more persons: Estimated pharmacist requirement = basic pharmacist requirement.

4. *Size of Shortage Computation.* The size of the shortage will be computed as follows: Pharmacist shortage = estimated pharmacist requirement number of pharmacists available.

5. *Contiguous Area Considerations.* Pharmacists in areas contiguous to an area being considered for designation will be considered excessively distant or overutilized if either:

(a) Pharmacy manpower in contiguous areas are more than 30 minutes travel time from the center of the area under consideration, or

(b) The number of pharmacists in the contiguous area is less than or equal to the estimated requirement for pharmacists for the contiguous area (as computed above).

C. *Determination of Degree of Shortage*

The degree of shortage of a given geographic area, designated as having a shortage of pharmacy manpower, will be determined using the following procedure.

1. *Grouping of Areas.* Designated areas will first be assigned to groups, based on the ratio of the number of pharmacists available to the estimated pharmacist requirement, as follows:

Group 1—Areas with no pharmacists.

Group 2—Areas where the ratio of available pharmacists to pharmacists required is less than .5.

Group 3—Areas where the ratio of available pharmacists to pharmacists required is between .5 and 1.0.

All group 1 areas will be assumed to have a greater shortage than all group 2 areas, and all group 2 areas will be assumed to have a greater shortage than all group 3 areas.

2. *Relative Shortage within a Group.* In comparing any two areas within each group as defined above, the area with the larger computed shortage of pharmacists will be assumed to have the greater shortage.

APPENDIX G.—CRITERIA FOR THE DESIGNATION OF AREAS HAVING SHORTAGES OF VETERINARY MANPOWER

PART I—GEOGRAPHIC AREAS

A. *Criteria for Food Animal Veterinary Shortage*

A geographic area will be designated as having a shortage of food animal veterinary manpower if the following three criteria are met:

1. It is a rational area for the delivery of veterinary services.

2. The ratio of veterinary livestock units to food animal veterinarians in the area is at least 10,000:1, and the computed food animal veterinary shortage to meet this ratio is at least .5, that is, rounds off to a need for at least one food animal veterinarian.

3. Food animal veterinarians in contiguous areas are overutilized or excessively distant from the population of the area under consideration.

B. *Criteria for Companion Animal Veterinary Shortage*

A geographic area will be designated as having a shortage of companion animal veterinary manpower if the following three criteria are met:

1. It is a rational area for the delivery of veterinary services.

2. The ratio of resident civilian population to number of companion animal veterinarians in the area is at least 30,000:1 and the computed companion animal veterinary shortage to meet this ratio is at least .5, that is, rounds off to a need for at least one companion animal veterinarian.

3. Companion animal veterinarians in contiguous areas are overutilized or excessively distant from the population of the area under consideration.

C. *Methodology for Determining Food Animal and Companion Animal Veterinary Manpower Shortages*

In determining whether an area meets the criteria established by paragraphs A and B of this Part, the following methodology will be used:

1. *Rational Areas for the Delivery of Veterinary Services.*

(a) The following areas will be considered rational areas for the delivery of veterinary services:

(i) A county, or a group of contiguous counties whose population centers are within 60 minutes travel time of each other.

(ii) A portion of a county (or an area made up of portions of more than one county) which, because of topography, market or transportation patterns or other factors, has limited access to contiguous area resources, as measured generally by a travel time of greater than 60 minutes to such resources.

(b) The following distances will be used to estimate distances corresponding to 60 minutes travel time:

(i) Under normal conditions with primary roads available: 45 miles.

(ii) In mountainous terrain or in areas with only secondary roads available: 30 miles.

(iii) In flat terrain or in areas connected by interstate highways: 55 miles.

Within inner portions of metropolitan areas, the large variations in the scope of public transportation systems and traffic conditions do not permit standard mileage figures to be specified. In these areas information on the public transportation system will be used to determine the distance corresponding to 60 minutes travel time.

2. *Determination of Number of Veterinary Livestock Units Requiring Care.* Since various types of food animals require varying amounts of veterinary care, each type of animal has been assigned a weight indicating the amount of veterinary care it requires relative to that required by the milk cow. Those weights are used to compute the number of "Veterinary Livestock Units" (VLU), for which veterinary care is required.

The VLU is computed as follows:

Veterinary Livestock Units (VLU) = (number of milk cows)
+ .2 × (number of other cattle and calves)
+ .05 × (number of hogs and pigs)
+ .05 × (number of sheep)
+ .002 × (number of poultry)

3. *Counting of Food Animal Veterinarians.* The number of food animal veterinarians is determined by weighting the number of veterinarians within each of several practice categories according to the average proportion of practice time in that category which is devoted to food animal veterinary care, as follows:

Number of Food Animal Veterinarians =
(number of veterinarians in large animal practice, exclusively)
+ (number of veterinarians in bovine practice, exclusively)
+ (number of veterinarians in porcine practice, exclusively)
+ (number of veterinarians in poultry practice, exclusively)

+ .75 × (mixed practice veterinarians with greater than 50 percent of practice in large animal care)
+ .5 × (mixed practice veterinarians with approximately 50 percent of practice in large animal care)
+ .25 × (mixed practice veterinarians with less than 50 percent of practice in large animal care)

4. *Counting of Companion Animal Veterinarians* (that is, those who provide services for dogs, cats, horses, and any other animals maintained as companions to the owner rather than for food animals). The number of full-time equivalent companion animal veterinarians is determined by weighting the number of veterinarians within each of several practice categories by the average portion of their practice which is devoted to companion animal care by the practitioners within that category, as follows:

Number of Companion Animal Veterinarians=
(number of veterinarians in small animal practice, exclusively)
+ (number of veterinarians in equine practice, exclusively)
+ .75 × (mixed practice veterinarians with greater than 50 percent of practice in small animal care)
+ .5 × (mixed practice veterinarians with approximately 50 percent of practice in small animal care)
+ .25 × (mixed practice veterinarians with less than 50 percent of practice in small animal care)

5. *Size of Shortage Computation.* The size of shortage will be computed as follows:

(a) Food animal veterinarian shortage=(VLU/10,000)—(number of food animal veterinarians).

(b) Companion animal veterinarian shortage=(resident civilian pop./30,000)—(number of companion animal veterinarians).

6. *Contiguous Area Considerations.* Veterinary manpower in areas contiguous to an area being considered for designation will be considered excessively distant from the population of the area or overutilized if one of the following conditions prevails in each contiguous area:

(a) Veterinary manpower in the contiguous area are more than 60 minutes travel time from the center of the area being considered for designation (measured in accordance with paragraph C.1(b) of this part).

(b) In the case of food animal veterinary manpower, the VLU-to-food animal veterinarian ratio in the contiguous area is in excess of 5,000:1.

(c) In the case of companion animal veterinary manpower, the population-to-companion animal veterinarian ratio in the contiguous area is in excess of 15,000:1.

C. *Determination of Degree of Shortage*

The degree of shortage of a given geographic area, designated as having a shortage of veterinary manpower, will be determined using the following procedure:

1. *Grouping of Areas.* Designated areas will first be grouped as follows: Group 1—Areas with a food animal veterinarian shortage and no veterinarians. Group 2—Areas (not included above), with a food animal veterinarian shortage and no food animal veterinarians. Group 3—All other food animal veterinarian shortage areas. Group 4—All companion animal shortage areas (not included above), having no veterinarians. Group 5—All other companion animal shortage areas.

All group 1 areas are assumed to have greater shortage than all group 2 areas, all group 2 areas are assumed to have a greater shortage than all group 3 areas, etc.

2. *Relative Shortage within a Group.* In comparing any two areas within group 1, or any two areas within group 2, the area with the larger number of VLU's will be assumed to have the greater shortage. In comparing any two areas within group 3, the area with the larger ratio of VLU's to food animal veterinarians will be assumed to have the greater shortage. In comparing any two areas within group 4, the area with the larger human population will be assumed to have the greater shortage. In comparing any two areas with group 5, the area with the higher ratio of population to companion animal veterinarians will be assumed to have the greater shortage.

[FR Doc. 78-346 Filed 1-9-78; 8:45 am]

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TUESDAY, JANUARY 10, 1978
PART III

ENVIRONMENTAL PROTECTION AGENCY

■

GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

Allotment of Authorizations

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER B—GRANTS

[FRL 839-2]

PART 35—STATE AND LOCAL ASSISTANCE

Grants For Construction of Treatment Works—Allotment of Authroizations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: These regulations allot $19.5 billion in authorizations for fiscal years 1978 through 1981, subject to appropriations, among the States for grants for construction of wastewater treatment works under Title II of the Federal Water Pollution Control Act, as amended. The regulations also set forth requirements for reallotment of these and other funds, in accordance with the Clean Water Act of 1977.

EFFECTIVE DATE: January 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Albert L. Pelmoter, Municipal Construction Division (WH-547), Environmental Protection Agency, 401 M Street SW., Room E1211A, Washington, D.C. 20460, telephone 202-426-8902.

SUPPLEMENTARY INFORMATION: Section 205 of the Federal Water Pollution Control Act as amended by section 25(b) of the Clean Water Act of 1977 (Pub. L. 95-217, enacted December 28, 1977 (the "new law")) requires that authorizations for each of the fiscal years 1978 through 1981 shall be allotted by January 7, 1978. Section 30 of the new law amended section 207 of the Federal Water Pollution Control Act to authorize appropriation of up to $4.5 bilion for fiscal year 1978 and up to $5 billion for each of the fiscal years 1979 through 1981. $5 billion is also authorized for fiscal year 1982, but the new law does not specify an allotment formula for fiscal year 1982 funds, and does not require allotment of that authorization at this time.

Section 30 of the new law amended section 207 of the Federal Water Pollution Control Act to provide that the authorizations in section 207 are subject to appropriation. Therefore, no portion of the authorizations will be available in any fiscal year (including fiscal year 1978) for obligation until enactment of legislation appropriating part or all of the authorized sums.

For fiscal year 1978, such a bill is now pending before Congress (H.R. 9375). EPA will promptly notify the States when funds are appropriated for this purpose.

Section 25(b) of the new law amended section 205 of the Federal Water Pollution Control Act to provide that the sums authorized for fiscal years 1978 through 1981 shall be allotted in accordance with the percentages set forth in Table 3 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives. The regulations below set forth both the allotment percentages, from Table 3 of the Committee Print, and the amount each State would receive for obligation if the full sums authorized are appropriated, from Table 4 of the Committee Print. In the event Congress appropriates less than the authorized sums in any of the fiscal years 1978 through 1981, the allotment percentages from Table 3 of the Committee Print will be applied to appropriated sums to produce a distribution of funds among the States for obligation.

Section 25(b) further amended section 205 of the Federal Water Pollution Control Act by adding a new section 205(e) to provide that for the fiscal years 1978 through 1981, subject to appropriations, no State shall receive less than one-half of one percent of the total annual allotment, except that not more than thirty-three one-hundredths of one percent of the total allotment shall be distributed among Guam, the Virgin Islands, American Samoa, and the Trust Territories. Section 205(e) also authorizes a supplementary appropriation of up to $75 million in each of the fiscal years 1978 through 1981 to meet these requirements, and provides that if amounts appropriated under the supplementary authorization are insufficient to meet needs, the supplementary appropriation will be distributed on a pro rata basis among the States. There currently are no funds appropriated or pending under this authorization, and therefore the table does not reflect the minimum percentages.

Section 25(b) also amended section 205 to include revised reallotment procedures, which are set forth below.

This amendment is effective on January 7, 1978, in order to meet the requirements of the Clean Water Act of 1977.

Dated: January 4, 1978.

BARBARA BLUM,
Acting Administrator.

40 CFR Part 35 is amended as follows:

1. By revising § 35.910-1 to read:

§ 35.910-1 Allotments.

Allotments are made on a formula or other basis specified by Congress for each fiscal year. Except where Congress indicates the exact amount of funds which each State should receive, computation of a State's ratio will be carried out to the nearest ten-thousandth percent (0.0001 percent) and, unless otherwise specified in regulations for allotments for a specific fiscal year, allotted amounts will be rounded to the nearest thousand dollars.

2. By revising § 35.910-2 to read:

§ 35.910-2 Period of availability; reallotment.

(a) All sums allotted under § 35.910-5 shall remain available for obligation within that State until September 30, 1978. Such funds which remain unobligated on October 1, 1978, will be immediately realloted in the same manner as sums under paragraph (b).

(b) All other sums allotted to a State under section 207 of the Act shall remain available for obligation until the end of one year after the close of the fiscal year for which the sums were authorized. Sums not obligated at the end of that period shall be immediately reallotted on the basis of the same ratio as applicable to sums allotted for the then-current fiscal year, except that none of the funds reallotted shall be made available to any State which failed to obligate any of the funds being reallotted. Any sum made available to a State by reallotment under this section shall be in addition to any funds otherwise allotted to such State for grants under this subpart during any fiscal year.

(c) Deobligated sums remaining available at the end of any fiscal year shall be treated in the same manner as the last allotment prior to the end of that fiscal year.

3. By adding a new § 35.910-7, to read:

§ 35.910-7 Allotments for Fiscal Years 1978-1981.

(a) Except as subsequent legislation may otherwise require, for each of the fiscal years 1978-81, all funds appropriated under authorizations in section 207 of the Act will be distributed among the States based on the following percentages drawn from Table 3 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives:

State	Percentage
Alabama	1.2842
Alaska	.4235
Arizona	.7757
Arkansas	.7513
California	7.9512
Colorado	.9187
Connecticut	1.1072
Delaware	.3996
District of Columbia	.3193
Florida	3.8366
Georgia	1.9418
Hawaii	.7928
Idaho	.4952
Illinois	5.1943
Indiana	2.7678
Iowa	1.2953
Kansas	.8803
Kentucky	1.4618
Louisiana	1.2625
Maine	.7495
Maryland	2.7777
Massachusetts	2.9542
Michigan	4.1306
Minnesota	1.8691
Mississippi	.9660
Missouri	2.4957
Montana	.3472
Nebraska	.5505
Nevada	.4138

State	Percentage
New Hampshire	.8810
New Jersey	3.5715
New Mexico	.3819
New York	10.6209
North Carolina	1.9808
North Dakota	.3107
Ohio	6.4655
Oklahoma	.9279
Oregon	1.2974
Pennsylvania	4.3616
Rhode Island	.5252
South Carolina	1.1766
South Dakota	.3733
Tennessee	1.5486
Texas	4.3634
Utah	.4457
Vermont	.3845
Virginia	1.9602
Washington	1.7688
West Virginia	1.7903
Wisconsin	1.9503
Wyoming	.3003
American Samoa	.0616
Guam	.0744
Puerto Rico	1.1734
Trust Territories	.1530
Virgin Islands	.0378
Total	100.00

(b) Based on paragraph (a), and Table 4 of the Committee Print, the following authorizations are allotted among the States subject to the limitations of paragraph (c):

State	For fiscal year 1978	For each of the fiscal years 1979, 1980, 1981
Alabama	$57,789,000	$64,210,000
Alaska	19,057,500	21,175,000
Arizona	34,906,500	38,785,000
Arkansas	33,808,500	37,565,000
California	357,804,000	397,560,000
Colorado	41,341,500	45,935,000
Connecticut	49,824,000	55,360,000
Delaware	17,982,000	19,980,000
District of Columbia	14,368,500	15,965,000
Florida	172,647,000	191,830,000
Georgia	87,381,000	97,090,000
Hawaii	35,676,000	39,640,000
Idaho	22,284,000	24,760,000
Illinois	233,743,500	259,715,000
Indiana	124,551,000	138,390,000
Iowa	58,288,500	64,765,000
Kansas	39,613,500	44,015,000
Kentucky	65,781,000	73,090,000
Louisiana	56,812,500	63,125,000
Maine	33,727,500	37,475,000
Maryland	124,996,500	138,885,000
Massachusetts	132,939,000	147,710,000
Michigan	185,877,000	206,530,000
Minnesota	84,109,500	93,455,000
Mississippi	43,470,000	48,300,000
Missouri	112,306,500	124,785,000
Montana	15,624,000	17,360,000
Nebraska	24,772,500	27,525,000
Nevada	18,621,000	20,690,000
New Hampshire	39,645,000	44,050,000
New Jersey	160,717,500	178,575,000
New Mexico	17,185,500	19,095,000
New York	477,940,500	531,045,000
North Carolina	89,136,000	99,040,000
North Dakota	13,981,500	15,535,000
Ohio	290,947,500	323,275,000
Oklahoma	41,755,500	46,395,000
Oregon	58,383,000	64,870,000
Pennsylvania	196,272,000	218,080,000
Rhode Island	23,634,000	26,260,000
South Carolina	52,947,000	58,830,000
South Dakota	16,798,500	18,665,000
Tennessee	69,687,000	77,430,000
Texas	196,353,000	218,170,000
Utah	20,056,500	22,285,000
Vermont	17,302,500	19,225,000
Virginia	88,209,000	98,010,000
Washington	79,596,000	88,440,000
West Virginia	80,563,500	89,515,000
Wisconsin	87,763,500	97,515,000
Wyoming	13,513,500	15,015,000
American Samoa	2,772,000	3,080,000
Guam	3,348,000	3,720,000
Puerto Rico	52,803,000	58,670,000
Trust Territory of Pacific Islands	6,885,000	7,650,000
Virgin Islands	1,701,000	1,890,000
Total	4,500,000,000	5,000,000,000

(c) The authorizations set forth in paragraph (b) are subject to appropriation. Therefore, there will be no obligation of any portion of any authorization for a fiscal year until a law is enacted appropriating part or all of the sums authorized for that fiscal year. If sums appropriated are less than the sums authorized for a fiscal year, EPA will apply the percentages in paragraph (a) to produce a distribution of all appropriated sums among the States, and promptly will notify each State of its share. There will be no obligations in excess of a State's share of this distribution of appropriated sums.

(d) If supplementary funds are appropriated in any fiscal year under section 205(e) of the Act to carry out the puposes of this paragraph, no State shall receive less than one-half of one percent of the total allotment among all States for that fiscal year, except that in the case of Guam, the Virgin Islands, American Samoa, and the Trust Territories not more than thirty-three one-hundredths of one percent of the total allotment shall be allotted to all four of those jurisdictions. If for any fiscal year the amount apropriated to carry out this paragraph is less than the full amount needed, the following States will share in any funds appropriated for the purposes of this paragraph in the following percentages, drawn from the Note to Table 3 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives:

State	*Percentage*
Alaska	5.4449
Delaware	7.1459
District of Columbia	12.8612
Idaho	.3416
Montana	10.8755
Nevada	6.1352
New Mexico	8.4057
North Dakota	13.4733
South Dakota	9.0178
Utah	3.8648
Vermont	8.2206
Wyoming	14.2135
Total	100.0000

[FRDoc.78-643Filed1-6-78;11:44am]

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TUESDAY, JANUARY 10, 1978
PART IV

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

■

COMMUNITY DEVELOPMENT BLOCK GRANTS

Urban Development Action Grants

[4210-01]

Title 24—Housing and Urban Development

CHAPTER V—OFFICE OF ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

[Docket No. R-77-471]

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Subpart G—Urban Development Action Grants

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This rule prescribes the requirements governing urban development action grants, which are available to assist distressed cities and distressed urban counties in revitalizing their economic bases and reclaiming deteriorated neighborhoods. The provisions in this subpart cover all aspects of urban development action grants, which were authorized for the first time by section 110 of the Housing and Community Development Act of 1977, which added a new section 119 to the Housing and Community Development Act of 1974.

EFFECTIVE DATE: January 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Marcia K. Dodge, Urban Development Action Grant Task Force, Office of Community Planning and Development, Department of HUD, Washington, D.C. 20410, 202-755-6032.

SUPPLEMENTARY INFORMATION: On October 25, 1977, the Department of Housing and Urban Development published in the FEDERAL REGISTER (42 FR 56450) proposed regulations for revised Subpart G, governing the community development block grant program under Title I of the Housing and Community Development of 1974, as amended.

Interested persons were given until November 25, 1977, to comment. All comments with respect to the proposed rulemaking were given careful consideration, and as a result of more than 160 responses filed, the following changes are being made:

DEFINITIONS—(570.451)

The term "nonmetropolitan cities" is being changed to "small cities," and the definition makes clear that any city under 50,000 population and not a central city of an SMSA is considered a small city for the purpose of these regulations.

ELIGIBLE APPLICANTS—(570.452)

GENERAL (570.452(a))

It is clarified that only the eligible entity may be the applicant. However, applicants may contract with other public agencies, as provided in section 570.500, in carrying out their programs. Second, a provision is being added that the determinations of eligibility will be made using a modified Standard Form 424, Preapplication for Federal Assistance, as prescribed by OMB Circular A-102.

MINIMUM STANDARDS OF PHYSICAL AND ECONOMIC DISTRESS FOR FISCAL YEAR 1978—METROPOLITAN CITIES AND URBAN COUNTIES (570.452(b)(1))

The use of the unique distress factor is eliminated as a distress standard, except for applicants which have a percentage of poverty which is greater than one and one-half times the median, and an absolute per capita income below the median. The use of the unique distress factor is limited to this group of cities because of the excessive administrative burden on HUD in establishing the acceptability of the unique distress factor for a large number of cities. The unique distress factor is retained for those cities which show severe distress by extremely high poverty levels and low per capita income, and which meet two of the minimum standards of distress.

As a result of several comments that the unique distress standard was an unclear criterion, the regulations now specify the standards by which unique distress factors will be reviewed.

In recognition of the deletion of the unique distress factor for most cities, applicants are required to meet three of six standards, unless the applicant's percentage of poverty is less than one half of the median, in which case the applicant must meet four of the six standards.

A number of comments were critical of applying the standards of distress to data for the community as a whole, rather than using data for distressed areas within the applicant's jurisdiction. At the time the legislation was enacted, the desirability of applying the distress standards to areas within the community instead of to the entire community was fully debated and rejected. Therefore, it would be contrary to legislative intent to apply the distress standards to only part of the community.

A similar issue was raised by communities which have consolidated governments or annexed jurisdictions. After careful consideration, we believe the legislative intent is that these jurisdictions should be treated in the same way as all other jurisdictions in measuring the degree of distress.

A number of comments and suggestions were made on the individual distress standards. Most could not be accommodated because of a lack of available data.

The distress medians are being changed slightly for most of the standards. This is due to the addition of data for new metropolitan cities, as well as the cross-checking of HUD data with census data.

MINIMUM STANDARDS OF DISTRESS FOR SMALL CITIES (570.452(b)(2))

A number of suggestions were received on standards which should be used for small cities. The proposed standards will be published soon for public comment.

RESULTS IN PROVIDING HOUSING (570.452(c))

Some comments recommended that HUD require applicants to have provided specific numbers of housing units by family type. We believe that this would penalize those communities which have been unable to provide low- and moderate-income housing because of insufficient resources. Therefore, HUD will consider only those actions under the control of the applicant.

RESULTS IN PROVIDING EQUAL OPPORTUNITY (570.452(d))

Several comments were made concerning the emphasis on the Section 8 Existing Housing Program. Since the first criterion includes all HUD-assisted housing, the separate reference to the Section 8 Existing Housing Program is deleted.

Other comments recommended adding language to clarify that applicants would have to document their results in equal opportunity by showing the specific numbers of minorities, lower-income persons and women who have benefited from the applicant's equal opportunity efforts in housing and employment. Since data on equal employment opportunity performance is available to HUD through EEOC-4 forms, these will be reviewed in making this determination. We believe that is unnecessary to require the compilation of new data, except for documentation of performance in family units of the Section 8 Existing Housing Program.

ELIGIBLE ACTIVITIES (570.453)

This section is being revised to clarify that commercial, industrial, or residential projects may be undertaken with Action Grant assistance. A provision was added to clarify that activities may be undertaken in areas outside the applicant's jurisdiction, under certain circumstances.

INELIGIBLE ACTIVITIES AND LIMITATIONS ON ELIGIBLE ACTIVITIES (570.454)

This new section was added to group those activities which are either ineligible or which are eligible only under special circumstances. Based on many comments received, the regulations now provide that small cities may be

reimbursed for up to three percent of the approved grant for the costs of planning the project and preparing the application.

Public comment indicated a misinterpretation of our intent that Action Grant funds be used only for physical development activities. Therefore, a new provision is being added to clarify that Action Grant funds may not be used for public services. Another provision is being added which limits the amount of compensation for consultants to the maximum rate paid under level 18 of the Federal GS series. This provision is required by the HUD 1978 Appropriation Act. The provision requiring HUD consultation with other Federal agencies which make available assistance for business loans or industrial development was deleted. This provision applies to HUD and does not limit the activities which may be carried out by recipients of Action Grant funds.

Actions Which Must Be Taken Prior To Submission of an Application (570.455)

A new section 570.455 is being added to group all of the requirements which must be met before an application may be submitted. In addition, some substantive changes were made to the material published for public comment, as described in the following paragraphs.

DETERMINATION OF ELIGIBILITY (570.455(a))

Except for the first quarter, when special procedures will be used, determinations of eligibility will be made using a modified Standard Form 424. This will enable HUD to advise applicants of their eligibility status as well as to eliminate those proposals which have little or no chance of funding, before applicants incur substantial expense in preparing an application. The Standard Form 424 will also be used to notify clearinghouses of the applicant's intent to file an application under OMB Circular A-95 procedures.

ENVIRONMENTAL ASSESSMENT (570.455(b))

Another change requires applicants who submit applications after January 31, 1978 (or February 28, 1978 for small cities) to have made a level of clearance finding in accordance with the environmental review procedures contained in 24 CFR Part 58 before submitting their applications. This requirement is being added to ensure that implementation of projects will not be delayed because environmental reviews have not been initiated. (See the paragraph on HUD Review and Action on Applications for further discussion of environmental requirements.)

CITIZEN PARTICIPATION

A number of comments on the citizen participation requirements were received. Some requested clarification as to how these requirements related to the citizen participation requirements for other community development block grants. Some comments suggested that the requirements were inappropriate for commercial and industrial development projects. While these citizen participation requirements are not as extensive as those specified for other community development block grants under this Part, the requirements are statutory requirements and therefore cannot be waived or reduced. We believe that these requirements are sufficient considering the nature of the Action Grant program and the types of projects that may be undertaken with Action Grant assistance.

A-95 REQUIREMENT (570.455(d))

The requirements for A-95 review have been further modified. For the first calendar year quarter only, applicants may submit their applications to HUD and the clearinghouses concurrently. The clearinghouses will have thirty days to submit their comments to the applicant with a copy to HUD. For all subsequent quarters, applicants must provide clearinghouses with thirty days to review and comment on the application prior to submitting the application to HUD.

Applications (570.456)

APPLICATION SUBMISSION DATE (570.456(a))

This section is revised to provide for submission of applications by metropolitan cities and urban counties during the first month of each quarter (Janaury, April, July and October), and by small cities during the second month of each quarter (February, May, August, and November). This change is being made in order to facilitate HUD review and processing of applications.

SCOPE (570.456(b))

The proposed regulations indicated that, if additional funding were required to complete a previously approved project, the applicant would have to provide the funding from community development block grants, local general purpose funds, or other public or private resources. A clarification is being made that additional funding to complete previously approved activities may be provided from community development block grants only if the activities are otherwise eligible under Subpart C of this Part.

SUBMISSION REQUIREMENTS (570.456(c))

The requirement that applicants submit documentation that they meet the eligibility criteria is being deleted. Since determinations of eligibility must be made using HUD data prior to submission of applications, submission of additional documentation with the application is unnecessary.

The reference to the consistency of the Urban Development Action Program With the Overall Economic Development Plan (OEDP) is being deleted. The Urban Development Action Program does not have to be consistent with the OEDP until such time as the Department of Commerce issues regulations which require the OEDP to be consistent with the Community Development Program. We will amend the Action Grant regulations to reflect this requirement at such time as appropriate actions have been completed by the Department of Commerce.

A provision is being added that if the project involves flood and drainage facilities, the application must include evidence that the requirements of 570.607 concerning seeking other Federal assistance have been satisfied.

The basic requirements for the contents of maps now conform to the other requirements of Part 570, with additional information required for Action Grants.

Criteria for Selection (570.457)

The material in this section has been revised and expanded. Comments indicated that the proposed regulations did not properly reflect the legislative intent that the primary selection criterion is the comparative degree of distress among applicants, and that the Senate's impaction formula (age of housing, poverty, and population lag/decline) is the primary method for measuring distress. Therefore the regulations are being revised to reflect both provisions. The regulations now state that, once projects are found to be feasible and effective, the primary selection criterion shall be the comparative degree of distress, as measured by the impaction factors.

IMPACT OF THE PROPOSED PROJECT ON LOW- AND MODERATE-INCOME PERSONS AND MINORITIES (570.457(d))

A number of comments were received on this criterion. Several comments suggested that this criterion should be the most important selection factor, and that job training for low- and moderate-income persons and minorities should be required to be available. After careful consideration, we believe that, given the multiple objectives of the Action Grant Program, an appropriate emphasis has been given to this selection criterion. With respect to job training, although training may not be undertaken with Action Grant funds, HUD will consider plans for training low- and moderate-income persons through other resources.

The provision concerning HUD's consideration of the extent of citizen participation has been strengthened by encouraging the involvement of private non-profit entities, local development corporations, or small business investment corporations in the implementation of projects. Another provision was added which indicates that HUD will review the impact on low- and moderate-income and minority persons if the project involves relocation of an industrial or commercial facility within a metropolitan area or jurisdiction.

NATURE AND EXTENT OF FINANCIAL PARTICIPATION BY PRIVATE ENTITIES (570.457(e))

A number of comments recommended that HUD not require firm financial commitment as an essential component of an Action Grant project. However, no change was made because the legislative history indicates that the firm financial commitment is an essential component of an Action Grant project.

Clarification was requested on the conditions under which an agreement of a company to remain in the locality would constitute an acceptable form of private commitment. Therefore, this provision has been qualified to indicate that a company must also be financially committed to expand or modernize its facilities in order for the agreement to remain in the locality to be an acceptable form of private commitment.

Because the reference to the selection of the developer through an open process was somewhat confusing, this provision has been clarified to indicate that HUD will consider whether applicants have sought proposals from more than one developer and have considered all proposals received. Several comments requested clarification of what HUD would include in calculating the amount of private investment. This section is being expanded to indicate the specific types of investments which HUD would consider.

EXTENT OF FINANCIAL ASSISTANCE TO BE MADE AVAILABLE BY THE STATE (570.457))

Comments were received both supporting and opposing this provision. The statute specifically names State participation as a selection criterion. Moreover, HUD wishes to encourage State financial participation in Action Grant projects. Therefore, the provision is being retained.

IMPACT ON PHYSICAL, FISCAL, OR ECONOMIC DETERIORATION (570.457(g))

The proposed regulations stated that HUD would consider the quality of the design of the project, including the suitability of the location and the environmental impact of the project. Public comments requested clarification of how HUD would judge this. We have determined that it is infeasible for HUD to make this judgment. In addition, since design of the project and consideration of environmental impact are local responsibilities, this provision was deleted. However, a provision is being added which states that applicants are expected to give attention to the quality of the design of their proposed projects.

PHASEDOWN OR ELIMINATION OF HOLD-HARMLESS ENTITLEMENTS

Several comments were made that the phasedown or elimination of hold-harmless entitlements should be deleted from the selection criteria. Other comments indicated that insufficient emphasis had been given to this provision, and that hold-harmless communities should only have to meet selection criteria (e) and (i). The legislative history establishes that needy communities which incur substantial reductions because of phasedown or elimination of hold-harmless entitlements should receive priority consideration. However, there is no suggestion that such communities would not have to propose feasible and effective projects, as determined by all of the relevant selection criteria. Therefore, no changes were made to this subsection.

HUD REVIEW AND ACTION ON APPLICATIONS (570.458)

The procedure for application review is being clarified to conform to the new HUD organization. Area Offices will submit their comments directly to the Central Office.

A clarification is being made to indicate that HUD will allocate funds to ensure that funds are available each quarter, in order that applicants applying in later quarters can be assured that their applications will be considered.

The provision on the timing of grant awards is being revised to reflect the schedule for submission of applications from small cities.

A provision is being added to the section on conditional approvals to permit applicants to make modifications to projects, or to substitute new projects if required as a result of environmental reviews. However, such changes must be made in a time specified by HUD and are subject to a determination by HUD that the changed project is at least as feasible and effective as the original project.

POST-APPROVAL REQUIREMENTS (570.459)

A requirement is being added that recipients must submit an opinion of counsel that the private commitments are legally binding under State and local law and conform to the grant agreement executed by HUD and the recipient. This opinion must be submitted to HUD with the evidence of private commitments before costs may be reimbursed under the grant agreement.

PROJECT AMENDMENTS (570.460)

Reference was made in the proposed regulations to program amendments. More accurate terminology being using in the final rule is project amendments. A clarification is being made that project amendments are to be submitted to the HUD Area Office. The provision that the amendment must result from actions beyond the control of the applicant was deleted because it was overly restrictive. A provision is being added that recipients must comply with the applicable environmental review procedures in 24 CFR Part 58 for program amendments.

The procedures set forth in Subpart G are urgently needed so that applicants can complete their applications and so that HUD can act on these requests for Urban Development Action Grants as quickly as possible. Because the procedure adopted provides for accepting applications and making awards on a quarterly basis, applicants must be able to submit applications in a timely fashion before the beginning of the third fiscal year quarter. For this reason, the Assistant Secretary for Community Planning and Development has determined that good cause exists for making these regulations effective on the date of publication. A Finding of Inapplicability with respect to Environmental Impact has been prepared in accordance with HUD Handbook 1390.1. In addition, an Inflation Impact Statement has been prepared, in accordance with Executive Order 11821. Copies of the Statement and Finding are available for inspection and copying in the Office of the Rules Docket Clerk, Room 5216, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410. Accordingly, 24 CFR Part 570 is revised by adding a new Subpart G as follows:

Subpart G—Urban Development Action Grants

Sec.

Subpart G—Urban Development Action Grants

§ 570.450 Purpose.

The purpose of urban development action grants is to assist distressed cities and distressed urban counties which require increased public assistance and private investment to alleviate physical and economic deterioration. Assistance will be made available for economic revitalization in communities with population outmigration or a stagnating or declining tax base, and for reclamation of neighborhoods, having excessive housing abandonment or deterioration.

§ 570.451 Definitions.

The following definitions apply only to this subpart: (a) "Activities" means actions undertaken with assistance under this subpart.

(b) "Project" means a group of integrally related activities financed by public and private sources to meet the objectives of this subpart and described in an application pursuant to § 570.456.

(c) "Small cities" means cities under 50,000 population which are not central cities of an SMSA.

§ 570.452 Eligible applicants.

(a) *General.* Eligible applicants are distressed cities and distressed urban counties which meet the criteria specified in this section. Cities participating in the community development block grant program in cooperation with an urban county, as provided in § 570.105(b)(iii), are eligible applicants under this subpart, if they meet the requirements of this section. Such cities may at the same time continue as cooperating units of government in the urban county's entitlement grant application. Using a modified Standard Form 424 as specified in § 570.455(a), applicants must request a determination from the HUD Area Office as to whether they meet the eligibility criteria specified in subsections (b), (c), and (d) before submitting an application pursuant to § 570.456. HUD will provide available date to applicants from the sources identified in subsection (b) to the greatest extent possible.

(b) Minimum standards of physical and economic distress for FY 1978—(1) *Metropolitan cities and urban counties.* (i) Applicants which are metropolitan cities or urban counties must meet three of the six following minimum standards of physical and economic distress, based on data for the community as a whole, unless the applicant's percentage of poverty is less than one half of the median for all metropolitan cities, in which case (the applicant must meet four of the six factors.

(A) *Age of housing.* 34.59 percent or more of the applicant's year-round housing units was constructed prior to 1940, based on U.S. Census data;

(B) *Per capita income.* The net increase in per capita income for the period 1969–1974 was $1,424 or less, based on U.S. Census data;

(C) *Population lag/decline.* For the period 1960–1975 the percentage rate of population growth (based on corporate boundaries in 1960 and corporate boundaries in 1975) was 15.52 or less, based on U.S. Census data;

(D) *Unemployment.* The average yearly rate of unemployment for 1976 was 7.69 percent or greater, based on August, 1977 data compiled by the Bureau of Labor Statistics;

(E) *Job lag/decline.* The rate of growth in retail and manufacturing employment for the period 1967–1972 was 7.08 percent or less, based on U.S. Census data. If data is not available for both retail and manufacturing employment, the threshold will be the median (based on those cities for which both sets of data are available) for either retail employment or manufacturing employment.

(F) *Poverty.* 11.24 percent or more of persons within the applicant's jurisdiction is at or below the poverty level, based on 1970 U.S. Census data;

(ii) If, based on data for the community as a whole, the applicant's percentage of poverty is greater than one and one-half of the median for all metropolitan cities and its absolute per capita income is below the median, a unique distress factor may be considered. The Secretary may consider objective, quantified evidence of severe distress which is unique to the applicant's jurisdiction. To qualify, the applicant must establish a unique distress factor to the Secretary's satisfaction, and must meet two of the distress factors stated in subparagraph (i). The unique distress factor must meet all of the following criteria: (A) The factor must describe a fiscal, physical, or economic condition that severely impacts the vitality of the community; (B) The factor must represent a condition other than those for which the applicant has been credited. For example, if the applicant has met the unemployment criteria of paragraph (D), that community could not use other unemployment factors as a unique distress factor as well; (C) The factor cannot be the result of Federal, State, or local court actions (such as costs incurred by the locality to comply with a court order), or laws or regulations; (D) The jurisdiction must establish a basis for comparison of the unique factor in relation to other localities within the State; (E) Data used to substantiate a unique factor must pertain to the period between 1970–1977; and (F) The factor must be based on data for the community as a whole. The Secretary will make a determination of eligibility based on the documentation submitted.

(2) *Small cities.* [Reserved]

(c) *Results in providing housing.* In order to qualify, the applicant must demonstrate that it has achieved reasonable results in providing housing for persons of low- and moderate-income. Among the factors HUD will consider are the number of federally or other assisted housing units provided for low- and moderate-income households, especially since 1974. Specifically, HUD will evaluate the applicant's activities in implementing the proportional goals established in any HUD-approved Housing Assistance Plan applicable to the applicant's jurisdiction, as well as actions to provide such housing taken previous to the establishment of a Housing Assistance Plan. This evaluation would include a review of such local actions as the removal of impediments in local ordinances and land use requirements to the development of assisted housing, the formation of a local housing authority when necessary to carry out the Housing Assistance Plan, the provision of sites for assisted housing when resources are available, and other actions appropriate for implementation of the Housing Assistance Plan. The actions of an applicant, which previously participated in the community development block grant program as part of an urban county and has subsequently withdrawn, shall be considered with regard to the provision of assisted housing in accordance with the HUD-approved Housing Assistance Plan for the urban county applicable to the applicant's jurisdiction. If the applicant has never had a HUD-approved Housing Assistance Plan, the applicant must demonstrate that it previously has provided or assisted in the provision of housing for low- and moderate-income persons and families.

(d) *Results in providing equal opportunity.* In order to qualify, the applicant must demonstrate that it has achieved reasonable results in providing equal opportunity in housing and employment for low- and moderate-income persons and members of minority groups. Among the factors which HUD will consider are: (1) The location and occupancy characteristics of federally or other assisted housing units provided for families, and the extent to which the use of these programs promotes and shows progress in the geographic dispersal of minority families outside areas of low-income and minority concentration. (2) Whether the applicant is actively engaged in promoting housing choice in all of its neighborhoods through participation in an area-wide affirmative marketing effort, a New Horizons Fair Housing Assistance Project, or other fair housing activities designed to eliminate and prevent discrimination in the private housing market throughout the applicant's jurisdic-

tion. (3) Whether relocation as a result of federally assisted programs has resulted in expanded housing opportunities for minorities outside areas of minority or low-income concentration. (4) Whether the applicant is a participating jurisdiction in an approved Housing Opportunity Plan, where such plan includes the applicant's jurisdiction. (5) The applicant's performance reports to HUD and/or the Equal Employment Opportunity Commission with respect to employment indicate affirmative efforts to hire, train, and promote minorities, females, and lower-income persons.

§ 570.453 Eligible activities.

(a) Except as specified in § 570.454, grant assistance will be made available for any eligible activity specified in subpart C which supports a commercial, industrial, or residential project. If permissible under State and local law, the applicant may undertake activities outside of the applicant's jurisdiction where the benefits of the project accrue to the applicant.

(b) If an applicant requests assistance for an activity not eligible under subpart C, then the applicant must demonstrate that the activity proposed is consistent with the objectives of revitalizing the applicant's economic base or reclaiming neighborhoods having excessive housing abandonment or deterioration. Among the factors HUD will consider in determining whether or not an otherwise ineligible activity will be funded are the following: The necessity of the activity in stimulating private investment in the proposed project; the amount of long-term employment accessible to low- and moderate-income persons generated by the proposed project; the degree of impact of the proposed project on the economic condition of the community; and the effectiveness of the proposed project as a stimulus to area revitalization. New housing construction may be assisted if the applicant demonstrates, in addition to the factors specified above, that the proposed new housing is consistent with the applicant's community development and housing strategy and that other resources are not adequate.

§ 570.454 Ineligible activities and limitations on eligible activities.

(a) Metropolitan cities and urban counties may not use assistance under this subpart for planning the project or developing the application. However, they may use entitlement community development block grant funds for this purpose. Any small city which submits a project application which is selected for funding may devote up to three (3) percent of the approved amount of its action grant to defray its actual costs in planning the project and preparing its application.

(b) Assistance under this subpart may not be used for public services as described in § 570.200(a)(8).

(c) Consultants may be paid for the reasonable costs of personal services, which shall be charged on an hourly basis per person and which shall in no case on a per person basis exceed the maximum daily rate of compensation for a GS-18 as established by Federal law.

(d) Except as specified herein, no assistance will be provided for projects intended to facilitate the relocation of industrial or commercial plants or facilities from one area to another, unless the Secretary finds that such relocation does not significantly and adversely affect the unemployment or economic base of the area from which such industrial or commercial plant or facility is to be relocated. However, moves within a metropolitan area shall not be subject to this provision.

§ 570.455 Actions which must be taken prior to submission of an application.

(a) *Determination of eligibility.* In order to provide applicants with a full competitive opportunity to qualify for assistance under this subpart, applicants shall request a determination from the HUD Area Office on their eligibility for assistance prior to submitting an application. Except for the first calendar quarter of 1978, when special procedures will be used, the request for determination of eligibility shall be submitted on Standard Form 424, as modified by HUD. This shall include a list of all family section 8 existing occupied units by census tract, and within census tracts the number of minority and non-minority families.

(b) *Environmental assessment.* Metropolitan cities and urban counties submitting applications after January 31, 1978, and small cities submitting applications after February 28, 1978, must have a level of clearance finding in accordance with 24 CFR Part 58, 15(d).

(c) *Citizen participation.* Applicants must comply with the citizen participation requirements described in § 570.456(c)(11)(i).

(d) *Modified OMB Circular A-95 procedure for applications.* Applicants must comply with all procedures set forth in Part I of OMB Circular No. A-95 except as modified below. Those procedures also require that program amendments submitted to HUD in accordance with paragraph 570.460(b) shall be submitted to clearinghouses.

(1) *Notification.* Applicants shall submit a copy of the request for determination of eligibility to the appropriate State and areawide clearinghouses at the time the request is submitted to HUD. This will serve as the notice of intent to file an application. HUD will provide clearinghouses with a copy of its notification to the applicant of its eligibility status.

(2) *Application review.* (i) For the first calendar quarter of 1978, applicants may submit applications to clearinghouses and to HUD concurrently. The clearinghouses will have thirty days for review of the application and to provide a response to the applicant with a copy to HUD which clearly identifies the applicant. HUD will not make a final decision on the application until the clearinghouse comments are considered. If no comments are received by HUD, no funding decision will be made until 30 days after the deadline date for submission of applications.

(ii) For all subsequent quarters, unless the requirement is waived by a clearinghouse, applicants shall provide the clearinghouse a period of thirty days to review the completed application and to transmit to the applicant any comments or recommendations, prior to submission of the application to HUD.

(iii) The applicant shall transmit all comments with the application to HUD. In instances where comments are not received by the applicant within the thirty-day period, the applicant shall include a statement indicating that the State and areawide clearinghouses were notified and no comments were received.

(iv) If the A-95 review comments contain any findings of inconsistency with State, areawide, or local plans or noncompliance with environmental or civil rights laws, the applicant must state how it proposes to resolve the finding or state its justification for proposing to proceed with the project despite the findings developed through the A-95 review process.

§ 570.456 Applications.

(a) *Application submission date.* Applications will be accepted by HUD Area Offices during the first month of each quarter for metropolitan cities and urban counties (January, April, July, and October), and during the second month of each quarter for small cities (February, May, August, and November).

(b) *Scope.* Applicants must submit a separate application for each proposed project. The proposed project must be able to be carried out in a timely fashion, which generally HUD expects not to exceed four years. The applicant shall apply for action grant funds in an amount which, together with other public and private resources that will be available, will be adequate to complete the project without additional action grant funds. While a recipient remains eligible for action grant funding for activities in support of other projects in subsequent years, no additional funding will be available in subsequent years to complete a project approved in a prior year. Should additional funding be required to complete

a previously approved project, the applicant must provide such funding from other community development block grants (if the activities are eligible under Subpart C), local general purpose funds, or other public or private resources.

(c) *Submission requirements.* Applications must be submitted on HUD forms to the appropriate HUD Area Office and must consist of the following:

(1) Standard Form 424, prescribed by OMB Circular No. A-102.

(2) A community development plan and a housing assistance plan, as specified in Subpart D. Applicants which have an approved Community Development Program in effect may incorporate this information by reference.

(3) A brief description of the applicant's Urban Development Action Program, which shall consist of an action plan and strategy and related projects to alleviate physical and economic distress. This program (i) must be consistent with the Community Development Program and the Housing Assistance Plan described in Subpart D; and (ii) must describe unique opportunities to (A) attract private investment; (B) stimulate investment in restoration of deteriorated or abandoned housing stock; or (C) solve critical problems resulting from population outmigration or a stagnating or declining tax base.

(4) A description of the project to be undertaken, together with the estimated cost of the project. If the project involves flood and drainage facilities, the application must include evidence that the requirements of § 570.607 have been satisfied.

(5) The status of environmental review of the proposed project, and a proposed timetable for the completion of any required environmental actions pursuant to 24 CFR Part 58.

(6) Evidence of commitment of public and private resources which will be available for completing the project, pursuant to § 570.457 (e), (f), and (g). Such evidence may be in the form of a letter of intent or a legally binding commitment between the applicant and public/private entities.

(7) A summary of proposed expenditures for the activities to be undertaken with assistance under this subpart.

(8) A schedule for accomplishing the proposed project.

(9) A statement containing appropriate information pursuant to the criteria for selection set forth in § 570.457.

(10) A map or maps of the applicant's jurisdiction as submitted in the latest HUD-approved community development block grant application, with the following additional information: (i) location of the proposed project, and (ii) access to and from the proposed project and surrounding land uses.

(11) Certifications. The applicant shall submit certifications, in such form as HUD may prescribe, providing assurances that:

(i) Prior to submission of its application, it has:

(A) Prepared and followed a written citizen participation plan, which plan provides the opportunity for citizens to participate in the development of the application, with special attention to measures to encourage the statement of views and the submission of proposals by low- and moderate-income persons, minorities, and residents of blighted neighborhoods, and to scheduling hearings at times and locations which are convenient to all citizens;

(B) Provided citizens with adequate information concerning the amount of funds available for proposed activities, the range of activities that may be undertaken, and other important program requirements;

(C) Held public hearings to obtain the views of citizens, of which at least one hearing was held on needs which may be dealt with under this subpart, and at least one hearing was held on the application prior to official action authorizing submission of the application.

(ii) The proposed proposed project is consistent with the Community Development Program and the Housing Assistance Plan.

(iii) The following assurances required pursuant to Subpart D concerning: the legal authority of the applicant; action by the local governing body; A-95; NEPA; FMC-74-4 and OMB Circular No. A-102; labor standards; HUD requirements; flood hazards; equal opportunity; opportunities for training, employment and contracts for residents of the project area; real property acquisition; relocation; standards of conduct; the Hatch Act; access to books and records; and other assurances concerning EPA's list of violating facilities; flood insurance purchase requirements; and physical design of facilities assessible to and usable by the physically handicapped.

§ 570.457 Criteria for selection.

Grant assistance will be made available so as to achieve a reasonable balance for the program as a whole among projects that are designed primarily to restore deteriorated neighborhoods; to reclaim for industrial purposes underutilized real property; and to renew commercial employment centers. The nature and purpose of the proposed project will determine the extent to which each of the selection criteria in subparagraphs (c) through (k) will apply.

(a) *Selection of projects for funding: metropolitan cities and urban counties.* HUD shall in each calendar quarter review all proposals received and pending consideration, and shall determine which among such proposals are feasible and effective. HUD shall select from such feasible and effective proposals those to be funded on the following bases: (1) as the primary criterion, the comparative degree of physical and economic distress among applicants, as measured by the differences in the factors set forth below, which shall be assigned the relative weights as follows:

(i) The percentage of their total housing stock that was built prior to 1940: .5;

(ii) The percentage of their total current population that was in poverty in 1970: .3; and

(iii) The degree to which their population growth rate lags behind that of all metropolitan cities: .2.

(2) Such additional factors as the Secretary may determine to be relevant to an assessment of the comparative degree of physical and economic deterioration of applicants, including but not limited to, per capita income, unemployment, and job lag/decline; and (3) the factors contained in paragraphs (c) through (k) of this section.

(b) *Selection of projects for funding: small cities.* [*Reserved*].

(c) *The demonstrated performance of the applicant in carrying out housing and community development programs.* Performance shall be evaluated using such considerations as: past compliance with HUD regulations and statutory requirements; progress in carrying out programs as planned; and the ability to complete programs in a timely fashion.

(d) *The impact of the proposed project on the special problems of low- and moderate-income persons and minorities.* (1) HUD will consider the extent to which the proposed project eliminates or reduces the magnitude of the special problems of low- and moderate-income persons and minorities (e.g., the relative levels of unemployment and underemployment, discrimination in housing and employment, locational impaction, and lack of sufficient supportive services and facilities). In making this determination, HUD will consider the benefits of the project to low- and moderate-income persons and minorities, such as the provision of employment or entrepreneurial opportunities, housing opportunities, or public or private facilities and improvements. HUD will also consider plans for recruiting and training unemployed low- and moderate-income residents, especially minorities, in conjunction with existing programs (e.g., the Comprehensive Employment and Training Act of 1973). Location of the proposed project, when it is clearly relevant to the question of what groups benefit, can be used as one of

the factors to show that the proposed project benefits low- and moderate-income persons and minorities. While not required, priority will be given to projects in which minorities hold an equity interest.

(2) If the project includes activities which generate relocation, HUD will consider how the applicant's relocation process, including any proposed relocation advisory services, will provide the opportunity for such persons to relocate outside areas of low-income or minority concentration.

(3) Consideration will be given to (i) whether and how low- and moderate-income persons and minorities will share in the opportunity to reside in the area; and (ii) whether and how displaced businesses will be given the opportunity to relocate in the area, once the project is completed.

(4) Relocation of industrial and commercial plants within a jurisdiction or metropolitan area will be reviewed to determine the impact on low- and moderate-income and minority persons who are presently employed, and if the move will have a significantly negative impact on the area from which the facility is moved.

(5) HUD will also consider the extent of citizen participation in the development and review of the application, as well as the provision of technical assistance to citizens' groups if such assistance has been requested and is appropriate. HUD also ecourages the involvement of private nonprofit entities, local development corporations, or small business investment corporations in the implementation of projects.

(e) *The nature and extent of financial participation by private entities in the proposed project.* No activities will be funded under this subpart unless there is a firm commitment of private resources to the proposed project. The private commitment must have a clear, direct relationship to the activities for which funding is being requested. The necessary private commitment must be identified in the application. Examples of acceptable forms of private commitment include the commitment of a company to remain in the locality if the company is financially committed to invest in expansion or modernization of its facilities, the commitment of a developer, or a commitment of financing from such lending sources as banks, savings and loan institutions, credit unions, pension funds, insurance funds, or other investors. The following characteristics will be considered in determining the nature and extent of financial participation by private entities:

(1) Whether the applicant will be able to recapture its financial participation in the project for additional economic development or neighborhood revitalization uses, through such mechanisms as loan or lease repayments and participation in profits realized by the project;

(2) Whether the project includes a greater amount of private investment in relationship to the requested grant amount than projects of a similar nature which are being considered for action grant funding. In calculating the amount of private investment, HUD will include such investment as equity investments, the cost of capital improvements, the total value of new leases, the amount of financing provided by private entities to specific applicants for such financing, and similar net investments;

(3) Whether the private commitment is more firm than for other projects being considered for action grant funding; and

(4) Whether the applicant has sought proposals from more than one developer and has considered all proposals received from developers in regard to the proposed project.

(f) *The extent of financial assistance to be made available by the State.* Projects which include financial assistance from the State will receive more favorable consideration. The extent of such assistance will also be considered.

(g) *The nature and extent of financial participation by other public entities in the proposed projects.* Projects which include financial assistance from other public entities will receive more favorable consideration. Other public resources may be provided by matching other Federal grants, or by firm commitments of other Federal or local resources, such as those from the Economic Development Administration, the Small Business Administration, the Urban Mass Transportation Administration, or from the applicant's general purpose funds.

(h) *The impact of the proposed project on the physical, fiscal, or economic deterioration of the community.* The nature and purpose of the proposed project will determine which of the following measures will apply:

(1) Physical impact of the project will be measured by such factors as the extent of improvement in the applicant's housing stock; provision of public improvements or facilities; and the provision or improvement of commercial and industrial facilities; and the extent that other public and private facilities and services exist or will be provided to support the project. Applicants are expected to consider the quality of the design of the project.

(2) Fiscal impact will be measured by such factors as the extent of improvement in the applicant's tax base.

(3) Economic impact will be measured by such factors as the extent of increased long-term employment opportunities, particularly for residents of the distressed city or urban county.

(4) The market and economic feasibility of the proposed project will be taken into consideration in determining the physical, fiscal, or economic impact of the project.

(5) More favorable consideration will be given to projects which will cause minimal displacement and disruption of occupants and jobs.

(i) *The extent to which the project represents a special or unique opportunity to meet local priority needs which are consistent with the objectives of economic revitalization or reclamation of neighborhoods.*

(j) *The feasibility of accomplishing the project in a timely fashion within the total resources which will be provided.* HUD will consider such factors as the status of land assembly and zoning, the environmental status of the project, and administrative and legal mechanisms for accomplishing the project. Proposals will be considered to have a lesser degree of feasibility if they involve substantial additional planning, lengthy start-up time, or are subject to such potential obstacles as environmental or legal constraints.

(k) *Phasedown or elimination of hold-harmless entitlements.* Applicants which incur substantial reductions in their entitlement grants because of phasedown or elimination of hold-harmless funding will receive priority consideration provided they receive equal consideration on the other criteria for selection.

§ 570.458. HUD review and action on applications.

(a) *HUD review.* Area offices shall forward applications which meet the criteria of § 570.456, together with their assessment of the proposals, to the HUD Central Office, which will evaluate applications on a comparative basis in accordance with the criteria for selection specified in § 570.457.

(b) *HUD action on applications.* HUD will allocate funds to ensure that funds are available each quarter. Funding decisions will be made within two months after the deadline for submission of applications as specified in § 570.456(a). Applications postmarked after the last day of the month in which they are to be submitted will not be considered until the following quarter. Applications not approved in the first quarter in which they are accepted will be reconsidered for funding in the subsequent quarter, unless there is little likelihood that the project will be funded. Applications not approved after the second quarter will not receive further consideration, unless HUD is actively negotiating the terms of the project with the applicant. The Secretary will notify the applicant in writing of the action taken on its application, and the conditions under which the application may be reconsidered.

(c) *Conditional approval.* The Secretary may make a conditional approval,

in which case the grant will be approved, but the utilization of funds will be restricted. Conditional approvals will be made for purposes including, but not limited to, the following:

(1) To ensure that the recipient will carry out the activities according to the schedule submitted by the applicant pursuant to § 570.456(c)(8);

(2) to ensure that the applicant secures legally binding commitments of private resources pursuant to § 570.456(c)(6); and

(3) to permit local environmental reviews under § 570.603 to be completed. If the result of the environmental review is to require changes to the project, or the recommended substitution of a new project to be funded by the approved grant, the applicant may make such changes or substitution within a time specified by HUD. Such changes or substitutions are subject to a determination by HUD that the changed project qualifies under the provisions of § 570.457(a) or (b), at least to the same extent as the original project.

§ 570.459 Post-approval requirements.

(a) *Submission of evidence of private commitment.* Recipients must submit to the HUD Area Office evidence of legally binding commitments from private entities identified in the application pursuant to § 570.456(c)(6). Recipients must also submit an opinion of counsel that the commitments are legally binding under State and local law and conform to the grant agreement executed by HUD and the recipient. No costs may be reimbursed under the grant agreement prior to HUD receipt of such evidence.

(b) *Release of funds pursuant to § 570.603.* Recipients must comply with the provisions of § 570.504 concerning the release of funds for projects requiring environmental review.

(c) *Performance according to schedule.* Action grant funding shall be conditioned upon the performance of the recipient in meeting the schedule set forth in its application pursuant to § 570.456(c)(8). Failure to meet such schedule may result in the termination of the grant agreement, unless a revised schedule has been approved by HUD.

(d) *Reporting requirements.* [Reserved.]

§ 570.460 Project amendments.

(a) *Prior HUD approval.* Recipients must submit to the HUD Area Office a request for approval of all amendments involving new activities, or significant alteration of existing activities that will change the scope, location, scale, or beneficiaries of the approved activities, or whenever a revision involving the cumulative effect of a number of smaller changes add up to an amount that exceeds ten percent of the grant. HUD approval of amendments may be granted to those requests which meet all of the following criteria:

(1) If activities are added or are significantly altered, the new activities must meet the criteria for selection applicable at the time of receipt of the program amendment.

(2) The recipient has complied with the requirements of this subpart for A-95 review of amendments and citizen participation.

(3) Any new activity must be able to be completed promptly and within the approved budget.

(b) *A-95 review.* The recipient shall provide the State and areawide clearinghouses with thirty days for review and comment prior to submission of an amendment requiring prior HUD approval pursuant to § 570.460(a).

(c) *Environmental review.* The recipient shall comply with the provisions of 24 CFR Part 58 concerning the updating of environmental reviews.

(d) *Other amendments.* The recipient may make amendments other than those requiring prior HUD approval pursuant to § 570.460(a) without HUD approval.

§ 570.461 Allocation to small cities.

Not less than twenty-five percent of the funds made available under this subpart shall be used for cities under fifty thousand population which are not central cities of a metropolitan area.

§ 570.462 Applicability of rules and regulations.

The provisions of Subparts A, B, C, F, G, H, and J shall apply to this subpart, except to the extent that they are specifically modified or augmented by the contents of this subpart.

Issued at Washington, D.C., January 5, 1978.

ROBERT C. EMBRY, Jr.,
Assistant Secretary for Community Planning and Development.

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[4210-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. R-77-471]

[24 CFR Part 570]

COMMUNITY DEVELOPMENT BLOCK GRANTS

Subpart G, Urban Development Action Grants, Amendment of Proposed Rulemaking

AGENCY: Department of Housing and Urban Development.

ACTION: Amendment of proposed rule.

SUMMARY: The Secretary is amending a Notice of Proposed Rulemaking with respect to its Small Cities Community Development Block Grant Regulations to include a section that was omitted from the notice and is also extending the time for public comment 7 days. The section being added is necessary in order to set forth the basis for selection of applications.

COMMENT DUE DATE: February 6, 1978.

FOR FURTHER INFORMATION CONTACT:

David I. Dresser, Urban Development Action Grant Task Force, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-6032.

Accordingly, the Notice of Proposed Rulemaking published December 30, 1977, with respect to 24 CFR Part 570 Subpart G is amended by adding a section 570-457(b) at the end of the proposed rule to read as follows:

§ 570.457 Criteria for selection.

* * * * *

(b) *Selection of projects for funding, small cities.* HUD shall in each calendar quarter review all proposals received and pending consideration, and shall determine which among such proposals are feasible and effective. HUD shall select from such feasible and effective proposals those to be funded on the following basis: (1) As the primary criterion, the comparative degree of physical and economic distress among applicants as measured by the differences in the factors set forth below, which shall be assigned the relative weights set forth below:

Age of housing, 0.5; Poverty, 0.3; Population lag/decline, 0.2.

(2) Such additional factors as the Secretary may determine to be relevant to an assessment of the comparative degree of physical and economic deterioration of applicants; and (3) the factors contained in paragraphs (c) through (k) of this section.

Issued at Washington, D.C., January 5, 1978.

ROBERT C. EMBRY, Jr.,
Assistant Secretary for Community Planning and Development.

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