6-7-82
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federal register

Monday
June 7, 1982

Selected Subjects

CONTINUED INSIDE

Selected Subjects

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Contents

Federal Register
Vol. 47, No. 109
Monday, June 7, 1982

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
1900 24539

8 CFR
Proposed Rules:
214 24596
248 24596

9 CFR
92 24540

14 CFR
39 24541
Proposed Rules:
21 24596
75 24597
399 24598

16 CFR
455 24542

29 CFR
1601 24542

32 CFR
1665 24542
Proposed Rules:
1656 24599
1660 24599

33 CFR
117 (3 documents) 24543, 24544
157 24547
175 24548

38 CFR
3 24549
Proposed Rules:
21 24603

40 CFR
52 (2 documents) 24552
420 24554
Proposed Rules:
180 24604

46 CFR
50 24554
71 24554
91 24554
107 24554
111 24554
189 24554
510 24555
Proposed Rules:
7 24604

47 CFR
2 24557
22 24557
73 (9 documents) 24572–24580
74 24580
90 24581
Proposed Rules:
Ch. I 24612
73 24613

49 CFR
1 24581
171 24582
172 24582
173 24582
175 24582
512 24587
575 24593
1110 24594

Rules and Regulations

Federal Register
Vol. 47, No. 109
Monday, June 7, 1982

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1900

Farmers Home Administration Appeal Procedure

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends an administrative provision in its appeals regulation. This action is needed to change the authority for certain appeals decisions. The intended effect is to eliminate personnel and Agency management problems.

EFFECTIVE DATE: June 7, 1982.

FOR FURTHER INFORMATION CONTACT: Carl O. Opstad, Directives Management Branch, USDA, FmHA, 14th Street and Independence Avenue, SW., Room 6346–S, Washington, DC 20250, Telephone (202) 382–9744.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1512–1 to implement Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal Agency management affecting the internal decision making and signature authority of the Agency. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since the purpose of this change involves only internal Agency management and publication for comment is unnecessary.

The FmHA programs and projects which are affected by this regulation are subject to State and local clearinghouse review in the manner delineated in Subpart H of Part 1901 of this Chapter.

The Catalog of Federal Domestic Assistance numbers and titles for this regulation are:

No. and Program Title
10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.408 Grazing Association Loans
10.409 Irrigation, Drainage, and Other Soil and Water Conservation Loans
10.410 Low to Moderate Income Housing Loans (Rural Housing Loans—Section 502—Insured)
10.411 Rural Housing Site Loans (Section 523 and 524 Site Loans)
10.413 Recreation Facility Loans
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans (SW Loans)
10.417 Very Low-Income Housing Repair Loans and Grants
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.420 Rural Self-Help Housing Technical Assistance (Section 523 Technical Assistance)
10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facilities Loans
10.424 Industrial Development Grants
10.426 Area Development Assistance Planning Grants (Section 111)
10.427 Rural Rental Assistance Payments
10.428 Economic Emergency Loans
10.430 Energy Impacted Area Development Assistance Program
10.431 Technical and Supervisory Assistance Grants
10.432 Biomass Energy and Alcohol Fuels Loans and Guarantees

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that the action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

A proposed rule published in the **Federal Register** (46 FR 54949) on November 5, 1981, generated 31 comments which were considered by the Agency in developing its April 1, 1982, (47 FR 13758) final rule. However, an unanticipated Agency management problem has come to our attention. In footnote No. 3 to Exhibit D, Part 1900, Subpart B, the "Designee" is delegated authority to sign certain decision letters in appeal hearings. This authority causes personnel and Agency management problems in the handling of appeals when the State Director is the initial decision maker and the Administrator's designee is the hearing officer. To eliminate these problems, the Agency is amending Exhibit D to delete the signature authority for a person designated to conduct a hearing for the Administrator in certain cases. In these cases the hearing will be conducted by the designee but the decision will be made in the National Office.

List of Subjects in 7 CFR Part 1900

Appeals, Credit, Loan Programs—Agriculture, Loan programs—Housing and community development.

PART 1900—GENERAL

Accordingly, Title 7, Chapter XVIII, Part 1900, Subpart B, Exhibit D, Note 3, is revised to read as follows:

Exhibit D—Hearing/Review Officers Designation

* * * * *

3. *Designee:* A person designated by the Hearing Officer or Review Officer to conduct a hearing or review. The Designee signs the decision letter to the appellant without the concurrence of the original Hearing/Review Officer except:

a. For hearings on County Committee decisions. For these hearings the State Director or Acting State Director may designate other persons to act on his or her behalf in conducting the hearing, however, the State Director or Acting State Director must sign the hearing decision letter.

b. When the designee appointed by the Administrator to conduct a hearing is not an employee in the National Office. The designee will promptly after the hearing, send the complete case file, notes for the hearing, a tape recording of the hearing and a recommended decision to the Administrator for review and a final decision.

* * * * *

(7 U.S.C. 1989; 42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the

Under Secretary for Small Community and Rural Development, 7 CFR 2.70)

Dated: May 28, 1982.

Charles W. Shuman,

Administrator, Farmers Home Administration.

[FR Doc. 82-15337 Filed 6-4-82; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 82-055]

Specifically Approved States to Receive Stallions Imported From CEM-Affected Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document adds the State of New York to the list of specifically approved States authorized to receive certain stallions imported into the United States from countries affected with contagious equine metritis (CEM).

This action is being taken because the Deputy Administrator of Veterinary Services, Animal and Plant Health Inspection Service, has determined that New York has laws or regulations in effect to require the additional inspection, treatment and testing of such stallions to further ensure their freedom from CEM as required by the regulations.

DATES: Effective date June 1, 1982. Comments must be received on or before August 6, 1982.

ADDRESS: Written comments to Deputy Administrator, USDA, APHIS, VS, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. M. R. Crane, USDA, APHIS, VS, Room 818, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Emergency Action

This action has been reviewed in conformance with Executive Order 12291 and Secretary's Memorandum 1512-1, and has been determined to be not a "major rule." The Department has determined that this action will not have a significant annual effect on the economy, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have any adverse effects on competition, employment, investment, productivity, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived their review process required by Executive Order 12291.

Mr. W. F. Helms, Director, National Program Planning Staffs, VS, APHIS, USDA, has determined that an emergency situation exists which warrants publication without prior opportunity for a public comment period on this interim action. This amendment relieves restrictions presently imposed on stallions over 731 days of age being imported into the United States, and should be made effective immediately in order to permit affected persons to move these stallions into the United States without unnecessary restrictions.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency interim action is impracticable, unnecessary and contrary to the public interest, and good cause is found for making this emergency interim action effective less than 30 days after publication of this document in the **Federal Register.** Comments have been solicited for 60 days after publication of this document, and this emergency interim action will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the **Federal Register** as soon as possible.

Certification Under The Regulatory Flexibility Act

Dr. Harry C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. It is anticipated that approximately 20 stallions imported from CEM affected countries will be consigned to the State of New York annually. This compares with 29,161 horses of all classes imported into the United States in FY 1981. Furthermore, stallions over 731 days of age from CEM affected countries can be imported and consigned to other States approved to receive such animals.

Background

Section 92.2(i)(2) of Title 9, Code of Federal Regulations (9 CFR 92.2(i)(2)), among other things, authorizes the importation of stallions over 731 days of age into the United States from countries affected with contagious equine metritis (CEM) when specific requirements to prevent their introducing CEM into the United States are met, and the animals imported are moved into specified States for further inspection, treatment and testing by the State of destination. The amendment established minimum standards which a State must meet in order to be approved to receive stallions imported from CEM-affected countries. These standards contain treatment, testing and handling procedures believed necessary to ensure that the stallions being imported into the United States are free of the contagion of CEM.

Therefore, this document adds the State of New York to the list of specifically approved States to receive such horses, on the basis of a determination of their eligibility for such approval under § 92.4(a)(6) of the Regulations.

Alternatives

The alternatives considered in making this decision were (1) not to list New York as a State approved to receive stallions over 731 days of age from CEM affected countries, and (2) to make the change set forth in this document.

Alternative No. 1 would prohibit the consignment of stallions over 731 days of age from CEM affected countries to the State of New York. This alternative was not adopted because the Deputy Administrator, Veterinary Services, has determined that New York has met the minimum standards necessary to ensure that such stallions are free of the contagion of CEM. The continued prohibition on consignment to the State of New York would, therefore, constitute an unnecessary restriction on the importation of such stallions.

Alternative No. 2 would allow for the consignment of stallions over 731 days of age from CEM affected countries to the State of New York. This alternative was adopted because the Deputy Administrator, Veterinary Services, has determined that the State of New York has met the minimum standards necessary to ensure that such stallions are free of the contagion of CEM.

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock and livestock products, Quarantine, Transportation, Contagious Equine Metritis (CEM).

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, Part 92, Title 9, Code Federal Regulations, is amended by revising § 92.4(a)(5)(ii) to read as follows:

§ 92.4 Import permits for ruminants, swine, horses from countries affected with CEM, poultry, poultry semen, animal semen, birds, and for animal specimens for diagnostic purposes.

(a) * * *

(5) * * *

(ii) The following States have been approved to receive stallions over 731 days of age pursuant to § 92.2(i)(2)(iv):

The State of California
The State of Colorado
The State of Kentucky
The State of Maryland
The State of New York
The State of North Carolina
The State of Ohio
The State of South Carolina
The State of Virginia

* * * * *

(Sec. 2, 32 Stat. 792, as amend, sec. 306, 46 Stat. 689, as amended, secs. 2, 4, 11, 76 Stat. 129, 130, 132; 19 U.S.C. 1306, 21 U.S.C. 111, 134a, 134c, 134f; 37 FR 28464, 28477; 38 FR 19141).

All written submissions made pursuant to this interim rule will be made available for public inspection at the Federal Building, Room 870, 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 (9 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue in the **Federal Register.**

Done at Washington, D.C., this 1st day of June, 1982.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 82-15320 Filed 6-4-82; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82-ANE-06; Amdt. 39-4398]

Airworthiness Directives; Rolls-Royce RB211 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires incorporation of fan retention modifications on all Rolls-Royce, Ltd., RB211-22B and -524 series turbofan engines. The AD is needed to prevent possible loss of the fan module following a fan shaft location bearing failure (low pressure (LP) location bearing) which could result in significant aircraft damage. There have been two previous LP location bearing failures which have resulted in loss of the fan module.

DATES: Effective date—June 7, 1982. Compliance schedule—As prescribed in the body of the AD.

ADDRESSES: The applicable service bulletins [1] may be obtained from Rolls-Royce, Ltd., P.O. Box 31, Derby, England DE2 8BJ. Copies of the service bulletins are contained in the Rules Docket, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: John E. Tigue, Engine and Propeller Standards Staff (ANE-110), Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7330.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring incorporation of the Rolls-Royce axial fan retention modifications in RB211 series engines as specified in Rolls-Royce Service Bulletins 72-6574 and 72-6576 was published in the **Federal Register** on March 15, 1982, Vol. 47, No. 50, pages 11036-11037. The proposal was prompted by LP location bearing failures which have led to oil fires and fan shaft damage. In two instances, the failure resulted in loss of the fan module. The proposed amendment required incorporation of fan retention devices on center (fuselage mounted) engines on Lockheed 1011 aircraft by August 31, 1982, and on wing mounted engines on Lockheed L1011 and Boeing 747 aircraft by November 30, 1982.

[1] Filed as part of original document.

Interested persons have been afforded an opportunity to participate in the making of the amendment. Comments received are discussed below.

Three commentators did not object to the proposed AD, although one cautioned that compliance by the proposed dates depends upon an adequate and timely supply of modification kits.

Four commentators requested two to three month extensions to the proposed compliance schedule. These commentators argued that the proposed compliance dates are based on six to nine month intervals following an expected March 1, 1982, availability of modification kits and tooling. The commentators cited logistical and technical problems which delayed the start of modification activity beyond March 1, 1982.

The FAA agrees that an extension of the proposed compliance dates is appropriate, but the cited delays do not justify an extension of two to three months. Accordingly, the proposed compliance dates are extended one month.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

Rolls-Royce, Ltd. Applies to Rolls-Royce, Ltd., RB211-22B and -524 series turbofan model engines.

Compliance required as indicated unless already accomplished.

To preclude possible loss of the fan assembly, install the Rolls-Royce axial fan retention modification as specified in Rolls-Royce Service Bulletin 72-6574, Revision 2, dated March 19, 1982, or later revision approved by the FAA, applicable to RB211-22B, -524B-02, -524B-19, -524B2-39, and -524C2-19 engines and as specified in Rolls-Royce Service Bulletin 72-6576, Revision 2, dated March 19, 1982, or later revision approved by the FAA, applicable to RB211-524B3-02, -524B4-02, and -524D4-19 engines in accordance with the following schedule:

1. Center (fuselage mounted) engines on Lockheed L1011 aircraft by September 30, 1982.

2. Wing mounted engines on Lockheed L1011 and Boeing B747 by December 31, 1982.

All persons affected by this directive who have not already received the referenced service bulletins from the manufacturer may obtain copies upon request to Technical Publications Department, Rolls-Royce, Ltd., P.O. Box 31, Derby, England DE2 8BJ. This document may also be examined at Federal Aviation Administration, New England

Region, 12 New England Executive Park, Burlington, Massachusetts 01803. A historical file on this AD is maintained by the FAA at the New England Regional Office.

Upon request of the operator, and FAA Maintenance Inspector, subject to prior approval of the Chief, Aircraft Certification Division, FAA, New England Region, may adjust the compliance date(s) specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the adjustment for that operator.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves a proposed regulation which is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that the rule will not have a significant economic impact on a substantial number of small entities because the rule will affect only domestic air carriers of B747 and L1011 aircraft in which the RB211 engines are installed, none of which are believed to be small entities. A final regulatory evaluation prepared for this document is contained in the public docket, and a copy may be obtained by writing to Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket No. 82-ANE-06, 12 New England Executive Park, Burlington, Massachusetts.

Issued in Burlington, Massachusetts, on May 25, 1982.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 82-15080 Filed 6-4-82; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 455

Trade Regulation Rule Concerning Sale of Used Motor Vehicles

AGENCY: Federal Trade Commission.

ACTION: Used car rule; consideration following disapproval of the rule by Congress.

SUMMARY: The Used Car Rule has been disapproved by the Congress. The Commission has taken the rule under consideration in accordance with section 21(c) of the FTC Improvements Act of 1980, 15 U.S.C. 57a-1(c) (Supp. IV 1980).

DATE: Date of Commission action May 27, 1982.

FOR FURTHER INFORMATION CONTACT: Susan M. Liss, Federal Trade Commission, 6th Street and Pennsylvania Ave., NW., Washington, D.C. 20580, (202) 523-1670.

SUPPLEMENTARY INFORMATION: On August 18, 1981, the Commission promulgated a final rule (16 CFR Part 455) concerning the sale of used motor vehicles. Pursuant to section 21 of the FTC Improvements Act of 1980, 15 U.S.C. 57a-1 (Supp. IV 1980), the rule would have become effective unless each House of Congress adopted a concurrent resolution disapproving the rule within the time period provided in the statute. Both Houses of Congress disapproved the rule.

Therefore, the Commission has taken the Rule under consideration in accordance with section 21(c) of the Act.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82-15270 Filed 6-4-82; 8:45 am]

BILLING CODE 6750-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

706 Agencies; Handling of Employment Discrimination Charges

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations designating certain State and local fair employment practices agencies (706 Agencies) so that they may handle employment discrimination charges, within their jurisdictions, filed with the Commission. Publication of this amendment effectuates the designation of Louisville and Jefferson County (KY) Human Relations Commission as a 706 Agency.

EFFECTIVE DATE: June 7, 1982.

FOR FURTHER INFORMATION CONTACT: Franklin F. Chow, Equal Employment Opportunity Commission, Office of Field Services, State and Local Division, 2401 E. St., NW, Washington, D.C. 20506, telephone 202/634-6905.

SUPPLEMENTARY INFORMATION:

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

PART 1601—PROCEDURAL REGULATIONS

In Title 29, Chapter XIV of the Code of Federal Regulations, § 1601.74(a) is amended by adding in alphabetical order the following agency:

§ 1601.74 Designated and notice agencies.

(a) * * * Louisville and Jefferson County (KY) Human Relations Commission.

* * * * *

(Sec. 713(a) 78 Stat. 265 (42 U.S.C. 2000e-12(a))

Signed at Washington, D.C. this 1st day of June 1982.

For the Commission.

John E. Rayburn,

Director, State and Local Division.

[FR Doc. 82-15256 Filed 6-4-82; 8:45 am]

BILLING CODE 6570-06-M

SELECTIVE SERVICE SYSTEM

32 CFR Part 1665

Privacy Act of 1974; Selective Service Regulations

AGENCY: Selective Service System.

ACTION: Final rule.

SUMMARY: Procedures under the Privacy Act of 1974 (5 U.S.C. 552a) are revised to exempt certain information in a system of records from the disclosure requirements of that act.

EFFECTIVE DATE: The amendment will become effective June 7, 1982.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, Washington, D.C. 20435, Phone: (202) 724-1167.

SUPPLEMENTARY INFORMATION: This amendment to Selective Service Regulations was published in the **Federal Register** for April 23, 1982 (47 FR 17578) for comment pursuant to section 13(b) of the Military Selective Service Act (50 U.S.C. app. 463(b) and 5 U.S.C. 552 and 552a). No comment was received. The proposed amendment to the regulations without change will be made final by this publication.

This regulation implements 5 U.S.C. 552a.

As required by Executive Order 12291, I have determined that this proposed rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612). I have determined that these regulations do not have significant economic impact on a substantial number of small entities.

List of Subjects in 32 CFR Part 1665

Armed forces, Draft, Privacy.

Thomas K. Turnage,

Director.

June 2, 1982.

PART 1665—PRIVACY ACT PROCEDURES

The amendment is:

Part 1665—Privacy Act Procedures of 32 CFR is amended by adding § 1665.8 to read as follows:

§ 1665.8 Systems of records exempted from certain provisions of this act.

Pursuant to 5 U.S.C. 552a(k)(2), the Selective Service System will not reveal to the suspected violator the informant's name or other identifying information relating to the informant.

(5 U.S.C. 552a)

[FR Doc. 82-15331 Filed 6-4-82; 8:45 am]

BILLING CODE 8015-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7 82-01]

Drawbridge Operation Regulations; Garrison Channel, Tampa, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Mr. Edward J. Kohrs on behalf of American Centennial Insurance Company, the Coast Guard is changing the regulations governing the bridge across Garrison Channel, mile 0.2, Tampa, Florida to require the draw to open on signal if at least 48 hours advance notice is given to the local representative. This change is being made because no requests have been made to open the draw since 1979. This action will relieve the bridge owner of the burden of having a person constantly available to open the draw and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This amendment becomes effective on July 7, 1982.

FOR FURTHER INFORMATION CONTACT: James R. Kretschmer, Bridge Administrator, Aids to Navigation Branch, Room 1006, Federal Building, 51 Southwest First Avenue, Miami, Florida 33130, telephone (305) 350-4108.

SUPPLEMENTARY INFORMATION: On January 28, 1982, the Coast Guard published a proposed rule (47 FR 4094) concerning this amendment. The Commander, Seventh Coast Guard District, also published this proposal as a Public Notice dated February 5, 1982. Interested persons were given until March 1, 1982 to submit comments.

Drafting Information

The principal persons involved in drafting this rule are: Walter Paskowsky, Bridge Administration Specialist, Bridge Section, Aids to Navigation Branch and Lieutenant Michael T. Harris, Assistant Legal Officer, Seventh Coast Guard District Legal Office.

Discussion of Comments

The Jacksonville District, U.S. Army Corps of Engineers, provided the only comment, and stated they had no objections to the proposed revision. Access around Seddon Island is available for navigation via Seddon Channel to the west and Sparkman Channel to the east. Therefore, a final economic evaulation on the regulation has not been prepared because of minimal economic impact.

These final regulations have been reviewed under provisions of Executive Order 12291 and have been determined not to be a major rule. They are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of May 22, 1980). As explained above, an economic evaluation has not been conducted. In accordance with section 605(d) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended by adding a new § 117.245(i)(4-a) immediately after § 117.245(i)(4) to read as follows:

§ 117.245 Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico except the Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

* * * * *

(i) Waterways discharging into Gulf of Mexico east of Mississippi River.

* * * * *

(4-a) Garrison Channel, Tampa, Florida. The draw shall open on signal if at least 48 hours advance notice is given.

* * * * *

(33 U.S.C. 449, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(g)(3))

Dated: May 13, 1982.

B. E. Stabile,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 82-15204 Filed 6-4-82; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD5 81-10R]

Drawbridge Operation Regulations; Roanoke River, North Carolina

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the North Carolina Division of Highways, the Coast Guard is establishing new regulations governing operation of the drawbridge across the Roanoke River, mile 37.5 at Williamston, North Carolina, to limit the opening of the drawbridge. This change is being made because vessel traffic through the bridge has declined in recent years. This action will result in a substantial monetary saving to the bridge owner and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This amendment becomes effective on July 3, 1982.

FOR FURTHER INFORMATION CONTACT: Wayne J. Creed, Bridge Administrator, Aids to Navigation Branch, Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23705, (804) 398-6222.

SUPPLEMENTARY INFORMATION: On February 25, 1982, the Coast Guard published a proposed rule (46 FR 49913) concerning this amendment. The Commander, Fifth Coast Guard District, also published this proposal in Public Notice (5-510) dated March 1, 1982, which was included in Local Notice to Mariners No. 9 dated March 2, 1982. Interested persons were requested to submit comments, but no comments were received.

Discussion of Rule

These regulations will require a 24-hour advance notice for all draw openings year round. The bridge is currently operated under the general regulations that are contained in Title 33, Code of Federal Regulations, § 117.240, which requires the bridge to open on signal. Therefore, draw operators are in constant attendance.

The regulations will relieve the bridge owner of the responsibility for keeping draw operators in constant attendance. The 24-hour advance notice for draw openings is established because water traffic at this location has declined in recent years.

Records of draw openings show that the bridge was opened 28 times for the passage of water traffic during 1979, and the bridge was only opened 6 times during 1980. Moreover, the prospect for any significant increase in water traffic is poor because the oil terminal upstream of the bridge has been closed and petroleum products are currently moved by pipeline and truck. Barge traffic to and from the oil terminal accounted for 95% of the draw openings. Therefore, the change in regulations is made without significantly affecting water traffic and it will relieve the bridge owner of the responsibility of providing constant operator attendance at the bridge. There are no businesses that will be impacted by the change in operating regulations.

Evaluation

This regulation has been reviewed under the provisions of Executive Order 12291 and has been determined not to be a major rule. In addition, this regulation is considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact will be minimal. In accordance with Section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is certified that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Final Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended as follows:

In 33 CFR 117.245, paragraph (g) is revised by adding a new subparagraph (2–b) to read as follows:

§ 117.245 Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

* * * * *

(g) * * *

(2–a) * * *

(2–b) Roanoke River, N.C.; North Carolina Division of Highways bridge at Williamston. At least 24-hours advance notice required for draw openings.

* * * * *

(33 U.S.C. 499, 49 U.S.C. 1655(g)(2), 49 CFR 1.46(c)(5), 33 CFR 1.05–1(g)(3))

Dated: May 10, 1982.

John D. Costello,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 82–15192 Filed 6–4–82; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGO 13–82–062]

Drawbridge Operation Regulations; Willamette River, Oregon

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Multnomah County, Oregon, the Coast Guard is changing the regulations governing the Morrison and Burnside Bridges across the Willamette River at Portland, Oregon, by requiring that advance notice be given for bridge openings. This regulation change is being made because the average number of daily openings are not sufficient to require that drawtenders be kept in constant attendance. This action will relieve the owner of the bridges of the burden of having persons constantly available to open the draws while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This amendment is effective on July 7, 1982.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, District Bridge Administrator, Aids to Navigation Branch, Room 3564, Federal Building, 915 Second Avenue, Seattle, Washington 98174, telephone (206) 442–5864.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on pages 49910–49913 of the **Federal Register** of October 8, 1981. Interested parties were given until November 7, 1981 to submit comments. The Commander, Thirteenth Coast Guard District, also published the proposal as Public Notice 81–N–15, dated October 23, 1981. Interested parties were given until November 27, 1981 to submit comments. A total of nineteen responses were received to the published notices of proposed rule change. Review of the comments indicated that there was significant community controversy regarding the proposal. In view of the comments received, the Commandant authorized the Commander, Thirteenth Coast Guard District, to hold a public hearing to obtain additional information on the proposal. Notice of the hearing was published on page 3010 of the **Federal Register** of January 21, 1982. The Commander, Thirteenth Coast Guard District, also published notice of the hearing as Public Notice 82–N–01, dated January 13, 1982. The public hearing was held at the Bonneville Power Administration Building, 1002 N.E. Holladay Street, Portland, Oregon on February 11, 1982 in two sessions, the first commencing at 2:30 p.m., and the second at 7:00 p.m. A total of eleven persons provided comments at the two sessions. Notice was given at each of the sessions that the comment period would be kept open until February 25, 1982 to accommodate persons wishing to provide written comment. Three additional responses were received during this period. Six responses were received during a preliminary solicitation for comments prior to issuance of the public notice, and two responses were received to the notice of the public hearing.

Drafting Information

The principal persons involved in drafting this rule are: John E. Mikesell, District Bridge Administrator and Lt. James R. Woeppel of the District Legal Officers Staff.

Discussion of Rule

Multnomah County, Oregon requested the Coast Guard to amend the operating regulations for its Morrision, Burnside, and Broadway Bridges across the Willamette River at Portland, Oregon. The request was made because of limited requests for openings of the draws and in an effort to reduce operating costs of the bridges. Under the current operating regulations, the four Multnomah County drawbridges across the Willamette River at Portland are under constant attendance and open upon request for the passage of vessels except during authorized closed periods. Multnomah County requested that the operating regulations be changed to require advance notice to be given for openings of the Morrison, Burnside and Broadway Bridges, except when the water elevation reaches +12 feet and during Rose Festival Week, at which time all bridges would open on call. On weekdays, Monday through Friday, between the hours of 0800 and 1630, one hour advance notice would be required for bridge openings; at all other times two hours advance notice would be required. Advance requests openings

would be made by contacting the drawtender of the Hawthorne Bridge by marine radio, telephone, or other suitable means.

The regulation change as originally proposed would require that advance notice be given for openings of the Morrison, Burnside and Broadway Bridges, thereby eliminating the need for the bridges to have a drawtender in constant attendance. A total of forty-one persons or organizations provided comments on the proposed rule change. Some of the commentors provided comments on more than one subject. The comments that were received fell into the following general categories: (1) No objection, (2) In support of, (3) In opposition to, (4) Concerned about, (5) Offering an alternate proposal, and (6) Other. The comments are summarized as follows:

(1) No objection—Seven comments were received. Three of the comments were from federal and state agencies, and four were from commercial navigation interests. The comments of no objection received from federal and state agencies are considered to be procedural in nature and represent neither support nor opposition to the proposal. The no objection comments received from commercial navigation interests are considered to be the views of companies whose operations would not be significantly affected by the proposed change.

(2) In support of—Four comments were received. One comment from an elected public official of the county and two from private citizens addressed the cost savings which would be realized by the proposed change. One comment from a commercial navigation interest was a simple declaration of support for the proposal. Comments which support the proposal solely on the basis of cost savings to the bridge owner are not considered to be a determinant factor in this action, because the Coast Guard's primary concern is the degree to which the proposal would provide for the reasonable needs of navigation.

(3) In opposition to—Nine comments were received. Four comments were from county bridge operators or their representatives, two were from private citizens and one each was from a commercial navigation interest, a recreational navigation interest, and an elected public offical of the county. Opposition comments expressed concern about public safety and the potential for delay, inconvenience and expense to navigation on the waterway.

(4) Concerned about—Twenty-four comments were received. Four were from commercial navigation interests, and two were from recreational navigation interests. Fourteen comments were from county bridge operators or their representatives. Two comments were from private citizens and one each was from a public official and a commercial interest. The majority of the concerns addressed issues of vessels delay, operating expense, and inconvenience of scheduling and passage, which were anticipated if the proposal was approved. Additional concerns were expressed that the right of free passage on a navigable waterway would be interfered with. The potential effects that the proposed rule would have on waterway and public safety were also expressed as concerns. These concerns are considered significant, in that they express opinions on the reasonableness of the proposal in providing for the needs of navigation. Comments were also received from bridge operators and private citizens indicating concerns for highway and pedestrian safety if the proposal was approved. Problems of highway and pedestrian safety are not within the scope of Coast Guard jurisidiction in this action.

(5) Alternate proposal—Four comments were received which recommended an alternative to the proposed rule change. One proposal was made by a state agency concerned with commercial navigation, and three were made by county bridge operators. The proposed alternative would exclude the Broadway Bridge from the proposed regulation change. Reasons given for the alternative indicate that it would better serve the interests of navigation, and provide for a greater margin of waterway and public safety.

(6) Other—Six comments were placed in this category because they provided no substantive information on the issue under consideration.

Comments received from elected officials of the county indicated both support for and opposition to the proposal. These conflicting views tend to indicate a lack of unanimity on the part of the county in support of their own proposal. Comments of support or opposition were not considered to be significant factors in and of themselves in the evaluation of the proposed action. Concerns expressed on the suitability of the proposal in providing for the reasonable needs of navigation were considered significant were evaluated accordingly.

Upon consideration of all comments and concerns, and after reviewing all of the material submitted, the Coast Guard has determined that exclusion of the Broadway Bridge from the proposed regulation change would be in the best public interest. Excluding the Broadway Bridge from the proposed regulation change would more adequately provide for the reasonable needs of navigation and public safety, while allowing the county to operate the Morrison and Burnside bridges using the advance notice procedure for openings, thereby eliminating the need for drawtenders to be in constant attendance. Under this regulation, the most upstream and most downstream of the four county bridges would have drawtenders in constant attendance. The two middle bridges would require advance notice for operation.

Evaluation

These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulation

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations be amended by revising § 117.750 to read as follows:

§ 117.750 Willamette River at Portland, Oreg., Columbia River at Vancouver, Wash., and North Portland Harbor (Oregon Slough), Oreg., bridges (highway and railroad); signals.

(a) The draws of the Burlington Northern railroad bridges at Vancouver, Wash., and at St. Johns, Oreg., shall open on signal.

(b) The draws of the Interstate Highway Bridge at Vancouver, Wash., the Union Pacific railroad/highway bridge, Hawthorne Bridge and Broadway Bridge at Portland, Oreg., shall open on signal, except during closed periods (see paragraph (i)(1) of this section, and § 117.758a).

(c) The draws of the Burnside and Morrison Bridges at Portland, Oreg., shall:

(1) Open on signal, except during closed periods (see paragraph (i)(1) of this section), on weekdays Monday through Friday, between the hours of 0800 to 1630, if at least one hour notice is given, and at all other times if at least two hours notice is given. Notice shall be given by marine radio, telephone or other means to the drawtender of the Broadway Bridge for vessels bound upstream and the drawtender of the Hawthorne Bridge for vessels bound downstream.

(2) Open on signal for the emergency passage of harbor patrol and fireboats if notice is given to the drawtender at either the Broadway or Hawthorne Bridges. At such times the Broadway and Hawthorne Bridges may be temporarily unmanned and unable to open for the passage of vessels.

(3) Open on signal, except during closed periods (see paragraph (i)(1) of this section), without advance notice when the water elevation reaches and remains above +12 feet.

(4) Open on signal, except during closed periods (see paragraph (i)(1) of this section), without advance notice during Portland Rose Festival week.

(d) Call signals for opening of draw. These signals shall be as prescribed for each bridge in paragraph (e) of this section. It is given by vessels as notice to bridge operators to open the draw, or in case the draw is already open, that they intend to pass through. A call signal given twice in rapid succession indicates that vessel has authority to pass bridges during closed periods (see paragraph (i)(1) of this section).

(e) Answering signals. (1) Acknowledging signal. Shall be the same as the call signal for each bridge. Its purpose is to acknowledge the call signal of a vessel and to indicate that the operator intends to open the draw as soon as practicable, or that he will hold it open.

(2) Danger signal. Shall consist of a series of short blasts, at least four, given in rapid succession, and repeated if necessary. It's purpose is to answer the call signal of a vessel and to indicate that the draw cannot, or will not, be opened at once, or, when vessels are waiting in the vicinity, that the draw, if open, is about to be closed. It is also to be used in emergency to revoke an acknowledging signal.

(3) Rescinding signal. Shall be the reverse of the call signal for each bridge. It is given by a vessel to cancel a previous call signal, to indicate that the vessel does not intend to pass through and that the draw need not be opened, or may be closed.

(4) Answer to rescinding signal. (i) Answer by the bridge operator to a rescinding signal shall be the danger signal (see paragraph (e)(2) of this section).

(5) Call signals. The following call signals are prescribed for vessels wishing to have the drawspans opened or held open.

(i) Burlington Northern railroad bridge, at Vancouver, Wash., one long followed by one short blast.

(ii) Interstate Highway Bridge, at Vancouver, Wash., two long followed by one short blast.

(iii) (Reserved)

(iv) Burlington Northern railroad bridge, at St. Johns, Oreg., one long followed by one short blast.

(v) Broadway Bridge, two long followed by one short blast.

(vi) Union Pacific Railroad bridge, one long followed by one short blast.

(vii) Burnside Bridge, one long followed by two short blasts.

(viii) Morrison Bridge, one long followed by three short blasts.

(ix) Hawthorne Bridge, one long followed by four short blasts.

Call signals may be given on any form of whistle, horn, siren, or trumpet with sufficient range or volume to be heard by bridge operators.

(f) To bridge owners. All bridges to which this section applies shall be equipped with suitable air whistles of sufficient size and range that signals sounded on same shall be distinctly audible up and down stream under adverse wind and weather conditions for a distance of 2,500 feet, except for the Burlington Northern Railroad Co. bridges over the Columbia and Willamette Rivers, which shall have a range of at least 5,000 feet under the same conditions.

(g) To navigators. (1) A vessel, desiring at any time (except during closed periods, and except for bridges which require advance notice, see paragraphs (c)(1) and (i)(1) of this section) to pass through any of the above-mentioned bridges, under which it cannot pass with the draw closed, shall sound the call signal for such bridge as prescribed in paragraph (e) of this section, and shall repeat such signal at intervals until it is answered by the operator of the bridge (see paragraphs (d) and (h) of this section). In the case two vessels approaching from opposite directions would meet at or near the bridge, the vessel bound downstream shall be considered as having the right of way. When either vessel waits for passage of the other, it shall again give the call signal for the bridge and receive acknowledgement before proceeding. It is incumbent upon navigators to make sure that their signals are understood before proceeding through a drawspan, and when approaching bridges, vessels should be kept under control, with a view to stopping, if necessary, before reaching the bridge.

(2) Vessels authorized to pass through bridges during closed periods, as provided in paragraph (i)(1) of this section and in the case of the Burnside and Morrison Bridges, after contacting the drawtender at the Broadway or Hawthorne Bridges, shall sound the call signal twice in rapid succession. Signals to open shall be given by vessels at a distance of at least 1,000 feet from the bridge, except in the case of a vessel leaving a wharf or anchorage or when waiting less than 1,000 feet from the bridge. In such cases the signal shall be given early enough to allow the operator of the bridge sufficient time in which to clear and open the draw before arrival of the vessel.

(3) All vessels when passing any bridge shall be moved as expeditiously as is consistent with established rules governing speed in the harbor of Portland, and all towboats engaged in handling other craft or in towing logs through any of the bridges shall be of sufficient power to handle the tow without unduly delaying the closing of the drawspan.

(4) Vessels with hinged or adjustable masts or booms projecting above their fixed structures shall lower same and pass under the bridge, if practicable, without signaling for the draw to open.

(h) To bridge operators. (1) If the bridge can be opened, or is already open, when a call signal is given, the operator shall promptly answer the vessel calling by giving the acknowledging signal and promptly open the draw (except during closed periods, see paragraph (i)(1) of this section) or hold it open, as the case may be.

(2) In case the draw cannot be opened at once when the call signal is given, the operator shall promptly answer the vessel calling by giving the danger signal and shall repeat same, if necessary. As soon as the exigency which prevented opening has been removed the bridge operator shall promptly sound the regular acknowledging signal for that bridge to advise vessels that the draw can be opened at once, and he shall thereupon proceed to open same if there is a vessel waiting to pass through.

(3) When two vessels arrive at a bridge at or near the same time and

blow the call signal, lift spans, when opened, shall be raised high enough to clear the taller vessel. If either vessel at any drawbridge waits for passage of the other and again gives the call signal, the bridge operator shall promptly answer with the acknowledging signal and shall hold the span open. In case the intentions of a waiting vessel are not understood by a bridge operator, when the draw is open he shall sound the danger signal as a warning to vessels that he is about to close the draw.

(4) If a rescinding signal is given by a vessel to cancel a previously given call signal, and it is evident the vessel does not intend to pass through, the bridge operator shall answer with the danger signal (four or more short blasts) and may then close the draw, or need not open it.

(i) Closed periods. (1) The periods from 7 a.m. to 8:30 a.m. and 4 p.m. to 5:30 p.m. are hereby designated closed periods during which the draw spans of bridges carrying street traffic over the Willamette River at Portland need not be opened for navigation except as below provided, or when necessary to prevent accident.

(2) Closed periods above defined shall not be effective on Saturday, Sunday, New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, or days observed in lieu of these under State law: Provided, That closed periods shall not apply against harbor patrol or fireboats answering calls. At the Broadway Bridge only, oceangoing vessels of 750 gross tons or over that are entering the harbor directly from the ocean may signal and pass through this bridge at any hour. Vessels authorized to pass through bridges during closed periods or in case of emergency when opening of the draw is necessary to prevent accident, shall sound the call signal twice in rapid succession, i.e., with an interval of not over 5 seconds between signals. The Broadway Bridge shall be opened, however, for oceangoing vessels of 750 tons or over, under the rule above, whether the vessel gives a single or double call signal.

(33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(g)(3))

Dated: May 7, 1982.

C. F. DeWolf,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 82-15191 Filed 6-4-82; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 157

[CGD 81-039b]

Disestablishment of Merchant Marine Technical Branch, Fifth Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: As a result of an evaluation of its Merchant Marine Technical Branch field organization, the Coast Guard decided to disestablish the Merchant Marine Technical Branch of the Fifth Coast Guard District, Portsmouth, Virginia. As of July 1, 1981, the plan review duties for the geographical area served by the Fifth Coast Guard District were assumed by the Merchant Marine Technical Branch, Third Coast Guard District, New York, NY. Those directly affected by this action were notified directly in March 1981 by CCGD5 (mmt).

DATES: Disestablishment was effective July 1, 1981.

FOR FURTHER INFORMATION CONTACT: LCDR David B. Anderson, Merchant Marine Technical Division (G-MMT-4/13), Room 1300C, Coast Guard Headquarters Building, 2100 2nd Street, SW., Washington, D.C. 20593 (202-426-2197).

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in the drafting of this rule are LCDR David B. Anderson, Project Manager, Office of Merchant Marine Safety and Mr. Michael N. Mervin, Project Attorney, Office of the Chief Counsel.

Discussion

The Coast Guard has completed an evaluation of its Merchant Marine Technical Branch field organization, taking into account many factors including personnel considerations and system efficiency. As a result, the Commandant concluded that a consolidation of the Merchant Marine Technical Branches of the Third and Fifth Coast Guard Districts was necessary for improved overall plan review efficiency, quality and consistency. Accordingly, the workload and military personnel previously assigned to the Fifth District's Merchant Marine Technical Branch were reassigned to the Third Coast Guard District. Shipyards, designers and other businesses and persons within the geographical area of the Fifth Coast District who are directly affected by this action were informed by letter from CCGD5 (mmt) in March 1981.

Because these amendments are of an administrative nature concerning the organization of the Coast Guard, they have no economic or environmental impacts. Therefore, it is not necessary to prepare a Regulatory Impact Analysis, Environmental Assessment, Regulatory Flexibility Analysis, or final evaluation.

Since this amendment relates to departmental rules of organization, it is excepted from notice and public procedures requirements. It is made effective immediately because it is not a substantive rule.

List of Subjects in 33 CFR Part 157

Environmental protection, Oil pollution, Tank vessels, Water pollution control, Organization and functions (government agencies).

In consideration of the foregoing, Chapter I of Title 33, Code of Federal Regulations, is amended as follows:

PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO TANK VESSELS CARRYING OIL IN BULK

1. In § 157.100, by removing and reserving (b)(2) and revising paragraphs (b)(1) and (b)(3) to read as follows:

§ 157.100 Plans for U.S. tank vessels: Submission.

* * * * *

(b) * * *

(1) Commander, 3rd Coast Guard District (mmt), Governors Island, New York, N.Y. 10004, if the COW system is installed in the area under the 1st, 3rd, or 5th Coast Guard Districts.

(2) [Removed and reserved].

(3) Commander, 8th Coast Guard District (mmt), 500 Camp Street, Hale Boggs Federal Building, New Orleans, Louisiana 70130, if the COW system is installed in the area under the 2nd, 7th, or 8th Coast Guard Districts.

* * * * *

2. In § 157.200, by removing and reserving paragraph (b)(2) and revising paragraphs (b)(1) and (b)(3) as follows:

§ 157.200 Plans for U.S. tank vessels: Submission.

* * * * *

(b) * * *

(1) Commander, 3rd Coast Guard District (mmt), Governors Island, New York, N.Y. 10004, if the dedicated clean ballast tank system is installed in the area under the 1st, 3rd, or 5th Coast Guard Districts.

(2) [Removed and reserved].

(3) Commander, 8th Coast Guard District (mmt), 500 Camp Street, Hale Boggs Federal Building, New Orleans, Louisiana 70130, if the dedicated clean

ballast tank system is installed in the area under the 2nd, 7th, or 8th Coast Guard Districts.

* * * * *

(46 U.S.C. 391a, 49 U.S.C. 1655(b), 49 CFR 1.46 (n)(4))

Dated: May 27, 1982.

L. N. Hein,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 82-15181 Filed 6-4-82; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 175

[CGD 81-038-A]

Visual Distress Signal Equipment Requirements

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulation governing the carriage of visual distress signals in order to approve older signal launchers which project approved signals, and, also, to clarify the language concerning the carriage requirements. Comments which have been received about existing flare launchers favor the continued approval of these, contingent upon their serviceability and their design for use with approved signals. This proposal will replace the grandfather clause for existing flare launchers with a permanent exemption based on each launcher's serviceability and its use of approved signals.

DATE: This amendment will be effective on June 7, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. William B. Sobeck, Office of Boating, Public, and Consumer Affairs (G-BBS), U.S. Coast Guard Headquarters, 2100 2nd Street SW., Washington, D.C. 20593, (202) 426-4176.

SUPPLEMENTARY INFORMATION: The Coast Guard published final rules regarding the carriage of visual distress signals on boats on December 17, 1979 (44 FR 73024). The rules contained a list of accepted visual distress signaling devices that could be used to satisfy the carriage requirements. Since that date the Coast Guard has received numerous inquiries on the use of these devices. It was found that some existing flare launchers were designed to use the approved flare signals, so the Coast Guard will allow the continued use of the approved flare signals, so the Coast Guard will allow the continued use of flare launchers manufactured prior to January 1st, 1981, as long as they remain serviceable. This will mean no new costs for the boating public, and should save some consumers the expense of buying new equipment. Also, some boaters thought that they were required to carry the pyrotechnic type visual distress signals, and expressed confusion over the number required by Table 175.130. This amendment seeks to clarify the wording.

Regulatory Evaluation

Since the only substantive change made by this action would allow continued use of existing equipment, resulting in slight savings to some boaters, the impact will be minimal and an economic evaluation has not been conducted. No new costs will be imposed on the boating public or the manufacturers of flare launchers. As the changes are largely editorial in nature, the Coast Guard for good cause finds that the notice and public comment procedures of 5 U.S.C. 553 are unnecessary.

These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, they are considered to be nonsignificant in accordance with the guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of May 22, 1980). As these regulations impose no new costs, and should serve to lessen cost to the boating public, it is certified pursuant to Section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164) that these rules will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal persons involved in drafting this rule are Lieutenant (junior grade) C. M. Stratton, Project Manager, Office of Boating, Public and Consumer Affairs, and Lieutenant Michael Tagg, Project Attorney, Office of the Chief Counsel.

List of Subjects in 33 CFR Part 175

Marine safety.

Final Regulations

In consideration of the foregoing, the Coast Guard is amending Part 175 of Title 33, Code of Federal Regulations as set forth below.

PART 175—EQUIPMENT REQUIREMENTS

1. By revising § 175.130 and Table § 175.130 to read as follows:

§ 175.130 Visual distress signals accepted.

(a) Any of the following signals, when carried in the number required, can be used to meet the requirements of § 175.110:

(1) An electric distress light meeting the standards of 46 CFR 161.013. One is required to meet the night only requirement.

(2) An orange flag meeting the standards of 46 CFR 160.072. One is required to meet the day only requirement.

(3) Pyrotechnics meeting the standards noted in Table 175.130.

(b) Any combination of signal devices selected from the types noted in paragraphs (a) (1), (2) and (3) of this section, when carried in the number required, may be used to meet both day and night requirements. *Examples*—the combination of two hand held red flares (160.021), and one parachute red flare (160.024 or 160.036) meets both day and night requirements. Three hand held orange smoke (160.037) with one electric distress light (161.013) meet both day and night requirements.

TABLE 175.130.—PYROTECHNIC SIGNAL DEVICES

Approval number under 46 CFR	Device description	Meets requirement for	Number required
160.021	Hand Held Red Flare Distress Signals.[3]	Day and Night	3
160.022	Floating Orange Smoke Distress Signals.	Day Only	3
160.024	Parachute Red Flare Distress Signals.	Day and Night [1]	3
160.036	Hand-Held Rocket-Propelled Parachute Red Flare Distress Signals.	Day and Night	3
160.037	Hand-Held Orange Smoke Distress Signals.	Day Only	3
160.057	Floating Orange Smoke Distress Signals.	Day only	3
160.066	Distress Signal for Boats, Red Aerial Pyrotechnic Flare.	Day and Night [2]	3

[1] These signals require use in combination with a suitable launching device approved under 46 CFR 160.028.

[2] These devices may be either meteor or parachute assisted type. Some of these signals may require use in combination with a suitable launching device approved under 46 CFR 160.028.

[3] Must have manufacture date of 1 Oct. 1980 or later.

2. Amend § 175.135 by removing and reserving paragraph (a)(3) and adding paragraph (b) as follows:

§ 175.135 Existing equipment.

(a) * * *

(3) [Removed and reserved]

(b) Launchers manufactured before 1 January, 1981, which do not have approval numbers are acceptable for use with meteor or parachute signals listed

in Table 175.130 under § 175.130 as long as they remain in serviceable condition.

(46 U.S.C. 1454; 49 CFR 1.46 (n)(1))

Dated: April 19, 1982.

V. W. Driggers,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public and Consumer Affairs.

[FR Doc. 82-15179 Filed 6-4-82; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 3

Veterans Benefits; Implementing New Legislation

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration has amended its adjudication regulations to implement certain provisions of a new law, the Veterans' Disability Compensation, Housing, and Memorial Benefits Amendments of 1981. The provisions that are the subject of this action are: (1) An increase in the amount of compensation payable to a veteran who has suffered loss or loss of use of two upper extremities; (2) changes in the amount payable and the effective date of a retroactive DIC (dependency and indemnity compensation) award to a child over 18; (3) an increase in the automobile allowance; (4) limitations on the pension reduction for certain hospitalized pensioners; and (5) changes in the 2-year active duty requirement.

DATES: These changes are effective October 1, 1981 with the exception of changes to 38 CFR 3.12a and 3.551 which are effective October 17, 1981 as specified in section 701 of Pub. L. 97-66.

FOR FURTHER INFORMATION CONTACT: T. H. Spindle, Jr. (202-389-3005).

SUPPLEMENTARY INFORMATION: On pages 6291-6295 of the **Federal Register** of February 11, 1982, the Veterans Administration published proposed amendments of 38 CFR 3.12a, 3.350, 3.551, 3.650, 3.667 and 3.808. Interested persons were given until March 15, 1982, to submit comments, suggestions, or objections to the proposed amendments. None have been received. The regulation amendments are adopted without change and are set forth below.

The Administrator hereby certifies these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this rule is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulations implement a legislative enactment. They will have no significant impact on small entities.

The agency has determined that these regulations are nonmajor in accordance with Executive Order 12291 because they simply implement statutory requirements and have little or no economic impact, in themselves.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

(Catalog of Federal Domestic Assistance program numbers are 64.100, 64.104, 64.109 and 64.110)

Approved: May 14, 1982.

Robert P. Nimmo,

Administrator.

PART 3—ADJUDICATION

1. Section 3.12a is revised as follows:

§ 3.12a Minimum active-duty service requirement.

(a) *Definitions.* (1) The term "minimum period of active duty" means, for the purposes of this section, the shorter of the following periods.

(i) Twenty-four months of continuous active duty. Non-duty periods that are excludable in determining the Veterans Administration benefit entitlement (e.g., see § 3.15) are not considered as a break in service for continuity purposes but are to be subtracted from total time served.

(ii) The full period for which a person was called or ordered to active duty.

(2) The term "benefit" includes a right or privilege but does not include a refund of a participant's contributions under 38 U.S.C. Ch. 32.

(b) *Effect on Veterans Administration benefits.* Except as provided in paragraph (d) of this section, a person listed in paragraph (c) of this section who does not complete a minimum period of active duty is not eligible for any benefit under title 38, United States Code or under any law administered by the Veterans Administration based on that period of active service.

(c) *Persons included.* Except as provided in paragraph (d) of this section, the provisions of paragraph (b) of this section apply to the following persons:

(1) A person who originally enlists (enlisted person only) in a regular component of the Armed Forces after September 7, 1980 (a person who signed a delayed-entry contract with one of the service branches prior to September 8, 1980, and under that contract was assigned to a reserve component until entering on active duty after September 7, 1980, shall be considered to have enlisted on the date the person entered on active duty); and

(2) Any other person (officer as well as enlisted) who enters on active duty after October 16, 1981 and who has not previously completed a continuous period of active duty of at least 24 months or been discharged or released from active duty under 10 U.S.C. 1171 (early out).

(d) *Exclusions.* The provisions of paragraph (b) of this section are not applicable to the following cases:

(1) To a person who is discharged or released under 10 U.S.C. 1171 or 1173 (early out or hardship discharge).

(2) To a person who is discharged or released from active duty for a disability adjudged service connected without presumptive provisions of law, or who at time of discharge had such a service-connected disability, shown by official service records, which in medical judgment would have justified a discharge for disability.

(3) To a person with a compensable service-connected disability.

(4) To the provision of a benefit for or in connection with a service-connected disability, condition, or death.

(5) To benefits under chapter 19 of title 38, United States Code.

(e) *Dependent or survivor benefits—*(1) *General.* If a person is, by reason of this section, barred from receiving any benefits under title 38, United States Code (or under any other law administered by the Veterans Administration) based on a period of active duty, the person's dependents or survivors are also barred from receiving benefits based on the same period of active duty.

(2) *Exceptions.* Paragraph (e)(1) of this section does not apply to benefits under chapters 19 and 37 of title 38, United States Code. (38 U.S.C. 3103A)

2. Section 3.350 is amended as follows:

(a) By removing the word "rendering" and inserting the word "making" in the first sentence and removing the word "rendered" and inserting the word "done" in the last sentence of paragraph (a)(3)(i).

(b) By removing the word "intermediate" following the word "rate" in paragraph (f)(2)(i) and (iii) and by inserting the word "other" preceding the word "eye" in paragraph (f)(2)(iii).

(c) By revising the introductory portion of paragraph (b) preceding subparagraph (1) and paragraphs (c), (d), (e) and (f)(1) as follows:

§ 3.350 Special monthly compensation ratings.

* * * * *

(b) *Ratings under 38 U.S.C. 314(l).* The special monthly compensation provided by 38 U.S.C. 314(l) is payable for anatomical loss or loss of use of both feet, one hand and one foot, blindness in both eyes with visual acuity of 5/200 or less or being permanently bedridden or so helpless as to be in need of regular aid and attendance.

* * * * *

(c) *Ratings under 38 U.S.C. 314(m).* (1) The special monthly compensation provided by 38 U.S.C. 314(m) is payable for any of the following conditions:

(i) Anatomical loss or loss of use of both hands;

(ii) Anatomical loss or loss of use of both legs at a level, or with complications, preventing natural knee action with prosthesis in place;

(iii) Anatomical loss or loss of use of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place with anatomical loss or loss of use of one leg at a level, or with complications, preventing natural knee action with prosthesis in place;

(iv) Blindness in both eyes having only light perception;

(v) Blindness in both eyes leaving the veteran so helpless as to be in need of regular aid and attendance.

(2) *Natural elbow or knee action.* In determining whether there is natural elbow or knee action with prosthesis in place, consideration will be based on whether use of the proper prosthetic appliance requires natural use of the joint, or whether necessary motion is otherwise controlled, so that the muscles affecting joint motion, if not already atrophied, will become so. If there is no movement in the joint, as in ankylosis or complete paralysis, use of prosthesis is not to be expected, and the determination will be as though there were one in place.

(3) *Eyes, bilateral.* With visual acuity 5/200 or less or the vision field reduced to 5 degree concentric contraction in both eyes, entitlement on account of need for regular aid and attendance will be determined on the facts in the individual case.

(d) *Ratings under 38 U.S.C. 314(n).* The special monthly compensation provided by 38 U.S.C. 314(n) is payable for any of the conditions which follow. Amputation is a prerequisite except for loss of use of both arms. If a prosthesis cannot be worn at the present level of amputation but could be applied if there were a reamputation at a higher level, the requirements of this paragraph are not met; instead, consideration will be given to loss of natural elbow or knee action.

(1) Anatomical loss or loss of use of both arms at a level or with complications, preventing natural elbow action with prosthesis in place;

(2) Anatomical loss of both legs so near the hip as to prevent use of a prosthetic applicance;

(3) Anatomical loss of one arm so near the shoulder as to prevent use of a prosthetic applicance with anatomical loss of one leg so near the hip as to prevent use of a prosthetic appliance;

(4) Anatomical loss of both eyes.

(e) *Ratings under 38 U.S.C. 314 (o).* (1) The special monthly compensation provided by 38 U.S.C. 314(o) is payable for any of the following conditions:

(i) Anatomical loss of both arms so near the shoulder as to prevent use of a prosthetic appliance;

(ii) Conditions entitling to two or more of the rates (no condition being considered twice) provided in 38 U.S.C. 314(l) through (n);

(iii) Bilateral deafness rated at 60 percent or more disabling (and the hearing impairment in either one or both ears is service connected) in combination with service-connected blindness with bilateral visual acuity 5/200 or less.

(2) *Paraplegia.* Paralysis of both lower extremities together with loss of anal and bladder sphincter control will entitle to the maximum rate under 38 U.S.C. 314(o), through the combination of loss of use of both legs and helplessness. The requirement of loss of anal and bladder sphincter control is met even though incontinence has been overcome under a strict regimen of rehabilitation of bowel and bladder training and other auxiliary measures.

(3) *Combinations.* Determinations must be based upon separate and distinct disabilities. This requires, for example, that where a veteran who had suffered the loss or loss of use of two extremities is being considered for the maximum rate on account of helplessness requiring regular aid and attendance, the latter must be based on need resulting from pathology other than that of the extremities. If the loss or loss of use of two extremities or being permanently bedridden leaves the person helpless, increase is not in order on acount of this helplessness. Under no circumstances will the combination of "being permanently bedridden" and "being so helpless as to require regular aid and attendance" without separate and distinct anatomical loss, or loss of use, of two extremities, or blindness, be taken as entitling to the maximum benefit. The fact, however, that two separate and distinct entitling disabilities, such as anatomical loss, or loss of use of both hands and both feet, result from a common etiological agent, for example, one injury or rheumatoid arthritis, will not preclude maximum entitlement.

(4) *Helplessness.* The maximum rate, as a result of including helplessness as one of the entitling multiple disabilities, is intended to cover, in addition to obvious losses and blindness, conditions such as the loss of use of two extremities with absolute deafness and nearly total blindness or with severe multiple injuries producing total disability outside the useless extremities, these conditions being construed as loss of use of two extremities and helplessness.

(f) *Intermediate or next higher rate.* An intermediate rate authorized by this paragraph shall be established at the arithmetic mean, rounded to the nearest dollar, between the two rates concerned (38 U.S.C. 314 (p))

(1) *Extremities.* (i) Anatomical loss or loss of use of one foot with anatomical loss or loss of use of one leg at a level, or with complications preventing natural knee action with prosthesis in place, shall entitle to the rate between 38 U.S.C. 314(l) and (m).

(ii) Anatomical loss or loss of use of one foot with anatomical loss of one leg so near the hip as to prevent use of prosthetic appliance shall entitle to the rate under 38 U.S.C. 314(m).

(iii) Anatomical loss or loss of use of one foot with anatomical loss or loss of use of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place, shall entitle to the rate between 38 U.S.C. 314(l) and (m).

(iv) Anatomical loss or loss of use of one foot with anatomical loss or loss of use of one arm so near the shoulder as to prevent use of a prosthetic appliance shall entitle to the rate under 38 U.S.C. 314(m).

(v) Anatomical loss or loss of use of one leg at a level, or with complications, preventing natural knee action with prosthesis in place with anatomical loss of one leg so near the hip as to prevent use of a prosthetic applicance, shall entitle to the rate between 38 U.S.C. 314(m) and (n).

(vi) Anatomical loss or loss of use of one leg at a level, or with complications, preventing natural knee action with prosthesis in place with anatomical loss or loss of use of one hand, shall entitle to the rate between 38 U.S.C. 314 (l) and (m).

(vii) Anatomical loss or loss of use of one leg at a level, or with complications,

preventing natural knee action with prosthesis in place with anatomical loss of one arm so near the shoulder as to prevent use of a prosthetic appliance, shall entitle to the rate between 38 U.S.C. 314 (m) and (n).

(viii) Anatomical loss of one leg so near the hip as to prevent use of a prosthetic appliance with anatomical loss or loss of use of one hand shall entitle to the rate under 38 U.S.C. 314(m).

(ix) Anatomical loss of one leg so near the hip as to prevent use of a prosthetic appliance with anatomical loss or loss of use of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place, shall entitle to the rate between 38 U.S.C. 314 (m) and (n).

(x) Anatomical loss or loss of use of one hand with anatomical loss or loss of use of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place, shall entitle to the rate between 38 U.S.C. 314 (m) and (n).

(xi) Anatomical loss or loss of use of one hand with anatomical loss of one arm so near the shoulder as to prevent use of a prosthetic applicance shall entitle to the rate under 38 U.S.C. 314(n).

(xii) Anatomical loss or loss of use of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place with anatomical loss of one arm so near the shoulder as to prevent use of a prosthetic appliance, shall entitle to the rate between 38 U.S.C. 314 (n) and (o).

* * * * *

3. In § 3.551, paragraph (g) is added as follows:

§ 3.551 Reduction because of hospitalization.

* * * * *

(g) *Hospitalization for rehabilitation*—(1) *General.* The reduction required by paragraph (c)(2) or (c)(3) of this section shall not be made for up to three additional calendar months after the last day of the third month referred to in paragraph (c)(2) of this section, or after the last day of the month referred to in paragraph (c)(3) of this section, under the following conditions:

(i) The Chief Medical Director, or designee, certifies that the primary purpose for furnishing hospital or nursing home care during the additional period is to provide the veteran with a prescribed program of rehabilitation under chapter 17 of title 38, United States Code designed to restore the veteran's ability to function within the veteran's family and community; and

(ii) The veteran is admitted to a Veteran's Administration hospital or nursing home after October 16, 1981.

(2) *Continued hospitalization for rehabilitation.* The reduction required by paragraph (c)(2) or (c)(3) of this section shall not be made for periods after the expiration of the additional period provided by paragraph (g)(1) of this section under the following conditions:

(i) The veteran remains hospitalized or in a nursing home after the expiration of the additional period provided by paragraph (g)(1) of this section; and

(ii) The Chief Medical Director, or designee, certifies that the primary purpose for furnishing continued hospital or nursing home care after the additional period provided by paragraph (g)(1) of this section is to provide the veteran with a program of rehabilitation under chapter 17 of title 38, United States Code, designed to restore the veteran's ability to function within the veteran's family and community.

(3) *Termination of hospitalization for rehabilitation.* Pension in excess of $60 monthly payable to a veteran under this paragraph shall be reduced the end of the calendar month in which the primary purpose of hospitalization or nursing home care is no longer to provide the veteran with a program of rehabilitation under chapter 17 of title 38, United States Code designed to restore the veteran's ability to function within the veteran's family and community. (38 U.S.C. 3203(a).)

4. Section 3.650 is amended as follows:

(a) By removing the introductory portion preceding paragraph (a).

(b) By revising the introductory portion of paragraph (a) preceding subparagraph (1) and by adding paragraph (c) so that the added and revised material reads as follows:

§ 3.650 Rate for additional dependent.

(a) *Running awards.* Except as provided in paragraph (c) of this section where a claim is filed by an additional dependent who has apparent entitlement which, if established, would require reduction of pension, compensation or dependency and indemnity compensation being paid to another dependent, payments to the person or persons on the rolls will be reduced as follows:

* * * * *

(c) *Retroactive DIC award to a school child*—(1) *General.* If DIC (dependency and indemnity compensation) is being currently paid to a veteran's child or children under 38 U.S.C. 413(a), and DIC is retroactively awarded to an additional child of the veteran based on school attendance, the full rate payable to the additional child shall be awarded the first of the month following the month in which the award to the additional child is approved. The rate payable under the current award shall be reduced effective the date the full rate is awarded to the additional child. The rate payable to the additional child for periods prior to the date the full rate is awarded shall be the difference between the rate payable for all the children and the rate that was payable before the additional child established entitlement.

(2) *Applicability.* The provisions of paragraph (c)(1) of this section are applicable only when the following conditions are met:

(i) The additional child was receiving DIC under 38 U.S.C. 413(a) prior to attaining age 18; and

(ii) DIC for the additional child was discontinued on or after attainment of age 18; and

(iii) After DIC has been discontinued, the additional child reestablishes entitlement to DIC under 38 U.S.C. 413(a) based on attendance at an approved school and the effective date of entitlement is prior to the date the Veterans Administration receives the additional child's claim to reestablish entitlement. (38 U.S.C. 413(b)).

(3) *Effective date.* This paragraph is applicable to DIC paid after September 30, 1981. If DIC is retroactively awarded for a period prior to October 1, 1981, payment for the period prior to October 1, 1981 shall be made under paragraph (a) of this section and payment for the period after September 30, 1981, shall be made under this paragraph.

5. Section 3.653 is amended as follows:

(a) By inserting the words "or her" following the words "sent to him" in paragraph (c)(1) and (2).

(b) By revising paragraph (b) (gender changes) as follows:

§ 3.653 Foreign resident.

* * * * *

(b) *Retroactive payments.* Any amount not paid to an alien under this section, together with any amounts placed to the alien's credit in the special deposit account in the Treasury or covered into the Treasury as miscellaneous receipts under 31 U.S.C. 123–128 will be paid to him or her on the filing of a new claim. Such claim should be supported with evidence that the alien has not been guilty of mutiny, treason, sabotage or rendering assistance to an enemy, as provided in § 3.902(a). (38 U.S.C. 3109).

* * * * *

6. In § 3.667, paragraph (a)(3) is revised as follows:

§ 3.667 School attendance.

(a) *General.* * * *

(3) An initial award of DIC (dependency and indemnity compensation) to a child in the child's own right is payable from the first day of the month in which the child attains age 18 if the child was pursuing a course of instruction at an approved school on the child's 18th birthday, and if a claim for benefits is filed within 1 year from the child's 18th birthday. In the case of a child who attains age 18 after September 30, 1981, if the child was, immediately before attaining age 18, counted under 38 U.S.C. 411(b) for the purpose of determining the amount of DIC payable to the surviving spouse, the effective date of an award of DIC to the child shall be the date the child attains age 18 if a claim for DIC is filed within 1 year from that date. (38 U.S.C. 3010(e)).

* * * * *

7. In § 3.808, the introductory portion preceding paragraph (a) is revised as follows:

§ 3.808 Automobiles or other conveyances; certification.

A certification of eligibility for financial assistance in the purchase of one automobile or other conveyance in an amount not exceeding $4,400 (including all State, local and other taxes where such are applicable and included in the purchase price) and of basic entitlement to necessary adaptive equipment will be made where the claimant meets the requirements of paragraphs (a), (b), and (c) of this section.

* * * * *

[FR Doc. 82-15330 Filed 6-4-82; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-FRL 2125-5]

Approval and Promulgation of Implementation Plans; Connecticut; Alternative Emission Reductions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The purpose of this document is to approve the State Implementation Plan (SIP) revision for the Connecticut volatile organic compound (VOC) bubble regulation. This plan revision was prepared by the State to meet the requirements of Part D (Plan requirements for Non-Attainment Areas) and certain other sections of the Clean Air Act, as amended in 1977.

EFFECTIVE DATE: July 7, 1982.

FOR FURTHER INFORMATION CONTACT: Betsy Horne (617) 223-5630.

SUPPLEMENTARY INFORMATION: In a Notice of Proposed Rulemaking (NPR), published February 25, 1982 (47 FR 8212), EPA proposed approval of Regulation 19-508-20 (cc), which was submitted on December 15, 1980. During the public comment period only one letter was received and it fully supported the proposed approval.

The State's submittal and EPA's action were fully explained in the NPR and will not be restated here, except to highlight two points discussed in the NPR.

The first is the inclusion of three additional source categories (miscellaneous metal parts, manufacture of synthesized pharmaceutical products and graphic arts) eligible for bubbling. The NPR indicated that EPA was in the process of approving control limits for the three categories and proposed that they would also be eligible for inclusion under the bubble once their control limits were approved. A final rule approving control limits for these sources was published on February 17, 1982 (47 FR 6827). Therefore, consistent with the NPR, today's final action on the Connecticut bubble regulation includes these industrial sources as eligible to apply to bubble their VOC emissions.

The second concerns calculating equivalency. The NPR indicated that applicable plant owners could "propose emission limits different from those now specified in the SIP, so long as on a solids-applied basis the total allowable emissions for the plant remains the same or is reduced". Consistent with EPA policy, today's action approves in advance any bubble issued by the state which demonstrates equivalency, as described above, based on total plant-wide emissions.

Action

EPA is approving Connecticut Regulation 19-508-20 (cc) as submitted on December 15, 1980 as it applies to Regulation 19-508-20: (m), can coating; (n), coil coating; (o), fabric and vinyl coating; (p), metal furniture coating; (q), paper coating; (r), wire coating; (s), miscellaneous metal parts; (t), manufacture of synthesized pharmaceutical products and (v), graphic arts—rotogravure and flexography.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sec. 110(a) and Sec. 301(a), Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)))

Dated: May 28, 1982.

Anne M. Gorsuch,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1981.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart H—Connecticut

Section 52.370, paragraph (c) is amended by adding subparagraph (23) as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(23) Regulation 19-508-20(cc), Alternative Emission Reductions as it applies to Regulation 19-508-20: (m), can coating; (n), coil coating; (o), fabric and vinyl coating; (p), metal furniture coating; (q), paper coating; (r), wire coating; (s), miscellaneous metal parts; (t), manufacture of synthesized pharmaceutical products and (v), graphic arts—rotogravure and flexography, was submitted on December 15, 1980, and January 11, 1982, by the Commissioner of the Department of Environmental Protection.

[FR Doc. 82-15335 Filed 6-4-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-FRL 2108-2]

Approval and Promulgation of Implementation Plans; New Hampshire Revisions—Ozone; Attainment Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The purpose of this document is to approve in part the State Implementation Plan (SIP) revisions for the State of New Hampshire involving operating permits with compliance schedules for six major sources of volatile organic compounds (VOC). These permits were submitted by the State in response to a condition for approval imposed on the ozone control portion of the SIP in the April 11, 1980 Federal Register (45 FR 24869). The intended effect of this action is to reduce the amount of hydrocarbons released from stationary sources, thereby decreasing the amount of ozone (a component of "smog") formed in the atmosphere.

EFFECTIVE DATE: This action will be effective August 6, 1982 unless notice is received on or before July 7, 1982, someone wishes to submit adverse or critical comments.

ADDRESSES: Comments should be sent to Harley F. Laing, Chief, Air Branch, Room 1903, JFK Federal Building, Boston, Massachusetts 02203.

Copies of the New Hampshire submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Air Branch, Room 1903, JFK Building, Boston, MA 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20400; Office of the Federal Register, 1100 L Street, NW., Washington, D.C.; and Air Resources Agency, Health and Welfare Building, Hazen Drive, Concord, New Hampshire 03301.

FOR FURTHER INFORMATION CONTACT: Alan E. Dion, (617) 223–5630.

SUPPLEMENTARY INFORMATION: In the April 11, 1980 Federal Register (45 FR 24869) EPA conditionally approved the Ozone Attainment Plan for the Merrimack Valley—Southern New Hampshire Interstate Air Quality Control Region. New Hampshire is a rural nonattainment state, for which EPA requires the implementation of RACT controls as expeditiously as practicable only on sources with the potential to emit more than 100 tons per year (TPY). It was EPA's view that most VOC sources were capable of achieving compliance within one to two years. The New Hampshire VOC control regulation submitted on May 29, 1979, allowed affected sources until December 31, 1982 to achieve compliance, without any requirement to justify the period of time needed or to set increments of progress toward compliance. Since this was not consistent with EPA policy, this portion of the 1979 SIP was approved on the condition that the State submit operating permits with schedules for expeditious compliance by all regulated sources. In response the State submitted permits on May 2, 1980 and May 16, 1980 for the nine major VOC sources affected by the conditional approval.

Two of these sources, Markem Corporation and Velcro USA, Inc., have permits which contain compliance schedules that limit their allowable emissions to less than 100 TPY before the end of 1982. Since EPA policy allows the use of permits to define limitations of a source's potential to emit (see August 22, 1980 Memorandum from Richard Rhoads to Tom Devine, available at the locations listed in the ADDRESSES section), and since under these permits the affected sources will emit less than 100 TPY, these compliance schedules are approvable. On January 8, 1982, the state submitted a revised permit for Velcro USA extending its compliance date to April 1, 1982. EPA finds this extension approvable.

One source, the Oak Materials Group, has converted its solvent usage to methylene chloride. Methylene chloride is a solvent which is exempt from control under the New Hampshire VOC regulations. EPA stated in the April 11, 1980 Federal Register (45 FR 24871) that it does not encourage the use of an exempt solvent like methylene chloride to achieve compliance, since it has been identified as mutagenic in bacterial and mammalian cell test systems and is therefore a possible carcinogen or mutagen to humans. Nonetheless, EPA also stated that it would not disapprove a SIP for allowing use of methylene chloride, and this permit is therefore approvable.

Two more sources, Mobil Oil Corporation and ATC Petroleum, Inc., have compliance schedules which call for utilizing Reasonably Available Control Technology (RACT) measures to achieve compliance by the end of 1982. These schedules are approvable.

Additionally, on November 20, 1981, the State submitted a revised permit for Nashua Corporation's Nashua facility. The state compliance schedule requires that the only regulated line emit less than 100 tons per year by the end of 1985. The line coats a pressure sensitive recorder paper which cannot be converted to low solvent. Furthermore, the product is being phased out since there is no long-term demand for it. Therefore, if the company was required to achieve the CTG limit, it would be compelled to buy and install add-on control equipment which would be used for less than three years. EPA has reviewed the compliance schedule for this facility and has determined that it represents RACT.

EPA does not have sufficient data to make a compliance determination for Ideal Tape, for Nashua Corporation's Merrimack facility or for Essex Group. Through the State Air Agency, EPA has requested additional information from these three sources to support each of their RACT demonstrations, and EPA will take no action on these permits at this time.

Since the Agency views this SIP revision as noncontroversial and routine, EPA is today approving it without prior proposal. The public should be advised that this action will be August 6, 1982. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Action

EPA is approving the operating permits with compliance schedules for ATC Petroleum, Inc., Nashua Corporation (Nashua), Markem Corporation, Mobil Oil Corporation, Oak Materials Group, and Velcro USA, Inc. EPA is taking no action on Ideal Tape, Essex Group and Nashua Corporation (Merrimack).

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a))

Dated: May 28, 1982.

Anne M. Gorsuch,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the Federal Register on July 1, 1981.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart EE—New Hampshire

Section 52.1520, paragraph (c) is amended by adding subparagraph (20) as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(20) Revisions to meet the requirements of Part D for the Ozone Control Plan were submitted on May 2, 1980; May 16, 1980; November 20, 1981 and January 8, 1982. Included are operating permits with compliance schedules for: ATC Petroleum, Inc., Markem Corporation, Mobil Oil Corporation, Oak Materials Group, Velcro USA, Inc., and Nashua Corporation's Nashua facility.

[FR Doc. 82-15367 Filed 6-4-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 420

[WH-FRL 2142-3]

Iron and Steel Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards, Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: On May 27, 1982, EPA promulgated regulations to limit effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works from facilities engaged in manufacturing steel. 47 FR 23258. Inadvertently, EPA announced in the **"DATE"** section of the **Federal Register** publication that the regulation "shall become effective May 27, 1982", on publication. This statement was incorrect. The **"DATE"** section should instead read as set forth below. The purpose of this notice is to inform the public of the correct effective dates of the regulation.

DATE: This regulation shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on June 10, 1982. It shall become effective July 10, 1982. The compliance date for the BAT regulations is as soon as possible, but in any event no later than July 1, 1984. The compliance date for New Source Performance Standards (NSPS) and Pretreatment Standards for New Sources (PSNS) is the date the new source begins operations. The compliance date for Pretreatment Standards for Existing Sources (PSES) is within 3 years after this rule becomes effective.

Under Section 509(b)(1) of the Clean Water Act judicial review of this regulation can be made only by filing a petition for review in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under Section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

FOR FURTHER INFORMATION CONTACT: Technical information and copies of technical documents may be obtained from Mr. Ernst P. Hall (202-426-2586), at: Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The economic analysis may be obtained from Mr. Robert Greene, Office of Policy Analysis (PM 220), at the same address.

Dated: June 3, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-15589 Filed 6-4-82; 9:29 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 50, 71, 91, 107, 111 and 189

[CGD 81-039a]

Disestablishment of Merchant Marine Technical Branch, Fifth Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: As a result of an evaluation of its Merchant Marine Technical Branch field organization, the Coast Guard decided to disestablish the Merchant Marine Technical Branch of the Fifth Coast Guard District, Portsmouth, Virginia. As of July 1, 1981, the plan review duties for the geographical area served by the Fifth Coast Guard District were assumed by the Merchant Marine Technical Branch, Third Coast Guard District, New York, NY. Those directly affected by this action were notified directly in March 1981 by CCGD5 (mmt).

DATE: Disestablishment was effective July 1, 1981.

FOR FURTHER INFORMATION CONTACT: LCDR David B. Anderson, Merchant Marine Technical Division (G-MMT-4/13), Room 1300C, Coast Guard Headquarters Building, 2100 2nd Street, SW., Washington, D.C. 20593 (202-426-2197).

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in the drafting of this rule are LCDR David B. Anderson, Project Manager, Office of Merchant Marine Safety and Mr. Michael N. Mervin, Project Attorney, Office of the Chief Counsel.

Discussion

The Coast Guard has completed an evaluation of its Merchant Marine Technical Branch field organization, taking into account many factors including personnel considerations and system efficiency. As a result, the Commandant concluded that a consolidation of the Merchant Marine Technical Branches of the Third and Fifth Coast Guard Districts was necessary for improved overall plan review efficiency, quality and consistency. Accordingly, the workload and military personnel previously assigned to the Fifth District's Merchant Marine Technical Branch were reassigned to the Third Coast Guard District.

Shipyards, designers and other businesses and persons within the geographical area of the Fifth Coast Guard District who are directly affected by this action were informed by letter from CCGD5 (mmt) in March 1981.

Because these amendments are of an administrative nature concerning the organization of the Coast Guard, they have no economic or environmental impacts. Therefore, it is not necessary to prepare a Regulatory Impact Analysis, Environmental Assessment, Regulatory Flexibility Analysis, or final evaluation.

Since this amendment relates to departmental rules of organization, it is excepted from notice and public procedures requirements. It is made effective immediately because it is not a substantive rule.

List of Subjects in 46 CFR Parts 50, 71, 91, 107, 111, and 189

Marine safety, Vessels, Organization and functions (government agencies).

In consideration of the foregoing, Chapter I of Title 46, Code of Federal Regulations, is amended as follows:

PART 50—GENERAL PROVISIONS

1. In § 50.20-5, by removing and reserving paragraph (d)(5) and revising paragraph (d)(1) to read as follows:

§ 50.20-5 Procedures for submittal of plans.

* * * * *

(d) * * *

(1) Commander, 3d Coast Guard District (mmt), Governors Island, New York, N.Y. 10004, for the geographical area covered by the 1st, 3rd, and 5th Coast Guard Districts.

* * * * *

(5) [Removed and reserved]

* * * * *

PART 71—INSPECTION AND CERTIFICATION

2. In § 71.65–15, by removing and reserving paragraph (a)(3)(v) and revising paragraph (a)(3)(i) to read as follows:

§ 71.65–15 Procedure for submittal of plans.

(a) * * *

(3) * * *

(i) Commander, 3rd Coast Guard District (mmt), Governors Island, New York, N.Y. 10004 for the geographical area covered by the 1st, 3rd and 5th Coast Guard Districts.

* * * * *

(v) [Removed and reserved]

* * * * *

PART 91—INSPECTION AND CERTIFICATION

3. In § 91.55–15, by removing and reserving paragraph (a)(3)(v) and revising paragraph (a)(3)(i) to read as follows:

§ 91.55–15 Procedure for submittal of plans.

(a) * * *

(3) * * *

(i) Commander, 3rd Coast Guard District (mmt) Governors Island, New York, N.Y. 10004, for the geographical area covered by the 1st, 3rd, and 5th Coast Guard Districts.

* * * * *

(v) [Removed and reserved]

* * * * *

PART 107—INSPECTION AND CERTIFICATION

4. In § 107.317, by removing and reserving paragraph (b)(2) and revising paragraph (b)(1) to read as follows:

§ 107.317 Addresses for submittal of plans, specifications, and calculations.

* * * * *

(b) * * *

(1) Commander (mmt), 3rd Coast Guard District, Governors Island, New York N.Y. 10004, for the geographical area covered by the 1st, 3rd, and 5th Coast Guard Districts.

* * * * *

(2) [Removed and reserved]

* * * * *

PART 189—INSPECTION AND CERTIFICATION

5. In § 189.55–15, by removing and reserving (a)(3)(v) and revising paragraph (a)(3)(i) to read as follows:

§ 189.55–15 Procedure for submittal of plans.

(a) * * *

(3) * * *

(i) Commander, 3rd Coast Guard District (mmt), Governors Island, New York, N.Y. 10004, for the geographical area covered by the 1st, 3rd, and 5th Coast Guard Districts.

* * * * *

(v) [Removed and reserved]

* * * * *

(46 U.S.C. 367, 369, 375, 391, 392, 416, 49 U.S.C. 1655(b), 49 CFR 1.49(b))

Dated: May 27, 1982.

L. N. Hein,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 82–15180 Filed 6–4–82; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL MARITIME COMMISSION

46 CFR Part 510

[General Order 4, Revised; Amdt. 1; Docket No. 81–76]

Licensing of Independent Ocean Freight Forwarders

AGENCY: Federal Maritime Commission.

ACTION: Final rules.

SUMMARY: This amends the Commission's independent ocean freight forwarder regulations to remove restrictions against affiliations between such forwarders and persons who have a beneficial interest in export shipments via oceangoing common carriers. These revisions are necessary to conform the regulations to amendments to the Shipping Act, 1916, made by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35).

EFFECTIVE DATES: The changes contained herein will be effective June 7, 1982, except for the change to § 510.33(c) which will be effective September 7, 1982.

FOR FURTHER INFORMATION CONTACT: Jeremiah D. Hospital, Chief, Office of Freight Forwarders, Federal Maritime Commission, Room 10105, 1100 L Street, NW., Washington, D.C. 20573, (202) 523–5843.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission's rules governing the licensing and operation of independent ocean freight forwarders are contained at 46 CFR Part 510[1] and are commonly known as General Order 4, Revised. The definition of the term "independent ocean freight forwarder" and the conditions under which forwarders are licensed to operate are based on and subject to sections 1 and 44 of the Shipping Act, 1916 (the Act). As a result of amendments made by Pub. L. 97–35 to sections 1 and 44 of the Act,[2] the Commission, on December 28, 1981, proposed five revisions to its rules solely for the purpose of conforming its rules to the statutory amendments. Those five revisions are now being adopted by the Commission.

Section 1 of the Act has been amended by Pub. L. 97–35 to define a forwarder as follows:

> The term "independent ocean freight forwarder" means a person that is carrying on the business of forwarding for a consideration who is not a shipper, consignee, seller, or purchaser of shipments to foreign countries.

Previously, the definition read:

> An "independent ocean freight forwarder" is a person carrying on the business of forwarding for a consideration who is not a shipper or consignee or a seller or purchaser of shipments to foreign countries, *nor has any beneficial interest therein, nor directly or indirectly controls or is controlled by such shipper or consignee or by any person having such a beneficial interest.* (emphasis added.)

Section 44 of the Act has been amended by adding new subsection (f):

> (f) A forwarder may not receive compensation from a common carrier with respect to any shipment in which the forwarder has a beneficial interest or with respect to any shipment in which any holding company, subsidiary, affiliate, officer, director, agent, or executive of such forwarder has a beneficial interest.

The above-quoted changes to sections 1 and 44 of the Act are scheduled to remain in effect only until December 31, 1983. After that date the definition of an "independent ocean freight forwarder" will revert back to that in effect prior to August 13, 1981, the date of enactment of the amendments.

Comments on the Commission's proposed revisions to General Order 4 were received from the National Customs Brokers and Forwarders Association of America, Inc. (the Association), which represents over three hundred and fifty forwarders and/or customs brokers, and an individual

[1] See 46 FR 24565, May 1, 1981.

[2] See section 1608 of Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981, effective August 13, 1981.

forwarder, Bee International, Inc. of Jacksonville, Florida (Bee).

The Assocation states that although the proposed rule revisions comport with the changes made by Pub. L. 97–35, additional rules are required to permit effective supervision over exporter affiliated forwarders. Otherwise, the Association states, wholesale violations of the law will result. The Association suggests that forwarders affiliated with exporters be made to identify such affiliations on their stationery and billing forms so that a prospective client-exporter may know, before hiring such forwarder, that the forwarder is affiliated with a potential competitor. The Association also suggests that affiliated forwarders be made to certify semi-annually to the Commission (1) the name of each affiliated exporter, along with the names of each affiliate's officers, directors and shareholders; (2) the number of shipments handled by the forwarder for each of its affiliates, together with a copy of each bill of lading; and (3) that no compensation was received from oceangoing common carriers on any such shipments. The Association also suggests that a forwarder who becomes affiliated with an exporter be made to advise the Commission in writing within ten days, setting forth the name of the exporter, its location, and the names of the exporter's officers, directors and shareholders.

Bee states that the proposed amendments could result in a loss of business and in illegal rebating, and sets forth examples of how illegal rebates could occur without detection by the Commission or by the ocean carriers. Bee concludes by stating that either it does not understand the new law and proposed rules, or, it it does, it does not understand why "the U.S. Government and the FMC" would allow such a situation. Whatever the merits of Bee's objections, they are clearly beyond the scope of this rulemaking proceeding.

The Association's suggestions would result in a substantial additional paperwork and reporting burden upon the ocean freight forwarder industry. In addition the Commission cannot publish as a final rule the new regulations requested by the Association. Such regulations would have to be made the subject of a new proposed rulemaking proceeding so that comments could be received from all segments of the public.

The Commission does not wish to downplay the seriousness with which it views the Association's concern that surreptitious siphoning off of business will occur. However, section 20 of the Shipping Act, 1916, already prohibits forwarders from passing on to their shipper affiliates, here or in foreign countries, the confidential, proprietary information a forwarder acquires in its position of fiduciary for U.S. exporters. The Commission would not hesitate to bring the full weight of the law to bear upon any forwarder found to violate section 20. A finding that a shipper-affiliated forwarder has abused its fiduciary responsibility by improperly disclosing to its foreign or domestic affiliates any information which may be used to the detriment of U.S. exporters would subject the forwarder to possible revocation of its license and the imposition of appropriate civil penalties.

Pursuant to 5 U.S.C. 601 *et seq.*, the Commission certifies that the rule revisions adopted herein will not have a significant economic impact on a substantial number of small entities. The proposals do not require additional reports or records, and are based entirely on changes to the underlying law. The economic impact which will occur will occur as a direct result of the changes to the law.

List of Subjects in 46 CFR Part 510

Freight forwarders.

PART 510—LICENSING OF INDEPENDENT OCEAN FREIGHT FORWARDERS

Therefore, pursuant to sections 18, 21, 43, and 44 of the Shipping Act, 1916 (46 U.S.C. 817, 820, 841a and 841b), and 5 U.S.C. 553, the following provisions of Title 46 of the Code of Federal Regulations are amended to read as follows:

§ 510.2 [Amended]

1. Section 510.2(j) is revised to read as follows:

* * * * *

(j) "Independent ocean freight forwarder" refers to a person performing freight forwarding services for a consideration, either monetary or otherwise, who is not a shipper or consignee or seller or purchaser of property in commerce from the United States.

* * * * *

§ 510.12 [Revised]

2. Section 510.12 is revised to read as follows:

No person is eligible for a license who is a shipper, consignee, seller, or purchaser of shipments in commerce from the United States.

§ 510.32 [Amended]

3. Section 510.32(a) is revised to read as follows:

(a) *Prohibition.* No licensee shall act in the capacity of a shipper, consignee, seller, or purchaser of any shipment in commerce from the United States.

* * * * *

§ 510.33 [Amended]

4. Section 510.33(c) is revised to read as follows:

* * * * *

(c) *Form of certification.* Prior to receipt of compensation, the licensee shall file with the carrier, in addition to the anti-rebate certification required by § 510.31(h), a signed certification as set forth below on one copy of the relevant ocean bill of lading which indicates performance of at least two of the listed services in addition to arranging for space:

The undersigned hereby certifies that neither it nor any holding company, subsidiary, affiliate, officer, director, agent or executive of the undersigned has a beneficial interest in this shipment; that it is the holder of valid FMC License No. —, issued by the Federal Maritime Commission and has, in addition to soliciting and securing the cargo specified herein or booking or otherwise arranging for space for such cargo, performed at least two (2) of the following services, as indicated:

(1) Coordinated the movement of the cargo to shipside.

(2) Prepared and processed the ocean bill of lading.

(3) Prepared and processed dock receipts or delivery orders.

(4) Prepared and processed consular documents or export declarations.

(5) Paid the ocean freight charges.

A copy of such certificate shall be retained by the licensee pursuant to § 510.34.

* * * * *

§ 510.33 [Amended]

5. Section 510.33 is amended by the addition of new paragraph (h):

* * * * *

(h) A freight forwarder may not receive compensation from an ocean-going common carrier with respect to any shipment in which the forwarder has a beneficial interest or with respect to any shipment in which any holding company, subsidiary, affiliate, officer, director, agent, or executive of such forwarder has a beneficial interest.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 82–15257 Filed 6–4–82; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 22

[Gen. Docket No. 80-183; RM-2365; RM-2750; RM-3047; RM-3068; FCC 82-202]

Allocation of Spectrum in a Certain MHz Band and To Establish Other Rules, Policies, and Procedures for One-Way Paging Stations in the Domestic Public Land Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This First Report and Order allocates 3 MHz of spectrum for paging services in the 929–932 MHz band. Private paging services will use frequency band 929–930 MHz, common carrier services will use frequency band 931–932 MHz, with a flexible boundary between the two bands effective after five years. The 930–931 MHz band will be reserved for advanced technology paging systems. This allocation was made in response to petitions filed by the Ad Hoc Private Paging Committee and Telocator Network of America. These new paging frequencies will allow for substantial growth of the paging industry, which has been restricted by a shortage of frequencies.

EFFECTIVE DATE: July 7, 1982.

FOR FURTHER INFORMATION CONTACT: Rodney Small, (202) 653–8169; Stephen Markendorff, (202) 632–6450.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 22

Communications common carriers, Communications equipment, Mobile radio.

First Report and Order

Adopted: April 29, 1982.
Released: May 14, 1982.

In the matter of amendment of Parts 2 and 22 of the Commission's rules to allocate spectrum in the 928–941 MHz Band and to establish other rules, policies, and procedures for one-way paging stations in the domestic public land mobile radio service; General Docket No. 80–183, RM–2365 RM–2750 Rm–3047 RM–3068.

I. Introduction and Background

1. On April 24, 1980, the Commission adopted a *Notice of Proposed Rule Making*[1] in this proceeding which proposed that the 3 MHz of spectrum from 929 to 932 MHz be allocated for private and common carrier paging systems. This *Notice* followed the traditional administrative approach to spectrum allocation by attempting to determine the need for given types of service and then allocating separate blocks of frequencies for each. A subsequent *Supplemental Notice of Proposed Rulemaking*[2] proposed an alternative allocation plan which provided for greater flexibility. Both *Notices* proposed that 1 MHz of spectrum (forty 25 kHz frequencies) each be allocated for private and common carrier systems, with 1 MHz of spectrum in reserve. However, the *Supplemental Notice* proposed possible use of private frequencies by common carriers and vice-versa after a five year exclusive period and did not earmark frequencies for a particular type of paging use such as tone-only, tone-voice, or tone-optical readout. Also, the *Supplemental Notice* did not propose either a restriction on message length or required sharing among common carriers, as had the initial *Notice*.

2. Twenty-three sets of comments were filed in this proceeding, with an additional eleven sets of reply comments.[3] In general, the comments favored the more flexible approach set forth in the *Supplemental Notice*, and it is that approach which we have basically followed in this *Report and Order*. However, it should be noted that the initial *Notice* and the comments raised important issues not covered in the *Supplemental Notice*, and we have addressed those issues here.

II. Discussion

A. Amount of Spectrum To Be Allocated

3. Comments were unanimous in supporting an allocation of at least 3 MHz of spectrum for paging systems, with some stating that more spectrum was required. Both of the original petitioners—The Ad Hoc Private Paging Committee (AHPPC) and Telocator Network of America (Telocator)—expressed this view. AHPPC stated that at least 60 additional private paging frequencies are needed, as opposed to the 40 proposed in the two *Notices*. Telocator stated that a total of 7 MHz, not 3 MHz, of spectrum is needed to accommodate the rapid paging growth that it foresees.

4. Although both of the above projections are plausible, we conclude that the studies on which we relied in 1980 are still the best indicators of future paging demand.[4] Furthermore, we are concerned that an increased allocation could promote inefficient use of the 900 MHz band, which is also in demand by other services. Accordingly, we are retaining the proposed allocation of 1 MHz of spectrum each for common carrier and private paging systems, with an additional 1 MHz of spectrum in reserve.

B. Frequency Band To Be Used

5. *Suitability of 900 MHz band.* We received few comments on our proposal to use the 900 MHz band for this allocation. One party, however, did submit extensive comments on the suitability of this band for paging. Jan David Jubon, a consulting engineer, expressed concern about the building penetration characteristics of 900 MHz, saying that the Commission should study the characteristics of the 900 MHz band before adopting any rules. He also recommended that authorizations under Part 22 of the Commission's Rules be granted only on a developmental or an experimental basis for two years to allow the Commission to study the potential of 900 MHz paging before formulating appropriate rules.

6. We have considered these comments and concluded that, based upon our experience with private two-way systems in the 800 MHz band, the 900 MHz band is indeed suitable for paging. Since the propagation characteristics of these bands are similar, we also conclude that we have sufficient information to authorize 900 MHz paging systems on a regular, rather than a developmental, basis, particularly in view of our decision to authorize frequencies based on mileage separation only, *see* paragraphs 53–61 below. In our view, developmental authorizations could deter licensees from investing in operational systems, without serving any apparent public interest purpose.

7. *Location of band.* The National Telecommunications and Information Administration (NTIA) in its comments proposed to move the paging band from 929–932 MHz to 932–935 MHz so that a Federal Government requirement for low-capacity fixed service might be accommodated at 929–932 MHz and 932–935 MHz. This proposal drew little

[1] One-Way Signaling in the 900 MHz Band, *Docket 80–183*, FCC 80–231, Notice of Proposed Rulemaking, released May 8, 1980, 45 FR 32013 (hereafter "NPRM").

[2] One-Way Signaling in the 900 MHz Band, *Docket 80–183*, FCC 80–510, Supplemental Notice of Proposed Rulemaking, released November 4, 1980, 45 FR 73979 (hereafter *"Supplemental Notice"*).

[3] A complete list of parties commenting is contained in Appendix A.

[4] Notice, *supra*, n. 1, at para 9, 45 FR at 32015.

comment. Some commenters, however, did state that no justification has been made for Government use of the 929–932 MHz band, and that in its absence the paging band should remain at 929–932 MHz.

8. The Commission and the NTIA have reached an agreement concerning other spectrum for the proposed government low-capacity fixed service. Therefore, we shall position the paging band at 929–932 MHz as we originally proposed. This allocation will not preclude the government from providing the proposed low-capacity fixed service.

9. In the *Supplemental Notice*, we positioned the private radio and common carrier bands adjacent to each other, with the reserve band at one end of the allocation. AHPPC proposed that the Commission use an assignment scheme whereby the private, common carrier and reserve frequencies all be "interleaved," rather than assigned in contiguous blocks of 40 frequencies each.[5] Specifically, AHPPC proposed that the Commission designate the first 10 frequencies in this allocation as private frequencies, followed by 10 as common carrier frequencies, 10 as reserve frequencies, and so forth, until all 120 frequencies were designated. According to AHPPC, its proposal would allow greater separation between frequencies within the same service and would allow licensees to combine transmitters on a single antenna. We have considered AHPPC's proposal for interleaving these bands and determined that the small number of situations where licensees might benefit from combining transmitters for the same service on a single antenna would not justify the administrative burden associated with assigning and keeping track of frequencies that are not contiguous. In addition, interleaving does not necessarily resolve the problem of placing adjacent frequencies on the same antenna structure. Even with interleaving there can be cases where adjacent frequencies would be assigned on the same antenna structure unless special precautions were taken. These same precautions could be taken without interleaving to assure that adjacent frequencies are not assigned on the same structure. Further, interleaving could restrict future use of the reserve pool. Instead of leaving a contiguous 1 MHz reserve band, there would be four 250 kHz bands. Thus, if transmitters with different bandwidths were developed, the lack of a large frequency band could restrict these technological benefits. We conclude that the small, if any, advantage of interleaving the frequencies is not sufficient to offset the loss of 40 contiguous frequencies in the reserve pool. Therefore, we are positioning the private and common bands as originally proposed with the reserve band in middle of the allocation. This will allow either the private or common carrier users to easily access the reserve when needed.

C. Flexible Boundary Concept

10. One of the more controversial issues in this proceeding is the proposed flexible boundary between the private and common carrier segments of the band. Under this proposed plan, either a common carrier or private licensee could be assigned a frequency from the other's allocation if its allocation in a given area were exhausted. As proposed, this boundary would not become flexible until after a five year period of exclusive use had expired. The comments on this proposal were generally favorable.

11. While we too are in favor of the flexible boundary concept, we foresee potential problems in implementing such a plan. This is because the standards used in assigning common carrier frequencies are different from those used in assigning private radio frequencies. For example, as discussed in paragraphs 53–61, the common carrier frequencies in this allocation will be assigned on the basis of fixed mileage separation criteria. On the other hand, the Commission recently proposed to have coordinators outside the Commission recommend frequency assignments in the private radio allocation.[6] In making their recommendations, these frequency coordinators will not necessarily follow the same criteria used by the Commission in assigning the common carrier frequencies, but may use any criteria they choose. In addition, different standards are presently applied in the private and common carrier services to determine when a licensee has sufficiently "loaded" a frequency to justify grant of an additional frequency. These different standards raise questions as to how the Commission should treat common carriers or private users when they apply for a frequency in the other's allocation. For this reason, while we are adopting the concept of the flexible boundary, we are not issuing rules to implement the flexible boundary plan at this time. In the meantime, we encourage licensees to inform us of any other implementation problems they foresee and any ways they propose to resolve these problems. We anticipate that such information would be provided within four years of the release date of the *Order*, in sufficient time to allow the Commission to determine what, if any, rules to adopt to implement the flexible boundaries approved herein.

12. While the PRB and the Common Carrier methods of frequency assignment do differ, these differences are the result of different regulatory schemes. The Common Carrier Bureau approach is necessary to ensure that interference-free service is provided in all cases. Common Carriers provide interference-free service for hire while the PRB licensees normally use radio in their own business enterprises and are not guaranteed this protection. Neither the Common Carrier Bureau nor the PRB approach is necessarily preferable in an absolute sense. Each Bureau has chosen the approach best suited to the type of service that is regulates. Unfortunately, this makes the flexible boundary plan more difficult to implement.

D. Restrictions on Use of Reserve Frequencies

13. In the initial *Notice*, we proposed to leave 1 MHz of this allocation in reserve to allow for potential future use by advanced technology paging systems. We said in that *Notice* that the reserve band was not meant to be a "spill-over" for tone-only or tone-voice systems which use current technology, but was rather a band for technologies which are only now being developed. We received several comments on this proposal which reflect a variety of views. AT&T and IBM, for example, commented that access to the reserve band should be restricted to advanced technology systems. On the other hand, several commenters advocated use of this band by current technology systems if the remainder of the allocation is exhausted.

14. We have considered these comments and conclude that the reserve band frequencies will be available only for advanced technology paging systems. We find this restriction is necessary to encourage development of such systems. We intend to explore potential uses of this band in another *Notice* to be issued in the near future. The 900 MHz paging band will begin at 929 MHz and terminate at 931 MHz, as follows:

929.000–930.000 (forty 25 kHz frequencies)—Public Safety, Industrial Land Transportation (Private).

[5] *Ex parte* presentation to Commission staff on July 8, 1981. As required by Commission Rules, a summary of the presentation was placed in this Docket.

[6] Further Notice of Proposed Rulemaking, Docket 80–183, released March 31, 1982.

930.000–931.000 (forty 25 kHz frequencies)—Reserve for one-way paging systems.
931.000–932.000 (forty 25 kHz frequencies)—Domestic Public (Common Carrier).

III. Private Radio Issues

15. There were other important issues addressed in both *Notices* and in the comments that pertain in general to the Private Radio Services, and in particular to the question of efficient use of private paging frequencies. Due to recent information received from AHPPC suggesting the possibility of much more efficient use of private frequencies through coordination,[7] we recently issued a further *Notice of Proposed Rule Making* concerning the private paging frequencies at 900 MHz. We therefore are deferring consideration of specific private paging rules at 900 MHz until resolution of the *Further Notice*, which was released on March 31, 1982. The remainder of this *Report and Order* therefore discusses and resolves issues relating to the common carrier allocation at 900 MHz.

IV. Common Carrier Regulatory Framework

A. Types of Signaling Permitted

16. In the initial *Notice*, we proposed setting aside two common carrier frequencies for tone-optical readout paging to encourage the use of this spectrally efficient mode of communications.[8] We also proposed to authorize the use of these frequencies on a time-shared basis, in view of the large number of subscribers that can be accommodated on a single frequency using the tone-optical readout mode.[9] In the frequencies not restricted to tone-optical readout paging, we proposed to allow any form of one-way communications consistent with our modulation and bandwidth limitations. This would permit the use of the 900 MHz paging frequencies for one-way transmission of tone-only, tone-voice, tone-optical readout and record paging signals, as well as other data communications. To promote efficient use of these frequencies, we proposed in the *Notice* to limit the duration of any single signaling communication to 15 seconds.[10] In addition, we proposed to permit signaling communications to fixed receivers on a secondary, interruptible basis.

17. In the *Supplemental Notice*, we proposed not to earmark any common carrier frequencies for tone-optical readout paging. Instead, we would allow market forces to determine how these frequencies are used. We also proposed in the *Supplemental Notice* not to impose restrictions on message length in a common carrier system. Our rationale for this proposal was that a common carrier may find that it is in its own financial self-interest to limit message length. However, it may also wish to give subscribers the option of sending a longer (or shorter) message for an additional (or lesser) charge.

18. We have carefully considered this matter and decided not to earmark common carrier frequencies for any specific use. Thus, all common carrier frequencies will be available for any type of paging use consistent with our modulation and bandwidth requirements. All parties who commented on the subject favored this approach, reasoning that it will allow market forces to determine how many frequencies will be available for various types of paging. We concur with these views. We no longer view tone-optical readout paging as a fledgling technology in need of Commission encouragement to develop, since this technology is currently in use on existing paging systems. Thus, we see little benefit to be gained from earmarking these frequencies for exclusive tone-optical readout use. On the contrary, by not earmarking these frequencies, the public should benefit by encouraging increased competition among different types of paging systems and increased consumer choices.

19. We have also decided not to impose any restrictions on the length of paging messages on the 900 MHz frequencies. This decision was solidly supported by all those who commented on this issue. Since the common carrier is providing a service to the public, we believe it can best determine whether message length limitations are desired by the public it serves. Allowing the common carrier to make this determination should encourage the most economically efficient use of these frequencies. With respect to signaling communications to fixed receivers, we have decided at this time to apply our rule for existing frequencies to the 900 MHz frequencies.[11] We shall discuss allowing signaling to fixed receivers on all paging frequencies in *CC Docket 80–57*, which concerns general revisions to Part 22 of the Commission's Rules.[12] Because *CC Docket 80–57* applies to all public mobile radio service frequencies, it is a more appropriate proceeding for the general discussion of this issue.

B. Eligibility

20. In our initial *Notice*, we proposed to allow any existing or proposed communication common carrier—either radio common carrier [13] (RCC) or wireline common carrier—to apply for the 900 MHz common carrier frequencies. Under this proposal, there would be one allocation for both RCCs and wireline carriers. We received a number of comments on this later proposal. AT&T and NTIA supported the one allocation proposal, saying that separate allocations are not necessary to promote competition and could actually retard effective competition and spectrum use. NTIA and Mobilfone of Northeastern Pennsylvania, Inc. (Mobilfone), suggested that wireline carriers be required to offer paging sevices through a separate subsidiary to remove the opportunity for cross-subsidization of paging services. In the alternative, Mobilfone asked that the Commission require wireline carriers to maintain and produce separate books for their wireline and paging operations. According to Mobilfone, this would allow the Commission to determine whether cross-subsidization and non-compensatory pricing were occuring.

21. On the other hand, GTE Service Corporation (GTE) commented that separate allocations have been successful in stimulating mobile radio offerings by both RCCs and wireline carriers. According to GTE, separate allocations would allow the development of wireline service on a competitive basis, while allowing RCCs to proceed with their systems. GTE believes that separate allocations would minimize the need for comparative hearings involving RCCs and wireline carriers and would create a more competitive environment.

22. We have carefully considered these comments and conclude that our proposed single allocation approach is

[7] See note 5 above.

[8] See Appendix B, proposed § 22.2 of the Commission's Rules, 47 CFR 22.2, for a definition of tone-optical readout paging.

[9] The term "time-shared" means that two or more licensees would be assigned to share the same frequency on an equal basis. Ordinarily, these licensees would not use the same transmitter, so each licensee would have to monitor the frequency before transmitting to determine if it was in use.

[10] We proposed to permit data transmissions longer than 15 seconds on a secondary, interruptible basis.

[11] *See* Section 22.509(e)(2), 47 CFR 22.509(e)(2).

[12] CC Docket 80–57, FCC 80–69, Notice of Inquiry, released February 21, 1980, 76 FCC 2d 105, 45 FR 147074.

[13] "Radio Common Carrier" is the term generally used in the telecommunications industry to describe a "miscellaneous common carrier", as defined in 47 CFR 22.2, operating in the Public Mobile Radio Services.

more desirable than separate, exclusive allocations. In the past, the allocation scheme for paging frequencies, other than in the 150 MHz band for common carrier paging frequencies, has not included separate, exclusive allocations. The separate allocations scheme adopted in 1949 for the 150 MHz paging frequencies and the two-way frequencies was originally intended to foster "the development of competing systems, techniques and equipment." [14] It now appears, however, that while such goals remain valid and desirable, this regulatory constraint is no longer necessary for achieving our goals in a mature Domestic Public Land Mobile Radio Service industry.[15] We conclude that a single allocation approach, in combination with the availability of a relatively large number of paging frequencies, our proposed assignment policies and our loading standards, will more likely allow for a market-driven development of competing service offerings than will a rigid, separate allocation scheme. Therefore, we are adopting an allocation plan that provides for one block of 900 MHz frequencies to be made available to both wireline carriers and RCCs to apply for on an equal basis.[16]

23. We have also considered the suggestion that wireline carriers establish separate subsidiaries to offer paging service in this band, to remove the opportunity for cross-subsidization of paging servies. We conclude that such a structural separation is unnecessary for a number of reasons. Unlike our cellular radiotelephone allocation, the entry barriers for the 900 MHz paging market are quite low. For example, the costs of establishing a paging system are small in contrast to the costs of establishing a cellular radiotelephone system. In addition, with 40 frequencies available in this allocation, the potential exists for a large number of paging operators to enter the 900 MHz market. Our experience with wireline participation in one-way paging services indicates that a separate subsidiary requirement is unnecessary. For many years, RCCs have competed with wireline carriers in providing paging services. The participation of wireline carriers in providing paging services has not, in the past, demonstrated a need for imposing structural separation requirements on these carriers to insure competition.

24. Finally, the costs of this structural separation outweigh its benefits. A cost of this separation is the preclusion of some of the possible economies in jointly providing both traditional wireline service and paging service on an integrated basis. Since these services are now jointly provided by the wireline carriers, the cost-savings of such joint production may be substantial. In our view, these potential substantial costs to the wireline carriers are not offset by any real benefits to the public. Therefore, for the above reasons, we will not require wireline carriers to establish separate subsidiaries to offer paging service. Nor do we believe it is necessary to require wireline carriers to maintain and produce separate books for their paging and wireline operations. As with the requirement just discussed, this would also impose an economic burden on the wireline carriers that would not be offset by any real benefit to the public. Accordingly, we will not require wireline carriers to maintain and produce separate books for their paging and wireline operations.[17]

[14] General Mobile Radio Service, 13 FCC 1190, 1218, *recon. denied*, 13 FCC 1242 (1949).

[15] *See* One-Way Signaling in the 35 MHz and 43 MHz bands, Docket 80-189, FCC 81-296, Report and Order, released July 15, 1981, 77 FCC 2d 384, 46 FR 27655.

[16] While this single allocation approach differs from the one we recently adopted in Cellular Communications Systems, 86 FCC 2d 469, released May 4, 1981, 89 FCC 2d 58, *recon. granted in part*, FCC 82-99, released March 3, 1982, we conclude that this approach is proper for this allocation. In the cellular proceeding, we adopted a separate allocation based on the wirelines' distinctive technical capabilities to make cellular systems available to the public in the near future. We further recognized that the separate allocation would minimize delay caused by having to conduct comparative hearings since generally only one wireline carrier would be eligible per cellular market. In this paging proceeding we know of no particular wireline expertise which would speed paging service to the public, nor do we anticipate delays from comparative hearings because we are making available 40 paging frequencies.

[17] While it does not appear that the impact of wireline competition would be as severe as the commenters allege, we are concerned that problems may arise where an RCC proposes a competing service in an area already served by a wireline carrier. These problems would be particularly acute if the charges to the RCC for facilities furnished by the wireline carrier and used in connection with one-way paging are higher than the cost factors used by the wireline carrier in computing its costs for the same or similar facilities. Therefore, as we required in our Report and Order in Docket 16778, FCC 68-515, Report and Order, adopted May 8, 1968, 12 FCC 2d 841; *recon. denied*, FCC 68-863, Memorandum Opinion and Order, 14 FCC 2d 269 (August 21, 1968), *aff'd sub nom.* Radio Relay Corporation v. FCC, 409 F. 2d 322 (2nd Cir. 1969), we shall require any wireline carrier using these frequencies to fix its charges to RCCs for wireline facilities on the identical basis it uses to compute its own costs for any one-way paging service it offers. We note here that in imposing this requirement we are establishing standards to deter unfair competitive practices and to foster competitive equality between wireline carriers and RCCs. We are in no way addressing the level of the charges, prescribing any particular level or pattern of rates or otherwise participating in the ratemaking process, which is the function of authorities in the particular jurisdiction where the services are provided. Our goal is to avoid potential "price squeeze" effects, United States v. Aluminum Co. of America, 148 F. 2d 416 (1945), consistent with our mandate to consider and protect the public interest and we will so condition our licenses to wireline carriers, as we have done in the past.

C. Network Paging

25. In the initial *Notice*, we proposed to allocate up to three frequencies for common carriers proposing to offer paging service on an inter-city (regional or nationwide) network basis. An inter-city network paging system would enable a subscriber to receive pages when outside its local service area. If the subscriber travels to an area that is part of an inter-city system it could be paged through the RCC or wireline carrier in that area. Those commenting on the proposal to allocate these frequencies for intercity paging were generally in favor of the proposal.

26. *Frequencies for nationwide use.* A number of commenters expressed the view that inter-city network frequencies should be reserved only for nationwide network paging and should not be available for regional network use. In support of this proposal, Mobile Communications Corporation of America (MCCA) submitted data regarding the size of the market for nationwide paging. Based on its analysis of the paging industry, MCCA believes there is substantial unsatisfied need for this type of paging service. MCCA documents this need by market surveys conducted among MCCA's paging customers in Rochester, New York, and Houston, Texas. On the basis of this survey and an industry report by Telocator, [18] MCCA estimates a nationwide need for network paging of 50,000 units. In our view, three inter-city frequencies could accommodate a large number of units. We anticipate that many potential users of an inter-city system, such as salespersons, will travel within one geographic region rather than nationwide. These users would have no need for a system with nationwide capabilities. Thus, allowing regional paging on these two frequencies will offer users a greater choice of service. Accordingly, we are reserving one frequency for nationwide network paging exclusively and allowing the remaining two frequencies to be used for either nationwide or regional network paging.

27. *Restriction on use of tone-voice paging.* Two commenters in this proceeding said the Commission should not allow tone-voice paging on the network frequencies because of the low

[18] "Final Report of the Nationwide Paging Committee", Telocator Network of America, February 23, 1980.

number of these units a frequency can accommodate. We have carefully considered these comments and concluded that we will allow the marketplace to determine what type of paging systems are used on these network frequencies. Our rationale for not earmarking the non-network frequencies for a specific use is applicable to this conclusion, *see* paragraph 16. We note that we have reached this conclusion with some reservations in view of the small number of frequencies available for network use. While we have decided not to restrict tone-voice paging on these frequencies now, it may be necessary to do so in the future.

28. *Shared use of network frequencies.* In the initial *Notice,* we proposed to assign more than one licensee to the frequencies reserved for network paging. After much consideration we have decided to adopt this proposal and require that network licensees share these frequencies. This approach is necessary because of the small number of frequencies reserved for network use. We believe that applicants are in a better position than the Commission to determine the best methods for sharing. Applicants are better able to anticipate their own needs and to arrive at compromises among themselves. Thus, we are placing the burden of how these frequencies can be operated on the applicants. However, we are concerned that all the applicants might not come to an agreement on how to utilize these frequencies, as has been the case with the shared UHF frequencies made available in 13 major markets in *Docket No. 21039,* 77 FCC 2d 201 (1980). Therefore, if the applicants do not reach an agreement within one year from the "cut-off" date for that frequency, we shall dismiss their application, and those applicants cannot refile for one year from the date of return.[19] No applications for the nationwide or the given regional area will be granted until all the applicants reach an agreement. We believe this policy is necessary to encourage applicants to negotiate sharing arrangements on these frequencies as quickly as possible.

29. *Local paging on the network frequencies.* In our initial *Notice,* we proposed to limit "local" paging on the network frequencies to a secondary basis. Motorola commented on this proposal, saying that many carriers will need a local financial base to support a broader network. Therefore, Motorola suggested that primary local service be allowed on the network frequencies with "roamers" given priority when away from their home cities. We understand Motorola's concern; however, we conclude that local use of these frequencies, even on a secondary basis, could stifle their development for network use. We fear that licensees would concentrate on attracting local rather than network subscribers for these frequencies. In addition, the presence of local paging on these network frequencies could make sharing arrangements difficult to implement. Therefore, we have re-evaluated our original proposal with respect to secondary local use and have decided to allow only network paging on these three frequencies. We shall, however, after a three-year period, allow local paging on these frequencies in a given area if the non-network frequencies are exhausted and network frequencies are available. This would allow persons interested in establishing network systems ample opportunities to develop their systems and put these frequencies to use. This three-year period will begin with the effective date of this *Report and Order.*

30. *Establishment of a Network.* In the initial *Notice,* we invited comments on the showings which should be required of applicants for these network frequencies. We said in that *Notice* we expected an applicant would, at a minimum, have to submit either a proposal to operate in several cities through its own network, affiliate with a network operated by a different carrier, affiliate with carriers in other cities in a cooperative paging exchange network, or affiliate with a paging network operated by an entrepreneur other than a carrier. All of these methods are of the type that would establish the kind of inter-city networks we envision. We adopt these proposed required showings here. Any applicant that wishes to establish its *own* nationwide network must demonstrate that the network will be nationwide in character. Similarly, an applicant that wishes to establish a regional network must demonstrate that the network will have a regional character.

31. *Network Cut-off Procedures.* Because additional time may be needed for applicants to arrange the kinds of affiliations discussed in para. 30 above, we are adopting an extended "cut-off" period for the filing of applications on the network frequencies. Applicants for the nationwide network frequency will have at least 180 days to file an application, measured from the public notice date of the filing of the first application for the one nationwide network frequency, irrespective of the cities proposed to be served. Applicants on the remaining two regional or nationwide network frequencies will also have a 180 day cut-off period; however, there will be a separate cut-off period for each regional area involved rather than one cut-off period for the whole country.

32. *Need for network service.* In the initial *Notice,* we said that it may be necessary to require some minimum showing of public need for network service. We have reconsidered this position and now propose not to require applicants for an initial network frequency to demonstrate public need. Because of the apparent demand for network paging and the small number of frequencies we are allocating for this purpose, we believe need showings for an initial frequency would serve no useful regulatory purpose. However, we shall authorize an applicant in a given area no more than one network frequency initially. After a licensee is granted an authorization to use one network frequency, it may apply for an additional network frequency, if one is available. However, it must submit a traffic loading study, as required by 47 CFR 22.516 of the Rules, to show that its existing network facility is insufficient to meet the increased demand because of its existing loading. This one frequency limit is consistent with the policy we are applying to the non-network frequencies to assure that a licensee is using a frequency sufficiently before it is authorized an additional one.

D. Need for Service

33. In our initial *Notice,* we said that market projections indicated the existence of substantial unsatisfied need for paging service, and that this demand would continue to grow in the future. Traditionally, we have required common carrier applicants for paging frequencies to demonstrate a public need for service. We proposed in the initial *Notice* not to require an applicant to demonstrate a public need for service prior to obtaining an initial paging frequency in a given area. We also proposed to apply this policy to all paging frequencies, not only the frequencies in the 900 MHz band.[20]

[19] On the nationwide frequency, all applicants must reach an agreement with each other, irrespective of the specific areas for which they applied. On those frequencies that are available either for regional or national networks, applicants must reach an agreement with those applicants in the same areas as they are. If applicants on the nationwide network fail to agree, all the nationwide applications will be returned as defective. As to the regional or nationwide frequencies, if applicants do not agree, those specific applications where coordination is not reached will be dismissed.

[20] *Notice,* 45 FR at 32015.

To safeguard against inefficient use of this spectrum, we proposed to authorize no more than a single frequency at a time. Under this plan, after a licensee obtains an authorization for one frequency, it may apply for an additional frequency if needed. However, it will have to supply a traffic load study under § 22.516 of our rules demonstrating that its existing paging facilities in the area are insufficient to meet increased demand. As we stated in the *Notice*, this load study would have to encompass *all* one-way facilities of the applicant for an additional frequency, regardless of the frequency band. The purpose of requiring such a showing is to ensure that the spectrum is being used efficiently.

34. The need standards which have been applied to applications for an initial frequency have evolved primarily out of two cases, *Long Island Paging and New York Telephone Co.*[21] Although these cases suggest several types of evidence that might be considered persuasive in demonstrating public need for an initial frequency,[22] more recent Commission practice has been to require applicants for an initial frequency to submit a public need survey, with demographic and commercial information being accepted only to supplement the need survey. *See Edward R. Buckmaster and Burton R. Gigoux d/b/a Communications Services*, FCC 81–102, released March 19, 1981, 49 RR 2d 250, *aff'd mem. sub nom. Advanced Electronics v. FCC*, No. 81–1436 (D.C. Cir. February 24, 1982). Beyond this point, however, the need standards for an initial frequency are far from clear, for two reasons. First, although these cases address the approach to be used in measuring public need, the discussions of methodology contained in them are sufficiently vague to invite almost endless argument over the adequacy of any particular need showing. Second, and more important, the cases afford inadequate guidance regarding the minimum public need required to justify one initial frequency, *i.e.*, the minimum amount of actual demand for the service as measured by the number of persons desiring service or the number of units requested.

35. Most of those commenting on this proposal to eliminate an initial need showing supported it. However, Telocator expressed concern that the proposal might result in frequency warehousing, and GTE Service Corporation (GTE) urged caution in terms of our plan to eliminate a need demonstration. In particular, GTE argued that where a petition to deny is filed, necessitating that a finding of public interest, convenience and necessity be made, the Commission must examine the question of need.

36. We do not agree with GTE that the Commission should retain a need requirement because it must examine need where petitions to deny are filed. It has been our policy in the past to have a basic need showing requirement applicable to all applicants for an initial frequency. However, for the reasons, discussed above, we no longer find it necessary to impose such an affirmative requirement for initial frequency applications. As discussed in the *Notice* at 6 and 12–14, there is a clear public need for additional one-way paging services and facilities and for diverse sources of supply. This demand has grown at the rate of 25 percent annually and is expected to grow at an even greater rate as technology advances and costs decline. Intensive competition already exists among RCCs and between RCCs and wireline carriers.[23] In sum, the one-way paging market is demonstrably one in which individual need showings for new entry are not required to further the public interest. Accordingly, we conclude that a general policy in favor of new entry in the one-way paging industry would serve the public interest, convenience and necessity. Consistent with that finding, it will no longer be necessary for an applicant to show need in the traditional way for its initial paging channel in a community.[24]

37. In reaching this conclusion, we have given serious thought to the prospect of warehousing, which is contrary to current Commission policy. However, we have concluded that there are other safeguards present in our regulatory process to protect against frequency warehousing, which make a need showing unnecessary. First, in our view, the incentive for warehousing is closely linked to the availability of frequencies: a shortage encourages applicants to apply for frequencies they do not currently need to insure that they will have those frequencies later should they develop a need. Several actions we have taken recently to make more frequencies available should minimize these incentives for warehousing.[25] Second, we do not believe that entrepreneurs will undertake the expense of applying for and constructing a facility for one frequency unless they have assessed the potential of the market to support that operation and have found that a level of need exists which is at least equal to levels which satisfied past need showing requirements.[26] Third, we note that our decision to eliminate need showing requirements applies only to applications for one initial frequency. If this authorized frequency is put into use, even at low levels of use, the frequency is being used more efficiently than if it were left unassigned. Furthermore, if other carriers are authorized in the area, a competitive alternative is afforded for customers. Presumably, as further need for service develops, additional customers will use that frequency.[27] Finally, we observe that although our existing need standards for an initial frequency have been minimal, as noted above, we are unaware of any warehousing problem to date. Thus, we have no reason to expect that elimination of the need showing entirely would increase the likelihood of warehousing to any significant degree. Nor would the strengthening of our current need standards, rather than their

[21] Long Island Paging, 30 FCC 2d 405 (1971). *New York Telephone Co.*, 47 FCC 2d 488, *recon. denied*, 49 FCC 2d 264 (1974) *aff'd sub nom. Pocket Phone Broadcast Service, Inc. v. FCC*, 538 F. 2d 447 (D.C. Cir. 1976).

[22] New York Telephone Co., 47 FCC 2d at 494, lists four types of evidence which *Long Island Paging* considered "persuasive". These include: (1) statistics or specific facts tending to show need, such as the nature and economics of the service area; (2) demographic or statistical evidence showing the nature and number of industries, businesses, professions and trades in the service area; (3) information on the identity and occupation of persons making service inquiries together with a statement as to whether or not costs were quoted and whether definite commitments were made; and (4) evidence as to the success or failure of other carriers offering that type of service in the same market.

[23] As many as six to ten carriers offer paging service in the larger communities.

[24] In making this determination we act consistent with Commission and judicial precedent. *See* Specialized Common Carrier Services, 29 FCC 2d 870, 920 (1971), *aff'd sub nom.* Washington Utilities & Transportation Commission v. FCC, 513 F. 2d 1142 (9th Cir. 1975), *cert. denied*, 432 U.S. 836 (1975). *Accord*, American Telephone and Telegraph Co. v. FCC, 539. F. 2d 767 (D.C. Cir. 1976). *See also* Land Mobile Channels, 69 FCC 2d 1555, 1569 (1978).

[25] Docket 21039, 69 FCC 2d 1555 (1978) *recon. granted in part*, 77 FCC 2d 201 (1980) *appeal pending, sub nom.* Telocator Network of America v. FCC No. 78–2218, (D.C. Cir., filed November 26, 1978); One-Way Signaling in the 35 MHz and 43 MHz bands, Docket 80–189, FCC 81–296, Report and Order, released July 15, 1981, 46 FR 27655; and Cellular Communications Systems, *supra*.

[26] *Travel-phone Corp.*, 85 FCC 2d 517, 534 (1981) *appeal pending, sub nom.* Mobilfone Paging Radio v. FCC (D.C. Cir., 81–1369).

[27] We recognize that the Commission has a statutory mandate to assure that available frequencies are assigned so as to best serve the public interest. Our action today is in no way inconsistent with such a mandate. We believe that the public interest can be best served through a regulatory framework which leaves considerable room for independent business judgments while also containing adequate safeguards to protect against the hoarding of public resources, such as radio spectrum.

elimination, serve any useful purpose. At the same time, elimination of this requirement should reduce the administrative workload associated with these applications, freeing valuable staff resources for other more significant matters and providing more expeditious service to the public.

38. In addition to these benefits to potential paging users, there are administrative benefits from establishment of this policy as well.[28] As we stated earlier, while public need showings frequently become subjects of petitions to deny, the Commission almost invariably finds these showings adequate to demonstrate a public need for an initial frequency. In the time it takes for applicants to perfect these need showings, the public is deprived of service. In our view, our current policy contributes to the Commission's workload and delays application processing without producing any real benefit to the public. We conclude therefore that for this reason as well, the public interest will be served by eliminating the requirement of a need showing for one initial frequency. This policy will apply to all one-way paging applications for all one-way frequencies that have already been filed and to all one-way applications filed after the adopted date of this order.

39. Several parties objected to the limit of one frequency per applicant for initial authorizations. These parties suggested a limit of three frequencies, with the requirement that the licensee meet a threshold loading standard within a certain period of time. Two reply commenters opposed this suggestion, saying that it would result in warehousing of the 900 MHz frequencies. AHPPC, in its reply comments, responded that simultaneous grants of multiple frequencies without need showings would distort the flexible boundary concept. While the three frequency limit proposal has merit, it would be impractical to adopt. The enforcement burden imposed on the Commission to ensure loading would be too great for our administrative resources to handle. Therefore, we conclude that the limit of one frequency per initial authorization is desirable. We shall apply this one frequency limit even if the applicant submits a traditional need showing to support the grant of more than one frequency. To do otherwise would prompt numerous petitions to deny based on need which, as just discussed, would greatly add to the Commission's workload associated with these applications. Moreover, we conclude that one frequency will adequately enable a new entrepreneur in an area to establish a paging business. When that entrepreneur is ready to expand, he or she may then apply for an additional frequency and submit a traffic loading study to support the application.[29]

40. We also received several comments concerning our proposal to require existing one-way paging licensees to submit traffic load studies for their existing facilities in the area to show they are insufficient to meet demand. Telocator disagreed with this proposal, saying that existing carriers should have the same opportunities to enter the 900 MHz market as new carriers. Vegas Instant Page argued that this rule would not recognize the different propagation characteristics of the various frequency bands, and would prevent existing carriers from expanding their operations to quality wide-area systems. We have considered these comments and concluded that our proposal to require existing licensees to submit traffic load studies for their existing facilities was correct. To do otherwise would result in inefficient use of these new frequencies. This view is consistent with our policy of frequency assignment which is to insure that spectrum is used efficiently. The benefits of our policy to encourage new entrants, discussed in paragraph 35, does not apply to existing licensees that seek additional frequencies. As discussed above, the primary benefits of establishing such a policy for new entrants is the encouragement of additional carriers in the paging market and the creation of a wider range of user choices. Thus, we shall authorize an existing licensee for a new frequency only if its existing facility is adequately loaded. If a licensee authorized for a partially loaded frequency wishes to obtain a 900MHz frequency, the licensee may file for a 900 MHz frequency and state that it will relinquish its license for the existing frequency when and if the 900 MHz frequency is authorized. Otherwise, the licensee must show that its existing facility is insufficient to meet increased demand.

41. Several parties commenting expressed concern about the Commission's general policies with respect to the assignment of additional frequencies. These policies relate to how the Commission establishes loading standards and how the Commission defines a "new" station. We have concluded that this proceeding is not the proper forum for discussion of these concerns, since they raise issues that extend beyond the scope of this particular allocation proceeding. We contemplate addressing these issues in a future proceeding.

42. We also proposed in the *Notice* not to require the applicant to show why it could not provide desired one-way service over the facilities of its existing or proposed two-way station, as is now required by 47 CFR 22.501(d)(2).[30] This rule was designed to encourage the intermixture of one-way and two-way service, where frequencies were scarce. While this intermixture was once desirable, with the availability of a great number of new paging frequencies, we now conclude that it is no longer necessary to impose this requirement. The public should benefit from the elimination of this requirement since licensees will have greater flexibility to design their systems to meet the needs of their customers. Thus, in our view, no harm would result either to the public or to licensees from our decision to no longer require an applicant to show why it could not provide one-way service over its existing two-way facilities. Accordingly, we proposed to eliminate § 22.501(d)(2) entirely. In doing so, we said that we did not intend to prohibit licensees of two-way stations from offering paging service on a secondary basis. We received no opposition to this proposal. Therefore, for the reasons stated above, we are eliminating § 22.501(d)(2).[31] This policy will apply to all pending one-way applications and to all one-way applications filed after the adopted date of the Order.

E. Frequency Assignment Policies

43. *Time-sharing of frequencies.* In the initial *Notice*, the Commission proposed that where there were no vacant non-network frequencies [32] available in a

[28] A review by Commission staff shows that "need" was among the issues most often raised in petitions filed against paging and mobile telephone applications that were granted during the last two years.

[29] Having decided on a one-frequency limit, we have some concern that a single entity may attempt to circumvent this limit by filing under different names in the same area. Therefore, we shall require applicants to furnish certain specific information concerning their ownership and control. We shall closely scrutinize this information to determine the real parties in interest. Enforcement of this disclosure requirement in conjunction with our requirement that a licensee construct within eight months of receiving a construction permit should help prevent an applicant from filing numerous applications in the same area under different names. (*See* §§ 22.13(i) and 22.43(a)).

[30] *Cf.* Airsignal International, Inc., 46 FCC 2d 109–10 (1974).

[31] Applicants for one-way frequencies need not provide a 47 CFR 22.516 showing of the loading of their existing two-way facilities.

[32] The term "non-network" refers to the frequencies in this allocation that are not reserved for nationwide or regional network use.

particular area, an applicant would be assigned a frequency used by a station with low traffic loading on a time-shared basis. In our *Supplemental Notice*, we proposed alternatively not to require sharing among common carriers if an application is filed in an area where no vacant non-network frequencies are available.

44. No one specifically favored required sharing of the non-network frequencies and several parties opposed it. There was general agreement among these parties that required sharing was unnecessary because of the number of frequencies being allocated, and that it was impractical. There was also concern expressed that required sharing would discourage investors from committing funds to a venture that could have its market potential decreased if a subsequent application were filed.

45. We concur with the opposition to required sharing of the non-network frequencies. As we stated in the *Supplemental Notice*, "prescribed sharing among common carriers can force the marketplace into a common mold, where no carrier has the option of offering a higher quality service at a higher price or a lower quality service at a lower price." [33] We are also concerned that a carrier might be reluctant to commit capital to develop a system on a frequency that it might ultimately be required to share. Therefore, we will not require common carriers to share the non-network frequencies.

46. *Commission assignment of frequencies.* In the initial *Notice*, we proposed that an applicant for a 900 MHz unrestricted common carrier paging frequency could not apply for a specific frequency. Instead, the Commission would assign a frequency to the applicant based on fixed mileage separation criteria. Using this procedure, there would be no cases of electrical mutual exclusivity among applicants so long as there are vacant frequencies available.

47. Most parties were critical of this assignment procedure. Vegas Instant Page opposed the procedure because it would prohibit carriers from ordering base station equipment in anticipation of receiving a construction permit. Jan David Jubon and RAM Broadcasting Corporation were concerned that this assignment procedure would make it difficult for applicants to pre-plan small scale networking and intercarrier or intercity arrangments other than networking. These parties requested that the Commission make some type of arrangements to allow applicants who wish to establish a wide-area or network system to have priority for the frequency or frequencies they need. Several parties also proposed alternate assignment schemes which they claim would allow applicants to select their own frequences without unduly burdening the Commission staff.

48. We have carefully reviewed these comments and proposed assignment schemes, and have determined that our original proposal would best serve the public interest. While these proposed assignment schemes have some merit, we are convinced that our proposal will enable us to process applications for the 900 MHz frequencies more expeditiously than would any of the parties proposed methods. We anticipate that the large number of paging channels allocated in this proceeding and in the 35 and 43 MHz paging proceeding,[34] coupled with the channels recently allocated in the cellular radio service,[35] will prompt the filing of a great number of applications with the Common Carrier Bureau. Under our current processing scheme, applicants request a particular frequency and submit an engineering study to show that authorization of its requested frequency will not produce harmful electrical interference to any co-channel stations. We have concluded that using this procedure to process the anticipated volume of incoming 900 MHz applications would cause processing delays detrimental to applicants and the public.

49. In our view, the most expeditious way of processing the 900 MHz applications is to impose uniform fixed mileage separation criteria and ask Commission staff to make assignments. We believe this time saving will benefit the public. We have not used this procedure in the past because we had no established geographic criteria by which to assign frequencies. Now that we have decided to establish such criteria, we shall have a defintive means of assigning frequencies. *See* paragraphs 53–61, *infra*. Therefore, an applicant for a paging frequency will not specify a particular frequency when applying to the Commission; rather, the Commission staff will choose and assign frequencies to applicants. However, an applicant may state a preference for a particular frequency, and if that frequency is available the staff will make a reasonable effort to assign it to the applicant. To accommodate those interested in establishing wide-area systems, we shall apply a liberal assignment and transfer policy when licensees wish to trade their 900 MHz frequencies.[36]

50. *Lotteries and Auctions.* NTIA advocated that where there are competing applications, rather than assigning channels by comparative hearing or by required sharing, the Commission should choose among competing applicants by auction. According to NTIA, auctions would further the public interest by assigning spectrum to the user who values it most, and would encourage spectrum efficiency in congested areas. While NTIA strongly favors auctions, it believes either lotteries or "paper hearings" are superior to the traditional comparative hearings for choosing among competing applicants.

51. NTIA's proposal elicited several reply comments. Airsignal replied that prompt implementation of 900 MHz paging should not be delayed by the adoption of radically altered assignment procedures such as lotteries or auctions, which are of dubious legality. Airsignal argued that while comparative hearings are too lengthy and expensive, these hearings should not be necessary because of the large number of available frequencies. Airsignal maintained that, instead, the Commission should reform its present procedures to expedite hearings. The Utilities Telecommunications Council (UTC) and Telocator also cited legal problems with NTIA's auction proposal.

52. Because of the large number of frequencies being allocated in this proceeding and the procedures we are adopting to assign these frequencies, we believe we have minimized the problems of mutually exclusive applications. If mutually exclusive applications do arise, the procedures for dealing with mutually exclusive applications prevailing at that time will be followed.

F. Technical Requirements

53. *Fixed Mileage Separation Criteria.* In our initial *Notice*, we stated that our proposed rules were in large part based on the Private Radio Service Rules for 800 MHz urban/conventional systems. The concept underlying these rules is that of fixed mileage separation criteria, rather than the protected service area concept traditionally used in the Domestic Public Land Mobile Radio Service. We proposed a separation of 105 miles (169 kilometers) between co-channel stations if one or more of the stations was located at any of the following sites: Santiago Peak, Sierra

[33] Supplemental Notice at para 6, 45 FR 73980.

[34] One-way signaling in the 35 and 43 MHz bands, Docket 80–189, FCC 81–246, Report and Order, released July 15, 1981, 46 FR 27655.

[35] *See* Cellular Communications Systems, note 16 *supra*.

[36] *See* 47 CFR 22.40.

Peak, Mount Lukens, or Mount Wilson, California, the World Trade Center, New York, New York, or the Sears Tower, Chicago, Illinois.[37] In all other cases, the separation proposed between co-channel stations is 70 miles (113 kilometers). We requested comments on this departure from our traditional regulatory plan.

54. The comments we received on this issue were mixed. Jan David Jubon objected to the application of a fixed mileage separation scheme, saying that such a scheme obviates the efficient use of many frequencies in dense, widely-spread metropolitan areas. The one benefit to this scheme cited by Jubon is that it allows a licensee to propose a "full power" facility—1,000 watts effective radiated power at 1,000 feet (305 meters)—subsequent to proposing and installing a more economical low-power, start-up facility. While Jubon considers this protection beneficial in the broadcast services, he sees less benefit for paging licensees. His view is that many paging licensees will expand their existing facilities by adding locations at less than full power and height rather than by increasing the height and power at one location. While Jubon objected to the fixed mileage separation concept, he also argued that it is premature to propose specific propagation curves and field intensities for interference determination because there is insufficient information available to characterize 900 MHz services. In the interim, Jubon suggests that the Commission apply "Bullington"[38] procedures in assigning the 900 MHz frequencies.

55. GTE also opposed the concept of fixed mileage separation criteria, saying that it is a simplistic formula which fails to take into account terrain features affecting service area. According to GTE, this alleged failure increases the chances of poor technical design, overpowered transmitters and potential electrical interference. GTE claims that a specified field strength contour, based upon the specific technical paramaters of the system as installed, would best serve the public interest. Telocator disagreed in theory with the proposal to adopt a system of fixed mileage separations, but conceded that this approach was acceptable for the present since knowledge of the propagation characteristics of the 900 MHz band as applied to paging is limited.

56. AT&T supported the fixed mileage separation concept, but suggested that waivers of the rule be authorized where applicants can show that unacceptable interference will not occur. Both Airsignal and Zip-Call suggested a greater mileage separation than that proposed by the Commission. Airsignal proposed a protected area defined as a 125 mile (201 kilometers) radius from a single transmitter location. According to Airsignal, such an area would avoid inefficient frequency use caused by interference contours falling between urban centers, and would allow for system expansion. Along with this proposal, Airsignal recommended that the Commission eliminate restrictive height/power limitations and allow greater effective radiated power (ERP) and transmitter output power. If frequency availability is insufficient to meet demand in the future, Airsignal suggested that licensees have their service areas redefined to appropriate field strength measurements. Airsignal maintained that future assignments could be made by the Commission in consultation with affected licensees, and new applicants for licensed frequencies could be required to produce detailed interference studies. Zip-Call suggested that the Commission increase the minimum mileage separation by 10 miles (16 kilometers), saying that until data regarding technical characteristics of 900 MHz systems are available, it is preferable to provide extra protection than insufficient protection. In view of the large number of frequencies to be allocated, Zip-Call argues that a larger separation can be specified without a significant loss in net coverage.

57. We have carefully considered all of these comments concerning the fixed mileage separation criteria and have determined that application of the 70 mile criteria would best serve the public interest. At present, using existing engineering procedures it is often a time-consuming process to determine whether a proposed station can operate on an interference-free basis. Application of fixed mileage separation criteria will simplify this process and largely eliminate legal challenges based on interference. We have also determined that our discussion in paragraph 64 obviates the need to separate by 105 miles co-channel stations located at either of the two urban sites in Chicago and New York or at any of the four mountaintop sites in California. *See* paragraph 53, *supra*. Therefore, the separation between all 900 MHz co-channel stations nationwide is 70 miles, with no shortspacing permitted. After 900 MHz paging systems have been operating and we have gained experience in regulating them, we shall re-examine this 70 miles separation. If it proves to be either too protective or not protective enough, we shall adjust it accordingly.

58. *Definition of Reliable Service Area.* In the initial *Notice*, we requested comments on how a station's reliable service area should be defined for purposes other than interference protection, e.g., location of message center, determination of whether an application should be classified as requesting a "new" station or an additional location for an existing station and determination of whether certain amendments to applications are "minor" and therefore exempt from the public notice requirement. *See* 47 U.S.C. 309(c)(2)(A). In addition, the Commission must be able to determine whether an existing licensee is entitled to standing as a party in interest.[39] The service area contour defines the area within which we shall recognize a licensee as "aggrieved or * * * adversely affected" by a Commission action and thereby entitled to standing. Accordingly, we invited comments as to whether some definition other than the existing 43 dBu contour would be better. We suggested that one possibility would be to specify a uniform distance from the transmitter site as the service area (e.g., 20 miles or 32 kilometers); another would be to require the applicant to compute some specified field strength contour, as at present.

59. We received several comments on this subject. Zip-Call suggested that the Commission use a 25 mile (40 kilometer) radius to determine a station's reliable service area. According to Zip-Call, this approach is preferable to understating the degree of protection, which it believes Carey procedures do.[40] Zip-Call also suggests that if the Commission decides to set engineering standards to define service contours, it do so only after actual operating data become available. The service contours then prescribed, Zip-Call maintains, should include what is in fact the area of adequate reliability. For paging service, Zip-Call advocates that technical standards adopted to define service

[37] We proposed this departure from our basic mileage separation criteria for these six locations because the very large geographical areas of urban Los Angeles, New York and Chicago and the presence of several very high antenna sites presented circumstances which were unique with respect to these locations.

[38] "Radio Propagation for Vehicular Communication," IEEE Transactions on Vehicular Technology, November 1977, (commonly known as "Bullington" procedures).

[39] *See* FCC v. Sanders Brothers Radio Station, 309 U.S. 470, 476–77 (1940).

[40] Roger B. Carey, *Technical Factors Affecting the Assignment of Facilities in the Domestic Public Land Mobile Radio Service*, FCC Report No. R–6406 (June 24, 1964).

area should be designed to project an area of at least 98% reliability.

60. Jan David Jubon suggests application of a 20 mile standardized radius, which he claims corresponds well with a 43 dBu contour for 1,000 watts ERP at 1,000 feet. However, he advocates that for determination of whether certain amendments to applications are "minor", the Commission should rely on the actual field intensity contour location and its relationship to the proposed facility.

61. We have carefully considered these comments and decided to apply a fixed mileage radius to define a station's reliable service area for purposes other than interference protection. Since 20 miles is the approximate distance a paging signal will travel from the transmitter site, we have chosen that figure for defining the reliable service area. This approach will impose less of an economic burden on applicants because they are not required to submit engineering studies and less of an administrative burden on the Commission because we are not required to review these studies. Moreover, since this fixed mileage radius is not being used to determine interference protection, the precision provided by engineering studies is not so crucial. All in all, application of a fixed mileage radius to define a station's service area should allow us to make an expeditious, yet reasonable, decision concerning a station's reliable service area.

62. *Miscellaneous Technical Issues.* The General Electric Company (GE) proposed the adoption of the digital code used by the British Post Office (POCSAG) for use on the 900 MHz frequencies. According to GE, this code is spectrally efficient and would encourage a high level of competition because it is non-proprietary. Other parties, however, contend that a standard at this time would be premature, if one is needed at all. We conclude that not enough information is available at present to mandate the imposition of any standard code on the new paging frequencies. Furthermore, since we anticipate great demand for tone-voice pagers, it would seem illogical to impose a sophisticated digital code on the frequencies to be allocated immediately. Such action would discourage economic efficiency, since it would prevent many potential users from obtaining less sophisticated, but more desired, tone-voice paging.

63. Both Telocator and GE questioned our proposal to permit up to 1,000 watts ERP at 1,000 feet, with power reductions specified for higher antenna elevations. GE claims that differences in the coverage propagation characteristics between 450 MHz and 900 MHz, and reduction of the effective sensitivity of a 900 MHz paging receiver compared to a 450 MHz receiver, can account for about 10 db more system loss at 900 MHz compared to 450 MHz. According to GE, many paging systems have their antennas at less than 500 feet above average terrain, and the proposed rules impose a disadvantage of as much as 7 db on these 900 MHz systems. Therefore, GE recommends that for systems using antennas that are less than 500 feet above average terrain, the permissible ERP should be increased to 5,000 watts.

64. We have considered these comments concerning antenna height and power and determined that we shall adhere to our proposed restrictions for the present. To account for the increased attenuation at 900 MHz, we are allowing greater height and power in this band than is currently allowed for paging systems at 35, 43, 150 and 450 MHz. Until we have more operating experience with 900 MHz systems, we shall permit licensees on these frequencies to operate their systems at up to 1,000 watts ERP at 1,000 feet above average terrain. Licensees with antennas higher than 1,000 feet above average terrain must reduce their power according to the power reduction provisions of Part 22 of the Commission's Rules. This reduction policy applies to all 900 MHz paging facilities.

65. The 25 kHz bandwidth plan which we proposed for this allocation was not specifically addressed by most parties. However, those who did comment favored it. We have concluded that a 25 kHz bandwidth—which is currently used on lower band frequencies—is desirable for 900 MHz paging. We therefore are basing this allocation on a 25 kHz bandwidth, but invite innovative proposals for the advanced technology reserve band which might be based, at least in part, on other than a 25 kHz bandwidth. This subject will also be explored in the *Notice* mentioned in paragraph 14.

66. In its comments, Telocator recommended that the paging rules and licenses issued be structured for assignment of channels by 25 kHz bands (*e.g.* 931.000–931.025 or 931.025–931.050) rather than discrete 25 kHz channels (*e.g.* 931.0125 MHz, 931.0375 MHz, etc.). According to Telocator, this will prevent FM technology from becoming embedded in the rules for this band. Telocator suggests that the Commission have applicants using FM transmissions propose a center frequency at the mid-point of the band, and then comply with the technical standards adopted with respect to that modulation scheme. Telocator then suggests that applicants using modulation techniques other than FM demonstrate on a case-by-case basis that the proposed facility would not cause interference to adjacent and co-channel stations in excess of the values prescribed for in-band and out-of-band emissions for FM transmissions. The license itself would specify the emission and center frequency the licensee is authorized to use. Airsignal concurred with Telocator's concern that emissions not be restricted to FM.

67. We believe the suggestions made by Telocator and Airsignal have merit. It would be advantageous to allow licensees flexibility in choosing the type of emission mode they use and, to the extent possible, the amount of bandwidth they occupy. Such flexibility will permit licensees to use the combination of emission mode and bandwidth (up to 25 kHz) that best fits their needs. Therefore, in regulating these channels we shall allow licensees to use any emission mode, provided that the emissions are contained within the authorized bandwidth. All licensees will be authorized a 25 kHz bandwidth. The authorizations will specify a center frequency at the mid-point of their assigned band, and licensees must comply with the technical standards required for the modulation technique that they propose. Licensees desiring to use modulation techniques other than FM must demonstrate that their facilities will not interfere with adjacent and co-channel stations in excess of the values prescribed for in-band and out-of-band emissions for FM transmissions.

68. This plan allows licensees to establish more than one channel within their authorized 25 kHz bandwidth. In addition to allowing licensees greater flexibility, we believe this approach will encourage more efficient use of spectrum. For example, a licensee desiring to provide tone-voice paging may wish to use its assigned bandwidth entirely for FM. On the other hand, a licensee desiring to provide tone-only paging might divide its assigned bandwidth into several discrete channels and use a modulation technique other than FM. Allowing licensees to establish more than one channel within their 25 kHz bandwidth should also encourage equipment manufacturers to experiment with different modulation techniques in hopes of developing less costly and/or more spectrally efficient paging systems. This, in turn, should increase competition among different types of systems resulting in a wider range of

equipment and/or service choices available to licensees.

G. Other Matters

69. *Control and Repeater Frequencies.* In the initial *Notice*, we invited comments on Telocator's proposal that frequencies allocated in this proceeding be made available for control and repeater use outside major metropolitan areas. We received several comments on this proposal. GTE disagreed with the proposal unless there was some showing of demand for this use. GTE suggested that the Commission wait before authorizing such uses to allow initial frequency demand to be monitored. If enough spectrum is then available, these uses could be authorized on a secondary basis. Jan David Jubon, Motorola and the Quintron Corporation supported Telocator's proposal. The Quintron Corporation commented that the instant proposal itself creates a need for control and repeater frequencies, since it is likely that simulcasting in this band will require radio control links for technical reasons alone.

70. We have carefully reviewed these comments and conclude that they have not demonstrated that there is sufficient demand at present to warrant allocation of frequencies for control and repeater use outside major metropolitan areas. Moreover, the Commission recently made available frequencies in the 900 MHz band to be used for control and repeater purposes by wide area paging systems.[41] If the frequencies allocated in that proceeding do not meet the needs of the commenters, interested parties may petition for control and repeater use of the frequencies in this allocation at a later time.

71. *Federal preemption of state regulation.* In its comments, NTIA suggested that the Commission preempt state entry and exit regulation of common carrier paging operations to insure that paging services are timely made available. The National Association of Regulatory Utilities Commissioners (NARUC) was especially concerned with NTIA's proposal, saying that preemption of state entry and exit regulation would be illegal and would deprive the state regulatory commission of the task of deciding what economic structure best suits its own conditions. Without reaching any of the legal issues raised by NARUC, we agree that federal preemption here is unwarranted. We have not preempted state entry and exit regulation of paging services in the other bands, and it does not appear necessary for achievement of our policies for the 900 MHz frequencies. Moreover, the states encompass a wide variety of economic environments which may justify different entry and exit regulations. These factors, coupled with the fact that paging systems are basically local in nature, leads us to believe that the states should not be preempted from decisions concerning entry and exit of paging common carriers at this time. Accordingly, we will not preempt state entry and exit regulation of any of the 900 MHz paging frequencies.

G. Procedures

72. In Paragraph 39 of this *Order* we have stated that only a single one-way paging frequency in a community will be granted at a time. Accordingly, if an applicant files for as 900 MHz paging frequency at the same time that it has another one-way paging application pending without dismissing the previously filed one-way application, the Commission will treat the previously filed one-way application as being amended by the 900 MHz application. The amended application will then be considered newly filed and subject to the applicable cut-off procedures.[42]

73. We shall accept applications for the 900 MHz frequency for an initial period of 60 days only, beginning 90 days after this *Report and Order* is published in the **Federal Register**. We have adopted this approach to enable the staff to determine the number of applications filed and to expeditiously and efficiently assign frequencies to the pending applications. When the Common Carrier Bureau decides to reopen any remaining 900 MHz frequencies for filing after the close of the 60 day filing period it will issue a Public Notice. In addition, because these 900 MHz frequencies are newly allocated and the potential entrants have not had the opportunity to previously file applications for these frequencies, we are not going to initially allow applications to be amended pursuant to § 22.31(e)(2) of the rules.[43]

74. When the Bureau reopens the 900 MHz frequencies for filing it will then determine whether to allow applicants to amend their applications pursuant § 22.31(e)(2) of the rules.

V. Conclusion

75. Accordingly, It is ordered, That pursuant to the authority found in Section 4(i), 301 and 303(r) of the Communications Act of 1934, as amended, (47 U.S.C. 154(i), 303(r)), Parts 2 and 22 of the Commission's Rules and Regulations are amended as specified in Appendix B. These amendments become effective July 7, 1982.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A.—Parties Commenting in 900 MHz Paging Proceeding

Ad Hoc Private Paging Committee—composed of existing and potential private paging users, including representatives of medical, educational, business and industrial groups, as well as manufacturers and designers of paging equipment and systems.

Airsignal International, Inc.—licensee in the Domestic Public Land Mobile Radio Service

American Telephone and Telegraph Company

Association of College and University Telecommunications Administrators

Central Committee on Telecommunications of the American Petroleum Institute—composed of representatives of 45 petroleum and natural gas companies.

Contemporary Communications Corporation—contemplating entrance into the local and/or nationwide paging market.

DPRS, Inc./t.a. Zip-Call—licensee in the Domestic Public Land Mobile Radio Service

Duke University

L. M. Ericsson Telecommunications, Inc.—involved in the manufacture of pagers.

General Electric Company

GTE Service Corporation

International Business Machines Corporation

Jan David Jubon, P.E.

Manufacturers Radio Frequency Advisory Committee—representative association of, and frequency coordinator for, private licensees in the Manufacturers Radio Service.

Mobile Communications Corporation of America—licensee in the Domestic Public Land Mobile Radio Service.

National Mobile Radio Association—nationwide non-profit association of small businesses engaged in the sale and maintenance of radio equipment.

National Telecommunications and Information Administration

Quintron Corporation—designer, manufacturer and supplier of land mobile paging transmitters and mobile telephone base stations.

Special Industrial Radio Service, Inc.—non-profit organization serving as the frequency advisory committee for the Special Industrial Radio Service.

[41] *See* Allocation of Channels in the 900 MHz Range for Multiple-Address Radio Systems, Third Notice of Proposed Rulemaking, S. S. Docket 79-18, FCC 80-751, released January 14, 1981. Regulations for Use of Radio in Public Utility Distribution Automation Systems, S. S. Docket 79-18, FCC 80-710, released January 14, 1981.

[42] 47 CFR 22.23(c)(i), 47 CFR 22.31. *See also* Charlotte Message Center, Mimeo 001482, released June 12, 1981. Under this policy any pending one-way application requesting more than one initial channel in a community will only be granted in part.

[43] 47 CFR 22.31(e)(2).

Telocator Network of America—national council of the independent, non-wireline radio common carrier industry.

Texas Tech University School of Medicine

Utilities Telecommunications Council—national representative on telecommunications matters of the nation's electric, gas, water and steam utilities, which are licensees in the Power Radio Service.

Vegas Instant Page—licensee in the Domestic Public Land Mobile Radio Service.

Replies in 900 MHz Paging Proceeding

Ad Hoc Private Paging Committee

Metro Mobile Communications, Inc.—SMRS operator licensed in the 800 MHz band.

Mobile Communications Corporation of America

Mobilfone of Northeastern Pennsylvania, Inc.—licensee in the Domestic Public Land Mobile Radio Service.

Motorola, Inc.

MX-COM, Inc.—supplier of integrated circuits for tone signaling.

National Association of Regulatory Utility Commissioners—quasi-governmental non-profit organization of state officials involved in regulating utilities and common carriers.

Ram Broadcasting Corporation—licensee in the Domestic Public Land Mobile Radio Service.

Telocator Network of America

Utilities Telecommunications Council

Vegas Instant Page

Appendix B

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

47 CFR Part 2 is revised as follows:

Section 2.106 is amended by adding the following in numerical order:

* * * * * * *

§ 2.106 Table of frequency allocations

FEDERAL COMMUNICATIONS COMMISSION

Band (MHz)	Service	Class of station	Frequency (MHz)	Nature of services of stations
7	8	9	10	11
929–930 (NG–132)	LAND MOBILE	Base		PUBLIC SAFETY INDUSTRIAL LAND TRANSPORTATION
930–931	LAND MOBILE	Base		One-Way Paging Reserve
931–932 (NG–132)	LAND MOBILE	Base		DOMESTIC PUBLIC
932–947	LAND MOBILE			RESERVE

* * * * *

A new NG Footnote is added to read as follows:

NG 132 After September 1, 1987, and subject to further order of the Commission concerning assignment procedures, stations in the Public Safety, Industrial and Land Transportation Services may be authorized the use of frequencies in the 931–932 MHz band and Domestic Public Services may be authorized to use frequencies in the 929–930 MHz band.

* * * * *

PART 22—PUBLIC MOBILE RADIO SERVICES

47 CFR Part 22 is revised as follows:

1. Section 22.2 is amended by adding the following definitions in alphabetical order:

§ 22.2 Definitions.

* * * * *

Paging service. A service provided by a communication common carrier engaged in rendering signaling communication.

Paging service, optical readout. Paging service consisting of communication of a message to a receiver which displays the message on an optical or tactile readout, whether in a permanent form (*see Record communication)* or a temporary form.

Paging service, tone-only. Paging service designed to activate an aural, visual, or tactile signaling device when received.

Paging service, tone/voice. Paging service in which a tone is transmitted to activate a signaling device and audio circuit in the addressed receiver, following which a voice-grade signal is transmitted, to be amplified by the audio circuitry.

* * * * *

Radio Common Carrier (RCC). A miscellaneous common carrier engaged in the provision of the Public Mobile Radio Services.

* * * * *

Signaling communication. One-way communications from a base station to a mobile or fixed receiver, or to multipoint mobile or fixed receivers by audible or subaudible means, for the purpose of actuating a signaling device in the receiver(s) or communicating information to the receiver(s), whether or not the information is to be retained in record form.

2. Section 22.13 is amended by revising paragraph (a)(1) as follows:

§ 22.13 General application requirements.

(a) * * *

(1) Disclose fully the real party or parties in interest, that are engaged in the Public Mobile Radio Services, including the following information:

(i) A list of its subsidiaries, if any. Subsidiary means any business five per cent or more whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, stockholder or key management personnel of the applicant. This list must include a description of each subsidiary's principal business and a description of each subsidiary's relationship to the applicant.

(ii) A list of its affiliates, if any. Affiliates means any business which holds a five per cent or more interest in the applicant, or any business in which a five per cent or more interest is held by another company which holds a five per cent interest in the applicant (e.g. Company A owns 5% of Company B and 5% of Company C; Companies B and C are affiliates).

(iii) A list of the names, addresses, citizenship and principal business of any person holding five per cent or more of each class of stock, warrants, options or debt securities together with the amount and percentage held, and the name, address, citizenship and principal place of business of any person on whose account, if other than the holder, such interest is held. If any of these persons are related by blood or marriage, include such relationship in the statement.

* * * * *

3. Section 22.101, paragraph (a) is revised to read as follows:

§ 22.101 Frequency tolerance.

(a) The carrier frequency of each transmitter authorized in these services must be maintained within the following percentage of the reference frequency except as otherwise provided in paragraph (b) of this section (unless otherwise specified in the instrument of

station authorization the reference frequency is considered to be the assigned frequency):

Frequency range (MHz)	Frequency tolerance (percent)		
	All fixed and base stations	Mobile stations over 3 watts	Mobile stations 3 watts or less [1]
25 to 50	0.002	0.002	0.005
50 to 450	.0005	.0005	.005
450 to 512	.00025	.0005	.0005
929 to 932 [3]	.00015		
2,110 to 2,220	.001		
2,220 to 12,220 [2]	.005	.005	.005
12,220 to 40,000	.03	.03	.03

[1] Below 512 MHz transmitter plate power input to the final frequency stage, as specified in the Commission's Radio Equipment List. Above 512 MHz transmitter power output as specified in the Commission's Radio Equipment List.

[2] Beginning Aug. 9, 1975, this tolerance will govern the marketing of equipment pursuant to §§ 2.803 and 2.805 of this chapter and the issuance of all authorizations for new radio equipment. Until that date new equipment may be authorized with a frequency tolerance of .03 percent in the frequency range 2,200 to 10,500 MHz and .05 percent in the range 10,500 MHz to 12,000 MHz, and equipment so authorized may continue to be used for its life provided that it does not cause interference to the operation of any other licensee. Equipment authorized in the frequency range 2,450 to 10,500 MHz prior to June 23, 1969 at a toleance of .05 percent may continue to be used until February 1, 1975 provided it does not cause interference to the operation of any other licensee.

[3] Equipment authorized to be operated on frequencies between 890 and 940 MHz as of Oct. 15, 1956, shall be required to maintain a frequency tolerance within 0.03 percent subject to the condition that no harmful interference is caused to any other radio station.

4. In Section 22.107, paragraph (b) is revised to read as follows:

§ 22.107 Transmitter power.

* * * * *

(b) The rated power of a transmitter employed in these radio services shall not exceed the values shown in the following tabulation:

Frequency range (MHz)	Rated power output (watts)
Below 30	50
30 to 50	350
50 to 76	50
76 to 512	[1] 250
929 to 932	2,000
512 to 10,000	[2] 20
Above 10,000	[2] 10

[1] Transmitter rated power output is limited to a maximum of 25 watts on frequencies in the bands 454.6625–455.000 MHz and 459.6625–460.000 MHz.

[2] In the bands 5.925–6.425 MHz and 27.500–29.500 MHz the maximum effective isotropically radiated power of the transmitter and associated antenna of a station in the fixed service shall not exceed—55 cSW. This limitation is necessary to minimize the probability of harmful interference to reception in this band by space stations in the fixed-satellite service. In the band 2.150–2.162 MHz up to 100 watts may be authorized pursuant to § 21.904.

* * * * *

5. Section 22.501 is amended by revising paragraphs (d) and (h) and by adding paragraph (p) as follows:

§ 22.501 Frequencies.

* * * * *

(d) For assignment, to base stations of communication common carriers for use exclusively in providing a one-way signaling service.

35.22 MHz	43.22 MHz
35.58 MHz	43.58 MHz

Whenever feasible, the frequencies 35.22 MHz and 35.58 MHz shall be assigned for use in any area prior to the assignment of the frequencies 43.22 MHz and 43.58 MHz.

* * * * *

(h) For assignment to base stations for use exclusively in providing a one-way signaling service as follows:

(1) Communication common carriers engaged also in the business of affording public landline message telephone service:

152.84 MHz	158.10 MHz

(2) Communication common carriers not also engaged in the business of providing a public landline message telephone service:

152.24 MHz	158.70 MHz

* * * * *

(p)(1) For assignment to base stations of communication common carriers for use exclusively in providing a one-way signaling service. (center frequency of 25 KHz band)

931.0125 MHz	931.5125 MHz
931.0375 MHz	931.5375 MHz
931.0625 MHz	931.5625 MHz
931.0875 MHz	931.5875 MHz
931.1125 MHz	931.6125 MHz
931.1375 MHz	931.6375 MHz
931.1625 MHz	931.6625 MHz
931.1875 MHz	931.6875 MHz
931.2125 MHz	931.7125 MHz
931.2375 MHz	931.7375 MHz
931.2625 MHz	931.7625 MHz
931.2875 MHz	931.7875 MHz
931.3125 MHz	931.8125 MHz
931.3375 MHz	931.8375 MHz
931.3625 MHz	931.8625 MHz
931.3875 MHz	931.8875 MHz [1]
931.4125 MHz	931.9125 MHz [1 2]
931.4375 MHz	931.9375 MHz [1 2]
931.4625 MHz	931.9625 MHz
931.4875 MHz	931.9875 MHz

[1] Reserved for stations engaged in providing nationwide network paging service.

[2] Reserved for stations engaged in providing nationwide or regional network paging service. Applicants for regional network paging service must specify one of these frequencies.

(2) Specification of frequency in application. An applicant for a new station in the band 929–932 MHz (except a station which will be engaged in providing network signaling service on the frequencies marked with footnote 1 in paragraph (p)(1)), will not specify a frequency in its application. Instead, the applicant should specify that it wishes a "900 MHz channel, unrestricted". The applicant may specify a frequency preference, but the Commission is not bound by such requests.

6. Section 22.502 is revised to read as follows:

§ 22.502 Classification of base stations.

Base stations in the Domestic Public Land Mobile Radio Service shall be classified, as set forth below, according to their transmitting antenna height above average terrain in any particular direction and according to their effective radiated power in the horizontal plane of the antenna in that direction. This classification is not applicable to base stations in the frequency bands 454.6625–455.0000 MHz, 459.6625–460.0000 MHz, and 929–932 MHz.

Antenna height above average terrain (feet)	Class of station				
400 to 500	C	B	B	A	A
300 to 400	C	C	B	B	A
200 to 300	D	C	C	B	B
100 to 200	D	D	C	C	B
0 to 100	E	D	D	C	C
	30	60	120	250	500
	Effective radiated power (watts)				

7. Section 22.503 is amended by adding paragraph (c) as follows:

§ 22.503 Geographical separation of co-channel stations.

* * * * *

(c) The mileage separation between base stations in the 929–932 MHz band operating simultaneously on a co-channel basis is at least 113 km. (70 miles.)

8. Section 22.504(b) is revised to read as follows:

§ 22.504 Service area of base station.

* * * * *

(b)(1) The field strength contours described in paragraph (a) of this section shall be regarded as determining the limits of the reliable service area of stations other than those in the frequency band 929–932 MHz for the purpose of providing protection to such stations from co-channel electrical harmful interference and for defining the area within which consideration will be accorded claims of economic competitive injury. The following F(50, 50) radio wave propagation charts shall be used in connection with making such determinations, and shall be used in combination with the following F(50, 10) radio wave propagation charts in the determination of areas of harmful interference between co-channel stations.

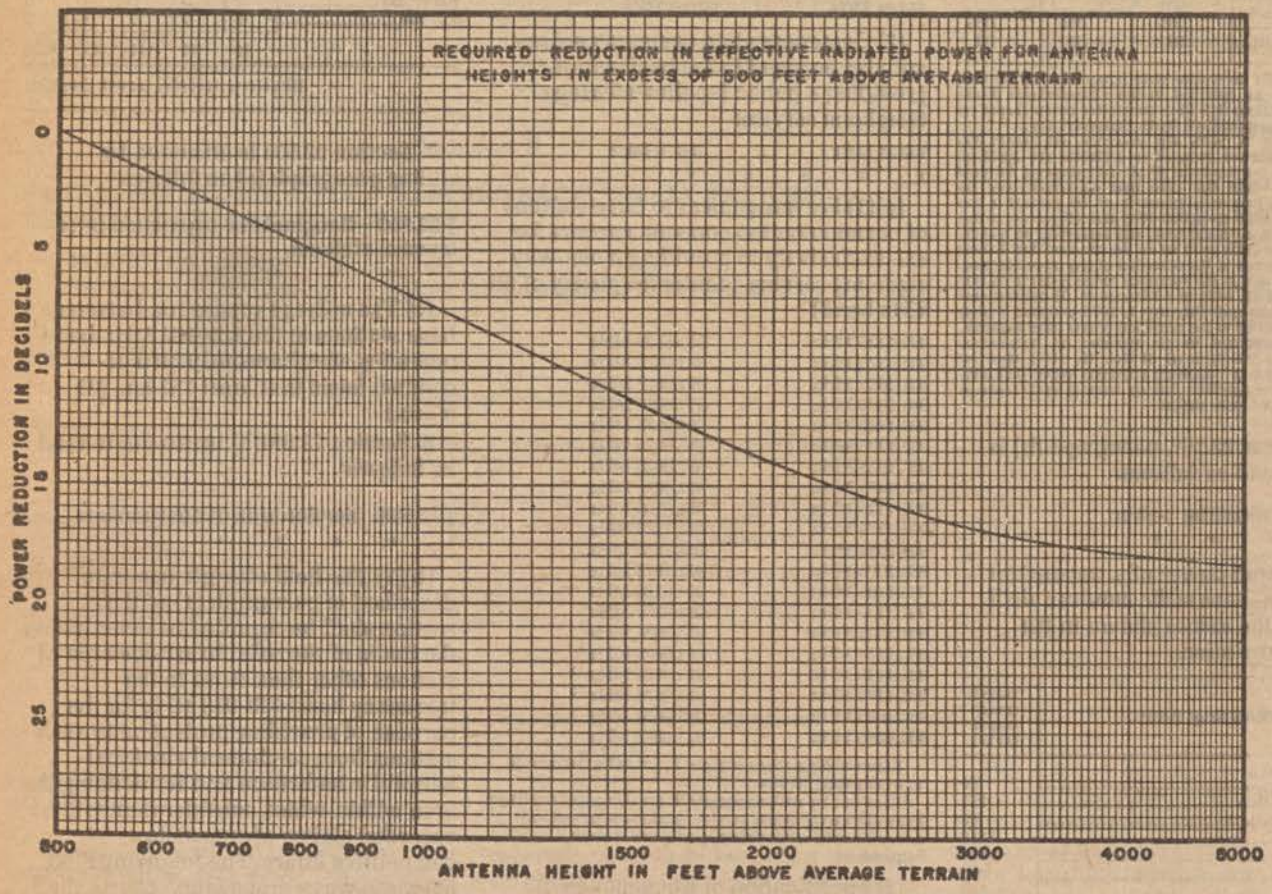
(2) The reliable service area for one-way signaling stations in the frequency band 929–932 MHz is 32 km (20 miles) from the location of the station's transmitter. The reliable service area is used to determine whether claims of economic competitive injury are considered. The reliable service area so defined is not entitled to protection from electrical interference from co-channel stations at distances greater than those listed in § 22.503(c) under any circumstances.

9. Section 22.505 is amended by designating the present text as

paragraph (a) and revising it, and by adding a new paragraph (b) as follows:

§ 22.505 Antenna height-power limit for base stations.

(a) In view of the fact that the predominant need for mobile communication service can usually be met by base stations within the classification set forth in § 22.502, and because widespread coverage is undesirable in areas where no substantial need exists for mobile communication service through a distant base station, base stations will not be authorized to employ transmitting antennas in excess of 500 feet above average terrain unless the effective radiated power of the base station is reduced below 500 watts by not less than the amount as shown in the chart below entitled "Required Reduction in Effective Radiated Power for Antenna Heights in Excess of 500 Feet Above Average Terrain". This antenna height-power limit does not apply to base stations in the frequency bands 470–512 and 929–932 MHz.



(b) The maximum effective radiated power and antenna height, respectively, for base stations providing one-way signaling service in the frequency band 929–932 MHz shall be no greater than 1 kilowatt (30 dBw) and 305 meters (1000 feet) above average terrain (AAT), or the equivalent thereof determined from the following table:

Antenna height (AAT) (feet)	Effective radiated power (ERP) (watts)
Above: 5000	65
4500	70
4000	75
3500	100
3000	140
2500	200
2000	350
1500	600
1000	1000

For AAT's between the above listed values, linear interpolation should be used.

10. Section 22.506 is amended by revising paragraph (a) and by adding new paragraphs (d) and (e) as follows:

§ 22.506 Power limitations.

(a) Stations in this service (other than base stations in the frequency bands 470–512 and 929–932 MHz) shall not be permitted to exceed 500 watts effective radiated power and shall not be authorized to use transmitters having a rated power output in excess of the limits set forth in § 22.107(b): *Provided, however,* That the effective radiated power of dispatch stations, and auxiliary test stations and base stations operating on frequencies specified in

§ 22.521 shall not exceed 100 watts: *Provided, further,* That the rated power output of transmitters used on frequencies specified in § 22.521 shall not exceed 25 watts and that the transmitter output power of airborne stations operating on such frequencies shall not be less than 4 watts. A base station standby transmitter having a rated power output in excess of that of the main transmitter of the base station with which it is associated and will not be authorized. For stations in the 470–512 MHz frequency band see section 22.501(1).

* * * * *

(d) Base stations operating on frequencies in the band 470–512 MHz shall not exceed the values of effective radiated power listed in § 22.501(l) and shall not use transmitters having a maximum output power in excess of the limits shown in § 22.107(b).

(e) Base stations operating on frequencies in the band 929–932 MHz shall not exceed the values of effective radiated power listed in § 22.505(b) and in any event no greater than 1000 watts, and shall not use transmitters having a maximum output power in excess of the limits shown in § 22.107(b).

11. Section 22.507 is amended by revising paragraph (b) and by deleting paragraph (c) as follows:

§ 22.507 Bandwidth and emission limitations.

* * * * *

(b) The maximum authorized bandwidth of emission and, for the cases of frequency or phase modulated emissions, the maximum authorized frequency deviation shall be as follows:

Type of emission	25–50 MHz		50–150 MHz		150–932 MHz	
	Authorized bandwidth (kHz)	Frequency deviation (kHz)	Authorized bandwidth (kHz)	Frequency deviation (kHz)	Authorized bandwidth (kHz)	Frequency deviation (kMz)
A1	1		1		1	
A2	3		3		3	
A3	8		8		8	
F1	3		3		3	
F2	15		15		15	
F3	20	5	[2]40	[3]15	[1]20	[3]5

[1] In the frequency band 450 to 470 MHz radio facilities using frequency modulated or phase modulated emission, authorized prior to June 1, 1968, will continue to be authorized with bandwidth of 40 kHz until Nov. 1, 1971, provided that the frequency deviation is reduced to 5 kHz by June 1, 1968.

[2] In the frequency bands 72.0–73.0 and 75.4–76.0 MHz, radio facilities using frequency modulated or phase modulated emission will be authorized with maximum bandwidth of 20 kHz and maximum frequency deviation of 5 kHz. Radio facilities which were authorized for operation on Dec. 1, 1961, in the frequency band 73.0–74.6 MHz may continue to be authorized without change and with bandwidth of 40 kHz and frequency deviation of 15 kHz. New or modified facilities in the frequency band 73.0–74.6 MHz will not be authorized.

(c) [Reserved]

* * * * *

12. Section 22.508 is amended by revising paragraphs (a) and (g) as follows:

§ 22.508 Modulation requirements.

(a) The use of modulating frequencies higher than 3000 Hertz for radiotelephone or tone signaling is not authorized for frequencies below 512 MHz or in the band 929–932 MHz.

* * * * *

(g) Each transmitter which operates on frequencies between 450 and 512 MHz or in the band 929–932 MHz and employes type A3 or F3 emission, shall be equipped with a modulation limiter in accordance with the provisions of paragraph (e) of this section and also shall be equipped with a low-pass audio filter installed between the modulation limiter and the modulated stage. At audiofrequencies between 3 kHz and 20 kHz, the filter shall have an attenuation greater than the attenuation at 1 kHz by at least:

$60 \log_{10} (f/3)$ decibels

where "f" is the audiofrequency in kilohertz. At audiofrequencies above 20 kHz, the attenuation shall be at least 50 decibels greater than the attenuation at 1 kHz: *Provided, however,* that in lieu of such filter, transmitters authorized to operate between 450 and 470 prior to June 1, 1968, may continue to operate until November 1, 1971, with a filter meeting the requirements prescribed in paragraph (f) of this section.

* * * * *

13. Section 22.516 is amended by revising the heading and the introductory language as follows:

§ 22.516 Additional showing required with application for assignment of additional frequency or frequencies, or as otherwise required by the Commission's Rules.

Traffic load studies shall be required in conjunction with an application requesting the assignment of an additional frequency for an existing one-way signaling station, in conjunction with an application requesting the assignment of one or more additional frequencies for an existing two-way station, or as the Commission may otherwise prescribe. A traffic load study shall include a showing of the following:

* * *

14. Part 22 is amended by adding new § 22.525 to read as follows:

§ 22.525 One-way signaling stations.

(a) An applicant for a new one-way signaling station may request no more than one channel. No showing of public need will be required of an applicant for an initial channel regardless of the band for which the request is made, in view of the generalized public need for one-way signaling communications.

(b) An applicant requesting a new one-way signaling station will be deemed to be requesting additional frequencies for its existing station if either (1) the transmitter location specified in the new application is within the service area of the existing station, or (2) there is an overlap of 50 percent or more between the service areas of the existing and proposed facilities.

(c) An applicant for an additional transmitter location within the service area of its existing station, and on the same frequency, will not be required to demonstrate public need for the new facility. The applicant may not reduce the distance between its own station location(s) and a co-channel station below that specified in § 22.503(c) as a result of the addition of a new transmitter location unless the frequency is time-shared to avoid interference.

(d) An applicant for an additional channel must demonstrate the need for it by submitting a traffic load study pursuant to § 22.516.

(e) an Applicant filing an application for a 900 MHz paging frequency, (1) at the same transmitter location as a pending one-way paging application, or (2) at a location which produces an overlap of 50 percent or more between the two facilities, without dismissing the previously filed pending application, will be treated as amending the previous application. The amended application will be considered newly filed and subject to the applicable cut-off procedures.

[FR Doc. 82-14290 Filed 6-4-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-883; RM-4005]

FM Broadcast Station in Palm Desert, California; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 244A to Palm Desert, California, in response to a petition filed by John R. Banoczi. The assignment could provide for a second FM service to Palm Desert.

DATE: Effective July 28, 1982.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order—Proceeding Terminated

Adopted: May 21, 1982.

Released: May 28, 1982.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. Palm Desert, California, BC Docket No. 81-883 RM-4005.

1. The Commission has under consideration the Notice of Proposed Rule Making, 46 FR 62870, published December 29, 1981, proposing the assignment of Channel 244A to Palm Desert, California, as its first FM assignment. The Notice was issued in response to a petition filed by John R. Banoczi ("petitioner"). Supporting comments were filed by the petitioner reaffirming that he or his associates will apply for the channel, if assigned. Comments were also filed by Classic Broadcasting, Inc. ("Classic"), licensee of Station KCMS(FM), Palm Desert, California. No oppositions to the proposal were received.

2. Palm Desert (population 11,801),[1] in Riverdale County (population 663,923), is located approximately 176 kilometers (110 miles) east of Los Angeles, California. It is served by daytime-only AM Station KGUY and FM Station KCMS (Channel 276A).

3. In comments to the proposal, the petitioner refers to the information in the Notice which demonstrated the need for a second FM allocation to Palm Desert. Classic comments that it has no objection to the proposed assignment, provided it does not preclude its pending application to change the city of designation from Indio to Palm Desert, California.[2] Classic adds that there is no substantial preclusion or any reason for delay in granting both requests.

4. In the Notice, we stated that as a result of the assignment of Channel 244A to Palm Desert, four communities[3] with a population greater than 1,000 would be precluded from assignment on the co-channel and adjacent Channel 245, one of which (Eagle Mountain) is without local service. However, at least six alternate channels are said to be available for assignment to the precluded communities.

5. We have concluded that the public interest would be served by assigning Channel 244A to Palm Desert, California. The petitioner has adequately demonstrated the need for a second FM station in that community. Since alternate channels are available to the precluded communities, we consider the preclusion impact insignificant. To avoid short spacing to Station KCAL (Channel 244A), Redlands, California, the transmitter site is restricted to 5.3 kilometers (3.3 miles) southeast of Palm Desert.

6. Mexican concurrence in the assignment of Channel 244A to Palm Desert, California, has been obtained.

7. Accordingly, pursuant to the authority contained in §§ 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's rules, it is ordered, That effective July 28, 1982, the FM Table of Assignments, § 73.202(b) of the rules is amended with regard to Palm Desert, California, as follows:

City	Channel No.
Palm Desert, Calif	244A, 276A

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

9. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission,

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-15328 Filed 6-4-82; 8:45 am]

BILLING CODE 6712-01-M

[1] Population figures are taken from the 1980 U.S. Census.

[2] Classic, operating on Channel 276A, was recently granted authority to change the community of license to specify Palm Desert pursuant to § 73.203(b) of the Commission's rules.

[3] Indio, Coachella, Twentynine Palms and Eagle Mountain.

47 CFR Part 73

[BC Docket No. 81-819; RM-3839]

FM Broadcast Stations in Colorado Springs, Evergreen, Lamar, Monte Vista, and Public, Colorado; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error of omission made in the Report and Order issued in BC Docket 81-819 concerning the assignment of FM broadcast stations in various cities in Colorado.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations (Colorado Springs, Evergreen, Lamar, Monte Vista, and Public, Colorado); BC Docket No. 81-819, RM-3839.

Released: May 27, 1982.

On May 17, 1982, the Commission, by its Broadcast Bureau, released a Report and Order in the above-captioned proceeding, (47 FR 22536; May 25, 1982). Inadvertently in paragraph 18, the deadline date for informing the Commission of consent to a certain modification was omitted. That date should read: July 19, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 82-15333 Filed 6-4-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-777, RM-3856]

FM Broadcast Station in Big Pine Key, Florida; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action substitutes Class C FM Channel 284 for Channel 228A at Big Pine Key, Florida, and modifies the Class A license for Station WWUS

(FM), in response to a petition filed by Lower Keys Broadcasting Corporation. The assignment would provide Big Pine Key with its first Class C FM station.

DATE: Effective July 28, 1982.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73 affected

Radio broadcasting.

Reported and Order—Proceeding Terminated

Adopted: May 21, 1982.

Released: June 3, 1982.

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Big Pine Key, Florida), BC Docket No. 81-777 RM-3856.

1. Before the Commission for consideration is the Notice of Proposed Rule Making, 46 FR 59563, published December 7, 1981, proposing the substitution of Class C FM Channel 284 for Channel 228A at Big Pine Key, Florida, and modification of the license for Channel 228A to specify operation on the Class C channel. Comments and reply comments were submitted by Lower Keys Broadcasting Corporation ("petitioner"). Opposing comments were received from: Breeze 94, Inc. ("Breeze 94"), licensee of FM Station WMUM, Marathon, Florida;[1] Phoenix Radio of Florida, Inc. ("Phoenix"), licensee of Key West FM Station WIIS; and Florida Keys Broadcasting Corporation ("Florida Keys"), licensee of co-owned Stations WKIZ and WFYN (FM), Key West. Florida Keys also filed reply comments.[2]

2. Big Pine Key (population 2,223),[3] in Monroe County (population 63,098),[4] is located approximately 48 kilometers (30 miles) northeast of Key West, Florida. It is served by FM Station WWUS (Channel 228A), licensed to the petitioner.

3. The Notice indicated that petitioner proposed a Class C station so it could serve most of the Lower Keys Division of Monroe County. While local service was the prime consideration, it also wished to serve the vast number of persons travelling through the area with a diverse broadcast voice, placing emphasis on the provision of essential weather warnings and news. Further, petitioner stated that the deletion of Channel 228A from Big Pine Key would free the channel for use at any of nine area communities, including six with no local aural service.[5]

4. In its comments, petitioner reaffirmed its intention to apply for the channel if assigned. In response to our request for information in the Notice, petitioner advised that no communities would be precluded from an alternative assignment if Channel 284 is assigned to Big Pine Key. Additionally, petitioner stated that the proposal was not designed to serve Key West since its proposed facilities (100 kW at 150 feet HAAT) would not be sufficient to provide a 60 dBu signal over Key West.

5. In opposing comments, Breeze 94 claims that petitioner has not demonstrated that Big Pine Key is underserved or that its coverage could not be improved if it operated its existing allocation with maximum facilities. Additionally, it states that a Class C assignment is not appropriate when a Class A would sufficiently serve the community of license, citing *Chubbuck, Idaho*, 49 R.R. 2d 694, 696 (1981); *Mountain Home, Arkansas*, 47 R.R. 2d 762 (1980); and *Eagle River, Alaska*, 50 R.R. 2d 215 (1981).[6] It notes that there have been instances where a Class C channel was assigned without the necessity of showing that a first or second service would be provided, based on the remoteness of the area to be served. It states that the instant proposal is not adequate since Big Pine Key and a majority of the communities adjacent thereto are served by nine other area signals, in addition to cable systems. Thus, it states that a Class C assignment at Big Pine Key will not provide additional service to a substantial population, and that instead petitioner's proposal is an attempt to reach the Marathon and Key West markets. It concludes that even though petitioner's proposal would not place a 60 dBu signal over Key West at this time, facilities could be constructed which would have a greater impact.

6. According to Florida Keys, the petitioner's proposal is inconsistent with the mandate of Section 307(b) of the Act "to provide a fair, efficient and equitable distribution of radio service * * *." It asserts that petitioner's proposal would realistically provide a fifth FM and seventh full time aural service to Key West which has a population of less than 50,000. It submits that this overabundance of service is especially unnecessary in Key West since it also is served by cable systems which, in turn, carry the signals of other Florida FM stations. Florida Keys asserts that petitioner is attempting to skirt this issue by basing its proposal on an assumed antenna height of 150 feet. It remarks that while petitioner might operate with minimum facilities initially, it is dubious that such an operation would continue on more than an interim basis, due to the attractiveness of serving the larger Key West market. Additionally, Florida Keys claims that petitioner's station presently receives a majority of its advertising support from Key West and Marathon businesses, which it claims will increase if petitioner upgrades the quality of its signal to those areas.

7. Florida Keys argues that the preclusive impact is more extensive than indicated by petitioner since the assignment of Channel 284 to Big Pine Key would affect the future allocation of Class C channels in the Upper and Middle Keys, areas which it maintains are growing most rapidly. Further, it maintains that preclusion would occur on the co-channel, as well as Channels 281 and 282 in four communities[7] which have a population in excess of 1,000 persons.

8. Phoenix also argues that petitioner's proposal is "an attempt to serve Key West in particular and the Lower Keys in general." To substantiate its claim of intent, Phoenix advises that petitioner's promotional advertisements have announced Station WWUS "is number one" in Key West. It adds that Key West no longer has a healthy economy and thus there is no need for an additional

[1] Breeze 94 also owns 50% of the stock of Marathon Wireless Communications, Inc., licensee of AM Station WFFG in Marathon.

[2] Additionally, after the pleading cycle expired, "A Request for Permission to Submit Supplemental Filing and a Supplement to Comments" was filed by Florida Keys. However, those comments are untimely for consideration herein and, in any event because they raise issues essentially related to the sources of advertising on its station from cities other than its community of license, such matter is not appropriate for consideration at the rule making stage.

[3] Population figure supplied by petitioner, as provided by the Monroe County Planning Department.

[4] Population figure was obtained from the preliminary 1980 U.S. Census.

[5] Those communities are as follows: Stock Island (population 4,418); Boca Chica (population 948), Big Coppitt (population 1,784), Key Colony Beach (population 1,022); Layton City (population 88), and Islamorada (population 1,437) (population figures were obtained from the 1980 U.S. Census).

[6] We do not find those cases supportive since the Class C in each instance was denied, in lieu of a Class A, for one or more of the following reasons: the community was found to be in close proximity to, or a suburb of, a larger city; a mutually exclusive proposal for a larger community was preferred; or the Commission was concerned with preclusive and intermixture impact.

[7] Those communities, according to Florida Keys, consist of the following: Key West (population 27,563); Boca Chica (population 948), Marathon (population 1,251), and Key Largo (population 2,666).

broadcast outlet in the community, or the entire Lower Keys. In any event, it claims that if petitioner wishes to broaden its coverage area, it could do so by increasing the antenna height for Station WWUS to 300 feet.

9. In reply comments, Florida Keys disputes petitioner's claim that the proposal would provide a second service to Marathon, Florida. According to its engineering study, a second service could be provided to Marathon by Key West FM Station WVFK.[8] Also, it argues that if Channel 284 is assigned to Big Pine Key, Channel 228A is not the only channel that would be available to the three communities presently without local aural service, as claimed by petitioner. Florida Keys engineering study reveals that there are at least four channels which could be assigned to Key Colony, Layton and Islamorada, *i.e.*, Channels 249A, 276A, 280A and 292A. In conclusion Florida Keys asserts that Channel 228A should be retained at Big Pine Key to prevent precluding the future assignment of Class C channels in the Upper and Middle Keys.

10. In reply comments, petitioner provided information supplied by the Lower Keys Chamber of Commerce to establish that Big Pine Key and Key West are seperate communities with distinctly different needs and interests. In addition to setting forth economic information relating to Big Pine Key, the Chamber of Commerce advised that recently Looe Key Coral Reef, located six miles south of Big Pine Key, was designated as a National Marine Sanctuary. As such, Big Pine Key has become a "jumping off point for divers and tourists wishing to reach that area."

11. With respect to a possible future increase in its antenna height, petitioner asserts that Big Pine Key is located in a hurricane belt, thereby rendering totally unrealistic any such increase in its facilities. Also, in response to allegations that additional coverage could be obtained by increasing the antenna height of petitioner's existing Class A facilities to the maximum of 300 feet, petitioner states that this would increase the distance of the station's 60 dBu contour by only 2.5 miles. Further, it asserts that since Big Pine Key is practically surrounded by water, this increased radius would cover less than 7.0 square miles of land area, in the sparsely populated area of Lower Sugarloaf Key, half of which is presently covered by its 60 dBu contour. The remainder of the signal would extend over water.

12. Additionally, petitioner insists that its proposal is not an attempt to seek additional advertising support from Key West and Marathon businesses by upgrading the quality of its signal. Petitioner submitted a promotional advertisement aired by Station WFYN which announced that the Key West operation is the only FM station covering the entire Lower Keys. It compares the Key West station's operating power of 26,000 watts with that of petitioner's and other area stations operating with 3,000 watts, to demonstrate that it (WFYN) seeks to serve the Lower Keys. As such, petitioner claims that Florida Keys' concern stems from a fear of economic harm to its operation.

13. Petitioner also attempts to rebut Florida Keys' engineering showing concerning preclusion. As to precluding the assignment of Channel 281 to Key Largo, petitioner states that the channel is already precluded by Station WSHE, Fort Lauderdale, Florida, operating on Channel 278. Petitioner notes that preclusion would occur on Channels 281 or 282 at Marathon only if Channel 228A is not deleted from Big Pine Key. However, if removed from Big Pine Key, Channel 228A could be assigned to Marathon as a second Class A assignment.

14. In response to Florida Keys' claim that a monitor of its station on May 1, 1981, revealed a considerable percentage of the advertisements were for Key West and Marathon businesses, petitioner advises that the day in question involved a national campaign day. Further, petitioner claims that a random review of its accounts on January 2, 1982, reveals that 61% of its advertisements were for Big Pine Key, 18% for Marathon, and 16% for Key West.

15. With respect to service to Key West, petitioner's engineering study reveals that it could provide a 60 dBu signal to Key West with a 300 foot antenna, while a 70 dBu signal would require a tower of at least 900 feet. (It presently operates with 3 kW at 190 feet.) The study also reveals that petitioner has eight years remaining on a ten year lease for its existing studio-transmitter site. Due to high winds and hurricanes that are common to the Keys, it asserts the availability of suitable land for a transmitter is scarce and expensive. It adds that because the station is located in the National Key Deer Wildlife Refuge area, an antenna exceeding 300 feet would pose an environmental impact consideration and thus not likely to obtain approval. In view of these considerations, it states that while it is theoretically possible to increase its antenna height, it would not be practical to do so since the exorbitant cost factor involved far outweighs consideration of any benefits which the increased coverage could offer.

16. As we stated in the Notice, and reaffirm here, a suburban issue is not appropriate for consideration since, based on petitioner's proposed operation, a 60 dBu signal will not be received in Key West. Even though the opposition comments maintain that petitioner intends to serve the larger communities of Key West and Marathon, we find that the showing of such intent is inadequate. The degree to which petitioner is claimed to have advertised in communities other than Big Pine Key is not of itself determinative of an intent to primarily serve those communities. As indicated earlier, such concern is inappropriate here. In any event, we have determined that since Big Pine Key is located a distance of about 30 miles from Key West, and since Marathon is an even smaller community than Big Pine Key, we do not believe petitioner's primary intention is to serve those communities.

17. The underlying common concern of the opponents to the instant proposal appears to be the fear of economic harm to their existing operations. If so, we are not convinced from the data submitted that the extent of harm warrants denial of the proposal. *See, Carroll Broadcasting Co.* v. *F.C.C.* 258 F. 2d 440 (D.C. Cir. 1958). Such injury to existing stations from another station is relevant only insofar as it affects the public interest. *See, Gainesville, Florida,* 11 R.R. 2d 1699 (1968).

18. In response to the allegations that Big Pine Key is adequately served by area facilities, it is noted that although the availability of reception services has been cited by the Commission as justification for denying a channel assignment in comparative cases, we are unaware of any case in which a channel assignment was denied to a community solely on the basis that it received service from other area stations. A channel is assigned to a specific community to broadcast programs meeting that community's needs. A station owing a primary obligation to another locality is not expected to provide the equivalence of such local service. *See, Clinton, Louisiana,* 45 R.R. 1587–89 (1979). Therefore, the signals received in Big Pine Key from area stations cannot be considered as substitutes for local service, and the reception of these

[8] According to unverified information supplied by the existing Key West licensees, Station WVFK has been silent for over one year.

signals does not provide a basis for denying the proposal herein.

19. Although communities of Big Pine Key's size are not usually assigned Class C facilities, from the information submitted by petitioner it does appear that the proposed assignment would nevertheless provide service to persons in sparsely settled areas that are not otherwise likely to receive local service. These communities are too small to expect with any certainty that an interest in an assignment would necessarily be forthcoming. *See, Greybull, Wyoming,* 49 R.R. 2d 617 (1980). In addition, we find a need for wide area coverage directed to supplying persons travelling through the Lower Keys with a diverse source of broadcast information, especially with regard to essential weather warnings and news. As we have previously held, a transient population in a sparsely settled area also has a need for radio service though the need may be unrelated to the needs of the community of license. *See, Yermo and Mountain Pass, California,* 44 Fed. Reg. 4486 (1979).

20. Florida Keys' concern that the instant proposal will impact on the future allocation of Class C channels in the Middle and Upper Keys is not a preclusion standard. We view the preclusion impact in terms of possible assignment to communities without any local station. Such communities are generally entitled only to a Class A channel. We would not ordinarily allow a Class C channel to remain unused on the possibility of its future use elsewhere where a Class A channel could be assigned there.

21. In view of the expressed interest in the proposed channel allocation, the demonstration of need, and the fact that the preclusion impact does not appear to be significant, we find the public interest would be served by the assignment of Channel 284 to Big Pine Key. Additionally, we have authorized, *infra,* a modification of Lower Keys Broadcasting Corporation's license for Station WWUS to specify operation on Channel 284 since there has been no other expression of interest in the Class C channel. *See, Cheyenne, Wyoming,* 62 F.C.C. 2d 63 (1976).

22. Accordingly, pursuant to the authority contained in §§ 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's rules, it is ordered, That effective July 28, 1982, the FM Table of Assignments, § 73.202(b) of the Rules is amended with regard to Big Pine Key, Florida, as follows:

City	Channel No.
Big Pine Key, Fla	284

23. It is further ordered, That pursuant to § 316(a) of the Communications Act of 1934, as amended, the license of Lower Keys Broadcasting Corporation for FM Station WWUS, Big Pine Key, Florida, is modified effective July 28, 1982, to specify operation on Channel 284, in lieu of Channel 228A, subject to the following conditions:

(a) The licensee shall file with the Commission a minor change application for a construction permit (Form 301), specifying the new facilities.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's Rules.

24. It is further ordered, That the Secretary shall send a copy of this Order by certified mail, return receipt requested to: Lower Keys Broadcasting Corporation, Rt. 3, Box 183E, Big Pine Key, Florida 33043.

25. It is further ordered, That this proceeding is terminated.

26. For further information concerning the above, contact Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission,

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-15323 Filed 6-4-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 82-43; RM-3989]

TV Broadcast Station in Hays, Garden City and Randall, Kansas; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein reassigns Channel *9 from Garden City, and from Randall, Kansas, to Hays, Kansas; substitutes Channel *18 at Garden City; and deletes Channel *14 from Hays, Kansas, in response to a petition filed by Smoky Hills Public Television Corp.

DATE: Effective July 28, 1982.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order—Proceeding Terminated

Adopted: May 24, 1982.

Released: May 28, 1982.

In the matter of amendment of § 73.606(b), table of assignments, television broadcast stations. (Hays, Garden City and Randall, Kansas); BC Docket No. 82-43, RM-3989.

1. The Commission herein considers the Notice of Proposed Rule Making, 47 FR 5734, published February 8, 1982, in response to a petition filed by Smoky Hills Public Television Corp. ("SHPTV") ("petitioner"). The Notice proposed substituting Channel *9 for Channel *14 at Hays, Channel *18 for Channel *9 at Garden City, and deleting Channel *9 at Randall, Kansas. Only the petitioner filed timely comments in this proceeding.[1]

2. Hays (population 16,301),[2] seat of Ellis County (population 26,099), is located 400 kilometers (250 miles) west of Kansas City, Kansas. It is served by commercial Station KAYS-TV (Channel 7). A permit has been issued for noncommercial educational Station KSMH-TV (Channel *14), held by petitioner.

3. Garden City (population 18,250), seat of Finney County (population 23,825), is located 310 kilometers (193 miles) west-northwest of Wichita, Kansas. It is served by two commercial TV stations (KGLD, Channel 11, and KUPK-TV, Channel 13). A permit has been issued for a noncommercial educational station on Channel *9 to Garden City Community Junior College for Station KSWK-TV.

4. Randall (population 154), in Jewell County (population 5,241), is located 225 kilometers (140 miles) north of Wichita. It has no TV service. Its only TV channel assignment (Channel *9) is unoccupied.[3]

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[1] After the deadline for filing comments, a letter was received from Kanza Society, Inc., Station KANZ-FM, Pierceville, Kansas, endorsing the proposal.

[2] Population figures are taken from the 1980 U.S. Census.

[3] Channel *9 at Randall has remained unoccupied since it was assigned in 1979 (BC Docket 78-321). The channel was assigned consistent with the Kansas Public TV Board's network plan for the state.

5. Petitioner's comments restated the information submitted in the petition, noting the loss of local, state and federal funds, which severely curtailed its ability to construct and operate. SHPTV referred to the Commission's *Second Report and Order* in Docket No. 21136, relating to the funding problem experienced by noncommercial broadcasters and the Commission's awareness of the problem. Petitioner adds that the proposal would provide local public television service to the unserved region of northwestern Kansas. Petitioner further states, and has attached a letter to the effect that the Southwest Kansas Public Television Board at Garden City, Kansas, has voted not to oppose the deletion of Channel *9 from Garden City and the substitution of Channel *18 therefor, since it is unlikely that their proposed facility would be activated in the near future.

6. Having considered the proposal, we find that the public interest would be served by the requested channel changes. With regard to the substitution of Channel *9 for Channel *14 at Hays, we have generally held that a licensee's interest in obtaining a lower TV channel is not in the public interest. However, where a public interest reason is found, we have no objection to the use of the lower channel. Based on the service to be provided to unserved areas and the cost savings of constructing and operating a VHF station in lieu of a UHF station by a noncommercial broadcaster, the proposal appears justified. Therefore, without an expression of interest in a channel allocation at Randall, Kansas, we shall delete Channel *9 from Randall, Kansas. (Several channels remain available should a party express an interest in operating a station there.) We shall also substitute Channel *18 for Channel *9 at Garden City, where the permittee has agreed to the deletion of its channel. In paragraph 8 we have modified the permits of Stations KSWK–TV and KSMH–TV at Garden City and Hays, respectively, to specify operation on the new channel. A site restriction of 13 miles southeast of the city must be imposed for the Channel *9 assignment at Hays.

7. Accordingly, pursuant to the 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 §§ 0.204(b) and 0.281 of the Commission's rules, it is ordered, That effective July 28, 1982, the Television Table of Assignments, § 73.606(b) of the Rules, is amended with respect to the communities listed below:

City	Channel No.
Garden City, Kans	11+, 13–, *18
Hays, Kans	7–, *9
Randall, Kans	

8. It is further ordered, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the outstanding permit held by Garden City Community Junior College for Station KSWK–TV (Garden City, Kansas), is modified to specify operation on Channel *18 instead of Channel *9, and the outstanding permit held by Smoky Hills Public Television Corp. for Station KSMH–TV (Hays, Kansas) is modified to specify operation on Channel *9 instead of Channel *14. Stations KSWK–TV and KSMH–TV may continue to operate on Channels *9 and *14, respectively, for one year from the effective date of this action or until it is ready to operate on Channels *18 and *9, whichever is earlier, unless the Commission sooner directs, subject to the following conditions:

(a) The licensee shall file with the Commission a minor change application for a construction permit (Form 301), specifying the new facilities.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's rules.

9. It is further ordered, That the Secretary of the Commission shall send a copy of this *Report and Order* by certified mail, return receipt requested, to Board of Trustees, Garden City Community Junior College, P.O. Box 1016, Garden City, Kansas 67846, and to Smoky Hills Public Television Corp., c/o 1011 Fort Street, Hays, Kansas 67601.

10. It is further ordered, That this proceeding is terminated.

11. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632–7792.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-15328 Filed 6-4-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-147; RM-4049]

FM Broadcast Station in Nantucket, Massachusetts; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action substitutes Class B FM Channel 242 for Channel 228A at Nantucket, Massachusetts, and modifies the Class A license accordingly, in response to a petition filed by Home Service Broadcasting Corporation.

DATES: Effective July 28, 1982.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73.

Radio broadcasting.

Report and Order Proceeding Terminated

Adopted: May 25, 1982.

Released: May 27, 1982.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Nantucket, Massachusetts), BC Docket No. 82–147, RM–4049.

1. In response to a petition filed by Home Service Broadcasting Corporation ("petitioner"), the Commission adopted a Notice of Proposed Rule Making, 47 FR 13840, published April 1, 1982, proposing to substitute Class B Channel 242 for Channel 228A at Nantucket, Massachusetts. The Notice also proposed to modify the Class A license for Station WGTF(FM) to specify operation on Channel 242. Supporting comments were filed by the petitioner restating its interest in the Class C channel. No oppositions to the proposal were received.

2. Nantucket (population 5,087,[1] seat of Nantucket County (population 5,087) is located on Nantucket Island approximately 136 kilometers (85 miles) southeast of Boston, Massachusetts. It is served by FM Station WGTF (Channel 228A), licensed to the petitioner.

3. In comments petitioner incorporated by reference the information previously submitted, which demonstrated the need for a Class B assignment. In the Notice, we indicated

[1] Population figures are taken from the 1980 U.S. Census.

that preclusion resulting from a Channel 242 assignment would be minimal since almost all of the possible assignment area is already precluded by Station WSRS (Channel 241), Worcester, Massachusetts. Only the extreme portion of Massachusetts and Nantucket Island could be assigned Channel 242. This area could also receive the assignment of Channel 228A, if removed from Nantucket.

After consideration of the proposal, we believe that the public interest would be served by the proposed substitution of channels. The preclusion impact is considered to be insignificant. We have authorized in paragraph 6 a modification of petitioner's license for Station WGTF(FM) to specify operation on Channel 242, since there has been no other expression of interest in the Class B channel. See *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976).

5. In view of the foregoing and pursuant to the authority contained in Sections (i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.204(b) and 0.281 of the Commission's rules, it is ordered that effective July 28, 1982, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with respect to Nantucket, Massachusetts, as follows:

City	Channel No.
Nantucket, Massachusetts	242

6. It is further ordered, That pursuant to § 316(a) of the Communications Act of 1934, as amended, the outstanding license held by Home Service Broadcasting Corporation for Station WGTF(FM), Nantucket, Massachusetts, is modified, effective July 28, 1982, to specify operation on Channel 242 instead of Channel 228A. Station WGTF(FM) may continue to operate on Channel 228A for one year from the effective date of this action or until it is ready to operate on Channel 242, whichever is earlier, unless the Commission sooner directs, subject to the following conditions:

(a) The licensee shall file with the Commission a minor change application for a construction permit (Form 301), specifying the new facilities.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's rules.

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

8. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-15325 Filed 6-4-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-882; RM-4004]

FM Broadcast Station in Artesia, Miss.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 261A to Artesia, Mississippi, in response to a petition filed by Colom and Associates. The assignment could provide a first FM service to Artesia.

DATE: Effective July 28, 1982.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations. (Artesia, Mississippi); BC Docket No. 81-882, RM-4004.

Report and Order (Proceeding Terminated)

Adopted: May 21, 1982.

Released: May 27, 1982.

1. The Commission has under consideration the Notice of Proposed Rule Making, 46 FR 62874, published December 29, 1981, proposing the assignment of Channel 261A to Artesia, Mississippi. The Notice was issued in response to a petition filed by Colom and Associates ("petitioner"). Supporting comments were filed by the petitioner. No oppositions to the proposal were received.

2. Artesia (population 526),[1] in Lowndes County (population 57,304), is located approximately 32 kilometers (20 miles) west of Columbia, Mississippi. It has no local aural service.

3. Petitioner incorporated by reference the reasons stated in the Notice for the proposed assignment. It adds that the assignment would be in furtherance of the Commission's touchstone principle of maximizing diversity and the national goal of increasing minority ownership. Petitioner stated its intention to apply for the channel, if assigned.

4. The Commission believes that the public interest would be served by assigning Channel 261A to Artesia, Mississippi, since it would provide that community with an opportunity for its first FM station.

5. Accordingly, pursuant to the authority contained in §§ 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's rules, it is ordered, That effective July 28, 1982, the FM Table of Assignments (§ 73.202(b) of the rules), is amended with respect to the following community:

City	Channel No.
Artesia, Mississippi	261A

6. It is further ordered, That this proceeding is terminated.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-15332 Filed 6-4-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-4; RM-3974]

FM Broadcast Station in Sisseton, South Dakota; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channels 257A and 275 to Sisseton, South Dakota, in response to a petition filed by Lake Region News Corporation, and a request from Wayne D. Tisdale. The assigned channels could provide a first and second FM service to Sisseton and the surrounding area.

[1] Population figures are taken from the 1980 U.S. Census.

DATE: Effective July 28, 1982.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Sisseton, South Dakota), BC Docket No. 82-4, RM-3974.

Report and Order (Proceeding Terminated)

Adopted: May 21, 1982.

Released: May 28, 1982.

1. The Commission has under consideration the Notice of Proposed Rule Making, 47 FR 3388, published January 25, 1982, which invited comments on two alternate proposals for an FM assignment at Sisseton, North Dakota, in response to a petition filed by Lake Region News Corporation ("petitioner").

Alternate I. Assign Channel 257A to Sisseton, South Dakota, or

Alternate II. Assign Channel 275 to Sisseton, South Dakota.

Comments in support of Alternative II were filed by the petitioner stating its intention to apply for Channel 275, if assigned. Wayne D. Tisdale filed comments in support of Alternative I and expressed an interest in applying for Channel 257A, if assigned.

2. Sisseton (population 2,789),[1] seat of Roberts County (population 10,911), is located in the northeast corner of South Dakota, approximately 240 kilometers (150 miles) north of Sioux Falls. It is without local broadcast service.

3. Petitioner incorporated by reference the information in the Notice which demonstrated the need for a first FM assignment at Sisseton. Paragraph 5 of the Notice requested the petitioner to submit a *Roanoke Rapids/Anamosa* study indicating first and second service to be provided by the proposed Class C assignment. Petitioner asserts that the assignment will provide a first FM service to approximately 4,905 square kilometers (3,910 square miles) for 33,550 persons.[2] Thus it states that a Class C assignment would provide coverage to a large rural area and a much needed first service to Sisseton.

4. Tisdale comments that Sisseton is too small to warrant a Class C FM channel assignment. Instead, he states that a Class A channel would be more appropriate. He points out that there has been a decline in the population from 3,094 (1970) to 2,789 (1980), which appears to be the trend in small towns and rural areas of the Dakotas and Minnesota. It is the opinion of Tisdale that Sisseton is not earmarked for significant growth now or in the foreseeable future. Thus, in keeping with the Commission's policy of reserving Class C channels for larger urban communities, he urges the Commission to assign Channel 257A to Sisseton.

5. Petitioner contends that Tisdale's comments do not dispute the fact that the proposal meets the requirements for a Class C allocation. His statement with regard to the city not being earmarked for significant growth in the near future is described by petitioner as personal speculation. Instead, petitioner contends that the only effective way to expand services to the area is with a Class C facility. Petitioner requests the Commission to adopt its proposal as submitted.

6. In the Notice, we stated that the assignment of Channel 275 to Sisseton would cause preclusion on Channels 265A, 266, 267, 268 and 269A. We also requested the petitioner to submit a listing of precluded communities with a population greater than 1,000 and without local service. Petitioner was also asked to indicate whether alternate channels are available to those communities. Petitioner states that the assignment would not preclude any community with a population greater than 1,000.

7. While we expressed concern about assigning a Class C channel to Sisseton, we feel that the information provided by the petitioner adequately demonstrates the need for a Class C assignment. Although a community the size of Sisseton is not normally assigned a Class C channel, the proposed assignment would provide a significant amount of first and second services to the surrounding area and population even considering the reduction occasioned by the Ortonville assignment. Since the preclusion impact is not an impediment here, we believe the assignment of a Class C channel to Sisseton would be appropriate.

8. Having made that determination, we must now decide on Tisdale's request for a Class A channel assignment. Tisdale did not address the intermixture issue. Yet he appears to be determined to apply for a Class A channel. Tisdale could have objected to the intermixture result either in comments or reply comments. Having maintained his silence on this issue, while clearly expressing his interest in the Class A channel, we shall assume that he will apply for Channel 257A. We regard the intermixture result here as consistent with our policy to permit a Class A assignment where a Class C channel has already been assigned.

9. Canadian concurrence has been obtained in the assignments of Channels 257A and 275 to Sisseton, South Dakota.

10. Accordingly, pursuant to the 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 §§ 0.204(b) and 0.281 of the Commission's rules, it is ordered, That effective July 28, 1982, the FM Table of Assignments, § 73.202(b) of the rules is amended with regard to Sisseton, South Dakota, as follows:

City	Channel No.
Sisseton, South Dakota	257A, 275

11. It is further ordered, That this proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-15322 Filed 6-4-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 81-563; RM-3752]

FM Broadcast Station in Cheney, Grand Coulee and Spokane, Washington; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns FM Channel 266 to Cheney, Washington, in response to a request from Romarge-Turnbeaugh. The assignment could provide a first local service to Cheney.

DATE: Effective July 28, 1982.

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

[1] Population figures are taken from the 1980 U.S. Census, Advance Report.

[2] The assignment of Channel 268 to Ortonville, Minnesota (BC Docket 81-737, RM-3682), will reduce the first FM service area by approximately 50% and the second FM service area by approximately 75%.

FOR FURTHER INFORMATION CONTACT:
Phil Cross, Broadcast Bureau, (202) 632–5414.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order Proceeding Terminated

Adopted: May 21, 1982.

Released: June 3, 1982.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Cheney, Grand Coulee and Spokane, Washington), BC Docket No. 81–563 RM–3752.

1. The Commission has before it for consideration a Notice of Proposed Rule Making, 46 FR 44008, published September 2, 1981, in response to a petition filed by Romarge-Turnbeaugh ("petitioner"), proposing the reassignment of Channel 266 from Grand Coulee, Washington, where it is presently unused, to Cheney, Washington.

2. We pointed out in the Notice of Proposed Rule Making that our established policy is to reserve Class C channels for larger urban areas, a category which is descriptive of nearby Spokane, Washington, but not of Cheney, Washington. Given the proximity of Cheney to Spokane (approximately 13 miles), we questioned which city the proposed Class C facility would actually serve. Accordingly, we proposed three alternatives: the reassignment of Class C Channel 266 from Grand Coulee to Cheney; the reassignment of the channel to Spokane; and the assignment of Class A Channel 237A to Cheney which we believed to be a more appropriate assignment to this small community.

3. Petitioner filed comments in support of the assignment of Channel 266 to Cheney. However, it insisted that it would not apply for a Class A channel if assigned to Cheney since it did not believe a Class A station would be commercially feasible in Cheney. No oppositions were filed.

4. Petitioner submitted data on the economic growth and needs of Cheney, as requested. Cheney is described as a growing town of 7,610 persons,[1] an increase of approximately 20 percent over the 1970 census figures. It is the home of Eastern Washington University, which has approximately 8,000 students and faculty in addition to the town's population. Cheney is said to be oriented toward education, agriculture and recreation. Agriculture includes the raising of peas, oats, barley and wheat, as well as beef and dairy farming. As a recreational area, Cheney has 25 acres of parks; is within driving distance of four major ski resorts; and is the site of the summer training camp of the Seattle Seahawks.

5. Petitioner also submitted data on the demographics of Spokane, as requested. It is shown that Spokane is the second largest city in the State of Washington with a population of 171,300 and is situated in Spokane County with a population of 341,835. Spokane is the headquarters for large-scale agricultural operations, extensive lumbering activities, mining, and financial business in the northwest. Petitioner states that Spokane is served by a total of twenty radio stations (ten AM's and ten FM's), four television stations (two other stations have been authorized), and one cable facility.

6. Commenting on the three alternative proposals for channel assignments (par. 2, *supra*), petitioner contends that the public interest would be best served by assigning Channel 266 to Cheney, as the first local commercial service for that community. Petitioner states that it wishes to provide a service to the agricultural, recreational and educational elements of the area, and that it would not be as successful in attracting an audience and providing a public service if it were to use that format in Spokane. Furthermore, petitioner says that it has serious doubts as to whether it could put a competitive city grade signal into Spokane because the location of its transmitter site is restricted to approximately 20 air miles from Spokane. That location is said to be "down in a valley formed by the Spokane River," where the intervening terrain is hilly and mountainous.

7. Petitioner submitted a preclusion study showing alternative channels available to incorporated communities with a population over 1,000.

8. Canadian coordination has been received.

9. Grand Coulee, Washington (population 1,302), is in Grand County (population 41,881) and is located approximately 120 kilometers (75 miles) west of Spokane. Grand Coulee has two unoccupied Class C channels and would not be deprived of service if Channel 266 were assigned to Cheney or Spokane.

10. It has been our policy to reserve Class C channels for large urban areas. See Revision of FM Broadcasting Rules, 40 F.C.C. 747, 758 (1963). The higher power with which Class C stations may operate is best used, in most cases, where there is a need for coverage of unserved, or underserved, areas. We have made a number of exceptions to this policy where a showing is made that the city is relatively isolated and serves as a focal point for a large urban area. We have, in the past, been more restrictive in applying this policy where a suburban community seeks a Class C channel in order to reach and become part of the large city's market. See *Albuquerque and Alameda, New Mexico* 48 R.R. 2d 1327 (1981). Here Cheney is within 13 miles of Spokane and as such a Cheney Class C station would be expected to provide a city grade signal over Spokane. However, in analyzing the comments of petitioner, we have determined that because of the mountainous terrain, a portion of Spokane may not be able to receive the proposed Class C station. The Cheney station must be sited at least 14 miles south of Spokane to avoid short-spacing on an IF channel to Station KWAS, Spokane. At such a site, a city grade signal would not adequately reach the eastern portion of Spokane. In view of that fact, we have not raised a suburban issue concerning whether the station would in reality serve Spokane. As for the Class A option for Cheney, we have no interested party in that proposal. Thus we find that the public interest would be served by the assignment of Class C Channel 266 to Cheney, Washington.

11. Authority for the adoption of the amendment herein is contained in §§ 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's rules.

12. Accordingly, it is ordered, That effective July 28, 1982, § 73.202(b) of the Commission's rules, the FM Table of Assignments, is amended with regard to the following community:

City	Channel No.
Cheney, Washington	266
Grand Coulee, Washington	253

13. It is further ordered, That this proceeding is terminated.

14. For further information concerning the above, contact Phil Cross, Broadcast Bureau, (202) 632–5414.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82–15324 Filed 6–4–82; 8:45 am]

BILLING CODE 6712–01–M

[1] Population figures are taken from the 1980 U.S. Census, Advance Report.

47 CFR Parts 73 and 74

Radio Broadcast Services; Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services; Editorial Amendments to the Commission's Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This order, by Chief, Broadcast Bureau, makes editorial amendments in broadcast station rules in 47 CFR Parts 73 and 74, correcting errors which exist in certain cross-references, engineering formulas, charts and tables and also printer's errors, misspellings and incorrect date and time parameters.

DATE: Effective May 3, 1982.

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

FOR FURTHER INFORMATION CONTACT: Steve Crane, (202) 632-5414 or John Reiser, (202) 632-9660, Broadcast Bureau.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 73

Radio broadcast.

47 CFR Part 74

Radio.

Adopted: April 12, 1982.

Released: April 19, 1982.

In the matter of editorial amendments to Parts 73 and 74, Volume III FCC Rules and Regulations; order.

1. A review of the broadcast rules in Parts 73 and 74 of Volume III reveals a number of errors in rule texts. These errors come about as a result of various reasons such as failure to redesignate cross references to rule sections which have been rewritten or renumbered; incorrect designations of rule sections referenced in new rules; printer's errors; misspellings; errors in engineering formulas, charts and tables; and incorrect dates and time parameters (*i.e.*, "no later/earlier than x days/hours * * *").

2. The editorial revisions, as shown in the attached appendix, make no substantive change in rule texts and do not change the purpose or application of the subject rules. They neither impose additional burdens nor remove any provisions relied upon by licensees or the public and these amendments serve the public interest.

3. These corrections are implemented by authority designated by the Commission to Chief, Broadcast Bureau. Prior notice of rulemaking, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. (b)(3)(B), inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose.

4. Therefore, it is ordered, that pursuant to sections 4(i), 303(r) and 5(d)(1) of the Communications Act of 1934, as amended, and §§ 0.71 and 0.281 of the Commission's rules, Parts 73 and 74 of Volume III of the FCC rules and regulations are amended as set forth in the attached appendix, effective May 3, 1982.

5. For further information concerning this *Order*, contact Steve Crane, (202) 632-5414, or John Reiser, (202) 632-9660, Broadcast Bureau.

Federal Communications Commission.

Laurence E. Harris,

Chief, Broadcast Bureau.

Appendix

PART 73—RADIO BROADCAST SERVICES

§ 73.157 [Amended]

1. Section 73.157, *Special antenna test authorizations* is amended as follows:

Reference in § 73.157(c) to "§ 73.92" is revised to read "§ 73.1230."

§ 73.340 [Amended]

2. Section 73.340, *Use of automatic transmission systems (ATS),* is amended as follows:

Reference in § 73.340(c)(1) to "§ 73.1830(a)(3)" is revised to read "§ 73.1820(a)(3)."

§ 73.540 [Amended]

3. Section 73.540, *Use of automatic transmission systems (ATC),* is amended as follows:

Reference in § 73.540(c)(1) to "§ 73.1830(a)(2)" is revised to read "§ 73.1820(a)(3)."

§ 73.676 [Amended]

4. Section 73.676, *Remote control operation,* as amended as follows:

a) Reference in § 73.676(a)(2) to "§ 73.1830" is revised to read "§ 73.1820."

b) Reference in § 73.676(b) to "§ 73.661" is revised to read "§ 73.1860."

c) Reference in § 73.676(c) to "§ 73.671" is revised to read "§ 73.1820."

§ 73.1226 [Amended]

5. Section 73.1226, *Availability to FCC of station logs and records,* is amended as follows:

Reference in § 73.1226(c) to "§ 1.613" is revised to read "§ 73.3613."

§ 73.1810 [Amended]

6. Section 73.1810, *Program logs,* is amended as follows:

Reference in § 73.1810(e) to "§ 73.1810" is revised to read "§ 73.1800."

§ 73.1820 [Amended]

7. Section 73.1820, *Operating logs,* is amended as follows:

Paragraph (d) of § 73.1820 is removed.

8. In § 73.3597, paragraph (f)(2) is revised to read as follows:

§ 73.3597 Procedures on transfer and assignment applications.

* * * * *

(f)(1) * * *

(2) It is not intended to forbid the seller to retain an equity interest in an unbuilt station which he is transferring or assigning if the seller obligates himself, for the period of 1 year after commencing program tests, to provide that part of the total capital made available to the station, up to the end of that period, which is proportionate to the seller's equity share in the permittee, taking into account equity capital, loan capital, and guarantees of interest and amortization payments for loan capital provided by the seller before the transfer or assignment. This condition will be satisfied:

* * * * *

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

§ 74.402 [Amended]

9. Section 74.402, *Frequency assignment,* is amended as follows:

The frequency group in § 74.402(a)(4) shown as "Group $K^{1,8}$" is revised to read "Group K^{8}_{1}"; and the frequency group shown as "Group $K^{2,8}$" is revised to read "Group K^{8}_{2}."

§ 74.966 [Amended]

10. Section 74.966, *ITFS station operator requirements,* is amended as follows:

Reference in § 74.966(c) to "§ 74.938" is revised to read "§ 74.934."

§ 74.1251 [Amended]

11. Section 74.1251, *Modification of transmission systems,* is amended as follows:

Reference in § 74.1251(a) to "§ 2.584" is revised to read "§ 2.1001."

[FR Doc. 82-15255 Filed 6-4-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 80-416; RM-3428]

Private Land Mobile Radio Services; Amendment of the Commission's Rules To Expand the Use of Digital Voice Modulation Generally to the Private Radio Services; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects the text of rule changes which extended digital voice capability generally to the Private Land Mobile Radio Services (47 FR 15337, April 9, 1982).

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

FOR FURTHER INFORMATION CONTACT: Keith Plourd or Arthur King, Private Radio Bureau, Washington, D.C. 20554, (202) 632-6497.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Industrial radio services, Public safety radio services, Land transportation radio services, Radiolocation radio service, Special emergency radio service, Administrative practice and procedure, Business and industry.

Adopted: May 26, 1982.

Released: June 1, 1982.

In the matter of an amendment of Part 90 of the Commission's Rules and Regulations to expand the use of digital voice modulation generally to the private radio services; PR Docket 80-416, RM-3428; correction.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

The Second report and Order, FCC 82-134, in the above entitled matter, released April 1, 1982, is corrected as follows:

Appendix, page 15,340, instruction 7: Paragraph (a) of § 90.425 is corrected by adding the words, "or system," in the first sentence to read as follows:

§ 90.425 Station identification. * * *

(a) Identification procedure. Except as provided in paragraph (d) of this section, each station or system shall be identified by the transmission of the assigned call sign during each transmission or exchange of transmissions, or once each 15 minutes (30 minutes in the Public Safety and Special Emergency Radio Services) during periods of continuous operation. The call sign shall be transmitted by voice in the English language, or by International Morse Code in accordance with paragraph (b) of this section. If the station is employing either analog or digital voice scrambling, transmission of the required identification shall be in the unscrambled mode using A3 or F3 emission, with all encoding disabled. Permissible alternative identification procedures are as follows:"

* * * * *

Appendix, page 2: add new instruction 8 (previously omitted) to read as follows:

"8. Amend § 90.385 by adding a new paragraph (a)(4) and revise paragraph (c) to read as follows:

§ 90.385 Restrictions and limitations on permissible communications, on use, and on mode of operation.

(a) * * *

(4) For digital voice operations. See § 90.207(k).

* * * * *

(c) When a licensee, eligible under Subparts B, C, D or E of this part, has qualified for an exclusive channel by meeting the applicable mobile loading standards, the system may be used for any purpose or operated, in any manner consistent with the regulations governing the service in which the licensee is eligible, including the use of F2, F4, F9 and F9Y emissions.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82-15370 Filed 6-4-82; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-171]

Organization and Delegation of Powers and Duties; Deep Seabed Hard Mineral Resources Act

AGENCY: Transportation Department (DOT).

ACTION: Final rule.

SUMMARY: DOT delegates to the Commandant of the Coast Guard and the General Counsel of the Department functions vested in the Secretary by the Deep Seabed Hard Mineral Resources Act.

DATE: This amendment becomes effective June 7, 1982.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, (202) 426-4723.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register.**

The Deep Seabed Hard Mineral Resources Act (June 28, 1980; Pub. L. 96-283; 94 Stat. 553) establishes for the United States an interim procedure for the orderly development of hard mineral resources in the deep seabed, pending adoption of an international regime relating to such development. All authority vested by the statute in the Secretary of Transportation—either as head of an agency or as head of the department in which the Coast Guard is operating—is delegated by this rule to the Commandant of the Coast Guard, except the authority in Section 118 to coordinate with certain foreign governments, which is delegated to the Department's General Counsel. Most of the responsibility being delegated to the Coast Guard relates to areas of traditional Coast Guard concern, such as safety of life at sea and the marine environment.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

1. Section 1.46 is amended by adding at the end thereof the following new paragraph (ff), to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

The Commandant of the Coast Guard is delegated authority to—

* * * * *

(ff) Carry out the functions vested in the Secretary by the Deep Seabed Hard Mineral Resources Act (June 21, 1980; Pub. L. 96-283; 94 Stat. 553), except section 118.

2. In § 1.57, a new paragraph (n) is added at the end thereof to read as follows:

§ 1.57 Delegations to General Counsel.

The General Counsel is delegated authority to—

* * * * *

(n) Conduct coordination with foreign governments under section 118 of the Deep Seabed Hard Mineral Resources

Act (June 21, 1980; Pub. L. 96–283; 94 Stat. 553).

(Sec. 9(e), Department of Transportation Act, 49 U.S.C. 1657(e))

Issued in Washington, DC, on May 7, 1982.

Andrew L. Lewis, Jr.,

Secretary.

[FR Doc. 82–15203 Filed 6–4–82; 8:45 am]

BILLING CODE 4910–62–M

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 175

[Docket No HM–173; Amdt. Nos. 171–65, 172–73, 173–15, 175–22]

Requirements for Transportation of Wet Electric Storage Batteries

AGENCY: Materials Transportaiton Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment is intended to simplify, clarify and otherwise improve those requirements of the Hazardous Materials Regulations that pertain to the transportation of wet electric storage batteries ("wet cell batteries"). Specifically, it entails (1) a revision of requirements applicable to the air transport of wheelchairs equipped with wet cell batteries, in order to enhance air transport safety and facilitiate the travel of handicapped persons who use wheelchairs; (2) new test criteria which effectively define the term "nonspillable" as applied to wet cell batteries; and, (3) new shipping names to distinguish between acid and alkaline corrosive battery fluids in order to aid emergency response efforts and to make the shipping descriptions consistent with international shipping descriptions.

EFFECTIVE DATE: August 6, 1982.

FOR FURTHER INFORMATION CONTACT: Edward T. Mazzullo, Standards Division, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426–2075.

SUPPLEMENTARY INFORMATION: On February 28, 1980, the MTB published a notice (Docket HM–173; Notice 80–4) in the **Federal Register** (45 FR 13153) which announced two public meetings and requested public comment concerning the need for revising those Hazardous Materials Regulations (HMR) which are applicable to the transportation of wet electric storage batteries. Of particular concern was the development of standards for the safe transport on passenger-carrying aircraft of wheelchairs equipped with wet cell batteries. Based on written comments received by MTB, public input received at the two informal meetings (one on April 3, 1980, in Washington, D.C., and the other on April 16, 1980, in Denver, Colorado) in response to Notice 80–4, and on MTB's own rulemaking initiative, a notice of proposed rulemaking was published on June 4, 1981 (46 FR 29968; Notice 81–4). Interested persons should refer to Notice 81–4 for additional background information.

Twenty commenters responded to Notice 81–4. Based on the comments received the proposals contained therein are being incorporated, with certain changes, as final amendments to the HMR. The majority of comments addressed general support of the proposals, particularly those proposals related to the air transport of wheelchairs equipped with wet cell batteries. Other significant comments and the actions taken thereon are discussed by subject area in the following paragraphs.

I. Air Transport of Wheelchairs Equipped With Wet Electric Storage Batteries (§§ 173.250, 175.305)

Most commenters strongly supported the proposed provisions for handling wheelchairs equipped with wet cell batteries. Several changes were suggested by commenters. One commenter suggested that the provisions for transporting wheelchairs on passenger-carrying aircraft should be located in § 175.305 (title Self-propelled vehicles) rather than in § 175.10 (titled Exceptions). MTB agrees with this comment and the new provisions are added as paragraph (b) of § 175.305. In response to another comment, MTB has added a cross-reference to the § 172.101 Hazardous Materials Table as follows: *Wheelchair, battery-equipped. See* Battery, *electric storage,* wet, with wheelchair.

In response to several commenters' suggestions, editorial changes have been made to § 175.305(b) in order to clearly distinguish between requirements applicable to nonspillable batteries (§ 175.305(b)(1)) and those applicable to batteries "other than nonspillable" (§ 175.305(b)(2) and (3)) and to clarify that the provisions of subparagraphs (1), (2), and (3) of § 175.305(b) are mutually exclusive.

One commenter suggested that the packaging prescribed for nonspillable batteries (§ 175.305(b)(1)) be amended to require use of absorbent materials. Nonspillable batteries have been shipped safely for many years in the absence of such a requirement. Therefore, the suggestion has not been adopted in this final rule.

The Air Line Pilots Association (ALPA), representing the interests of 33,000 pilots employed by domestic air carriers, contended that the proposed amendment did not reflect the capability of newly developed nonspillable lead acid batteries which are now available from at least one manufacturer. ALPA offered an alternative amendment which would limit transport on passenger-carrying aircraft to those wheelchairs equipped with nonspillable batteries. Another commenter, a battery manufacturer, stated that there are a number of nonspillable batteries available which are capable of powering wheelchairs. MTB is aware that certain manufacturers of nonspillable batteries are now marketing, or intend to market in the near future, nonspillable batteries suitable for use in wheelchairs. A number of wheelchair users have already equipped their wheelchairs with nonspillable batteries. MTB recommends the use of nonspillable batteries in wheelchairs, were practicable. However, to date MTB has not been presented with conclusive evidence to show that nonspillable batteries are equivalent to the more commonly used "spillable" lead acid batteries in terms of initial cost, useful life, amperage or availability. Further, past shipping experience does not provide sufficient justification for requiring the use of nonspillable batteries. Such a requirement would impose a burden of inconvenience and cost upon wheelchair users who travel by air and, therefore, has not been adopted.

One commenter recommended the use of plastic caps as a solution to the problem of spillage from wet cell batteries. The subject of spill-resistant caps was briefly addressed in Notice 81–4. Such caps may be either vented or non-vented and replace the fill caps in lead acid batteries. A typical lead acid battery equipped with non-vented caps normally will not leak if tipped over. However, such caps must be removed (and replaced with vented caps) before the battery can be used. Vented replacement caps (spring or gravity-loaded) allow normal functioning of the battery in an upright position but impede the flow of battery fluid when the battery is upset. Information available to MTB indicates that vented caps are not "leakproof" in that they can leak battery fluid when subjected to pressure changes or vibrations. Further, the caps cannot be fitted to all wet cell batteries due to variations in the size of fill openings or, as with the increasingly

popular maintenance-free batteries, due to the absence of fill openings. It does not appear feasible, for the aforementioned reasons, to prescribe the use of the spill-resistant caps as a regulatory requirement. However, in those instances where they can be employed, their use is recommended.

Provisions for removing batteries from wheelchairs, as proposed in § 175.10(b)(3), were criticized by two commenters. Comments submitted by the Air Transport Association's Restricted Articles Board (ATA), a group representing U.S. air carriers, alleged that the proposal was ambiguous as to whether the passenger or air carrier was to perform the packaging. ATA indicated that air carriers do not package any hazardous materials for or on behalf of a shipper or passenger, and will not in this instance either. ATA further indicated that DOT has an obligation to ensure that full and adequate notice of applicable requirements to be given to the wheelchair user population. A second commenter alleged that a passenger will not properly package a battery and the air carrier will reluctantly accept it.

MTB's proposal (and final rule) envisions packaging by either the passenger or air carrier personnel. It is believed that some air carriers will provide a packaging service for their disabled passengers, whereas others may accept batteries removed from wheelchairs for transport only if the passenger provides a satisfactory packaging. With regard to air carriers being unwilling to package a battery on behalf of a passenger, MTB notes that a number of air carriers have developed procedures for handling wheelchairs which encompass the partial or complete packaging of batteries.

With regard to notifying the wheelchair user population, MTB notes that in addition to many individual inquiries, approximately 30 organizations representing the interests of disabled persons have contacted MTB requesting information concerning this rulemaking. MTB has maintained a mailing list during the course of this rulemaking action to inform these groups and individuals. It is anticipated that individual airlines will develop or revise their individual policies and procedures for handling battery-equipped wheelchairs and disseminate this information to their passengers. As an aid to dissemination of information concerning the new requirements, FAA is considering publication of an advisory circular for the benefit of both passengers and carriers, containing recommended procedures for achieving safe transport and compliance with requirements. As information regarding regulatory requirements and carriers' policies and procedures are made known to wheelchair users who travel by air, there is little reason to believe that inadequately packaged batteries will be tendered for transport. Considering the interests of air carriers regarding safety, there is even less reason to believe that air carriers would accept batteries which obviously do not comply with packaging requirements.

ATA criticized provisions for rendering packages containing batteries "tilt proof," alleging that neither passengers nor air carriers have the capability of palletizing batteries at airports and that to otherwise secure batteries using restraining straps, brackets or holders would require costly modifications to cargo compartments. The intent of the proposed alternatives is to ensure that batteries are secured, rather than just placed, in cargo compartments and to require an active or positive means of securement, rather than passive means such as by bracing with other freight or baggage. Where securement in the cargo compartment is not possible, palletization offers a practicable alternative. Palletization can be as simple as securing the outside container used to package a battery to a board (by means of clamps, straps, bands, etc.) of dimensions sufficiently larger than the bottom of the outside container. In order to provide for various other means of securement, the language of § 175.305(b)(3)(i) (proposed § 175.10(b)(3)(i)) is revised to require that outside containers "* * * be protected against upset by securing to pallets or by securing them in cargo compartments using appropriate means of securement (other than by bracing with other freight or baggage) such as by use of restraining straps, brackets or holders." This language will give latitude to air carriers for developing appropriate methods for blocking and bracing the outside containers.

In Notice 81–4, it was proposed that new provisions would be added in § 175.33 with regard to notifying the pilot-in-command, orally or in writing, as to the location on aircraft of any wheelchair equipped with wet cell batteries (other than nonspillable batteries). One commenter suggested that notification should be required to be in writing so that there would be no dispute over the adequacy of notification to the pilot and so as not to take away from the focus regarding compatibility in loading of hazardous materials. MTB does not believe that a requirement for written notification is necessary. Information concerning other hazardous cargo would normally be available well before flight time, giving the aircraft operator adequate time to prepare written notification. With regard to stowing a passenger's wheelchair, the aircraft operator may not have adequate time to prepare written notification in all instances. Further, wheelchairs have been transported for a number of years in the absence of a requirement for written notification without any adverse impact on transportation safety. The rule, as adopted herein, permits either oral or written notification.

Two commenters addressed issues concerning wheelchairs equipped with wet cell batteries which are outside MTB's purview. One commenter requested clarification concerning mandatory aspects of HMR provisions, in light of certain proposed rules of the Civil Aeronautics Board (CAB) which are intended to prohibit unlawful discrimination against disabled travelers and implement section 504 of the Rehabilitation Act of 1973. Another commenter requested that MTB address the subject of carrier liability for damage to, or loss of, wheelchairs. Both matters appear to fall within the purview of the CAB. Therefore, MTB suggests the commenters address their concerns to the Bureau of Consumer Protection, Civil Aeronautics Board, Washington, D.C. 20428.

II. Defining "Nonspillable" Batteries (§ 173.260(d), 175.10)

Comments addressed to the new provisions for defining "nonspillable" as that term applies to wet cell batteries were generally supportive of the proposal. Three commenters suggested changes to the proposal. One commenter stated that the language of the proposed tests did not necessarily require testing of a battery with its fill or vent openings upside down, since a battery may have openings on a different face of the battery than its terminals. MTB agrees with this comment and has revised the language of the vibration and pressure differential tests to clarify that a battery is to be tested with fill openings and vents, if any, inverted.

One commenter suggested that the pressure differential test can be circumvented unless the sequence of test positions is specified. The commenter, a battery manufacturer alleged that most nickel cadmium aircraft batteries, which would otherwise pass the test, would spill battery fluid if tested first in an inverted position and then on their side. MTB agrees that leakage is possible under the

stated conditions. However, MTB does not believe a specified sequence is necessary and it has not been adopted in the final rule because such a sequence is not likely to occur in the transportation environment and because the types of batteries addressed by the commenter have been shipped safely for a number of years.

A permanent marking requirement for nonspillable batteries was suggested by one commenter in order to facilitate identification of these batteries. The commenter suggested "Meets U.S. DOT test criteria for nonspillable" as an appropriate marking. MTB disagrees with this proposal and it has not been adopted. A permanent marking requirement would impose costs on battery manufacturers and have only limited utility. It is MTB's impression that most batteries which are intended for retail sale, are packaged (usually in fiberboard boxes) for transportation and sale. Markings on the batteries would normally not be visible to the consumer at time of purchase, nor would they be visible to a carrier if a packaged battery is offered by the consumer for transport. Further, there are other means for a manufacturer to identify his product as nonspillable such as by package markings, product brochures, advertising literature, certification, etc.

The temperature at which the pressure differential test is conducted was incorrectly stated as 78° F. in Notice 81–4, whereas it correctly appeared as 75° F. in Notice 80–4. This discrepancy has been corrected and the final rule specifies a temperature of 75° F.

It should be noted that, for transportation by vessel, the sub-committee on the Carriage of Dangerous Goods of the Inter-governmental Maritime Consultative Organization (IMCO) has recently adopted criteria for nonspillable batteries which specifies a temperature test instead of a pressure differential test. This temperature test specifies that the battery be stored for a total of 18 hours (6 hours upright, 6 hours inverted and 6 hours on its side) at 130° F. ± 10° F., without leakage in any position.

III. General Revision of Regulations Applicable to Wet Electric Storage Batteries (§§ 171.16, 172.101, 173.250)

The revised § 172.101 shipping descriptions which were proposed in Notice 81–4 have been adopted with certain changes. The word "alkaline" has been changed to read "alkali" where used in shipping descriptions for batteries and battery fluid in order to achieve consistency with those shipping descriptions which appear in the Recommendations prepared by the United Nations Committee of Experts on the Transport of Dangerous Goods (UN Recommendations). For the same reason, the term "filled with" has been added to shipping descriptions for batteries (e.g., Battery, *electric storage,* wet, acid, has been changed to Battery, *electric storage,* wet, filled with acid). For those shipping descriptions in § 172.101 which correspond to descriptions in the UN Recommendations, the "UN" prefix has been retained for identification numbers, but where no corresponding description appears, "NA" prefixes have been used. Several cross references which were proposed (e.g., Alkaline battery fluid. *See* Battery fluid, alkaline) have not been adopted because they are unnecessary. Other editorial changes were made to several shipping descriptions for clarification and simplification.

Based on commenters' suggestions, a cross reference has been added to § 172.101 (*Wheelchair, battery equipped. See* Battery, *electric storage,* wet with wheelchair) and § 171.16 has been amended to reflect the new proper shipping names for batteries (i.e., Battery, *electric storage,* wet, filled with acid or alkali).

In order to reduce the impact of this and future amendments to the Hazardous Materials Table and in response to requests from two battery manufacturers, § 172.101(j) is revised to provide up to one year following the effective date of an amendment during which stocks of preprinted package markings and shipping papers can be continued in use.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Report requirements.

49 CFR Part 172

Hazardous materials transportation, Labeling, Packaging and containers.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 175

Hazardous materials transportation, Air carriers.

In consideration of the foregoing, 49 CFR Parts 171 through 175 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. In § 171.16, paragraph (c)(2) is revised to read as follows:

§ 171.16 Detailed hazardous materials incident reports.

* * * * *

(c) * * *

(2) Battery, *electric storage,* wet, filled with acid *or* alkali.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

2. In § 172.101, paragraph (j) is revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(j) Unless specifically stated otherwise in the amendment or the "Effective date" entry in its preamble, if any entry in this Table is changed by an amendment to this subchapter—

(1) Such a change does not apply to the shipment of any package filled prior to the effective date of the amendment; and

(2) Stocks of preprinted shipping papers and package markings may be continued in use, in the manner previously authorized, until depleted or for a one year period, whichever is less.

* * * * *

3. The Hazardous Materials Table in § 172.101 is amended as follows:

§ 172.101 Hazardous Materials Table.

(1)	(2)	(3)	(3A)	(4)	(5)		(6)		(7)		
					Packaging		Maximum net quantity in one package		Water shipments		
+/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Exceptions (a)	Specific requirements (b)	Passenger carrying aircraft or railcar (a)	Cargo only aircraft (b)	Cargo vessel (a)	Passenger vessel (b)	Other requirements (c)
	* * *										
	Deletions										
	* * *										
	Alkaline battery fluid	Corrosive material.	NA2797	Corrosive	173.244	173.249 173.257	1 quart	5 gallons	1, 2	1, 2	
	Alkaline battery fluid with empty storage battery.	Corrosive material.	NA2797	Corrosive	None	173.258	Forbidden	5 pints	1, 2	1, 2	
	Battery charger with electrolyte (acid) or alkaline battery fluid.	Corrosive material.	NA2794	Corrosive	None	173.259	Forbidden	5 pints	1, 2	1, 2	
	Battery, electric, storage, wet.	Corrosive material.	NA2794	Corrosive	173.260	173.260	Forbidden	No limit	1, 2	1, 2	
	Battery, electric, storage, wet with automobile, auto parts, engine (*or other specifically named mechanical apparatus*).	Corrosive material.	NA2794	Corrosive	173.250	173.260	No limit	No limit	1, 2	1, 2	Keep dry.
	Battery, electric storage, wet, with containers of electrolyte (acid) *or* alkaline battery fluid.	Corrosive material.	NA2794	Corrosive	None	173.258	Forbidden	2 gallons	1, 2	1, 2	
	Battery fluid. See Electrolyte (acid) or Alkaline battery fluid.										
	Electric storage battery, wet. *See* Battery, electric storage, wet.										
	Electrolyte (acid) or alkaline battery fluid, packed with dry-storage battery.	Corrosive material.	NA2797	Corrosive	None	173.258	Forbidden	5 pints	1, 2	1, 2	
	Electrolyte (acid) or alkaline battery fluid, packed with battery charger radio current supply device, *or* electronic equipment and actuating device.	Corrosive material.	NA2797	Corrosive	None	173.259	Forbidden	5 pints	1, 2	1, 2	
	Electrolyte (acid) battery fluid (*not over 4796 acid*) *RQ-1000/454.*	Corrosive material.	UN2796	Corrosive	173.244	173.257	1 quart	5 gallons	1, 2	1, 2	Glass carboys in hampers not permitted under deck.
	* * *										
	Additions										
	* * *										
	Battery, *electric storage,* dry (containing postassium hydroxide, dry *solid, flake bead, or granular*).	Corrosive material.	NA1813	Corrosive	173.244	173.245b	25 pounds	100 pounds	1, 2	1, 2	Keep dry.
	Battery, *electric storage,* wet, filled with acid.	Corrosive material.	UN2794	Corrosive	173.260	173.260	Forbidden	No limit	1, 2	1, 2	
	Battery, *electric storage,* wet, *filled with* acid, with automobile (*or specifically named self-propelled vehicle or mechanical apparatus*).	Corrosive material.	NA2794	Corrosive	173.250	173.260	No limit	No limit	1, 2	1, 2	Keep dry.
	Battery, *electric storage,* wet, *filled with* alkali, with automobile (*or specifically named self-propelled vehicle or mechanical apparatus*).	Corrosive	NA2797	Corrosive	173.250	173.260	No limit	No limit	1, 2	1, 2	Keep dry.

(1)	(2)	(3)	(3A)	(4)	(5)		(6)		(7)		
					Packaging		Maximum net quantity in one package		Water shipments		
+/E/A/W	Hazardous materials descriptions and proper shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Exceptions (a)	Specific requirements (b)	Passenger carrying aircraft or railcar (a)	Cargo only aircraft (b)	Cargo vessel (a)	Passenger vessel (b)	Other requirements (c)
	Battery, *electric storage*, wet, with wheelchair.	Corrosive material.		Corrosive	173.250	173.250 175.305	No limit	No limit	1, 2	1, 2	Keep dry.
	Battery, electric storage, wet, nonspillable. See § 173.260(d).										
	Battery, *electric storage*, wet, filled with alkali.	Corrosive material.	UN2795	Corrosive	173.260	173.260	Forbidden	No limit	1, 2	1, 2	
	Battery fluid, acid	Corrosive material.	UN2796	Corrosive	173.244	173.257	1 quart	5 gallons	1, 2	1, 2	
	Battery fluid, acid, with electronic equipment *or* actuating device.	Corrosive material.	NA2796	Corrosive	None	173.259	Forbidden	5 pints	1, 2	1, 2	
	Battery fluid, acid, with battery, *electric storage, wet, empty, or dry.*	Corrosive material.	NA2796	Corrosive	None	173.258	Forbidden	5 pints	1, 2	1, 2	
	Battery fluid, alkali	Corrosive material.	UN2797	Corrosive	173.244	173.257	1 quart	5 gallons	1, 2	1, 2	
	Battery fluid, alkali, with electronic equipment *or* actuating device.	Corrosive material.	NA2797	Corrosive	None	173.259	Forbidden	5 pints	1, 2	1, 2	
	Battery fluid, alkali, with battery, *electric storage wet, empty or dry.*	Corrosive material.	UN2797	Corrosive	None	173.258	Forbidden	5 pints	1, 2	1, 2	
	Electrolyte (acid) battery fluid (*not over 47% acid*) (RQ 1000/454). *See* Battery fluid, acid.										
	Wheelchair, battery-equipped. See Battery, *electric storage*, wet, with wheelchair.										

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

4. In § 173.250, paragraph (a) is revised, paragraph (b) is redesignated paragraph (d), and new paragraphs (b) and (c) are added, as follows:

§ 173.250 Automobiles, other self-propelled vehicles, engines or other mechanical apparatus.

(a) Except as provided in paragraph (b) of this section, automobiles and other self-propelled vehicles equipped with wet electric storage batteries are excepted from all other requirements of this subchapter when shipped as prescribed in paragraphs (a)(1) or (2) of this section, unless other hazardous materials are transported on the self-propelled vehicles, in which instance the regulations covering these other materials apply.

(1) When batteries are removed from the self-propelled vehicles and loaded in the transport vehicle therewith, the batteries must be so loaded, blocked and braced as to prevent short circuits, spillage of battery fluid or movement within the transport vehicle.

(2) When batteries are installed in self-propelled vehicles they must be completely protected against short circuits and so secured that spillage of battery fluid will not occur under conditions normal to transportation.

(b) For transportation by passenger-carrying aircraft, wheelchairs equipped with wet electric storage batteries must be shipped as prescribed in § 175.305 of this subchapter.

(c) When wet electric storage batteries or batteries packed in containers with battery fluid are shipped as part of carload or truckload shipments of automobile parts or assembly materials, they are subject to no other requirements of this subchapter when the batteries and battery fluid are boxed or crated and so loaded, blocked and braced as to prevent short circuits of the batteries, spillage of battery fluid and movement of the materials in the transport vehicle under conditions normal to transportation. When other hazardous materials are included in the shipments, the regulations covering these other materials apply.

* * * * *

5. In § 173.260, paragraph (d) is revised to read as follows:

§ 173.260 Electric storage batteries, wet.

* * * * *

(d) Nonspillable wet electric storage batteries capable of withstanding the tests prescribed in paragraphs (d) (1) and (2) of this section without leakage of battery fluid are excepted from all other requirements of this subchapter when protected against short circuits and securely packaged so as to withstand conditions normal to transportation.

(1) *Vibration test.* Battery is rigidly clamped to the platform of a vibration machine and a simple harmonic motion having an amplitude of 0.03 inches (0.06 inches maximum total excursion) is applied. The frequency is varied at the rate of one cycle per second per minute between the limits of 10 to 55 cycles per second. The entire range of frequencies and return is traversed in 95± minutes for each mounting position (direction of vibrator) of the battery. The battery must be tested in three mutually perpendicular positions (to include testing with fill openings and vents, if

any, in an inverted position) for equal time periods.

(2) *Pressure differential test.* Following the vibration test, the battery is stored for six hours at 75°F. ± 7°F. under an external partial pressure of 2 pounds per square inch absolute. The battery must be tested in three mutually perpendicular positions (to include testing with fill openings and vents, if any, in an inverted position) for at least six hours in each position.

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

6. In § 175.33, paragraph (b) is added to read as follows:

§ 175.33 Notification of pilot-in-command.

* * * * *

(b) When wheelchairs equipped with wet electric storage batteries, other than nonspillable batteries, are transported under the provisions of § 175.305(b)(2) or (b)(3) of this subchapter, the pilot-in-command shall be notified orally or in writing before take off as to their location in the aircraft.

7. In § 175.78, paragraph (a) is revised to read as follows:

§ 175.78 Stowage compatibility of cargo.

(a) No person may stow a package, or a wet electric storage battery other than a nonspillable battery, containing a corrosive material on an aircraft next to or in a position that will allow contact with a package of flammable solids, oxidizing materials, or organic peroxides.

* * * * *

8. Section 175.79 is revised to read as follows:

§ 175.79 Orientation of cargo.

(a) A package, or a wet electric storage battery other than a nonspillable battery, containing hazardous materials and marked "THIS SIDE UP", "THIS END UP", or with arrows to indicate proper orientation, must be loaded and stored aboard an aircraft in accordance with such markings and secured in a manner that will prevent any movement that would change the orientation of the package or battery.

(b) A package, or a wet electric storage battery other than a nonspillable battery, containing liquid hazardous material and not marked as indicated in paragraph (a) of this section must be loaded and stored with closures up and secured as prescribed in paragraph (a) of this section.

9. In § 175.305, paragraph (b) is added to read as follows:

§ 175.305 Self-propelled vehicles.

* * * * *

(b) Wheelchairs equipped with wet electric storage batteries may be carried in cargo compartments on passenger-carrying aircraft when transported in accordance with the provisions of paragraphs (b) (1), (2) or (3) of this section. Shipments are subject to no other requirements of this subchapter except those requirements in §§ 175.33, 175.78 and 175.79 which are applicable to batteries.

(1) Wheelchairs equipped with batteries of a nonspillable type, as defined in § 173.260(d) of this subchapter, may be transported subject to no other requirements of this subchapter provided the batteries are:

(i) Protected against short circuits, and

(ii) Securely attached to the wheelchairs or removed and boxed.

(2) Wheelchairs equipped with batteries other than nonspillable batteries, when carried on aircraft in cargo compartments which can accommodate upright loading and stowage of wheelchair, must be transported as follows:

(i) Batteries must remain installed on wheelchairs, be securely attached to them, and terminals must be protected against short circuits;

(ii) Wheelchairs must be deactivated by removing connections at battery terminals or by otherwise disconnecting the power source, and

(iii) Wheelchairs must be secured upright in cargo compartments.

(3) For carriage on aircraft in cargo compartments which cannot accommodate upright loading or storage of wheelchairs, batteries other than nonspillable batteries may be removed from wheelchairs and carried in strong outside containers, as follows:

(i) Outside containers must be leaktight, impervious to battery fluid, and be protected against upset by securing to pallets or by securing them in cargo compartments using appropriate means of securement (other than by bracing with freight or baggage) such as by use of restraining straps, brackets or holders;

(ii) Batteries must be protected against short circuits, secured upright in the outside containers and surrounded by absorbent material sufficient to absorb their total liquid contents, and

(ii) Outside containers must be marked to indicate proper orientation, be marked "Battery, wet, with wheelchair", and be labeled with CORROSIVE labels (§ 172.442 of this subchapter).

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1)

Note.—The Materials Transportation Bureau has determined that this document will not result in a "major rule" under the terms of Executive Order 12291 and DOT procedures (44 FR 11034) nor require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). Based on limited information available concerning size and nature of entities likely to be affected by this amendment, I certify that this amendment will not, as promulgated, have a significant economic impact on a substantial number of small entities. A regulatory evaluation and environmental assessment are available for review in the Docket.

Issued in Washington, D.C., on June 1, 1982.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 82-15205 Filed 6-4-82; 8:45 am]

BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

49 CFR Part 512

[Docket No. 78-10; Notice 8]

Confidential Business Information

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Response to petition for reconsideration, final rule.

SUMMARY: This notice responds to a petition for reconsideration of the agency's confidentiality regulation. The petition, which was submitted by the Motor Vehicle Manufacturers Association, requests the agency to amend the regulation to delete the provision for determinations of confidentiality immediately upon submission of information to the agency and to amend the requirements for substantiating confidentiality claims. The agency has deleted the immediate determination provision; but denied the request regarding the substantiation requirement.

EFFECTIVE DATE: June 1, 1982. Since the regulation was previously scheduled to become effective at this time and no additional burden is imposed by this notice, the effective date will remain the same.

FOR FURTHER INFORMATION CONTACT: Roger Tilton, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, D.C. 20590 (202-426-9511).

SUPPLEMENTARY INFORMATION: On January 8, 1981 (46 FR 2049), the NHTSA published a final rule specifying the procedures for submitting confidential information to the agency. That rule also described the procedures that the agency would employ in determining whether to grant a confidentiality

request, as well as the limited instances when confidential information might be disclosed if the public interest necessitated such a disclosure.

As issued, the regulation, in essence, required all submitters of confidential information to substantiate their confidentiality requests when they submitted the information to the agency. The agency would then make an immediate decision on the confidentiality of most information and notify the submitter of its decision. If the agency concluded that the information would not be held confidential, the submitter would be accorded a short period of time to appeal that decision.

The Motor Vehicle Manufacturers Association (MVMA) submitted a petition for reconsideration of the regulation. The agency has subsequently deferred the effective date of the regulation on several occasions in order to evaluate the MVMA petition in light of the agency's present needs for and experience with confidential information. As a result of that reevaluation, the agency has determined to grant portions of the MVMA's petition for reconsideration and is amending the final rule in accordance with those recommendations. The balance of the petition is, however, being denied.

One of the major objections made by the MVMA and by many other commenters to the original NPRM on the confidentiality regulation was that the provision for determination by the agency of the confidentiality immediately upon the submission of information to the agency was not in harmony with the practices of other government agencies and would be overly burdensome to both the government and to the submitters of information. The provision for immediate determinations necessitates requiring the submitter of information to substantiate its confidentiality requests at the same time that the confidentiality request was made. The government would then make its decision immediately on whether the information would receive confidential treatment. These steps would be followed even though the release of the information, if it were determined not to be confidential, might not be made until some distant time in the future under normal agency operations. Commenters thus recommended, and the MVMA repeated this request in its petition, that immediate determinations not be made. Instead, they recommended that the information be considered confidential until such time as the agency would normally disclose it if it were not confidential or until a Freedom of Information Act (FOIA) request was received.

The agency has reviewed its present use of confidential information. Currently, most of the confidential information received by the agency comes from investigations in defect or standards enforcement cases. The NHTSA investigative procedural regulation, 49 CFR 554.9, provides that communications submitted by a manufacturer which are the subject of an investigation will be made available to the public during the course of the investigation if they are not considered to be confidential. However, it is the agency's view that it may, consistent with this regulation, withhold such information from its public files pending a final determination of confidentiality, if it appears that the submitter's claim for confidential treatment appears to have a reasonable likelihood of success. The final confidentiality determination would then be deferred until it is required by a Freedom of Information Act request or some other event which makes the determination necessary. For example, section 152 of the National Traffic and Motor Vehicle Safety Act requires public disclosure of all nonconfidential information upon which an initial determination of defect or noncompliance is based.

Ordinarily all confidentiality claims will be determined when an investigative file is closed. However, the agency should also have discretion to continue to defer such a determination and withhold material from disclosure where confidentiality issues are unsettled or where further showing of entitlement to confidentiality by a submitter might be necessary for determination but unduly burdensome.

Therefore, the agency concludes that it would be unnecessary or inappropriate to make an immediate determination of the confidentiality of the defect and noncompliance information when it is received. Since this information constitutes the bulk of all confidential information received by the agency, NHTSA further concludes that the immediate determination process no longer fits the needs of the agency. Accordingly, the agency is amending § 512.6 to indicate that the agency will decide the confidentiality of the submitted information when all information which is not confidential, is made public at the agency's initiative. Similarly, information that has been requested by a third party through the FOIA process will have its confidentiality determined at the time that the FOIA request is received by the agency.

The MVMA also asked that the agency not require the submission of arguments to substantiate a confidentiality request until such time as the agency would make public the information pursuant to a FOIA request. Apparently the MVMA wants the NHTSA to notify the submitter and then request support of its claim at the time of the information's expected release.

The agency does not fully agree with this suggestion. NHTSA continues to believe that a request for confidential treatment of information should be thoroughly supported as soon as possible after its submission. Nearly all of the information received by this agency is made public, unless it is determined to be confidential. Therefore, the substantiation will be required at some point for almost every piece of confidential information submitted to the NHTSA. That substantiation should be made near the time of submission to reduce the time necessary for the agency to make the decision and release the information if it is not confidential. Also, it is to the advantage of the submitter to provide the necessary supporting material early in the process to ensure that it has taken every precaution to protect its information.

The agency does realize, however, that not every submitter of confidential information may have the time to substantiate its confidentiality claim immediately upon submission of the information. Since the agency will no longer make immediate determinations, an immediate substantiation is no longer necessary in most instances. Therefore, the agency is amending § 512.4(b) to state that the substantiation must be submitted at the same time as the original submission of the information or, if additional time is needed and requested, at a later date set by the Chief Counsel.

Substantive Requirements of the Regulation

The MVMA also objected to many of the substantive requirements for substantiating confidentiality requests. Many of its objections were repetitions of its earlier objections to the rule and will not be responded to in great detail here since the agency has previously responded to those objections and continues to conclude that these portions of the rule are necessary.

First, the MVMA suggests that the agency is requiring the submission of too much information to support a claim for confidential treatment of information. The agency disagrees. The information requested is simply that

required to allow the agency to make an informed decision of the confidential status of the submitted information. Accordingly, the agency will not amend this section of the regulation. However, the agency will work carefully with submitters to broaden the categories of class determinations in § 512.9. These classes consist of information that is presumed confidential. By expanding the number of these classes, it would be possible to put more submissions of information within one or more of the classes, and, therefore, to eliminate the necessity for submitting additional support data. This will reduce the burden on submitters.

As in its comments on the NPRM, the MVMA objected to several specific parts of the regulation including the required statement of measures undertaken by the submitter to ensure nondisclosure, and the "substantiation of inquiry" provisions. The agency declines to make these changes. The reasons for including these provisions were detailed in the NPRM and fully discussed in the final rule. The agency will not repeat its arguments here but will simply reiterate that it continues to find all these provisions necessary in making appropriate confidentiality determinations.

Finally, MVMA objected to the requirement to notify the agency of prior confidentiality determinations on the submitted information. It was suggested that this would be too burdensome on submitters. The agency disagrees. Certainly, a submitter will readily know whether it has submitted the same information to another agency, and whether that agency has granted or denied that request. The agency regards such factors to be relevant to the agency's own determination process. While agency discretion may differ in application among agencies, a determination of confidentiality by another agency, acting under the same or related statutory authority, would and should be entitled to weight before NHTSA. At the same time, actual final prior release of the same information by another agency would make agency protection moot. The agency therefore is retaining the requirement.

The MVMA objected to the requirement to update submissions if the confidential status of the information changes. NHTSA continues to believe that this update is necessary to ensure that material, whose confidentiality may change over time, is properly treated by the agency. The MVMA suggested that the agency has no authority to impose civil penalties for violating the updating requirement. The agency disagrees and refers the MVMA to 15 U.S.C. 1397 and 1398. Those sections allow the agency to assess civil penalties for failure to provide records and reports as required by the agency. The agency notes that imposition of such penalties would occur only in instances where a submitter is knowingly concealing information from the agency, and therefore would likely be rare.

The MVMA once again suggested that the waiver of confidential treatment of information for failure to supply the affidavit or the potential waiver for failure to provide necessary support information was unreasonable. This objection was answered in detail in the preamble to the final rule. The agency must have the necessary support information for confidentiality claims. As stated in the final rule, a technical error in the submission will not result in a release of confidential information. A submitter will be given the opportunity to correct its submission.

The MVMA also suggested that the *National Parks* test for confidentiality is not always the best and requires a geater showing of competitive harm than might otherwise be required. The agency concludes that the provisions of § 512.5 for determining confidentiality are appropriate given the range of judicial precedent in this area and the agency's statutory mandate.

MVMA objected to the notice requirement of 10-working days from denial of a confidentiality request to the placement of the information in the public docket and the 10-working day time for reconsideration of a previous determination. These provisions give submitters time to object to agency determinations and allow the agency to make an earlier release if the public interest requires. The agency previously concluded that the need to release information in many instances warranted a limited time in which a submitter would be able to petition for a reconsideration of the determination or to seek judicial resource. In FOIA cases, 10 days is absolutely necessary and mandatory. The agency concludes that 10 working days allows submitters sufficient time to take whatever steps are necessary to protect their information if they believe that the agency has made an erroneous determination. Even if the agency decides to shorten that period on occasion, a submitter would have ample notice to go to the court to attempt to restrain the agency.

Finally, the MVMA objected to the discretionary release of confidential information and the disclosure of confidential information to contractors. The agency in the final rule noted that the discretionary release provision was simply codifying in this regulation those releases that are already allowed by law. With respect to releases of information to contractors, the final rule addressed this problem. The regulation was amended to reflect the limitations on the contractor when such release occurs. The agency rarely releases confidential information to contractors. However, some releases may be required in the interests of safety and the rule is intended to ensure that the confidentiality of information will be maintained in those rare instances.

The agency has considered the economic and other impacts of this amendment and has determined that this is not a major rule within the meaning of Executive Order 12291. The agency has further determined that the rule is not significant within the meaning of the Department of Transportation's regulatory procedures and that a full regulatory evaluation is unnecessary because the economic impacts are minimal. This determination has been made because this regulation is essentially procedural and will not have appreciable impact on the cost of submitting data to the agency. Compliance with the Regulatory Flexibility Act is not required since the proposal was published (May 25, 1978) prior to implementation of that Act (January 1, 1980). Finally, the agency concludes that this procedural regulation would have no significant impact on the human environment.

In accordance with the foregoing, Part 512, *Confidential Business Information*, of Volume 49 of the Code of Federal Regulations is revised in its entirety and amended as set forth below.

The principal author of this notice is Roger Tilton of the Office of Chief Counsel.

List of Subjects in 49 CFR Part 512

Administrative Procedure and Practice, Freedom of Information, Information, Records.

Issued on May 28, 1982.

Raymond A. Peck, Jr.,

Administrator.

PART 512—CONFIDENTIAL BUSINESS INFORMATION

Sec.

Sec.
512.6 Determination of confidential treatment.
512.7 Modification of determinations.
512.8 Discretionary release of confidential business information.
512.9 Class determinations.
512.10 Disclosure of information in certain circumstances.
Appendix A—Affidavit In Support of Request for Confidentiality
Appendix B—Class Determinations
Appendix C—OMB Clearance

Authority: Sec. 9, Pub. L. 89-670, 80 Stat. 931 (49 U.S.C. 1657); sec. 112, Pub. L. 89-563, 80 Stat. 725, amended Pub. L. 91-265, 84 Stat. 262 (15 U.S.C. 1401); sec. 119, Pub. L. 89-563, 80 Stat. 728 (15 U.S.C. 1407); sec. 104, Pub. L. 92-513, 86 Stat. 950, (15 U.S.C. 1914); sec. 204, Pub. L. 92-513, 86 Stat. 957; (15 U.S.C. 1944); sec. 408, Pub. L. 92-513 as added Pub. L. 94-364, 90 Stat. 985 (15 U.S.C. 1990d), sec. 505 Pub. L. 94-163, 89 Stat. 908 (15 U.S.C. 2005), delegation of authority at 49 CFR 1.50.

§ 512.1 Purpose and scope.

The purpose of this part is to establish the procedure by which the NHTSA will consider claims that information submitted to the NHTSA, or which the NHTSA otherwise obtains, is confidential business information, as described in 5 U.S.C. 552(b)(4).

§ 512.2 Applicability.

(a) This part applies, in accordance with its terms, to all information which is submitted to the NHTSA, or which the NHTSA otherwise obtains, except as provided in paragraph (b).

(b) Information received as part of the procurement process, is subject to the Federal Procurement Regulations, 41 CFR, Chapter 1, as well as this part. In any case of conflict between the Federal Procurement Regulations and this part, the provisions of the Federal Procurement Regulations prevail.

§ 512.3 Definitions.

"NHTSA" means the National Highway Traffic Safety Administration.

"Administrator" means the Administrator of the National Highway Traffic Safety Administration.

"Chief Counsel" means the Chief Counsel of the National Highway Traffic Safety Administration.

"Confidential business information" means information described in 5 U.S.C. 552(b)(4).

§ 512.4 Asserting a claim for confidential treatment of information.

(a) Any person submitting information to the NHTSA and requesting that it be withheld from public disclosure as confidential business information shall—

(1) Stamp or mark "confidential" or some other term which clearly indicates the presence of information claimed to be confidential, on the top of each page containing information claimed to be confidential.

(2) Mark each item of information which is claimed to be confidential and which appears on a page marked in accordance with paragraph (a)(1) of this section, with brackets "[]".

(3) If an entire page is claimed to be confidential, indicate clearly that the entire page is claimed to be confidential.

(4) Submit the documents containing allegedly confidential information directly to the Office of Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street SW., Washington, D.C.

(5) In the case of a document containing information which is claimed to be confidential submitted in connection with a NHTSA activity for which there is a public file or docket, simultaneously submit to the NHTSA a copy of the document from which information claimed to be confidential is deleted, for placement in the public file or docket pending the determination of the claim for confidential treatment.

(6) Simultaneously submit to the NHTSA in writing the name, address, and telephone number of a representative for receipt of notice under this part.

(b) When submitting each item of information marked confidential in accordance with paragraph (a) of this section, the submitter shall also submit either information supporting the claim for confidential treatment to the NHTSA or, if submission of that supporting information is not possible at that time, a request for an extension of time in which to submit the information and an explanation of the length of extension needed. The submission of such a request automatically extends the deadline. The Chief Counsel determines the length of the extension. The recipient of an extension shall submit the supporting information in accordance with the extension. The supporting information must show—

(1) That the information claimed to be confidential is a trade secret, or commercial or financial information.

(2) Measures taken by the submitter of the information to ensure that the information has not been disclosed or otherwise made available to any person, company, or organization other than the submitter of the information.

(3) Insofar as is known by the submitter of the information, the extent to which the information has been disclosed, or otherwise become available, to persons other than the submitter of the information, and why such disclosure or availability does not compromise the confidential nature of the information.

(4) Insofar as is known by the submitter of the information, the extent to which the information has appeared publicly, regardless of whether the submitter has authorized that appearance or confirmed the accuracy of the information (include citations to such public appearances, and an explanation of why such appearances do not compromise the confidential nature of the information).

(5) Prior determinations of the NHTSA or other Federal agencies or Federal courts relating to the confidentiality of the submitted information, or similar information possessed by the submitter including class determinations under this part (include any written notice or decision connected with any such prior determination, or a citation to any such notice or decision, if published in the **Federal Register**).

(6) Except for information submitted to the agency in connection with the NHTSA's functions under Title V of the Motor Vehicle Information and Cost Savings Act, as amended, whether the submitter of the information asserts that disclosure would be likely to result in substantial competitive harm, what the harmful effects of disclosure would be, why the effects should be viewed as substantial, and the causal relationship between the effects and disclosure.

(7) For information submitted to the agency in connection with the NHTSA's functions under Title V of the Motor Vehicle Information and Cost Savings Act, whether the submitter of the information asserts that disclosure would result in significant competitive damage, what that damage would be, why that damage should be viewed as significant, and the causal relationship between the damage and disclosure.

(8) If information is voluntarily submitted, within the meaning of section 512.5(a)(2) of this part, why disclosure by the NHTSA would be likely to prevent the NHTSA from obtaining information in the future.

(9) The period of time for which confidentiality is claimed (permanently or until a certain date or the occurrence of a certain event) and why earlier disclosure would result in the harms set out in paragraphs (b), (6), (7), or (8) of this section as the case may be.

(c)(1) If any element of the showing to support a claim for confidentiality required under paragraph (b) of this section is presumptively established by a class determination affecting the information for which confidentiality is claimed, the submitter of information need not establish that element again under paragraph (b).

(2) If the Chief Counsel believes that information which a submitter of information asserts to be within a class of information set out in Appendix B is not within that class, the Chief Counsel—

(i) Notifies the submitter of the information that the information does not fall within the class as claimed, and briefly explains why the information does not fall within the class, and

(ii) Affords the submitter of the information a reasonable amount of time, not less than 10 working days, to comply fully with paragraph (b) of this section.

(d) Information in support of a claim for confidentiality submitted to the NHTSA under paragraph (b) of this section must consist of objective data to the maximum extent possible. To the extent that opinions are given in support of a claim for confidential treatment of information, the submitter of the information shall submit in writing to the NHTSA the basis for the opinions, and the name, title, and credentials showing the expertise of the person supplying the opinion.

(e) The submitter of information for which confidential treatment is requested shall submit to the NHTSA with the request a certification in the form set out in Appendix A from the submitter, or an agent of the submitter, that a diligent inquiry has been made to determine that the information has not been disclosed, or otherwise appeared publicly, except as indicated in accordance with paragraph (b) (3) and (4) of this section.

(f) A single showing in support for a claim that information is confidential, in accordance with paragraph (b) of this section, may be used to support a claim for confidential treatment of more than one item of information claimed to be confidential. However, general or nonspecific assertions or analyses may be insufficient to form an adequate basis for the agency to find that information may be afforded confidential treatment, under section 512.3, and may result in the denial of a claim for confidentiality.

(g) Where confidentiality is claimed for information obtained by the submitter from a third party, such as a supplier, the submitter of the information is responsible for obtaining all information or certifications from the third party necessary to comply with paragraph (b).

(h) A submitter of information shall promptly amend supporting information provided under paragraph (b) if the submitter obtains information upon the basis of which the submitter knows that the supporting information was incorrect when provided, or that the supporting information, though correct when provided, is no longer correct and the circumstances are such that a failure to amend the supporting information is in substance a knowing concealment.

(i) Noncompliance with this section may result in a waiver or denial of a claim for confidential treatment of information. However, failure to provide the certification required in paragraph (e) of this section shall result in a denial of the claim. Noncompliance with paragraph (h) of this section may subject a submitter of information to civil penalties.

(1) If the provisions of paragraph (a) of this section are not complied with at the time the information is submitted to the NHTSA so that the NHTSA is not aware of a claim for confidentiality, or the scope of a claim for confidentiality, the claim for confidentiality is waived unless the agency is notified of the claim before the information is disclosed to the public. Placing the information in a public docket or file is disclosure to the public within the meaning of this part, and any claim for confidential treatment of information so disclosed is precluded.

(2) A request that information be afforded confidential treatment may be denied if the submitter of the information does not provide all of the supporting information required in paragraph (b) of this section, and will be denied if the information provided is insufficient to establish that the information may be afforded confidential treatment under the substantive tests set out in section 512.3. The Chief Counsel may notify a submitter of information of inadequacies in the supporting information, and may allow the submitter additional time to supplement the showing, but is under no obligation to provide either notice or additional time to supplement the showing.

(j) Information received that is identified as confidential and whose claim for confidentiality is supported in accordance with this section will be kept confidential until a determination of its confidentiality is made under section 512.6 of this part. Information will not be publicly disclosed except in accordance with this part.

§ 512.5 Substantive standards for affording information confidential treatment.

(a) Information obtained by the NHTSA, except for information obtained by the NHTSA under Title V of the Motor Vehicle Information and Cost Savings Act, may be afforded confidential treatment if it is a trade secret, commercial, or financial information that is not already publicly available; and

(1) Which if disclosed, would be likely to result in substantial competitive harm to the submitter of the information, or

(2) Voluntarily submitted, and failure to afford the information confidential treatment would impair the ability of the NHTSA to obtain similar information in the future. Information whose production the NHTSA could not compel by compulsory process is voluntarily submitted information within the meaning of this part.

(b) Information obtained by the NHTSA under Title V of the Motor Vehicle Information and Cost Savings Act may be afforded confidential treatment if it is a trade secret, commercial or financial information that is not already publicly available or and which, if disclosed, would result in significant competitive damage.

§ 512.6 Determination of confidentiality.

(a) The decision of whether an item of information may be afforded confidential treatment under this part is made by the Office of Chief Counsel.

(b) The determination of confidentiality is made when disclosure of the information would be required if it were not entitled to confidentiality, pursuant to the Freedom of Information Act, or the statutes and regulations governing activities of the NHTSA or when the NHTSA finds that disclosure of such information, if not entitled to confidentiality, is in the best interest of the public, if—

(1) The information relates to a rulemaking proceeding for which a public docket has been established,

(2) The information relates to a petition before the NHTSA for which a public docket has been established,

(3) The information relates to a proceeding under Part B of Subchapter I of the National Traffic and Motor Vehicle Safety Act,

(4) The information relates to an investigation or proceedng by the NHTSA to enforce any regulation or standard, or

(5) The information is received under a reporting requirement established by the NHTSA.

(c) If information does not come under paragraph (b) of this section when received by the NHTSA, but is later determined to be information described in paragraph (b), the determination of confidentiality is made when public disclosure would otherwise be necessary.

(d) For information not described under paragraph (b) of this section, the determination of confidentiality is made

within ten working days after the NHTSA receives a request for that information under the Freedom of Information Act.

(e) The timing requirements prescribed in paragraph (d) of this section may be extended by the Chief Counsel for good cause shown on the Chief Counsel's own motion, or on request from any person, and is made only in accordance with 5 U.S.C. 552. Any extension of time is accompanied by a written statement setting out the reasons for the extension.

(f) A person submitting information to the NHTSA with a request that the information be withheld from public disclosure as confidential business information is given notice of the Chief Counsel's determination regarding the request as soon as the determination is made.

(1) If a request for confidentiality is granted, the submitter of the information is notified in writing that the information is being kept confidential and the length of time during which the information will be kept confidential.

(2) If a request for confidentiality is denied in whole or in part, the submitter of the information is notified in writing of that denial, and is informed that the information will be placed in a public docket on a specified date, which is not less than ten working days after the submitter of the information has received notice of the denial of the request for confidential treatment if practicable, or some earlier date if the Chief Counsel determines that the public interest requires that the information be placed in a public file on such earlier date. The written notification of a denial specifies the reasons for denying the request.

(g) A submitter of information whose request for confidential treatment is denied may petition for reconsideration of that denial only on the basis of information or arguments that were not available at the time the original request for confidentiality was made. The Chief Counsel may postpone placing the information in a public file in order to allow additional time to consider the petition for reconsideration. Petitions for reconsideration under this section shall be addressed to the Chief Counsel.

(h) If information which has been a subject of a confidentiality determination under this section is requested under the Freedom of Information Act, the Office of Chief Counsel advises the office processing that request whether the information has been determined to be confidential.

§ 512.7 Modification of confidentiality determinations.

(a) A determination that information is confidential business information remains in effect in accordance with its terms, unless modified by a later determination based upon—

(1) Newly discovered or changed facts.

(2) A change in the applicable law,

(3) A class determination under section 512.9 of this part, or

(4) The initial determination's being clearly erroneous.

(b) If the NHTSA believes that an earlier determination of confidentiality should be reconsidered based on one or more of the factors listed in paragraphs (a)(1)–(4) of this section, the submitter of the information is notified in writing of the NHTSA's intention to reconsider that earlier determination, and the reasons for that reconsideration, and is given an opportunity to comment which is not less than ten working days from the receipt of notice under this paragraph.

§ 512.8 Discretionary release of confidential business information.

(a) Information that has been determined or claimed to be confidential business information under § 512.6 of this part may be disclosed to the public by the Administrator notwithstanding such determination or claim if disclosure would be in the public interest as follows:

(1) Information obtained under Part A, Subchapter I of the National Traffic and Motor Vehicle Safety Act, relating to the establishment, amendment, or modification of Federal motor vehicle safety standards, may be disclosed when relevant to a proceeding under that part.

(2) Information obtained under Part B, Subchapter I of the National Traffic and Motor Vehicle Safety Act, relating to defects relating to motor vehicle safety, and failures to comply with applicable motor vehicle safety standards, may be disclosed if the Administrator determines that disclosure is necessary to carry out the purposes of that Act.

(3) Information obtained under Title I or V of the Motor Vehicle Information and Cost Savings Act may be disclosed when that information is relevant to a proceeding under the title under which the information was obtained.

(b) No information is disclosed under this section unless the submitter of the information is given written notice of the Administrator's intention to disclose information under this section. Written notice is given at least ten working days before the day of intended release, although the Administrator may provide shorter notice if the Administrator finds that such shorter notice is in the public interest. The notice under this paragraph includes a statement of the Administrator's reasons for considering the disclosure of information under this section, and affords the submitter of the information an opportunity to comment on the contemplated release of information. The Administration may also give notice of the contemplated release of information to other persons, and may allow such other persons the opportunity to comment. When a release of information is made pursuant to this section, the Administrator will consider ways to make the release with the least possible adverse effects to the submitter.

§ 512.9 Class determinations.

(a) The Chief Counsel may issue a class determination relating to confidentiality under this section if the Chief Counsel determines that one or more characteristics common to each item of information in that class will in most cases necessarily result in identical treatment of each item of information under this part, and that it is appropriate to treat all such items as a class for one or more purposes under this part. The Chief Counsel obtains the concurrence of the Office of the General Counsel, United States Department of Transportation, for any class determination that has the effect of raising the presumption that all information in that class is eligible for confidential treatment. Class determinations are published in the **Federal Register.**

(b) A class determination clearly identifies the class of information to which it pertains.

(c) A class determination may state that all of the information in the class—

(1) Is or is not governed by a particular section of this part, or by a particular set of substantive criteria under this part,

(2) Fails to satisfy one or more of the applicable substantive criteria, and is therefore ineligible for confidential treatment,

(3) Satisfies one or more of the applicable substantive criteria, or

(4) Satisfies one of the substantive criteria during a certain period, but will be ineligible for confidential treatment thereafter.

(d) Class determinations will have the effect of establishing rebuttable presumptions, and do not conclusively determine any of the factors set out in paragraph (c) of this section.

§ 512.10 Disclosure of information in certain circumstances.

(a) Notwithstanding any other provision of this part, information which has been determined to be confidential business information, or which has been claimed to be confidential business information, may be disclosed pursuant to a valid request—

(1) To Congress,

(2) Pursuant to court order,

(3) To the Office of the Secretary, United States Department of Transportation and other Executive branch offices or other Federal agencies in accordance with applicable laws,

(4) With the consent of the submitter of the information,

(5) To contractors, if necessary for the performance of a contract with the Administration. In such instances, the contract limits further release of the information to named employees of the contractor with a need to know and provides that unauthorized release constitutes a breach of the contract for which the contractor may be liable to third parties.

Appendix A

Affidavit in Support of Request for Confidentiality

I,————, being duly sworn, depose and say:

(1) That I am (official) and that I am authorized by (company) to execute documents on behalf of (company):

(2) That the information contained in *(pertinent document[s])* is confidential and proprietary data and is begin submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. 552(b)(4) [as incorporated by reference in and modified by § 505(d)(1) of Title 5 of the Motor Vehicle Information and Cost Savings Act.]

(3) That I have personally inquired of the responsible (company) personnel who have authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside (*company*).

(4) That based upon such inquiries to the best of my knowledge the information for which (company) has claimed confidential treatment has never been released of become available outside the (company) except as hereinafter specified:

(5) That I make no representations beyond those contained in this affidavit and in particular I make no representations as to whether this information may become available outside (company) because of unauthorized or inadvertent disclosure except as stated in Paragraph 4; and

(6) That the information contained in the enumerated paragraphs of this affidavit is true and accurate to the best of my information, knowledge and belief.

(Official)

Appendix B—Class Determinations

The Administration has determined that the following types of information would presumptively result in significant competitive damage or would be likely to result in substantial competitive harm if disclosed to the public—

(1) Blueprints and engineering drawings containing process of production data before the public availability, or within five years of the public availability, of the subject of the blueprints or engineering drawings, where the subject could not be manufactured without the blueprints or engineering drawings except after significant reverse engineering:

(2) Future model specific product plans, projected not more than three years into the future;

(3) Model specific projections of future sales mix, projected not more than three years into the future;

Appendix C—OMB Clearance

The OMB clearance number for this regulation is 2127–0025.

[FR Doc. 82-15267 Filed 6-2-82; 10:05 am]
BILLING CODE 4910-59-M

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49 CFR Part 575

[Docket No. 81-09; Notice 2]

Consumer Information Regulations

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: This notice amends the Consumer Information Regulations by revocation of the requirement that motor vehicle manufacturers provide information on passenger car tire reserve load. The National Highway Traffic Safety Administration has concluded that this information is without value to consumers, and that deletion of the requirement will avoid unnecessary regulatory burdens on industry.

EFFECTIVE DATE: This amendment is effective June 7, 1982.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Reck, Office of Automotive Ratings, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590, 202–426–1740.

SUPPLEMENTARY INFORMATION: The Consumer Information Regulations (49 CFR Part 575) require that manufacturers of motor vehicles and tires provide consumers with information on the performace of their products under various performance criteria. In the case of motor vehicle manufacturers, information is required in the areas of passenger car and motorcyle stopping distance (49 CFR 575.101), passenger car tire reserve load (49 CFR 575.102), and truck camper loading (49 CFR 575.103). National Highway Traffic Safety Administration (NHTSA) regulations require that motor vehicle manufacturers supply the required performance information in writing to first purchasers of their motor vehicles at the time of delivery (49 CFR 575.6(a)) and that the information be made available for examination by prospective purchasers at each location where the vehicles to which it applies are sold (49 CFR 575.6(c)). The information must also be submitted in advance to NHTSA (49 CFR 575.6(d)).

On September 24, 1981, NHTSA published in the **Federal Register** a proposal to delete from the Consumer Information Regulations the requirement for provision of information on passenger car tire reserve load (46 FR 47100; Docket No. 81–09, Notice 1). Tire reserve load is the difference between a tire's stated load rating and the load imposed on the tire at maximum loaded vehicle weight. This difference is expressed as a percentage of tire load rating under the regulation.

NHTSA's proposal noted that a NHTSA analysis, "The Relationship Between Tire Reserve Load Percentage and Tire Failure" (Docket No. 81–09, Notice 1, No. 002), had concluded that no relationship exists between tire reserve load percentage and tire failure rate. This analysis was based on the results of a study prepared for NHTSA by Chi Associates, "Statistical Analysis of Tire Failure vs. Tire Reserve Load Percentage" (Docket No. 81–09, Notice 1, No. 001), using tire reserve load data obtained from eight automobile manufacturers under special order from this agency. The proposal also noted the lack of major differences among manufacturers' reported tire reserve load percentages, and the safeguards against overloading contained in Federal Motor Vehicle Safety Standard No. 110 (FMVSS No. 110), Tire Selection and Rims.

In response to its proposal to delete the requirement for tire reserve load information, NHTSA received comments from seven motor vehicle manufacturers and importers. The commenters were unanimous in their support of the agency's proposal. Comments received generally focused on the lack of benefit to consumers resulting from provision of tire reserve load information.

Several commenters noted the lack of any proven safety benefit from the tire reserve load regulation. Two commenters, Ford Motor Company and Volkswagen of America, Inc., cited the above mentioned NHTSA analysis in

support of the proposition that tire reserve load is an invalid predictor of tire failure (Docket No. 81–09, Notice 1, Nos. 004 and 006). General Motors Corporation (Docket No. 81–09, Notice 1, No. 007) and American Motors Corporation (Docket No. 81–09, Notice 1, No. 008, referencing its prior comment, Docket No. 79–02, Notice 1, No. 012) argued that FMVSS No. 110 is sufficient to protect against the installation of tires with inadequate load carrying capacity.

American Motors also pointed out that much of the information required under the tire reserve load regulation is redundant of information which must be included on glove compartment placards pursuant to FMVSS No. 110. In this regard, information on recommended tire size designation and recommended inflation pressure for maximum loaded vehicle weight, required under paragraphs (c)(2) and (3) of the tire reserve load regulation (49 CFR 575.102(c)(2) and (3)) is essentially the same as that required under paragraphs S 4.3(c) and (d) of FMVSS No. 110 (49 CFR 575.110, S 4.3(c) and (d)).

Several commenters argued that not only is tire reserve load information lacking in safety value, but it may actually pose a danger to highway safety. Renault USA, Inc., Volkswagen, General Motors and American Motors all expressed concern that provision of tire reserve load information would mislead consumers into loading their vehicles beyond gross vehicle weight ratings (Docket No. 81–09, Notice 1, Nos. 003, 006, 007, 008). Renault and American Motors also noted that the tire reserve load regulation fails to take into account the effect of inflation pressure, thus further limiting the usefulness of the regulation and creating additional potential hazards resulting from improper tire inflation.

Chrysler Corporation and General Motors emphasized the minimal consumer interest in tire reserve load information (Docket No. 81–09, Notice 1, Nos. 005 and 007). As evidence of this minimal interest, both manufacturers noted the lack of consumer requests for point of sale information currently available.

Some cost savings are likely to result to automobile manufacturers as a result of deletion of this requirement. General Motors pointed out that, even if tire reserve load is dropped from the consumer information regulations, manufacturers will still be required to print and distribute booklets containing information on vehicle stopping distance and thus cost savings will be limited (Docket No. 81–09, Notice 1, No. 007). However, Ford commented that elimination of the tire reserve load provision would result in some savings in manpower and computer time (Docket No. 81–09, Notice 1, No. 004). Similarly, Volkswagen noted that manufacturers' booklet publication costs would be reduced and reporting requirements simplified if the proposed amendment were adopted (Docket No. 81–09, Notice 1, No. 006).

In view of the lack of benefits of the tire reserve load information requirements, the potential for reduction of unnecessary regulatory burdens by deletion of these requirements, and the other considerations discussed above, NHTSA has concluded that the tire reserve load requirements of the Consumer Information Regulations should be revoked. In order to avoid continued imposition of unnecessary regulatory burdens, this amendment relieving a restriction is made effective immediately.

Several commenters also suggested rescinding the vehicle stopping distance information requirement of the regulation, thereby eliminating all requirements for vehicle specific consumer information applicable to passenger cars. While beyond the scope of this rulemaking proceeding, NHTSA is reviewing the benefits of and need for other aspects of the Consumer Information Regulations in connection with a petition for rulemaking submitted by General Motors. If this review indicates that vehicle stopping distance information is not useful, the potential deletion of this requirement will be made the subject of a future rulemaking proceeding.

NHTSA has evaluated this relieving of a restriction and found that its effect would be to provide minor cost savings for motor vehicle manufacturers. Accordingly, the agency has determined that this action is not a major rule within the meaning of Executive Order 12291 and is not significant for purposes of Department of Transportation policies and procedures for internal review of regulatory actions. The agency has further determined that the cost savings are minimal and do not warrant preparation of a regulatory evaluation under the procedures.

List of Subjects in 49 CFR Part 575

Consumer protection, Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

The agency certifies, pursuant to the Regulatory Flexibility Act, that this action will not "have a significant economic impact on a substantial number of small entities," and that a Regulatory Flexibility Analysis was therefore not required. Few, if any, motor vehicle manufacturers can be considered small entities within the meaning of the statute. Small organizations and small government jurisdictions will not be significantly affected by this action. These entities could be affected by the action as motor vehicle purchasers. However, the agency has determined that tire reserve load information is not of value to purchasers. Moreover, possible cost savings associated with the action will be minor in the case of individual purchasers. Finally, the agency has concluded that the environmental consequences of this action will be of such limited scope that they clearly will not have a significant effect on the quality of the human environment.

PART 575—CONSUMER INFORMATION REGULATIONS

In consideration of the foregoing, 49 CFR Part 575, Consumer Information Regulations, is amended as set forth below.

§ 575.102 [Reserved]

1. Part 575 is amended by removing and reserving § 575.102.

(Secs. 103, 112, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407); delegation of authority at 49 CFR 1.50)

Issued on May 28, 1982.

Raymond A. Peck, Jr.,

Administrator.

[FR Doc. 82-15366 Filed 6-4-82; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1110

[Ex Parte 433]

Removal of General Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Removal of final rules.

SUMMARY: The Commission is removing rules adopted in 1967 which provided general requirements and filing information for applications and reports under 49 CFR Parts 1111 to 1119. The requirements and information under this Part are either included in the General Rules of Practice or have been incorporated in separate provisions of the regulations. Accordingly this provision is no longer needed.

EFFECTIVE DATE: July 6, 1982.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, 275–7245.

SUPPLEMENTARY INFORMATION: In 1967 the Commission adopted comprehensive

regulations in 49 CFR Parts 1110–1119 entitled, *Railcarriers Consolidation, Finance and Reorganization.* Part 1110 provided procedural and general requirements to be followed in filings under Parts 1111–1119. Part 1110 is no longer needed because the general and introductory information it provides is now contained in the General Rules of Practice, and because the specific rules under Parts 1111–1119 contain more detailed and at times conflicting provisions.

For example, Part 1110 prescribes the form to be used, typographical specifications, and filing information. All of this information is now included in the General Rules of Practice, as well as under the more specific rules (See §§ 1100.4, .13, .14, 1111.4, 1111.25, 1113.1–.4, 1114.1–.3, 1116.4, 1117.12). A very general definition of terms is provided in 1110.2, while the specific rules also contain the relevant definitions (See §§ 1111.3, 1115.2, 1116.1, 1117.1, .5) Similarly, the execution requirements in § 1110.6 can be found in the General Rules at § 1100.15, and under specific rules, *e.g.* § 1111.4(c)(2)(i). Likewise, general statements about additional information, incorporation by reference and waiver of rules, have been incorporated, where pertinent, into the specific rules (*e.g.* § 1111.4(c) (i), (iv), and (f)).

In conclusion Part 1110 contains information and requirements which at times conflict with specific rules. Where specific rules do not provide the information, it is available in the General Rules of Practice.

Removal of this part will have no legal effect on any person. Notice and comment, therefore, are unnecessary, and are not required under the Administrative Procedure Act. We are merely deleting a rule that has no further use or effect.

This action will have no effect on the quality of the human environment or conservation of energy resources. We are not required to make a regulatory flexibility analysis of this action since prior notice and comment are not mandated by 5 U.S.C. 553. However, this action will have no adverse effect on small entities since it merely removes a rule that has ceased to have purpose.

List of Subjects in 49 CFR Part 1110

Railroads.

PART 1110—GENERAL REQUIREMENTS [REMOVED]

Part 1110 of Title 49, Code of Federal Regulations, is removed.

(49 U.S.C. 10321, 5 U.S.C. 553)

Decided: May 28, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham, Sterrett, Andre, and Simmons.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–15338 Filed 6–4–82; 8:45 am]

BILLING CODE 7035–01–M

Proposed Rules

Federal Register
Vol. 47, No. 109
Monday, June 7, 1982

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.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 214 and 248

Nonimmigrant Classes; Change of Nonimmigrant Classification; Proposed Revisions in Regulations Pertaining to Nonimmigrant Students and Schools Approved for Their Attendance

Correction

In FR Doc. 82–14620, appearing at page 23463, in the issue of Friday, May 28, 1982, make the following changes:

(1) On page 23465, middle column, under List of Subjects, *"18 CFR Part 248"* should be changed to read *"8 CFR PART 248"*.

(2) On page 23465, middle column, in § 214.2 paragraph (f), second line, "seminiaries" should be changed to read "seminaries".

(3) On page 23466, first column, § 214.2, eleventh line, "lauguage" should be changed to read "language".

(4) On page 23470, first column, in § 214.2, paragraph (m)(12)(iii), sixth line, "for" should be changed to read "from".

(5) On page 23470, third column, § 214.3(g)(1), fifth line, "120M" should be changed to read "I–20M".

(6) On page 23471, middle column, second line, "248, 248.1(d)" should be changed to read "248.1(c), 248.1(d)".

(7) On page 23472, middle column, § 214.4(a), twenty-sixth line, "petition of school" should be changed to read "petition for school".

(8) On page 23472, middle column, in § 248.1(b), seventh line, "that that", should be changed to read "than that".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 12337; Notice No. SC–82–1–CE]

Special Conditions; Beech 200, 300 and 1900 Series Airplanes

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Notice of Proposed Amendment to Special Conditions.

SUMMARY: This notice proposes to amend Special Conditions No. 23–47–CE–5 presently applicable to Beech 200 series airplanes, to permit them to include new Beech 300 and 1900 airplanes as well as future 300 and 1900 derivative airplanes. The amendment is necessary in view of changes to maximum weight and seating capacity which are allowed by Special Federal Aviation Regulations (SFAR) 41 and the applicant's decision to use 300 Series and 1900 Series designations for airplanes that are to be certificated under SFAR 41.

DATE: Comments must be received by July 8, 1982.

ADDRESSES: Comments on this proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of Regional Counsel, ACE–7, ATTN: Rules Docket Clerk, Docket No. 12337, Room 1558, Federal Office Building, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 12337. Comments may be inspected in the docket file between 7:30 a.m. and 4:00 p.m. on weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: William L. Olson, Aerospace Engineer, Regulations and Policy Office, Federal Aviation Administration, Room 1659B, Federal Office Building, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–6939.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in amendment of these special conditions by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received during or before the closing date for comments will be considered by the Administrator before taking action on these proposals. The proposals contained in this notice may be changed based on comments received. All comments submitted will be available both before and after the closing date in the Rules Docket for examination by interested persons.

Type Certification Basis

The certification basis for the Beech Aircraft Corporation 300 and 1900 Series airplanes is as follows: Special Federal Aviation Regulation (SFAR) 41A, effective April 14, 1980, for domestic configurations or SFAR 41B, effective December 8, 1980, for export configurations; Part 23 of the Federal Aviation Regulations (FAR), effective February 1, 1965 through Amendment 23–9, effective June 17, 1970; Amendment 23–11, effective August 11, 1971; Amendment 23–14, §§ 23.143(a), 23.145(d), 23.153, 23.161(c)(3), 23.173(a), 23.175, 23.427, 23.441 and 23.445, effective December 20, 1973; Amendment 23–15, §§ 23.951(c) and 23.997(d); Amendment 23–23, § 23.1545, effective December 1, 1978; [Amendment 23–27, § 23.1529, effective October 14, 1980]*; Special Conditions No. 23–47–CE–5 including Amendments Nos. 1 and 2; Part 25 of the FAR, § 25.929, effective February 1, 1965; Amendment 25–23, § 25.1419, effective May 8, 1970; Amendment 25–41 § 25.831(d), effective August 17, 1977; Part 36 of the FAR, effective December 1, 1969 through Amendment 36–10; SFAR 27, effective February 1, 1974 through Amendment 27–3; and any other changes to Special Conditions No. 23–47–CE–5 that may result from this proposal.

Note—The bracketed reference to § 23.1529 pertains to Instructions for Continued Airworthiness as required by § 21.50. This bracketed entry does not apply to Beech 1900 Series airplanes. This bracketed entry will not apply to Beech 300 Series airplanes if, prior to delivery of the first of these airplanes, the Administrator grants a pending General Aviation Manufacturers Association petition for exemption from § 21.50. When (as for Beech 1900 Series airplanes and, possibly, for Beech 300 Series airplanes) Instructions for Continued Airworthiness are not required, a Maintenance Manual is required by §23.1529 as established by Amendment 23–8.

Special Conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special Conditions, as appropriate, are now issued after public notice in accordance with §§ 21.16 and 21.101(b)(2) and become part of the type certification basis in accordance with § 21.17(a)(2).

Background

On October 3, 1979, Beech Aircraft Corporation, P.O. Box 85, Wichita, KS 67201 submitted an application to amend Type Certificate (TC) No. A24CE to add new 1900 Series airplanes in the normal category. On August 22, 1980, Beech submitted another application to amend TC No. A24CE to add new 300 Series airplanes in the normal category. TC No. A24CE, which is applicable to Beech 200 Series airplanes was issued December 14, 1973. The Beech Series 200 are pressurized low wing twin-turbopropeller airplanes, which in the normal category, are limited to 12,500 pounds maximum gross weight and to seats for no more than 15 occupants. Beech Models 300, 300C, 300CT, 300T, 1900, and 1900C are derivative airplanes of the 200 Series. The above models have increased weight limitations and/or increased seating capacity limitations in accordance with SFAR 41. Because the original Beech Model 200 airplane design included novel and unusual features for an airplane type certificated under Part 23 of the FARs and the applicable airworthiness requirements did not contain adequate or appropriate safety standards at that time, Special Conditions No. 23-47-CE-5 were developed for the Beech 200 airplane to ensure a level of safety equivalent to that provided by Part 23 of the FAR. Special Conditions No. 23-47-CE-5, Docket No. 12337, issued October 30, 1972, as amended December 18, 1973 and January 12, 1979, for type certification of Beech 200 Series airplanes are applicable to Beech 300 and 1900 airplanes for the same novel or unusual design features for which these special conditions were developed. Accordingly, this amendment proposes to extend the applicability status of Special Conditions No. 23-47-CE-5 to Beech 300 and 1900 Series airplanes, as appropriate to Type Certificate A24CE without revising the special condition documents. This does not preclude the application of later amendments under the provisions of § 21.101(b)(1) or the issuance of special conditions that may be necessary under the provisions of § 21.101(b)(2) for future Beech 300 and 1900 Series airplanes.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, and Safety.

The Proposed Special Condition Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA proposes to amend Special Conditions No. 23-47-CE-5, Docket No. 12337, issued October 30, 1972, as amended December 18, 1973, and January 12, 1979, for the type certification of the Beech 200 Series airplanes under Type Certificate No. A24CE by amending its applicability to read as follows:

"Special Conditions for the type certification of the Beech 200, 300, and 1900 Series airplanes under Type Certificate No. A24CE."

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1421, and 1423); Section 6(c), Department of Transportation Act (49 U.S.C. 1655(c); 14 CFR 11.28 and 11.29(b)))

Note.—This proposal will allow application of current technology to an existing type certificated airplane thereby increasing speed, gross weight or seating capacity and providing an improved airplane for use by the public. For this reason: The FAA has determined that it (1) involves a regulation which is not a major rule under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that the proposed amendment will not have a significant economic impact on a substantial number of small entities. If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket.

Issued in Kansas City, MO on May 21, 1982.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 82-15082 Filed 6-4-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 82-AAL-4]

Proposed Establishment of Area Navigation Route, J814R

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Area Navigation Route (RNAV) J814R from North Pacific Route (NOPAC) R20 to Fairbanks, AK. This direct routing would save fuel by bypassing the heavily used jet routes in the Bethel, AK, area, thereby avoiding en route air traffic control delays.

DATE: Comments must be received on or before July 6, 1982.

ADDRESS: Send comments on the proposal in triplicate to: Director, FAA Alaskan Region, Attention: Chief, Air Traffic Division, Docket No. 82-AAL-4, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

This official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis Still, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 82-AAL-4." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed

in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 75.400 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to establish RNAV Route J814R to provide direct routing from Northern Pacific Route (NOPAC) R20 to Fairbanks, AK. The direct routing would save fuel by bypassing heavily used jet routes in the Bethel, AK, area, aid flight planning, and reduce controller workload. Section 75.400 of Part 75 of the Federal Aviation Regulations was republished in Advisory Circular AC 70–3 dated January 29, 1982

ICAO Considerations

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

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

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

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

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

List of Subjects in 14 CFR Part 75

Area high routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 75.400 of Part 75 of the Federal Aviation Regulation (14 CFR Part 75) as follows:

Waypoint Name; Location, and Reference Facility

J814R PANTT, AK, to Fairbanks, AK
PANTT—60°36'40" N., 168°00'00"W—Bethel, AK
FELAW—62°03'45" N., 162°58'47"W—Bethel, AK
JENSU—63°35'43" N., 156°01'27"W—McGrath, AK
Fairbanks—64°48'01.8" N., 148°00'34"W—Fairbank, AK

(Secs. 307(a), 313(a) and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9565); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on May 26, 1982.

Harold W. Becker,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 82-15081 Filed 6-4-82; 8:45 am]
BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 399

[PSDR-74; Docket: 40584]

Statement of General Policy; Correction

June 1, 1982.

AGENCY: Civil Aeronautics Board.

ACTION: Proposed rulemaking; Correction.

SUMMARY: The CAB asked for comment on three possible ways of changing the domestic passenger fare flexibility rules (47 FR 16792, April 20, 1982). In that notice, Member Dalley and Member Schaffer issued a concurring statement, but two lines explaining their opposition to a return to the former price regulation were inadvertently omitted. This notice reprints their statement.

FOR FURTHER INFORMATION CONTACT: Julien R. Schrenk, Chief, Domestic Fares and Rates Division, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202–673–5298.

SUPPLEMENTARY INFORMATION:

List of Subjects in 14 CFR Part 399

Administrative practice and procedure, Advertising, Air carriers, Antitrust, Archives and records, Consumer protection, Freight fowarders, Grant programs-transportation, Hawaii, Motor Carriers, Puerto Rico, Railroads, Reporting requirements, Travel agents, Virgin Islands.

Erratum

The concurring statement of Member Dalley and Member Schaffer on p. 6 of PSDR–74 is corrected to read:

Members Dalley and Schaffer, concurring:

We believe our fare flexibility policy has provided substantial benefit to the airline industry and traveling public. We also full support the move here to consider options for changing the price ceiling, as we near the end of domestic fare regulation.

We also have given some thought to inviting industry and public comment on the other half of the flexibility equation—the price floor. We have no thought of advocating a return to our former price regulation. What does motivate us, however, are two objectives that we believe are quite consistent with our deregulatory posture.

1. The Congress has placed before the Board not only the mandate for deregulating carrier pricing but also an oversight responsibility for that course. With present concerns in the industry directed at both prices that are possibly too low as well as too high, we see some need for closer watch of upward *and* downward movements in the remaining crucial nine months of oversight.

2. The Board has already established some policies at the lower end of the pricing scale in regard to predatory or anticompetitive discount pricing (see § 399.32 of the Board's Policy Statements). Although we have no evidence of predatory pricing practices, the Board is aware of some carrier concerns in the subject area. While we are unsure of the most appropriate forum for listening to full carrier comments, we feel the Board should take the initiative to create a valid forum for full exploration of all of the current pricing realities.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-15368 Filed 6-4-82; 8:45 am]

BILLING CODE 6320-01-M

SELECTIVE SERVICE SYSTEM

32 CFR Parts 1656 and 1660

Selective Service Regulations; Alternative Service

AGENCY: Selective Service System.

ACTION: Proposed rule.

SUMMARY: Procedures to implement the program of alternative service under section 6(j) of the Military Selective Service Act (50 U.S.C. 456(j)) are revised to assure greater fairness and efficiency in its administration.

DATES: Comment Date: Written comments received on or before July 7, 1982 will be considered. Effective date: Subject to the comments received the amendments are proposed to become effective upon publication in the **Federal Register** of a final rule not earlier than July 7, 1982.

ADDRESS: Written comment to: Selective Service System, Attn.: General Counsel, Washington, D.C. 20435.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, Washington, D.C. 20435 Phone: (202) 724-0895.

SUPPLEMENTARY INFORMATION: These amendments to Selective Service Regulations are published pursuant to section 13(b) of the Military Selective Service Act (50 U.S.C. App. 463(b)). These Regulations implement section 6(j) of the Military Selective Service Act (50 U.S.C. App. 456(j)).

Interested persons are invited to submit written comments on the proposed regulations. All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the office of the General Counsel from 9:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

As required by Executive Order 12291, I have determined that this proposed rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), I have determined that these regulations do not have significant economic impact on a substantial number of small entities.

List of Subjects in 32 CFR Part 1656

Armed Forces; Draft, Conscientious objection.

Dated: June 1, 1982.

Thomas K. Turnage,

Director.

PART 1660—[REMOVED]

32 CFR Part 1660, Alternative Service, is removed.

32 CFR Part 1656 is added to read as follows:

PART 1656—ALTERNATIVE SERVICE

Sec.

Authority: 50 U.S.C. App. 456(j).

§ 1656.1 Definitions.

(a) The provisions of this part govern the Alternative Service Program for conscientious objectors.

(b) The definitions of this paragraph shall apply in the interpretation of the provisions of this part:

(1) *Alternative Service.* Civilian work performed in lieu of military service by a registrant who has been classified in Class 1-O.

(2) *Alternative Service Worker (ASW).* A registrant assigned to perform alternative service.

(3) *Civilian Work.* The type of employment approved by the Director of Selective Service under the provisions of section 6(j) of the Military Selective Service Act which contributes to the maintenance of the national health, safety or interest.

(4) *Creditable Time.* Time that is counted toward an ASW's fulfillment of his alternative service obligation.

(5) *Designated Area Office for Alternative Service (DAO).* An Area Office designated by the Director of Selective Service to administer the Alternative Service Program in a specified geographical area.

(6) *Employer.* Any person, institution, firm, agency or corporation engaged in lawful activity in the United States, its territories or possessions or the Commonwealth of Puerto Rico who has been approved by Selective Service to employ ASWs.

(7) *Guaranteed Placement.* The assignment of ASWs to employers who have agreed to employ all ASWs assigned to them up to an agreed number.

(8) *Job Bank.* A current inventory of job openings.

(9) *Job Matching.* A comparison of the ASW's work experience, education, training, special skills, and work preferences with the positions in the job bank.

(10) *Job Placement.* Assignment of the ASW to alternative service work.

(11) *MEPS.* A military installation to which registrants are ordered to report for examination and determination of their acceptability for service.

(12) *Orientation.* Instructions given by the DAO to the ASW regarding his rights and duties necessary to fulfill

satisfactorily his Alternative Service obligations.

§ 1656.2 Responsibility for administration.

(a) The Director of Selective Service in the administration of the Alternative Service Program shall establish and implement appropriate procedures to:

(1) Assure that the program complies with the Selective Service Law;

(2) Find civilian work for ASWs who are required to perform alternative service;

(3) Place ASWs in approved jobs to perform alternative service;

(4) Monitor the work performance of ASWs placed in the program;

(5) Order reassignment and authorize job separation as necessary;

(6) Issue certificates of completion;

(7) Specify the location of Designated Area Offices for Alternative Service;

(8) Specify the geographical area in which the Designated Area Office for Alternative Service shall have jurisdiction over ASWs;

(9) Refer to Department of Justice any ASW who fails to satisfactorily perform his alternative service work assignment;

(10) Perform all other functions necessary for the administration of the Alternative Service Program; and

(11) Delegate any of his authority to such office, agent or person as he may designate and provide as appropriate for the subdelegation of such authority.

(b) The Region Manager shall be responsible for the administration and operation of the Alternative Service Program in his Region as prescribed by the Director of Selective Service.

(c) The State Director shall perform duties for the administration and operation of the Alternative Service Program in his State as prescribed by the Director in accord with § 1605.12(b).

(d) The manager of the Designated Area Office for Alternative Service shall perform duties for the administration and operation of the Alternative Service Program as prescribed by the Director of Selective Service.

(1) A Designated Area Office for Alternative Service shall be an office of record that is responsible for the administration and operation of the Alternative Service Program in its assigned geographical area of jurisdiction.

(2) Subject to applicable law and within the limits of available funds, the staff of each Designated Area Office for Alternative Service shall consist of as many compensated employees as shall be authorized by the Director of Selective Service.

(e) The manager of an area office not designated for Alternative Service shall perform duties for Alternative Service as prescribed by the Director.

§ 1656.3 Area office jurisdictions and responsibilities.

(a) The area office having in its jurisdiction the local board to which the Class 1–0 registrant is assigned will retain responsibility for the processing of the registrant until he has been:

(1) Determined morally, physically and mentally acceptable for service;

(2) Ordered by the local board to perform alternative service; and

(3) Ordered to report for alternative service orientation and classified 1–W.

(b) After the above actions are accomplished, the ASW will be transferred to the jurisdiction of the DAO assigned to administer the Alternative Service Program where the registrant is assigned to perform alternative service. The DAO shall:

(1) Evaluate and approve jobs and employers for Alternative Service;

(2) Issue such orders as are required to schedule the ASW for job interviews;

(3) Order the ASW to report for alternative service work;

(4) Monitor the ASW's job performance;

(5) Issue certificate of satisfactory completion of his alternative service obligation; and

(6) Return the ASW to the jurisdiction of the area office from which he was transferred.

§ 1656.4 Employer responsibilities.

Employers participating in the Alternative Service Program are responsible for:

(a) Entering into and complying with the employment agreement with Selective Service; and

(b) Providing a clear statement of duties, responsibilities, compensation and employee benefits to the ASW.

§ 1656.5 Employment development.

(a) The Director of Selective Service will determine which employment programs or activities contribute to the maintenance of the national health, safety or interest.

(b) The Director may establish priorities in the assignment of ASWs among employers and types of civilian work.

(c) Selective Service will contact organizations whose activities or programs may be appropriate for alternative service employment and will solicit their participation.

(d) An organization desiring to employ ASWs to perform Alternative Service is encouraged to submit a request in writing to Selective Service for approval.

(e) Selective Service shall negotiate employment agreements with eligible employers who will provide prospective job listings to Selective Service.

(f) Selective Service may also negotiate agreements with eligible employers wherein the employer will agree to hire a specified number of ASWs for guaranteed placement positions.

(g) An ASW voluntarily may seek his own alternative service work by identifying a job with a possible employer he believes would be eligible for Alternative Service and by having the employer advise the DAO in writing that he desires to employ the ASW. The acceptability and priority of the job so identified will be evaluated as all others considered for ASW assignment.

§ 1656.6 Alternative service worker's responsibilities.

(a) A registrant classified in Class 1–0 is required to comply with all orders issued under this part.

(b) A registrant classified in Class 1–0 is liable to perform 24 months of creditable time towards completion of Alternative Service.

§ 1656.7 Order to perform alternative service.

The local board of jurisdiction as prescribed in § 1633.11 of this chapter shall order any registrant who has been classified in Class 1–0, examined and found qualified, to perform alternative service at a time and place to be specified by the Director of Selective Service.

§ 1656.8 Job placement.

(a) Selective Service will maintain a job bank for the exclusive purpose of placing ASWs in alternative service jobs.

(b) Information supplied by the ASW about his skills and training may be considered for job interview referrals and potential job matching.

(c) When an ASW is hired, the DAO will issue a Job Placement Order, specifying the employer, the time, date and place to report for his alternative service work.

(d) If the ASW is not hired through the normal interview referral process within 30 days of his reporting for alternative service orientation, he may be ordered into guaranteed placement.

(e) An ASW may be ordered to guaranteed placement at any time without regard to other available employment in the job bank.

§ 1656.9 Orientation.

ASWs will be given an orientation as soon as practicable after the Order to Perform Alternative Service is issued.

§ 1656.10 Volunteer for alternative service.

No registrant shall be permitted to volunteer for Alternative Service.

§ 1656.11 Computation of creditable time.

(a) *General.* The basic unit of creditable time is the calendar month. A minimum of 35 hours a week, or an employer's full-time work week, whichever is greater, shall be used to establish the ASW's creditable time.

(b) *Award of Creditable Time.* Creditable time will be awarded for:

(1) Satisfactory work performed in an approved job after Order to Perform Alternative Service is issued;

(2) Attendance at Alternative Service Orientation;

(3) Approved travel;

(4) Leaves of absences for up to five days granted by the employer to the registrant to attend to a personal emergency; and

(5) Up to a maximum of 30 days time lost during any single unemployment period which is not the fault of the ASW.

(c) *Non-Creditable Time.* Creditable time shall not be awarded for:

(1) Time during which an ASW fails or neglects to perform satisfactorily his assigned Alternative Service;

(2) Time during which the DAO determines that work of the ASW is unsatisfactory due to his failure to comply with reasonable requirements of his employer;

(3) A period of time, not to exceed 30 days after the date the ASW reports for orientation, which may be required by Selective Service for administrative processing and job placement;

(4) Time during which the ASW is not employed in an approved job because of his own fault;

(5) Time worked prior to the issuance of his Order to Perform Alternative Service; or

(6) Time during which the ASW is in a postponement period.

§ 1656.12 Postponement—grounds and procedures.

(a) *General.* The area office of jurisdiction may grant for the reasons set forth in paragraph (d) of this section, for a specific period of time, a postponement of the date an ASW is required to report in compliance with an alternative service order.

(b) *Requests for Postponement.* A request for postponement of a reporting date specified in an order for the registrant to perform one of the reporting requirements listed below must be made in writing and filed prior to the reporting date with the area office which issued the order. Such requests must include a statement of the nature of the emergency and the expected period of its duration.

(1) Report to MEPS for examination;

(2) Report to a civilian authority for a contract examination;

(3) Report for alternative service orientation and job placement;

(4) Report for a job interview;

(5) Report to a job to commence employment.

(c) *Effect of Postponement.* A postponement of the reporting date of an alternative service order shall not render the order invalid, but shall only serve to postpone the date on which the registrant is to report. The registrant shall report at the expiration or termination of the postponement.

(d) *Grounds for Postponement.* A registrant may, upon presentation of the appropriate facts in his request, be granted a postponement based on one or more of the following conditions:

(1) The death of a member of the registrant's immediate family;

(2) An extreme emergency involving a member of the registrant's immediate family;

(3) A serious illness or injury of the registrant; or

(4) An emergency condition directly affecting the registrant which is beyond the registrant's control.

(e) *Basis for Granting Request.* The registrant's eligibility for a postponement shall be determined by the area office of jurisdiction based upon official documents and other written information contained in his file. Oral statements made by the registrant or made by another person in support of the registrant shall be reduced to writing and placed in the registrant's file.

(f) *Duration of Postponement.* The period of postponement shall not exceed 60 days from the reporting date on the order. When necessary, the Director of Selective Service may grant one further postponement, but the total postponement period shall not exceed 90 days from the reporting date on the most recently issued order.

(g) *Termination of Postponement.*

(1) A postponement authorized by this subsection may be terminated by the Director of Selective Service for cause upon no less than ten days written notice to the registrant.

(2) Any postponement shall be terminated when the basis for the postponement has ceased to exist.

(3) It is the responsibility of the ASW to notify the DAO in writing promptly whenever the basis for which his postponement was granted ceases to exist.

(h) *Religious Holidays.* The Director of Selective Service may authorize a delay of reporting under any of the orders specified in § 1656.12(b) for a registrant whose date to report conflicts with a religious holiday historically observed by a recognized church, religious sect or religious organization of which he is a member. Any registrant so delayed shall report on the next business day following the religious holiday.

§ 1656.13 Suspension of order to perform alternative service because of hardship to dependents.

(a) Whenever, after an ASW has begun work, a condition develops that results in hardship to his dependent as contemplated by § 1630.30(a) of this chapter which cannot be alleviated by his reassignment under § 1656.15(a) of this part and the local board that ordered the ASW to report for Alternative Service determines he would be entitled to classification in Class 3–A if his Order to Report for Induction had not been revoked, further compliance with his work order shall be suspended, for a period not to exceed 365 days, as the local board specifies. Extensions of not more than 365 days each of this period may be granted by the local board from time to time until the ASW's liability for training and service under the Military Selective Service Act terminates.

(b) An ASW may file a request for the suspension of his Order to Perform Alternative Service with the DAO. This request must be in writing, state as clearly as possible the basis for the request, and be signed and dated by the ASW. The ASW must continue working in his assigned job until his request for the suspension of his Order to Perform Alternative Service has been approved.

(c) Local boards shall follow the procedures in Part 1648 of this chapter to the extent they are applicable in considering a request for the suspension of an Order to Perform Alternative Service.

§ 1656.14 Job performance standards and sanctions.

(a) *Standard of Performance.* An ASW is responsible to adhere to the standards of conduct, attitude, appearance and performance demanded by the employer of his other employees in similar jobs. If there are no other employees, the standards shall conform to those that are reasonable and customary in a similar job.

(b) *Failure to Perform.* An ASW will be deemed to have failed to perform satisfactorily under the following conditions whenever:

(1) He refuses to comply with an order of the Director of Selective Service;

(2) He refuses employment by an approved employer who agrees to hire him;

(3) His employer terminates his employment because of conduct, attitude, appearance or performance which violates reasonable employer's standards; or

(4) He quits or leaves his job without reasonable justification.

(c) *Sanctions for Failure to Perform.* (1) The sanctions for failure to perform Alternative Service include but are not limited to job reassignment, loss of creditable time and referral to the Department of Justice for failure to comply with the Military Selective Service Act.

(2) Prior to invoking any of the sanctions discussed herein, the DAO will conduct a review as prescribed in § 1656.18 of all allegations that an ASW has failed to perform pursuant to any of the provisions of § 1656.14(b).

§ 1656.15 Reassignment.

(a) *Grounds for Reassignment.* Each of the following conditions may be the basis for job reassignments.

(1) An ASW experiences a change in his mental or physical condition which renders him unfit or unable to continue performing satisfactorily in his assigned job;

(2) An ASW's dependents incur a hardship which does not warrant a suspension of the Order to Perform Alternative Service under § 1656.13;

(3) The employer ceases to operate an approved program or activity;

(4) The employer fails to comply with the terms and conditions of the employment agreement;

(5) Continual and severe differences between the employer and ASW remain unresolved; or

(6) Director determines that reassignment is justified.

(b) *Who May Request Reassignment.* Any ASW may request a reassignment of his job. An employer may request job reassignment of an ASW who is in his employ.

(c) *Method for Obtaining a Reassignment.* All requests for reassignment must be in writing with the reasons specified. The request may be filed with the DAO of jurisdiction at any time during an ASW's alternative service employment. An ASW must continue in his assigned job, if available, until the request for reassignment is approved.

(d) It is the responsibility of the ASW to notify the DAO promptly in writing of any grounds which could be a reason for his reassignment.

§ 1656.16 Early release—grounds and procedures.

(a) *General Rule of Service Completion.* An ASW will not be released from alternative service prior to completion of 24 months of creditable service.

(b) *Reasons For Early Release.* The Director of Selective Service may authorize the early release of an ASW whenever the DAO determines that the ASW:

(1) Has failed to meet the performance standards of available alternative service employment due to a physical, mental or moral disability;

(2) No longer meets the physical, mental or moral standards that are required for retention in the Armed Forces based on a physical or mental examination at a MEPS or other designated location;

(3) Is planning to return to school and has been accepted by such school and scheduled to enter within 30 days prior to the completion of his alternative service obligation;

(4) Has been accepted for non-alternative service employment and that such employment will not be available if he remains in alternative service the full 24 months. Such early release shall not occur more than 30 days before the scheduled completion of his alternative service obligation; or

(5) Has enlisted in or volunteers for induction into the Armed Forces of the United States.

§ 1656.17 Employment agreements.

(a) *Nature of Agreement.* Before any ASW is placed with an employer, Selective Service and the employer shall enter into an employment agreement that specifies their respective duties and responsibilities under the Alternative Service Program.

(b) *Restrictions on Selective Service.* The Selective Service System shall not act in any controversy involving ASW's wages, hours and working conditions except to the extent any of these subjects are specifically covered in the employment agreement between Selective Service and the employer.

(c) *Investigating and Negotiating.* Whenever there is evidence that an employer is probably violating the employment agreement, Selective Service will investigate the matter. If the investigation produces substantial evidence of violations of the employment agreement, Selective Service may negotiate a resolution of the matter with the employer within the terms of the employment agreement.

(d) *Termination of Employment Agreement.* If a resolution of a dispute cannot be obtained by negotiation within a reasonable time, the Selective Service System shall terminate the employment agreement and shall reassign the ASW.

§ 1656.18 Administrative complaint process.

When the DAO becomes aware of a problem that involves an ASW's work assignment other than those covered in § 1656.17(b) or receives a complaint from an employer or an ASW, the DAO will take steps to resolve the problem. The DAO is authorized to:

(a) Interview all parties concerned to obtain information relevant to the problems or complaints; and

(b) Place a written summary of each interview in the ASW's file; and

(c) Inform the persons interviewed that they may prepare and submit to Selective Service within ten days after the interview their personal written statements concerning the problem. All such statements will be included in the ASW's file.

§ 1656.19 Administrative review.

(a) *General.* The Director of Selective Service shall establish for the Alternative Service Program a review system to resolve problems, complaints and grievances other than those identified in 1656.17(b) which occur during the period an ASW is required to perform alternative service. Problems that cannot be resolved between the ASW and the employer may be presented to the DAO by either the ASW or the employer. The DAO shall review the problem and takes steps to resolve it. The ASW may file a request for review of any reviewable decision.

(b) *The Region Office.* The Region Headquarters of jurisdiction shall review and act on any cases referred to it as prescribed by the Director of Selective Service. Any decision of the Region Headquarters may be reviewed by the Director of Selective Service.

(c) *Time To File Request.* An ASW may file with the DAO a written request for review of any reviewable decision within 15 days of the date of notice of the decision.

(d) *Non-Reviewable Decisions.* The following decisions by the DAO are final and not subject to appeal by the ASW:

(1) Job assignments;

(2) Job reassignments;

(3) Postponements.

§ 1656.20 Completion of alternative service.

Upon completion of 24 months of creditable time served in alternative service or when released early in accordance with § 1656.16(b) (3) or (4):

(a) The ASW shall be released from the Alternative Service Program; and

(b) The Director shall issue to the ASW a Certificate of Completion and the registrant shall be reclassified 4–W in accordance with § 1630.47 of this chapter.

§ 1656.21 Expenses for emergency medical care.

(a) Claims for payment of actual and reasonable expenses for emergency medical care, including hospitalization, of ASWs who suffer illness or injury, and the transportation and burial of the remains of ASWs who suffer death as a direct result of such illness or injury will be paid in accordance with the provisions of this section.

(b) The term "emergency medical care, including hospitalization", as used in this section, means such medical care or hospitalization that normally must be rendered promptly after occurrence of the illness or injury necessitating such treatment. Discharge by a physician or facility subsequent to such medical care or hospitalization shall terminate the period of emergency.

(c) Claims will be considered only for expenses that are incurred as a result of illness or injury that occurs while the ASW is engaged in travel or performing work in Alternative Service under orders issued by or under the authority of the Director of Selective Service. Claims will be considered only for expenses for which only the ASW is liable and for which there is no legal liability for his reimbursement except in accord with the provisions of this section.

(d) No claim shall be paid unless it is presented to the Director of Selective Service within one year after the date on which the expenses were incurred.

(e) No claim shall be allowed in any case in which the Director of Selective Service determines that the injury, illness, or death occurred because of the negligence or misconduct of the ASW.

(f) Cost of emergency medical care including hospitalization greater than that which would be paid by Medicare for the same treatment, including hospitalization, will *prima facie* be considered unreasonable. Payment for burial expenses shall not exceed the maximum that the Administration of Veteran's Affairs may pay under the provisions of 38 U.S.C. 902(a) in any one case.

(g) Payment of claims when allowed shall be made only directly to the ASW or his estate unless written authorization of the ASW or the personal representative of his estate has been received to pay another person.

[FR Doc. 82–15362 Filed 6–4–82; 8:45 am]
BILLING CODE 8015–01–M

VETERANS ADMINISTRATION

38 CFR Part 21

Definition of Program of Education

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: This proposed regulation updates the definition of "a program of education" and makes other minor, technical changes. The update makes clear that "a program of education" may consist of courses required by the Small Business Administration Administrator as a condition to obtaining financial assistance under 15 U.S.C. 636. Currently, the regulation makes an incorrect reference to a section of the United States Code. This proposal will bring the regulation into agreement with the law.

DATES: Comments must be received on or before July 6, 1982. The Veterans Administration proposes to make this regulation effective on the date of final approval.

ADDRESSES: Send written comments to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 am and 4:30 pm, Monday through Friday (except holidays) until July 16, 1982. Anyone visiting the Veterans Administration Central Office in Washington, D.C. for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Visitors to VA field stations will be informed that the records are available for inspection only in Central Office and will be furnished the address and room number.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW, Washington, D.C. (202–389–2092).

SUPPLEMENTARY INFORMATION: Section 21.4230 is amended to provide that a program of education may consist of courses required by the Administrator of the Small Business Administration as a condition to obtaining financial assistance under 15 U.S.C. 636. Section 21.4230 is also written to make it clearer.

The Veterans Administration has determined that this proposed regulation does not contain a major rule as that term is defined by Executive Order 12291, Federal Regulation. The annual effect on the economy will be less than $100 million. The proposal will not result in any major increases in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs hereby certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This regulation is exempt under 5 U.S.C. 605(b) from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. This certification is based on the fact that this regulation will affect only individual benefit recipients. They will have no significant direct impact on small entities (i.e. small businesses, small private and nonprofit organizations, and small governmental jurisdictions.)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grants programs—education, Loan programs—education, Reporting requirements, Schools, Veterans, Veterans Administration, Vocational education, Vocational rehabilitation.

The Catalog of Federal Domestic Assistance number for the program affected by the proposed amended regulation is 64.111.

Approved: May 20, 1982.

Robert P. Nimmo,

Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

The Veterans Administration proposes to amend 38 CFR Part 21 as follows:

Section 21.4230 is revised to read as follows:

§ 21.4230 Requirements.

(a) *Definition.* A program of education—(1) Is a combination of subjects or unit courses pursued at a school which is generally accepted as

necessary to meet requirements for a predetermined educational, professional or vocational objective;

(2) Under chapter 34 may consist of subjects or courses which fulfill requirements for more than one objective if all objectives pursued are generally recognized as being related to a single career field; or

(3) Is any unit course or subject or combination of courses or subjects, pursued by an eligible veteran at an educational institution, required by the Administrator of the Small Business Administration as a condition to obtaining financial assistance under the provisions of 15 U.S.C. 636. (38 U.S.C. 1652(b), 1670, 1691(a))

(b) *Educational.* An educational objective is one that leads to the awarding of a diploma, degree or certificate which reflects educational attainment.

(c) *Professional or vocational.* A professional or vocational objective is one that leads to an occupation. It may include educational objectives essential to prepare for the chosen occupation. When a program consists of a series of courses not leading to an educational objective, such courses must be directed toward attainment of a designated professional or vocational objective.

(d) *Selection—Chapter 34.* The Veterans Administration will approve a program of education under Chapter 34 selected by an eligible veteran or serviceperson if it meets the requirements of paragraph (a) of this section; has an objective as described in paragraph (b) or (c) of this section; the courses or subjects in the program are approved for Veterans Administration training; and the veteran or serviceperson is not already qualified for the objective of the program, except: (38 U.S.C. 1671)

(1) A course or courses at the secondary school level for persons who have previously received a secondary school diploma or an equivalency certificate and deficiency courses needed or required to qualify for an educational or training program may be authorized under the provisions of § 21.4235, and

(2) An eligible veteran may receive up to 6 months educational assistance, or the equivalent in part-time assistance, for training in a program of education in which the veteran is already qualified, provided that the program pursued is refresher training to permit the veteran to update knowledge and skills and to be instructed in the technological advances which have occurred in the veteran's field of employment during and since the veteran's period of service. The program of education must be a course to be taken after the date of the veteran's discharge or release from active duty. It may be to update skills learned either during or prior to service but not for skills first acquired after discharge from service. Educational assistance allowance paid under this paragraph (d)(2) will be charged against the veteran's basic entitlement.

(e) *Provisional—Chapter 35—child.* When the Veterans Administration approves an application for educational assistance under chapter 35, the Veterans Administration will inform the eligible child and, if a minor, the parent or guardian also of the need to develop a program of education consistent with paragraphs (a) and (b) or (c) of this section. An educational plan may be submitted and approved without counseling if it meets the requirements of paragraphs (a) and (b) or (c) of this section. (38 U.S.C. 1713, 1720)

(f) *Selection—Chapter 35—spouse or surviving spouse.* The Veterans Administration will approve a program of educational assistance selected by an eligible spouse or surviving spouse if—

(1) It meets the requirements of paragraphs (a) and (b) or (c) of this section, and

(2) The individual is not already qualified for the objective of the program of education. (38 U.S.C. 1721)

[FR Doc. 82-15363 Filed 6-4-82; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6E1756/6E1800/8E2103/9E/2137/P219; PH-FRL 2130-1]

Methyl Parathion; Proposed Tolerances

Correction

In FR Doc. 82-13931, appearing at page 22981, in the issue of Wednesday, May 26, 1982, make the following change:

On page 22982, in the third column, paragraph (b) of § 180.121, the second line, change "diethyl-" to "dimethyl-".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 7

[CGD 81-058]

Boundary Lines

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Seagoing Barge Act has been revised by defining a seagoing barge as one that proceeds outside the Boundary Lines. The Coast Guard proposes to revise the regulations delineating Boundary Lines by establishing lines that are applicable to the Seagoing Barge Act. The proposed revision also (1) more clearly defines the existing Boundary Lines, (2) brings the Boundary Lines more in line with their application to marine safety matters based upon a "perils of the sea" criteria and (3) consolidates the Boundary Lines applicable to different marine safety statutes where feasible.

DATE: Comments should be received on or before September 7, 1982.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/44), U.S. Coast Guard, Washington, D.C. 20593. Comments may be delivered to and will be available for inspection or copying between the hours of 7:00 a.m. and 5:00 p.m., Monday through Thursday, at the Marine Safety Council (G-CMC/44), Room 4402, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Patrick A. Turlo, (G-MVI-1/24), Room 2415, U.S. Coast Guard Headquarters, Washington, D.C., (202) 426-1464.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Each comment should include the name and address of the person submitting the comment, reference the docket number (CGD 81-058), identify the specific section of the proposal to which each comment applies, and include sufficient detail to indicate the basis on which each comment is made. All comments received before expiration of the comment period will be considered before final action is taken on this proposal. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. These proposed rules may be changed in light of comments received. No public hearing is planned, but one may be held if written requests are received and it is determined that the opportunity to make oral presentation will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this proposal are: Lieutenant Commander Patrick A. Turlo, Project

Manager, Office of Merchant Marine Safety, and Lieutenant Michael Tagg, Project Attorney, Office of Chief Counsel.

Discussion

As amended, the Act of February 19, 1895 (33 U.S.C. 151, The Boundary Line Statute) authorizes the Secretary of Transportation to designate and define the lines dividing the high seas from rivers, harbors and inland waters. These lines (33 CFR Part 82) were initially utilized to determine application of international and inland navigational rules of the road. Over a long period of years, six statutes were enacted that still employed the "Lines of Demarcation" to establish applicability. Regulations published in the July 11, 1977 issue of **Federal Register** (1) established "COLREGS Demarcation Lines" for navigational purposes and (2) republished the former "Lines of Demarcation" in 33 CFR Part 82 as "Boundary Lines." The Boundary Lines were transferred to 46 CFR Part 7 and continue to establish the applicability of 6 marine safety statutes. These statutes deal with vessel inspection, equipment, and manning standards as opposed to navigational rules, and are briefly described as follows:

(1) The Vessel Bridge-to-Bridge Radiotelephone Act (33 U.S.C. 1201 et seq.) requires the carriage of radiotelephones on board certain vessels inside the Boundary Lines. (The requirement is further conditioned upon the vessels being upon the navigable waters of the United States.)

(2) The Officers Competency Certificates Convention Geneva, 1936, (54 Stat. 1683) is in force and the United States is party thereto. Article 1 extends the Convention to all vessels registered in a nation party to the Convention and engaged in maritime navigation. The domestic legislation on the topic, 46 U.S.C. 224a, limits the application of the Convention, for the United States, to vessels navigating on the high seas pursuant to the understanding filed by the United States at the time of ratification ("That the United States Government understands and construes the words 'maritime navigation' appearing in this convention to mean navigation on the high seas only,") and then defines the high seas with reference to the Boundary Lines.

(3) The Coastwise Loadline Act (46 U.S.C. 88) applies to merchant vessels 150 gross tons and over engaged in coastwise voyages by sea, passing outside the Boundary Lines.

(4) 46 U.S.C. 367, relating to seagoing vessels of 300 gross tons and over propelled by internal combustion engines, defines seagoing with reference to the Boundary Lines.

(5) 46 U.S.C. 404 sets forth the requirements for the "inspection and manning of small vessels." Exemptions are granted in the statute to certain vessels under 150 gross tons that operate inside the Boundary Lines within the waters of southeastern Alaska and the State of Washington.

(6) The final statute, 33 U.S.C. 152, applies to the length of towing hawsers between towing vessels and barges when operating inside the Boundary Lines.

On August 18, 1980, Pub. L. 96–324 was signed into law. In revising 33 U.S.C. 151, the law more clearly defines the authority of the Coast Guard to establish demarcation lines not only for navigational rules but also for marine safety statutes which refer to 33 U.S.C. 151 as well. The lines for the marine safety statutes may not be located more than twelve miles seaward of the base line from which the territorial sea is measured and the lines may differ in position for the purposes of different statutes.

The Act also amended the Seagoing Barge Act, 46 U.S.C. 395, by defining a seagoing barge as one that "proceeds outside the line dividing the inland waters from the high seas, as defined in Section 2 (of the Act) (33 U.S.C. 151)."

Input was solicited in 1979 and 1980 from Coast Guard Marine Inspection and Marine Safety Offices regarding positioning for the proposed lines for the Seagoing Barge Act and the other six marine safety statutes in general. Requests for comments from the State and Justice Departments were also made as required by the President's signing statement accompanying Pub. L. 96–324. The proposed lines are revised, repositioned or, in many cases, not changed at all based on the input/recommendations received.

The establishment and placement of the lines in the proposed regulations relate solely to safety and do not concern themselves with the issue of State or Federal sovereignty or jurisdiction in the areas involved.

Under the GENERAL heading of the proposed 46 CFR Part 7, the statutues that employ the Boundary Lines for applicability are listed in § 7.1. The "General rule for establishing boundary lines," 46 CFR 7.3, is revised to eliminate the vague wording which presently exists in the regulations.

Proposed § 7.5 lists exceptions to the Boundary Lines:

(a) Lines for the Vessel Bridge-to-Bridge Radiotelephone Act are set at three miles, the extent of the navigable waters of the United States. In general, this proposed three mile limit represents an extension of the applicability of this Act from the current lines. The current lines normally provide coverage to the sea buoys only or, in some cases, not even that distance offshore. The radiotelephone requirements are therefore not applicable to traffic lanes and other relatively congested areas outside the harbors and channels covered by the current lines. The safety of vessels in these areas would be greatly enhanced by extending the line to three miles for this Act. Easy identification of the line applicable to this Act would also be a benefit derived from this proposed change in applicability.

(b) Separate lines for the Seagoing Barge Act are established for the New England areas where the current Boundary Lines are deemed not satisfactory for the purpose of application of this particular Act. Historically, barges have been required to be inspected once they proceeded past the headlands since no lines for this Act were authorized or established. Application of the line proposed for the six other statutes would allow barges built for inland waters to proceed out on the high seas without inspection. Therefore, a new line in close to the headlands has been established for application of this Act in the New England area. The present lines for the other six statutes remain basically unchanged and are deemed satisfactory due to the irregular nature of the coastline and the type of vessel traffic in the New England area.

(c) Lines for shallow water drilling barges in the Gulf of Mexico are established at 12 miles from the base line when the units are being towed. Requirements in 33 CFR Subchapter N are to be met when the units are operating/drilling. When being towed, the units will be merely transiting from one drill site to another. Once on site, the units will be subject to (a) OSHA and State requirements or (b) 33 CFR Subchapter N depending on the location of drilling operations.

(d) Application of the Seagoing Barge Act in the sheltered waters of British Columbia is waived as set forth in the United States-Canada treaty of 1933.

Proposed §§ 7.10 through 7.235 revise and redefine Boundary Lines to meet the intent of the seven marine safety statutes that currently employ the Boundary Lines statute (33 U.S.C. 151). The major proposed revisions to the lines are made to allow the dredging of channels where inland dredges normally operate. Proposed lines in the Gulf of Mexico and Alaska are revised to bring

them inside 12 miles as required by 33 U.S.C. 151 as amended. Except for the lines and exceptions in proposed § 7.5, the lines for all of the applicable statutes are consolidated into one line. New sections are added to delineate harbors and entrances not in the present regulations; however, lines for harbors and inlets still not specifically established in the proposed regulations are governed by the general rule in 46 CFR 7.3.

Regulatory Evaluation

These proposed regulations have been determined to be non-major regulations in accordance with the guidelines set out in Executive Order 12291, and are also considered to be non-significant under the "Policies and Procedures for Simplification, Analysis, and Review of Regulations" (DOT Order 2100.5 of May 22, 1980). An economic evaluation of the proposed regulations has not been conducted since their impact is expected to be minimal. Existing lines were used where possible and, in many cases, the lines were extended further to sea. The proposed regulations will create demarcation lines for different marine safety statutes that are unified where feasible.

The Regulatory Flexibility Act (94 Stat. 1164, Pub. L. 96-354) requires an analysis of the impact of proposed regulations on small businesses, organizations, and small governmental jurisdictions. The proposed regulations will have only a minor economic impact on these entities as the minor changes of the lines will not create any new economic costs.

Pursuant to section 605(b) of the Act, it is certified that the proposed regulations will not have a significant impact on a substantial number of small entities.

List of Subjects in 46 CFR Part 7

Law enforcement, Vessels.

Accordingly, Part 7 of Title 46, Code of Federal Regulations, is proposed to be amended as follows:

1. By revising 46 CFR Part 7 to read as follows:

PART 7—BOUNDARY LINES

General

Sec.

Authority: Sec. 2, 28 Stat. 672 as amended (33 U.S.C. 151); sec. 6(b)(1), 80 Stat. 937 (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(b).

General

§ 7.1 General purpose of boundary lines.

The Lines in this part delineate the application of the following U.S. statutes relating to vessel inspection, equipment and manning requirements: 33 U.S.C. 152; 33 U.S.C. 1201 et seq.; 46 U.S.C. 88; 46 U.S.C. 224a; 46 U.S.C. 367; 46 U.S.C. 395; and 46 U.S.C. 404.

§ 7.3 General rule for establishing boundary lines.

Except as otherwise described in this part, Boundary Lines are lines drawn following the general trend of the seaward, highwater shorelines and lines continuing the general trend of the seaward, highwater shorelines across entrances to small bays, inlets and rivers.

§ 7.5 Exceptions.

(a) For application of the Vessel Bridge-to-Bridge Radiotelephone Act, 33 U.S.C. 1201 et. seq., the line is 3 miles seaward of the baseline from which the territorial sea is measured.

(b) For application of the Seagoing Barge Act, 46 U.S.C. 395, the following lines apply to all harbors on the coast of Maine, New Hampshire and Massachusetts between West Quoddy Head, Maine and Cape Cod, Massachusetts:

(1) A line drawn from the southeasternmost extremity of Western Head to the southernmost extremity of Double Shot Island; thence to Libby Island Light; thence to Moose Peak Light; thence to the eastern extremity of Little Pond Head.

(2) A line drawn from the southern extremity of Pond Point, Great Wass Island, to the southernmost point of Crumple Island; thence to the southernmost extremity of Petit Manan Point, thence to the southernmost extremity of Schoodic Island; thence to the southern point of Eastern Head, Isle Au Haut.

(3) A line drawn from Western Head, Isle Au Haut, the Marshall Point Light; thence to Pemaquid Point Light; thence to the southern point of Small Point, Cape Small; thence to Cape Elizabeth Light; thence to the easternmost extremity of Fletcher Neck.

(4) A line drawn from the easternmost extremity of Sisters Point, Gerrish Island, to the easternmost extremity of Odiornes Point.

(5) A line drawn from the southernmost extremity of Eastern Point, Cape Ann to Strawberry Point. A line drawn from the tower at Brant Rock located in approximate position latitude

42°05.5′ N. longitude 70°38.6′ W. to the westernmost extremity of Race Point.

(c) In the Gulf of Mexico, when being towed, the line which applies to shallow water drilling barges for application of 46 U.S.C. 88 and 46 U.S.C. 395 is the seaward limit of the contiguous zone as defined in 33 CFR 2.05–15.

Note.—For purposes of this part, a shallow water drilling barge is defined as a barge that is not capable of drilling in more than 30 feet of water. When operating/drilling, the requirements set forth in 33 CFR Subchapter N shall apply.

(d) Barges of 100 gross tons and over operating on the sheltered waters of British Columbia as defined in the United States-Canada treaty of 1933 are not required to be inspected as seagoing barges under the Seagoing Barge Act, 46 U.S.C. 395.

Atlantic Coast

§ 7.10 Eastport, ME to Cape Ann, MA.

(a) A line drawn from the easternmost extremity of Kendall Head to coordinate latitude 44°54′45″ N. longitude 66°58′30″ W.; thence to the range marker located in approximate position latitude 44°51′45″ N. longitude 66°59′ W.

(b) A line drawn from West Quoddy Head Light to Sail Rock Lighted Whistle Buoy "1" (latitude 44°48.5′ N. longitude 67°56.4′ W.); thence to Little River Lighted Whistle Buoy "2LR" (latitude 44°37.5′ N. longitude 67°09.8′ W.); thence to Frenchman Bay Approach Lighted Whistle Buoy "FB" (latitude 44°14.5′ N. longitude 67°57.2′ W.); thence to Mount Desert Light; thence to Matinicus Rock Light; thence to Monhegan Island Light; thence to Portland Lighted Horn Buoy "P" (latitude 43°31.6′ N. longitude 70°05.5′ W.); thence to Boon Island Light; thence to Cape Ann Lighted Whistle Buoy "2" (latitude 42°37.9′ N. longitude 70°31.2′ W.).

§ 7.15 Massachusetts Bay, MA.

A line drawn from Cape Ann Lighted Whistle Buoy "2" (latitude 42°37.9′ N. longitude 70°31.2′ W.) to Boston Lighted Horn Buoy "B" (latitude 42°22.7′ N. longitude 70°47.0′ W.); thence to Race Point Light.

§ 7.20 Nantucket Sound, Vineyard Sound, Buzzards Bay, Narragansett Bay, MA, Block Island Sound and easterly entrance to Long Island Sound, NY.

(a) A line drawn from Chatham Light to Pollack Rip Entrance Lighted Horn Buoy "PR" (latitude 41°36.1′ N. longitude 69°51.1′ W.); thence to Great Round Shoal Channel Lighted Buoy "2" (latitude 41°26.0′ N. longitude 69°46.2′ W.); thence to Sankaty Head Light.

(b) A line drawn from the westernmost extremity of Nantucket Island to the southwesternmost extremity of Wasque Point, Chappaquiddick Island.

(c) A line drawn from Gay Head Light to Block Island Southeast Light; thence to Montauk Point Light on the easterly end of Long Island.

§ 7.25 Montauk Point, NY to Atlantic Beach, NY.

(a) A line drawn from Shinnecock East Breakwater Light to Shinnecock West Breakwater Light.

(b) A line drawn from Moriches Inlet East Breakwater Light to Moriches Inlet West Breakwater Light.

(c) A line drawn from Fire Island Inlet Breakwater Light 348° true to the southernmost extremity of the spit of land at the western end of Oak Beach.

(d) A line drawn from Jones Inlet Light 322° true across the southwest tangent of the island on the north side of Jones Inlet to the shoreline.

§ 7.30 New York Harbor, NY.

A line drawn from East Rockaway Inlet Breakwater Light to Ambrose Light; thence to Highlands Light (north tower).

§ 7.35 Sandy Hook, NJ to Cape May, NJ.

(a) A line drawn from Shark River Inlet North Breakwater Light "2" to Shark River Inlet South Breakwater Light "1".

(b) A line drawn from Manasquan Inlet North Breakwater Light to Manasquan Inlet South Breakwater Light.

(c) A line drawn along the submerged Barnegat Inlet North Breakwater to Barnegat Inlet North Breakwater Light "2"; thence to Barnegat Inlet Light "5"; thence along the submerged Barnegat Inlet South Breakwater to shore.

(d) A line drawn from the seaward tangent of Long Beach Island to the seaward tangent of Pullen Island across Beach Haven and Little Egg Inlets.

(e) A line drawn from the seaward tangent of Pullen Island to the seaward tangent of Brigantine Island across Brigantine Inlet.

(f) A line drawn from the seaward extremity of Absecon Inlet North Jetty to Atlantic City Light.

(g) A line drawn from the southernmost point of Longport at latitude 39°18.2′ N. Longitude 74°32.2′ W. to the northeasternmost point of Ocean City at latitude 39°17.6′ N. longitude 74°33.1′ W. across Great Egg Harbor Inlet.

(h) A line drawn parallel with the general trend of the seaward, highwater shoreline across Corson Inlet.

(i) A line formed by the centerline of the Townsend Inlet Highway Bridge.

(j) A line formed by the shoreline of Seven Mile Beach and Hereford Inlet Light.

§ 7.40 Delaware Bay and tributaries.

A line drawn from Cape May Inlet East Jetty Light to Cape May Harbor Inlet Lighted Bell Buoy "2CM" (latitude 38°55.8′ N. longitude 74°51.4′ W.); thence to Delaware Bay Entrance Channel Lighted Buoy "8" (latitude 38°48.9′ N. longitude 75°02.3′ W.); thence to the northernmost extremity of Cape Henlopen.

§ 7.45 Cape Henlopen, DL to Cape Charles, VA.

(a) A line drawn from the easternmost extremity of Indian River Inlet North Jetty to Indian River Inlet Lighted Gong Buoy "1" (latitude 38°36.5′ N. longitude 75°02.8′ W.); thence to Indian River Inlet South Jetty Light.

(b) A line drawn from Ocean City Inlet Light "6" to Ocean City Inlet Entrance Lighted Buoy "4" (latitude 38°19.4′ N. longitude 75°05.0′ W.); thence to Ocean City Inlet Entrance Lighted Buoy "5" (latitude 38°19.3′ N. longitude 75°05.1′ W.); thence to the easternmost extremity of the south breakwater.

(c) A line drawn from Assateague Beach Tower Light to the tower charted at latitude 37°52.6′ N. longitude 75°26.7′ W.

(d) A line drawn from the southernmost extremity of Cedar Island to Wachapreague Inlet Entrance Lighted Buoy "1" (latitude 37°34.7′ N. longitude 75°36.0′ W); thence due south to shore at Parramore Beach.

(e) A line drawn from the seaward tangent of Parramore Beach to the lookout tower on the northern end of Hog Island charted in approximate position latitude 37°27.2′ N. Longitude 75°40.5′ W.

A line drawn from Cape Charles Light to North Chesapeake Entrance Lighted Gong Buoy "NCD" (latitude 36°56.8′ N. longitude 75°55.1′ W.); thence to Chesapeake Bay Entrance Lighted Bell Buoy "CBC" (latitude 36°54.8′ N. longitude 75°55.6′ W.); thence to Cape Henry Buoy "1" (latitude 36°55.0′ N. longitude 75°58.0′ W.); thence to Cape Henry Light.

§ 7.55 Cape Henry, VA to Cape Fear, NC.

(a) A line drawn from Rudee Inlet Jetty Light "2" to Rudee Inlet Jetty Light "1".

(b) A line formed by the centerline of the highway bridge across Oregon Inlet.

(c) A line drawn from Hatteras Inlet Light 255° true to the eastern end of Ocracoke Island.

(d) A line drawn from the westernmost extremity of Ocracoke Island at latitude 35°04′ N. longitude 76°00.8′ W. to the northeasternmost extremity of Portsmouth Island at latitude 35°03.7′ N. longitude 76°02.3′ W.

(e) A line drawn across Drum Inlet parallel with the general trend of the seaward, highwater shoreline.

(f) A line drawn from the southernmost extremity of Cape Lookout to Beaufort Inlet Lighted Bell Buoy "2BI" (latitude 34°38.4′ N. longtitude 76°40.6′ W.); thence to the seaward extremity of the Beaufort Inlet west jetty.

§ 7.60 Cape Fear, NC to Sullivans Island, SC.

(a) A line drawn from the southernmost extremity of Cape Fear to Cape Fear River Entrance Lighted Bell Buoy "2CF" (latitude 33°49.5′ N. longitude 78°03.7′ W.); thence to Oak Island Light.

(b) A line drawn from Georgetown Light to Winyah Bay Lighted Bell Buoy "2WB" (latitude 33°11.6′ longitude 79°05.4′ W.); thence to the southernmost extremity of Sand Island.

§ 7.65 Charleston Harbor, SC.

A line drawn from Charleston Light on Sullivans Island to Charleston Lighted Whistle Buoy "2C" (latitude 32°40.7′ N. longitude 79°42.9′ W.); thence to Folly Island Loran Tower (latitude 32°41.0′ N. longitude 79°53.2′ W.).

§ 7.70 Folly Island, SC to Hilton Head Island, SC.

(a) A line drawn from the southwesternmost extremity of Folly Island to the easternmost extremity of Kiawah Island at Sandy Point.

(b) A line drawn from the southwesternmost extremity of Seabrook Island 257° true across the North Edisto River Entrance to the shore of Botany Bay Island.

(c) A line drawn from the microwave antenna tower on Edisto Beach charted in approximate position latitude 32°29.3′ N. longitude 80°19.2′ W. across St. Helena Sound to the abandoned lighthouse tower on Hunting Island charted in approximate position latitude 32°22.5′ N. longitude 80°26.5′ W.

(d) A line formed by the centerline of the highway bridge between Hunting Island and Fripp Island.

(e) A line drawn from the westernmost extremity of Bull Point on Capers Island to Port Royal Sound Lighted Whistle Buoy "2PR" (latitude 32°04.8′ N. longitude 80°34.9′ W.); thence to the easternmost extremity of Hilton Head at latitude 32°13.2′ N. longitude 80°40.1′ W.

§ 7.75 Savannah River/Tybee Roads.

A line drawn from the southwesternmost extremity of Braddock Point to Tybee Lighted Whistle Buoy "T" (latitude 31°58.3′ N. longitude 80°44.1′ W.); thence to the southernmost point of Savannah Beach, bearing approximately 278° true.

§ 7.80 Tybee Island, GA to St. Simons Island, GA.

(a) A line drawn from the southernmost extremity of Savannah Beach on Tybee Island 255° true across Tybee Inlet to the shore of Little Tybee Island south of the entrance to Buck Hammock Creek.

(b) A line drawn from the southernmost extremity of Little Tybee Island at Beach Hammock to the easternmost extremity of Wassaw Island.

(c) A line drawn approximately parallel with the general trend of the seaward, highwater shorelines from the seaward tangent of Wassaw Island to the Seaward tangent of Bradley Point on Ossabaw Island.

(d) A north-south line (longitude 81°08.4′ W.) drawn from the southernmost extremity of Ossabaw Island to St. Catherines Island.

(e) A north-south line (longitude 81°10.6′ W.) drawn from the southernmost extremity of St. Catherines Island to Northeast Point on Blackbeard Island.

(f) A line following the general trend of the seaward, highwater shoreline across Cabretta Inlet.

(g) A north-south line (longitude 81°16.9′ W.) drawn from the southwesternmost point on Sapelo Island to Wolf Island.

(h) A north-south line (longitude 81°17.1′ W.) drawn from the southeasternmost point on Wolf Island to the northeasternmost point on Little St. Simons Island.

(i) A line drawn from the southernmost extremity of Little St. Simons Island to the easternmost extremity of Sea Island.

(j) An east-west line from the southernmost extremity of Sea Island across Goulds Inlet to St. Simons Island.

§ 7.85 St. Simons Island, GA to Little Talbot Island, FL.

(a) A line drawn from the tower located 1,700 yards bearing 060° true from St. Simons Light to St. Simons Lighted Whistle Buoy "ST S" (latitude 31°04.1′ N. longitude 81°16.7′ W.); thence to the northernmost tank on Jekyll Island charted in approximate position latitude 31°05.9′ N. longitude 81°24.5′ W.

(b) A line drawn from the southernmost tank on Jekyll Island charted in approximate position latitude 31°01.6′ N. longitude 81°25.2′ W. to St. Andrew Sound Buoy "11" (latitude 38°58.7′ N. longitude 81°22.4′ W.); thence to the abandoned lighthouse tower on the north end of Little Cumberland Island charted in approximate position latitude 30°58.5′ N. longitude 81°24.8′ W.

(c) A line drawn from the seaward end of the north St. Mary's Entrance jetty to St. Mary's Entrance Lighted Whistle Buoy "1" (latitude 30°42.7′ N. longitude 81°19.0′ W.); thence to Amelia Island Light.

(d) A line drawn from the southernmost extremity of Amelia Island to the northeasternmost extremity of Little Talbot Island.

§ 7.90 St. Johns River, FL.

A line drawn from the southeasternmost extremity of Little Talbot Island to St. Johns Lighted Whistle Buoy "2 STJ" (latitude 30°23.8′ N. longitude 81°20.3′ W.); thence to St. Johns Light.

§ 7.95 St. Johns Point, FL to Miami Beach, FL.

(a) A line drawn across the seaward extremity of the St. Augustine Inlet Jetties.

(b) A line formed by the centerline of the highway bridge over Matanzas Inlet.

(c) A line drawn across the seaward extremity of the Ponce de Leon Inlet Jetties.

(d) A line drawn from Canaveral Harbor Approach Channel Range Front Light to Canaveral Bight Wreck Lighted Buoy "WR6" (latitude 28°23.7′ N. longitude 80°32.2′ W.); thence to the radio tower on Canaveral Peninsula in approximate position latitude 28°22.9′ N. longitude 80°36.6′ W.

(e) A line drawn across the seaward extremity of the Sebastian Inlet Jetties.

(f) A line drawn from the seaward extremity of the Fort Pierce Inlet North Jetty to Fort Pierce Inlet Lighted Whistle Buoy "2" (latitude 27°28.5′ N. longitude 80°16.2′ W.); thence to the tower located in approximate position latitude 27°27.2′ N. longitude 80°17.2′ W.

(g) A north-south line (longitude 80°09.8′ W.) drawn across St. Lucie Inlet through St. Lucie Inlet Entrance Range Front Daybeacon.

(h) A line drawn from the seaward extremity of Jupiter Inlet North Jetty to the northeast extremity of the concrete apron on the south side of Jupiter Inlet.

(i) A line drawn from the seaward extremity of Lake Worth Inlet North Jetty to Lake Worth Inlet Lighted Bell Buoy "2LW" (latitude 26°46.4′ N. longitude 80°01.5′ W.); thence to Lake Worth South Light "1"; thence to the

seaward extremity of Lake Worth Inlet South Jetty.

(j) A line drawn across the seaward extremity of the South Lake Worth Inlet Jetties.

(k) A line drawn from Boca Raton Inlet North Jetty Light "2" to Boca Raton Inlet South Jetty Light "1".

(l) A line drawn from Hillsboro Inlet Light to Hillsboro Inlet Entrance Light "2"; thence to Hillsboro Inlet Entrance Light "1"; thence west to the shoreline.

(m) A line drawn from the tower located in approximate position latitude 26°06.9′ N. longitude 80°06.4′ W. to Port Everglades Lighted Whistle Buoy "1" (latitude 26°05.5′ N. longitude 80°04.8′ W.); thence to the signal tower located in approximate position latitude 26°05.5′ N. longitude 80°05.5′ W.

(n) A line formed by the centerline of the highway bridge over Bakers Haulover Inlet.

§ 7.100 Florida Reefs and Keys from Miami, FL to Key West, FL.

(a) A line drawn from the tower located in approximate position latitude 25°46.7′ N. longitude 80°08′ W. to Miami Lighted Whistle Buoy "M" (latitude 25°46.1′ N. longitude 80°05.0′ W.); thence to the abandoned lighthouse tower on Cape Florida.

(b) A line drawn from the abandoned lighthouse tower on Cape Florida to Biscayne Channel Light "8"; thence to the northernmost extremity on Soldier Key.

(c) A line drawn from the southernmost extremity on Soldier Key to the northernmost extremity of Ragged Keys.

(d) A line drawn from the Ragged Keys to the southernmost extremity of Angelfish Key following the general trend of the seaward, highwater shoreline.

(e) A line drawn on the centerline of the Overseas Highway (U.S. 1) and bridges from latitude 25°19.3′ N. longitude 80°16′ W. at Little Angelfish Creek to the radar dome charted on Long Key at approximate position latitude 24°49.3′ N. longitude 80°49.2′ W.

(f) A line drawn from the radar dome charted on Long Key at approximate position latitude 24°49.3′ N. longitude 80°49.2′ W. to Long Key Light "1"; thence to Arsenic Bank Light "1"; thence to Arsenic Bank Light "2"; thence to Sprigger Bank Light "5"; thence to Schooner Bank Light "6"; thence to Oxfoot Bank Light "10"; thence to East Cape Light "2"; thence through East Cape Daybeacon "1A" to the shoreline of East Cape.

Gulf Coast

§ 7.105 Cape Sable, FL to Sanibel Island, FL.

(a) A line drawn following the general trend of the mainland, highwater shoreline from Cape Sable at East Cape to Little Shark River Entrance Light "1"; thence to the westernmost extremity of Shark Point; thence following the general trend of the mainland, highwater shoreline crossing the entrances of Harney River, Broad Creek, Broad River, Rodgers River, First Bay, Chatham River, Huston River to the shoreline at coordinate latitude 25°43.3′ N. longitude 81°20.8′ W.; thence to the southernmost extremity of Cape Romano.

(b) A line drawn across Big Marco Pass parallel to the general trend of the seaward, highwater shoreline.

(c) Lines drawn across Capri, Hurricane and Little Marco Passes parallel to the general trend of the seaward, highwater shoreline.

(d) A straight line drawn from Gordon Pass Light "4" through Daybeacon "5" to the shore.

(e) A line drawn across the seaward extremity of Doctors Pass Jetties.

(f) Lines drawn across Wiggins, Big Hickory, New, and Big Carlos Passes parallel to the general trend of the seaward, highwater shoreline.

(g) A straight line drawn from Sanibel Island Light through Matanzas Pass Channel Light "2" to the shore of Estero Island.

§ 7.110 Pine Island Sound, FL and Charlotte Harbor, FL.

(a) Lines drawn across Redfish and Captiva Passes parallel to the general trend of the seaward, highwater shoreline.

(b) A line drawn from the northernmost extremity of Cayo Costa to Charlotte Harbor Entrance Lighted Bell Buoy "2" (latitude 26°39.8′ N. longitude 82°19.6′ W.); thence to Boca Grande Inner Channel Range Rear Light; thence to Port Boca Grande Light.

§ 7.115 Port Boca Grande, FL to Anna Maria Key, FL.

(a) Lines drawn across Gasparilla and Stump Passes parallel to the general trend of the seaward, highwater shoreline.

(b) A line drawn across the seaward extremity of Venice Inlet Jetties.

(c) A line drawn across Midnight Pass parallel to the general trend of the seaward, highwater shoreline.

(d) A line drawn from the westernmost extremity of Sarasota Point to the southernmost extremity of Lido Key.

(e) A line across New Pass parallel to the seaward, highwater shoreline of Longboat Key.

(f) A line drawn across Longboat Pass parallel to the seaward, highwater shoreline.

§ 7.120 Tampa Bay, FL and Tributaries.

A line drawn from the northernmost extremity of Anna Maria Key at Bean Point to Southwest Channel Entrance Lighted Bell Buoy "1" (latitude 27°32.5′ N. longitude 82°47.9′ W.); thence to Tampa Bay Lighted Whistle Buoy (latitude 27°35.8′ N. longitude 82°55.6′ W.); thence to the southernmost extremity of Long Key.

§ 7.125 St. Petersburg, FL to Rock Island, FL.

(a) A line drawn from the penthouse located in approximate position latitude 27°44.2′ N. longitude 82°45.2′ W. to Johns Pass Lighted Buoy "JP" (latitude 27°46.2′ N. longitude 82°47.8′ W.); thence to the tank located in approximate position latitude 27°48.1′ N. longitude 82°48′ W.

(b) A line drawn from the tank located in approximate position latitude 27°55′ N. longitude 82°50.5′ W. to Clearwater Pass Channel Lighted Bell Buoy "1" (latitude 27°58.1′ N. longitude 82°50.7′ W.); thence to the tank located in approximate position latitude 27°59.1′ N. longitude 82°49.6′ W.

(c) A line drawn across Dunedin and Hurricane Passes parallel with the general trend of the seaward, highwater shoreline.

(d) A line drawn from the northernmost extremity of Honeymoon Island to Anclote Anchorage South Entrance Light "1" (latitude 28°08.4′ N. longitude 82°52.0′ W.); thence to Anclote Keys Light.

(e) A line drawn from the northernmost extremity of Anclote Key to Anclote Anchorage North Entrance Light "4"; thence to the westernmost extremity of Bayonet Point at position latitude 28°19.5′ N. longitude 82°43.9′ W.

(f) A line drawn from the tank located in approximate position latitude 28°49.9′ N. longitude 82°40.1′ W. to Cross Florida Barge Canal Light "8"; thence to Northwest Channel Approach Light "2"; thence to Horseshoe Beach Channel Light "10"; thence to the westernmost extremity of Horseshoe Point.

(g) A line drawn from the westernmost extremity of Hardy Point to Steinhatchee River Light "1" (latitude 29°39.4′ N. longitude 83°27.4′ W.); thence to the westernmost extremity of Rock Point.

§ 7.130 Rock Island, FL to Cape San Blas, FL.

(a) A line drawn from Gamble Point Light to the southeasternmost extremity of Lighthouse Point at latitude 29°54.1′ N.

(b) A line drawn from the south shore of Southwest Cape at longitude 84°22.7′ W. to Dog Island Reef East Light "1"; thence to Turkey Point Light "2"; thence to the easternmost extremity of Dog Island.

(c) A line drawn from the westernmost extremity of Dog Island to the easternmost extremity of St. George Island.

§ 7.135 Cape San Blas, FL to Perdido Bay, FL.

(a) A line drawn from Cape St. George Light to Cape San Blas Light.

(b) A line drawn from St. Joseph Point on the northernmost extremity of St. Joseph Spit to St. Joseph Bay Lighted Whistle Buoy "SJ" (latitude 29°52.0′ N. longitude 85°29.5′ W.); thence to the radio tower on Mexico Beach located in approximate position latitude 29°56.6′ N. longitude 85°23.9′ W.

(c) A line drawn from the westernmost extremity of Crooked Island to the easternmost extremity of Shell Island.

(d) A line drawn from the seaward end of the St. Andrew Bay entrance South Jetty to St. Andrew Bay Entrance Lighted Whistle Buoy "SA" (latitude 30°05.5′ N. longitude 85°46.4′ W.); thence to the seaward end of the St. Andrew Bay entrance North Jetty.

(e) A line drawn from the radar dome located in approximate position latitude 30°23.1′ N. longitude 86°26.9′ W. to Choctawhatchee Bay Entrance Lighted Whistle Buoy "CB" (latitude 30°22.3′ N. longitude 86°30.5′ W.); thence to the tower located in approximate position latitude 30°23.5′ N. longitude 86°33.5′ W.

(f) A line drawn from the southernmost extremity of Santa Rosa Island at longitude 87°16.0′ W. to Pensacola Bay Entrance Lighted Gong Buoy "1" (latitude 30°16.3′ N. longitude 87°17.5′ W.); thence to Massachusetts Wreck Lighted Bell Buoy "WR2" (latitude 30°17.7′ N. longitude 87°18.7′ W.); thence to Fort McRee Leading Light.

(g) A line drawn between the seaward end of the Perdido Pass Jetties.

§ 7.140 Mobile Bay, AL to Mississippi Passes, LA.

(a) A line drawn from Mobile Point Light to Mobile Bar Lighted Buoy "8" (latitude 30°10.3′ N. longitude 88°02.8′ W.); thence to Mobile Bar Lighted Bell Buoy "2" (latitude 30°08.8′ N. longitude 88°03.4′ W.); thence to Mobile Entrance Lighted Whistle Buoy "1" (latitude 30°08.1′ N. longitude 88°03.9′ W.); thence to the dome located in approximate position latitude 30°15. N. longitude 88°04.7′ W.

(b) A line drawn from the westernmost extremity of Dauphin Island to the easternmost extremity of Petit Bois Island.

(c) A line drawn from the southernmost extremity of Petit Bois Island at longitude 88°27′ W. to Horn Island Pass Lighted Whistle Buoy "HI" (latitude 30°10.6′ N. longitude 88°32.6′ W.); thence to the easternmost extremity of Horn Island.

(d) An east-west line (latitude 30°14.7′ N.) drawn between the westernmost extremity of Horn Island to the easternmost extremity of Ship Island.

(e) A curved line drawn following the general trend of the seaward, highwater shoreline of Ship Island.

(f) A line drawn from Ship Island Light to Chandeleur Light; thence in a curved line following the general trend of the seaward, highwater shorelines of the Chandeleur Islands to the southern extremity of the Chandeleur Islands in approximate position latitude 29°44.1′ N. longitude 88°53.1′ W.; thence to Mississippi River-Gulf Outlet Lighted Bell Buoy "2" (latitude 29°25.5′ N. longitude 88°59.5′ W.); thence to the northernmost extremity of Main Pass outlet in position latitude 29°21.5′ N. longitude 89°11.7′ W.

§ 7.145 Mississippi Passes, LA.

(a) A line drawn from coordinate latitude 29°21.5′ N. longitude 89°11.7′ W. following the general trend of the seaward, highwater shoreline in a southeasterly direction to coordinate latitude 29°12.4′ N. longitude 89°06′ W.; thence following the general trend to the seaward, highwater shoreline in a northeasterly direction to coordinate latitude 29°13′ N. longitude 89°01.3′ W. located on the northwest bank of North Pass.

(b) A line drawn from coordinate latitude 29°13′ N. longitude 89°01.3′ W. to coordinate latitude 29°12.7′ N. longitude 89°00.9′ W.; thence to coordinate latitude 29°10.6′ N. longitude 88°59.8′ W.; thence to coordinate latitude 29°03.5′ N. longitude 89°03.7′ W.; thence to Mississippi River South Pass East Jetty Light "4"; thence to the southwestern extremity of South Pass Outlet in position latitude 28°59′ N. longitude 89°08.8′ W.

(c) A line drawn from the southwestern extremity of South Pass Outlet in position latitude 28°59′ N. longitude 89°08.8′ W. following the general trend of the seaward, highwater shoreline in a northwesterly direction to coordinate latitude 29°03.4′ N. longitude 89°13′ W.; thence west to coordinate latitude 29°03.5′. longitude 89°15.5′ W.; thence following the general trend of the seaward, highwater shoreline in a southwesterly direction to Mississippi River Southwest Pass Entrance Light.

(d) A line drawn from Mississippi River Southwest Pass Entrance Light to the seaward extremity of the Southwest Pass West Jetty located at coordinate latitude 28°54.5′ N. longitude 89°26.1′ W.

§ 7.150 Mississippi Passes, LA to Isles Dernieres, LA.

(a) A line drawn from the seaward extremity of Southwest Pass West Jetty located at coordinate latitude 28°54.5′ N. longitude 89°26.1′ W. following the general trend of the seaward, highwater jetty and shoreline in a north, northeasterly direction to Old Tower latitude 28°58.8′ N. longitude 89°23.3′ W.; thence to West Bay Light (latitude 29°02.5′ N. longitude 89°21.6′ W.); thence to coordinate latitude 29°05.2′ N. longitude 89°24.3′ W.; thence a curved line following the general trend of the highwater shoreline to the seaward extremity of Empire Waterway east jetty; thence to Empire Waterway Entrance Lighted Bell Buoy "1" (latitude 29°13.4′ N. longitude 89°36.8′ W.); thence to the seaward extremity of Empire Waterway west jetty.

(b) A curved line following the general trend of the seaward, highwater shoreline from the seaward extremity of Empire Waterway west jetty to Barataria Bay Light; thence to Barataria Lighted Whistle Buoy "BP" (latitude 29°14.3′ N. longitude 89°54.2′ W.); thence to the northeasternmost extremity of Grand Isle.

(c) A line drawn from Belle Pass East Jetty Light to Belle Pass entrance Lighted Bell Buoy "2" (latitude 29°03.9′ N. longitude 90°13.8′ W.); thence to Belle Pass West Jetty Light; thence a curved line following the general trend of the seaward, highwater shoreline from Belle Pass to the westernmost extremity of Timbalier Island.

(d) A line drawn from the westernmost extremity of Timbalier Island to Cat Island Pass Lighted Buoy "3" (latitude 29°01.9′ N. longitude 90°34.0′ W.); thence to the easternmost extremity of Isles Dernieres; thence a curved line drawn from the easternmost extremity of Isle Dernieres following the general trend of the seaward, highwater shorelines of the Isles Dernieres to Caillou Boca Light "13".

(e) A south-north line drawn from Caillou Boca Light "13" across Caillou Boca.

§ 7.155 Point Au Fer, LA to Sabine Pass, TX.

(a) A line drawn from Point Au Fer to Athcafalaya Channel Entrance Lighted Bell Buoy "A" (latitude 29°11.8' N. longitude 91°32.2' W.); thence to Atchafalaya Bay Pipeline Light "D" (latitude 29°25' N. longitude 91°31.7' W.); thence to Atchafalaya Bay Light "1" (latitude 29°25.3' N. longitude 91°35.8' W.); thence to South Point.

(b) A line drawn from tower located in approximate position latitude 29°34' N. longitude 92°12.4' W. to Freshwater Bayou Lighted Bell Buoy "FB" (latitude 29°28.9' N. longitude 92°19.1' W.); thence to the tower located in approximate position latitude 29°32.6' N. longitude 92°19.1' W.

(c) A line drawn from Mermentau River Channel Light "4" to Mermentau River Channel Entrance Lighted Bell Buoy "2" (latitude 29°42.1' N. longitude 93°00.6' W.); thence to Calcasieu Channel Lighted Buoy "15" (latitude 29°34.3' N. longitude 93°16.5' W.); thence to lighted platform in approximate position latitude 29° 38.2' N. longitude 93°36.5' W.; thence to Sabine Bank Channel Lighted Buoy "7" (latitude 29°30.6' N. longitude 93°42.1' W.); thence to lighted platform in approximate position latitude 29°32.7' N. longitude 93°48.3' W.; thence to the southernmost extremity of Texas Point in position latitude 29°40.4' N. longitude 93°52.2' W.

§ 7.160 Sabine Pass, TX to Rio Grande, TX.

(a) A line drawn from the tank on Bolivar Peninsula located in approximate position latitude 29°27.5' N. longitude 94°38.2' W. to Galveston Bay Entrance Channel Lighted Buoy "1" (latitude 29°18.3' N. longitude 94°37.6' W.); thence to Houston Ship Channel Outer Range Rear Light.

(b) A line drawn from the northernmost point of Surfside Beach at longitude 95°14.3' W. to Freeport Entrance Lighted Gong Buoy "1" (latitude 28°54.1' N. longitude 95°15.8' W.); thence to the southernmost extremity of Bryan Beach at longitude 95°22.5' W.

(c) A line drawn from the southernmost extremity of the Matagorda Ship Channel North Jetty to Matagorda Ship Channel Lighted Buoy "2" (latitude 28°23.8' N. longitude 96°17.6' W.); thence to Matagorda Ship Channel Entrance Lighted Whistle Buoy "MB" (latitude 28°23.0' N. longitude 96°17.0' W.); thence to Matagorda Light.

(d) A line drawn from Corpus Christi Bay Cut A East Range Rear Light to Aransas Pass Entrance Lighted Whistle Buoy "AP" (latitude 27°47.6' N. longitude 96°57.4' W.); thence to the tank at Port Aransa located in approximate position latitude 27°49.8' N. longitude 97°03.8' W.

(e) A line drawn from Brazos Santiago Pass Light to Brazos Santiago Pass Entrance Lighted Whistle Buoy "BS" (latitude 26°03.9' N. longitude 97°06.6' W.); thence to the seaward extremity of Brazos Santiago pass south jetty.

Hawaii

§ 7.165 Mamala Bay, HI.

A line drawn from Barbers Point Light to Diamond Head Light.

Pacific Coast

§ 7.170 Santa Catalina Island, CA.

(a) A line drawn from the northernmost point of Lion Head to the north tangent of Bird Rock Island; thence to the northernmost point of Blue Cavern Point.

(b) A line drawn from White Rock to the northernmost point of Abalone Point.

§ 7.175 Mexican/United States Border to Point Fermin, CA.

(a) A line drawn from the southerly tower of the Coronado Hotel in approximate position latitude 32°40.8' N. longitude 117°10.6' W. to San Diego Bay Channel Lighted Bell Buoy "5" (latitude 32°39.1' N. longitude 117°13.6' W.); thence to Point Loma Light.

(b) A line drawn from Mission Bay South Jetty Light "2" to Mission Bay North Jetty Light "1".

(c) A line drawn from Oceanside South Jetty Light "4" to Oceanside breakwater Light "3".

(d) A line drawn from Dana Point Jetty Light "6" to Dana Point Breakwater Light "5".

(e) A line drawn from Newport Bay East Jetty Light "4" to Newport Bay West Jetty Light "3".

(f) A line drawn from Anaheim Bay East Jetty Light "6" to Anaheim Bay West Jetty Light "5"; thence to Long Beach Breakwater East End Light "1". A line drawn from Long Beach Entrance Light "2" to Long Beach Light. A line drawn from Los Angeles Main Channel Entrance Light "2" to Los Angeles Light.

7.180 Point Vincente, CA to Point Conception, CA.

(a) A line drawn from Redondo Beach East Jetty Light "2" to Redondo Beach West Jetty Light "3".

(b) A line drawn from Marina Del Rey Light "4" to Marina Del Rey Breakwater South Light "1". A line drawn from Marina Del Rey Breakwater North Light "2" to Marina Del Rey Light "3".

(c) A line drawn from Port Hueneme East Jetty Light "4" to Port Hueneme West Jetty Light "3".

(d) A line drawn from Channel Islands Harbor South Jetty Light "2" to Channel Islands Harbor Breakwater South Light "1". A line drawn from Channel Islands Harbor Breakwater North Light to Channel Islands Harbor North Jetty Light "5".

(e) A line drawn from Ventura Marina South Jetty Light "6" to Ventura Marina Breakwater South Light "3". A line drawn from Ventura Marina Breakwater North Light to Ventura Marina North Jetty Light "7".

(f) A line drawn from Santa Barbara Harbor Light "4" to Santa Barbara Harbor Lighted Bell Buoy "1" (latitude 34°24,1' N. longitude 119°40.7' W.); thence to Santa Barbara Harbor Breakwater Light.

§ 7.185 Point Conception, CA to Point Sur, CA.

(a) A line drawn from the Southernmost extremity of Fossil Point at longitude 120°43.5' W. to the seaward extremity of Whaler Island Breakwater.

(b) A line drawn from the outer end of Morro Bay Entrance East Breakwater to Morro Bay Entrance Lighted Bell Buoy "1" (latitude 35°21.5' N. longitude 120°52.3' W.); thence to Morro Bay West Breakwater Light.

§ 7.190 Point Sur, CA to Cape Blanco, OR.

(a) A line drawn from Monterey Harbor Light "6" to Monterey Harbor Anchorage Buoy "A" (latitude 36°36.5' N. longitude 121°53,2'W.); thence to the northernmost extremity of Monterey Municipal Wharf No.2.

(b) A line drawn from the seaward extremity of the pier located 0.3 mile south of Moss Landing Harbor Entrance to the seaward extremity of the Moss Landing Harbor North Breakwater.

(c) A line drawn from Santa Cruz Light to the southernmost projection of Soquel Point.

(d) A straight line drawn from Point Bonita Light across Golden Gate through Mile Rocks Light to the shore.

(e) A line drawn from the northwestern tip of Tomales Point to Tomales Point Lighted Horn Buoy "2" (latitude 38°15.1' N. longitude 123°00.1' W.); thence to Bodega Harbor Approach Lighted Gong Buoy "BA" (latitude 38°17.2' N. longitude 123°02.3' W.); thence to the southernmost extremity of Bodega Head.

(f) A line drawn from Humboldt Bay Entrance Light "4" to Humboldt Bay Entrance Light "3".

(g) A line drawn from Crescent City Outer Breakwater Light "5" to the southeasternmost extremity of Whaler Island at longitude 124°11' W.

§ 7.195 Cape Blanco, OR to Cape Flattery, WA.

(a) A line drawn from the seaward extremity of the Coos Bay South Jetty to Coos Bay Entrance Lighted Bell Buoy "1" (latitude 43°21.9' N. longitude 124°21.7' W.); thence to the seaward extremity of the Coos Bay North Jetty.

(b) A line drawn from the lookout tower located in approximate position latitude 46°13.6' N. longitude 124°00.7' W. to Columbia River Entrance Buoy Whistle Buoy "2" (latitude 46°12.8' N. longitude 124°08.0' W.); thence to Columbia River Entrance Lighted Bell Buoy "1" (latitude 46°14.5' N. longitude 124°09.5' W.); thence to North Head Light.

(c) A line drawn from Grays Harbor Light to Grays Harbor Entrance Lighted Whistle Buoy "2" (latitude 46°52.8' N. longitude 124°12.6' W.); thence to Grays Harbor Entrance Lighted Buoy "3" (latitude 46°55.0' N. longitude 124°14.7' W.); thence to Grays Harbor Bar Range Rear Light.

§ 7.200 Strait of Juan de Fuca, Haro Strait and Strait of Georgia, WA.

(a) A line drawn from the northernmost point of Angeles Point to Hein Bank Lighted Bell Buoy (latitude 48°21.1' N. longitude 123°02.5' W.); thence to Salmon Bank Lighted Gong Buoy "3" (latitude 48°25.5' N. longitude 122°58.5' W.); thence to Cattle Point Light on San Juan Island.

(b) A line drawn from Lime Kiln Light to Kellett Bluff Light on Henry Island; thence to Turn Point Light on Stuart Island; thence to Skipjack Island Light; thence to Clements Reef Buoy "2" (latitude 48°46.6' N. longitude 122°53.4' W.); thence to International Boundary Range B Front Light.

Alaska

§ 7.205 Canadian (BC) and United States (AK) Borders to Cape Spencer, AK.

(a) A line drawn from the northeasternmost extremity of Point Mansfield, Sitklan Island 040° true to the mainland.

(b) A line drawn from the southeasternmost extremity of Island Point, Sitklan Island to the southernmost extremity of Garnet Point, Kanagunut Island; thence to Lord Rock Light; thence to Barren Island Light; thence to Cape Chacon Light; thence to Cape Muzon Light.

(c) A line drawn from Point Cornwallis Light to Cape Barolome Light; thence to Cape Edgecumbe Light; thence to the westernmost extremity of Cape Cross.

(d) A line drawn from Surge Bay Entrance Light to Cape Spencer Light.

§ 7.210 Cape Spencer, AK to Cape St. Elias, Ak.

(a) A line drawn from the westernmost extremity of Harbor Point to the southernmost extremity of LaChaussee Spit at Lituye Bay.

(b) A line drawn from Ocean Cape Light to Yakutat Bay Entrance Lighted Whistle Buoy "2" (latitude 59°31.9' N. longitude 139°57.1' W.); thence to the southeasternmost extremity of Point Manby.

(c) A line drawn from the northernmost extremity of Point Riou to the easternmost extremity of Icy Cape.

§ 7.215 Point Whiteshed, AK to Aialik Cape, AK.

(a) A line drawn from the southernmost extremity of Point Whitshed to the easternmost extremity of Hinchinbrook Island.

(b) A line drawn from Cape Hinchinbrook Light to Schooner Rock Light "1".

(c) A line drawn from the southwesternmost extremity of Montague Island to Point Elrington Light; thence to the southernmost extremity of Cape Puget.

(d) A line drawn from the southermost extremity of Cape Resurrection to the Aialik Cape.

§ 7.220 Kenai Peninsula, AK to Kodiak Island, AK.

(a) A line drawn from the southernmost extremity of Kenai Peninsula at longitude 151°44.0' W. to East Amatuli Island Light; thence to the northwesternmost extremity of Shuyak Island at Party Cape; thence to the easternmost extremity of Cape Douglas.

(b) A line drawn from the southernmost extremity of Pillar Cape on Afognak Island to Spruce Cape Light; thence to the easternmost extremity of Long Island; thence to the northeasternmost extremity of Cape Chiniak.

(c) A line drawn from Cape Nunilak at latitude 58°09.7' N. to the northernmost extremity of Raspberry Island. A line drawn from the westernmost extremity of Raspberry Cape to the northernmost extremity of Miners Point.

§ 7.225 Alaska Peninsula, AK to Aleutian Islands, AK.

(a) A line drawn from the southernmost extremity of Cape Kumhun to the westernmost extremity of Nakchamik Island; thence to the eastmost extremity of Castle Cape at Chignik Bay.

(b) A line drawn from Second Priest Rock to Ulakta Head Light at Iliuliuk Bay entrance.

(c) A line drawn from Arch Rock to the northernmost extremity of Devilfish Point at Captains Bay.

(d) A line drawn from the easternmost extremity of Lagoon Point to the northwesternmost extremity of Cape Kutuzof at Port Moeller.

§ 7.230 Alaskan Peninsula, AK to Nunivak, AK.

(a) A line drawn from the northernmost extremity of Goose Point at Egegik Bay to Protection Point.

(b) A line drawn from the westernmost extremity of Kulukak Point to the northernmost extremity of Round Island; thence to the southernmost extremity of Hagemeister Island; thence to the southernmost extremity of Cape Peirce; thence to the southernmost extremity of Cape Newenman.

(c) A line drawn from the church spire located in approximate position latitude 59°45' N. longitude 161°55' W. at the mouth of the Kanektok River to the southernmost extremity of Cape Avinof.

§ 7.235 Kotzebue Sound, AK.

A line drawn from Cape Espenberg Light to Sheshalik Spit.

L. N. Hein,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 82-15183 Filed 6-4-82; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 81-343]

Inquiry Into the Policies To Be Followed in the Authorization of Common Carrier Facilities To Meet Pacific Telecommunications Needs During the 1981-1995 Period; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time to file comments and reply to comments.

SUMMARY: This document grants American Telephone and Telegraph Company's (AT&T) requests for extensions of time for filing comments and replies to the comments. The extensions of time will permit AT&T to submit revised circuit and facility forecasts and discuss the information with participants in the ANZCAN Cable System project.

DATES: Comments must be filed on or before June 28, 1982 and Reply Comments on or before July 28, 1982.

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

FOR FURTHER INFORMATION CONTACT: Robert Gosse, George Li, International Facilities Planning Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554 (202) 632-4047

SUPPLEMENTARY INFORMATION:

Order

Adopted: May 28, 1982.

Released: May 28, 1982.

In the Matter of Inquiry into the Policies to be Followed in the Authorization of Common Carrier Facilities to Meet Pacific Telecommunications Needs During the 1981-1995 Period, CC Docket No. 81-343, May 20, 1982, 47 FR 21868.

1. On May 7, 1982, the Commission released its Notice of Proposed Rulemaking in the above-captioned matter, FCC 82-206, —— FCC 2d —— in which it set forth tentative conclusions pertaining to Pacific region facilities requirements during the mid-1980's and requested certain information for use in its deliberations. The Commission's notice called for comments to its information request to be supplied on June 1, 1982, and replies to those submissions on June 14, 1982.

2. We have before us for consideration a request by American Telephone and Telegraph Company (AT&T) for an extension of two filing dates in this proceeding. AT&T requests extension of the June 1, 1982 filing date for comments until June 28, 1982 and the date for filing replies to those comments until July 28, 1982. In support of these requests, AT&T states that there will be a reduction in the circuit forecast for U.S. Mainland-Hawaii domestic message telephone traffic and a concomitant change in the facility plans for that cross-section. AT&T contends that these changes must be discussed with the other cable system owners on the ANZCAN Cable System project so that all parties concerned will be better able to update the record. Although these discussions have been initiated, AT&T estimates that it will not be able to finalize its revised forecast before the middle of June 1982. Further, AT&T states that it has contacted all concerned parties that it was filing this motion and that they indicated that they would not object to the request.

3. The inclusion in the record of AT&T's revised circuit and facility forecasts will benefit the rulemaking proceeding. The requested extensions are minimal and will not harm the public interest.

4. Accordingly, it is ordered, pursuant to § 0.291 of the Commission's Rules and Regulations, 47 CFR 0.291 (1979), that the responses to the Commission's Notice of Proposed Rulemaking in CC Docket No. 81-343 shall be filed in accordance with the following schedule:

Gary M. Epstein,

Chief, Common Carrier Bureau.

[FR Doc. 82-15356 Filed 6-4-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 82-289; RM-4089]

FM Broadcast Station in Jacksonville, Texas; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of a second FM channel to Jacksonville, Texas, in response to a petition filed by George E. Gunter.

DATES: Comments must be filed on or before July 13, 1982, and reply comments on or before July 28, 1982.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcast.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Jacksonville, Texas), BC Docket No. 82-289, RM-4089.

Adopted: May 21, 1982.

Released: June 3, 1982.

1. A petition for rule making was filed on March 22, 1982, by George E. Gunter ("petitioner") proposing the assignment of Channel 272A to Jacksonville, Texas, as its second FM allocation. Petitioner stated his intention to apply for the channel, if assigned.

2. Jacksonville (population 12,264),[1] in Cherokee County (population 38,127), is located approximately 168 kilometers (105 miles) southeast of Dallas, Texas. It is served by AM Station KEBE and FM Station KOOI (Channel 293) under common ownership.

3. In support of the proposal the petitioner asserts that Jacksonville operates with a mayor-city council form of government. It has several local businesses, a daily newspaper, and community services. From the information submitted by petitioner, it appears that no community with a population greater than 1,000 will be affected by the proposed assignment.

4. The assignment of Channel 272A to Jacksonville will result in intermixing a Class A channel with a Class C channel (293). The Commission has a policy of permitting such intermixture where, as here, no other Class C channels are available for assignment and the petitioner is willing to apply for the Class A channel, despite the unfavorable competitive situation. See *Yakima, Washington,* 42 F.C.C. 2d 548, 550 (1973), and *Key West, Florida,* 45 F.C.C. 2d 142, 145 (1974). A site restriction of 2 miles west of the city must be imposed to meet spacing requirements to Station KLCR, Center, Texas.

5. In view of the foregoing information and the fact that the proposed assignment would provide the community with an opportunity to develop a second local FM broadcast station, the Commission proposes amending the FM Table of Assignments, § 73.202(b) of the rules, with regard to Jacksonville, Texas, as follows:

City	Channel No.	
	Present	Proposed
Jacksonville, Tex	293	272A and 293.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference 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 July 13, 1982, and reply comments on or before July 28, 1982, and are advised to read the Appendix for the proper procedures.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules. See, Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Montrose H.

[1] Population figures are taken from the 1980 U.S. Census.

Tyree, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 134, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, 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 §§ 0.204(b) 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 a 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 the Commission's 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.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

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's 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. 82-15329 Filed 6-4-82; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 47, No. 109
Monday, June 7, 1982

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

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

Edgerton Livestock Auction Market, Edgerton, Minnesota, et al.; Proposed Posting of Stockyards

The Chief, Financial Protection Branch, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the Act.

MN–178 Edgerton Livestock Auction Market, Edgerton, Minnesota

SD–167 Tripp Livestock Market, Tripp, South Dakota

TX–326 O.K. Auction Company, Breckinridge, Texas

Notice is hereby given, therefore, that the said Chief, pursuant to authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), proposes to designate the stockyards named above as posted stockyards subject to the provisions of the Act as provided in section 302 thereof.

Any person who wishes to submit written data, views or arguments concerning the proposed designation, may do so by filing them with the Chief, Financial Protection Branch, Packers and Stockyards Administration, United States Department of Agriculture, Washington, D.C. 20250, by June 22, 1982.

All written submissions made pursuant to this notice shall be made available for public inspection in the office of the Chief of the Financial Protection Branch during normal business hours.

Done at Washington, D.C., this 2nd day of June, 1982.

Jack W. Brinckmeyer,

Chief, Financial Protection Branch, Livestock Marketing Division.

[FR Doc. 82–15385 Filed 6–4–82; 8:45 am]

BILLING CODE 3410–02–M

CIVIL AERONAUTICS BOARD

[Order 82–5–138]

Fitness Determination of Holiday Airlines, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 82–5–138, Order to Show Cause.

SUMMARY: The Board is proposing to find that Holiday Airlines, Inc., is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards. The complete text of this order is available, as noted below.

DATE: Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed below no later than June 16, 1982, together with a summary of the testimony, statistical data, and other material relied upon to support the allegations.

ADDRESS: Responses or additional data should be filed with Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and with all persons listed in Attachment A of Order 82–5–138.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia T. Szrom, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–5088.

SUPPLEMENTARY INFORMATION: The complete text of Order 82–5–138 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 82–5–138 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Bureau of Domestic Aviation, May 25, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82–15387 Filed 6–4–82; 8:45 am]

BILLING CODE 6320–01–M

[Docket 40253]

Northeast Sunrise Airlines, Inc., Fitness Investigation; Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to be held on June 11, 1982, at 10:00 a.m. (local time) in Room 1012, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., June 1, 1982.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 82–15388 Filed 6–4–82; 8:45 am]

BILLING CODE 6320–01–M

[Docket 40379]

Northeastern International Airways, Inc., Fitness Investigation; Hearing

A prehearing conference is currently scheduled to be held in this proceeding on June 9, 1982. By motion dated May 27, 1982, the Bureau of Domestic Aviation requests that the applicant submit additional data on May 28, 1982, and the hearing in this proceeding be merged with the prehearing conference on June 9. The Bureau's request for expedition is based on the applicant's continued use of dormant authority to operate scheduled passenger service. The Bureau states that the applicant has agreed to the above timetable.

Accordingly,

Notice is hereby given that a hearing in the above-entitled matter will immediately follow the prehearing conference scheduled to be held on June 9, 1982, at 10:00 a.m. (local time), in Room 1012 in the Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C.

Dated at Washington, D.C., June 1, 1982.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 82–15386 Filed 6–4–82; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Fireplace Mesh Panels From Taiwan; Antidumping Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Antidumping duty order.

SUMMARY: In separate investigations, the U.S. Department of Commerce ("the Department") and the U.S. International Trade Commission ("the ITC") have determined that fireplace mesh panels from Taiwan are being sold at less than fair value and that these sales are materially injuring a U.S. industry. Therefore, all unappraized entries, or warehouse withdrawals, for consumption of this merchandise made on and after January 22, 1982, the date on which the Department published its "Suspension of Liquidation" notice in the **Federal Register**, will be liable for the possible assessment of estimated antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on and after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: June 7, 1982.

FOR FURTHER INFORMATION CONTACT: Steve Garment, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, Telephone: (202) 377–1757.

SUPPLEMENTARY INFORMATION: For the purpose of this notice, the term "fireplace mesh panels" is defined as pre-cut, flexible mesh panels, both finished and unfinished, which are constructed of interlocking spirals of steel wire and are of a kind used in the manufacture of safety screening by U.S. manufacturers of fireplace accessories and zero-clearance fireplaces. Fireplace mesh panels are currently classified under item numbers 642.8700 or 654.0045 of the *Tariff Schedules of the United States, Annotated,* depending on their stage of processing.

In accordance with section 733 of the Tariff Act of 1930, as amended ("the Act") (19 U.S.C. 1673b), on January 22, 1982, the Department preliminarily determined that fireplace mesh panels from Taiwan are being sold at less than fair value (47 FR 3153–55). On April 9, 1982, the Department reached the same conclusion in a final determination (47 FR 15393–15396).

On May 21, 1982, in accordance with section 735(b) of the Act (19 U.S.C. 1673(b)), the ITC determined and notified the Department that such importations are materially injuring a U.S. industry.

Therefore, in accordance with section 736 of the Act (19 U.S.C. 1673e), the Department directs U.S. Customs officers to assess antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the U.S. price for all entries of fireplace mesh panels from Taiwan. These antidumping duties will be assessed on all of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 22, 1982, the date on which the Department published its "Suspension of Liquidation" notice in the **Federal Register**, and all future entries of said merchandise.

On and after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers deposit their estimated normal Customs duties on the merchandise, an additional deposit of estimated antidumping duties equal to the following rates:

a. Fuan Da Industrial Co., Ltd.: 0% of the f.o.b. value.

b. Yeh Sheng Wire Mesh & Screen Co., Ltd.: 6.4% of the f.o.b. value.

c. All other manufacturers: 4.7% of the f.o.b. value.

These determinations constitute an antidumping duty order with respect to fireplace mesh panels from Taiwan, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). The Department intends to conduct an administrative review within the twelve month period beginning on the anniversary date of the publication of this order, as provided in section 751 of the Act (19 U.S.C. 1675).

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Department of Commerce Regulations (19 CFR 353.48).

We have deleted from the Commerce Regulations, Annex I to 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

June 1, 1982.

[FR Doc. 82–15319 Filed 6–4–82; 8:45 am]

BILLING CODE 3510–25–M

Computer Systems Technical Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The Computer Systems Technical Advisory Committee was initially established on January 3, 1973, and rechartered on August 29, 1980 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical specifications and policy issues relating to those specifications which are of concern to the Department, (B) worldwide availability of products and systems, including quantity and quality, and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to computer systems or technology, and (D) exports of the aforementioned commodities subject to unilateral and multilateral controls which the United States establishes or in which it participates including proposed revisions of any such controls.

TIME AND PLACE: June 23, 1982, at 9:00 a.m. The meeting will take place at the Main Commerce Building, Room 5230, 14th Street and Constitution Ave., NW., Washington, D.C.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 16, 1980, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12065.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, Telephone: 202–377–4217.

FOR FURTHER INFORMATION CONTACT:

Mrs. Margaret A. Cornejo, Committee Control Officer, Office of Export Administration, Room 2613, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: 202–377–2583.

Dated: June 1, 1982.

Vincent F. DeCain,

Acting Director, Office of Export Administration.

[FR Doc. 82–15376 Filed 6–4–82; 8:45 am]

BILLING CODE 3510–25–M

Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The Computer Systems Technical Advisory Committee was initially established on January 3, 1973, and recharted on September 18, 1981 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act. The Subcommittee was approved for continuation on October 5, 1981 pursuant to the charter of the Committees. The Foreign Availability Subcommittee was formed to ascertain if certain kinds of equipment are available in non-COCOM and Communist countries, and if such equipment is available, then to ascertain if it is technically the same or similar to that available elsewhere.

TIME AND PLACE: June 22, 1982, at 1:30 p.m. The meeting will take place at the Main Commerce Building, Room 3708, 14th Street and Constitution Ave., NW., Washington, D.C.

AGENDA:

General Session

(1) Opening remarks by the Subcommittee Chairman.

(2) Presentation of papers or comments by the public.

(3) Review of the Foreign Availability Certification Group proposal status.

(4) Discussion of foreign availability technical data form.

(5) Discussion of world computer data bank.

(6) Discussion of subcommittee attendance.

Public Participation

The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written Statements may be submitted at any time before or after the meeting.

FOR FURTHER INFORMATION CONTACT:

Mrs. Margaret A. Cornejo, Committee Control Officer, Office of Export Administration, Room 2613, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: 202–377–2583.

Dated: June 2, 1982.

Vincent F. DeCain,

Acting Director, Office of Export Administration.

[FR Doc. 82–15375 Filed 6–4–82; 8:45 am]

BILLING CODE 3510–25–M

Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The Computer Systems Technical Advisory Committee was initially established on January 3, 1973, and rechartered on September 18, 1981 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act. The Subcommittee was approved for continuation on October 5, 1981 pursuant to the charter of the Committee. The Licensing Procedures Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

TIME AND PLACE: June 22, 1982, at 9:30 a.m. The meeting will take place at the Main Commerce Building, Room 1851, 14th Street and Constitution Ave., NW., Washington, D.C.

AGENDA:

General Session

1. Opening remarks by the Subcommittee Chairman.
2. Presentation of papers or comments by the public.
3. Report on review of distribution license policy.
4. Swiss Blue import certificate update.
5. Post-COCOM procedures.
6. Status of a short form 6031P—Computer Performance Parameter Sheet.
7. New business.

Public Participation

The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written Statements may be submitted at any time before or after the meeting.

FOR FURTHER INFORMATION CONTACT:

Mrs. Margaret A. Cornejo, Committee Control Officer, Office of Export Administration, Room 2613, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: 202–377–2583.

Dated: June 2, 1981.

Vincent F. DeCain,

Acting Director, Office of Export Administration.

[FR Doc. 82–15377 Filed 6–4–82; 8:45 am]

BILLING CODE 3510–25–M

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Report of Altered System

AGENCY: Education Department.

ACTION: Notification of Altered System.

SUMMARY: In accordance with the Privacy Act of 1974, the Department proposes to amend the following notice of systems of records: 18–40–0033, Department of Education Financial Management Information System (EDFMIS). The amendment will permit the Department to collect receivables from individuals who owe the Department monies under loan/award agreements if the program office does not maintain a system of records adequate to monitor the receivables. This amendment is needed at this time to collect receivables under the Bilingual Education Fellowship program. Other technical changes are made to the notice to make it more descriptive of the EDFMIS.

DATE: Department of Education will consider comments about the new routine uses received on or before July 7, 1982.

ADDRESS: The public should address comments to the Privacy Officer, Department of Education, Office of Public Affairs, 400 Maryland Avenue, SW, Room 2089, Washington, D.C. 20202. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Smith, Financial Management Service, Office of the Comptroller, 400 Maryland Avenue, SW, Room 3105, Washington, D.C. 20202. Telephone: (202) 426–6050.

SUPPLEMENTARY INFORMATION: The Department of Education Financial Management Information System (EDFMIS), System Notice 18–40–0033, currently maintains files on the following types of organizations and individuals: Department of Education employees, consultants, contractors, advisory committee members, and other individuals performing personal services for the Department. The collection of this data is necessary to account properly for funds that have been

appropriated to the Department of Education by Congress from the time the funds are received by Treasury warrant and apportioned by OMB until the funds have been obligated to a recipient and expended in accordance with Departmental requirements.

With this amendment, the system will also maintain information about receivable accounts for those programs that have legislative authority to collect receivables and for which an independent system of records is not warranted. The amendment will specifically permit the collection of debts owed the Department under the Bilingual Education Fellowship program.

Effective debt management precipitates the need to have certain individual records in order to monitor properly amounts due the Department of Education under this type of program.

The routine uses of EDFMIS, System Notice 18–40–0033, are modified by this notice to accommodate the use of EDFMIS to collect receivables under loan/award programs where the programs do not maintain systems of records adequate to monitor the receivables.

(Catalog of Federal Domestic Assistance No. 84.003)

Dated: June 1, 1982.

T. H. Bell,

Secretary of Education.

18–40–0033

SYSTEM NAME:

Department of Education Financial Management Information System, ED/ODSM/FMS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Room 3105, Federal Office Building #6, 400 Maryland Avenue, SW, Washington, D.C. 20202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Education employees, consultants, contractors, advisory committee members, other individuals performing personnel services for the Department, and individuals owing a the Department of Education monies as a result of loan/award agreements where the program office does not maintain a system of records adequate to monitor the receivables. The appendix to this notice lists the programs for which the Department currently collects receivables under the loan/award category.

CATEGORIES OF RECORDS IN THE SYSTEM:

Social security numbers or other assigned identifiers of individuals for whom a receivable has been established; name, address, and social security number of each individual and employer identification number of each company and institution if the individual, company, or institution provides services for the Department; and records indicating the cost of service(s) provided by each individual, company, or institution, and the status of these accounts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING THE CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual. In the event of litigation where one of the parties is; (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to represent effectively such party, provided such disclosure is compatible with the purpose for which the records were collected.

In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on magnetic tape, microfilm, microfiche and stored in retrievable file system.

RETRIEVABILITY:

Records are indexed by social security number or other individual identifier, employer identification number, and award document number. The records are retrieved by a manual or computer search of the indices.

SAFEGUARDS:

Direct access restricted to authorized agency staff in performance of official duties. Specifically, records are available to employees of the Department of Education Financial Management Service, the Office of the Inspector General, to program officials, and to General Accounting Office auditors, in performance of accounting-related functions. Authorized staff are assigned passwords which must be used for access to computerized data. Also, an additional password is necessary to gain access to the system. The system-access password is changed frequently. The data is maintained in a secured-access area.

RETENTION AND DISPOSAL:

File constantly updated. Records maintained for ten years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Management Service, U.S. Department of Education, Room 3105, FOB #6, 400 Maryland Avenue, SW, Washington, D.C. 20202.

NOTIFICATION PROCEDURE:

System Manager will respond to inquiries.

RECORD ACCESS PROCEDURES:

Same as under "Retrievability".

CONTESTING RECORD PROCEDURES:

Contact System Manager.

RECORD SOURCE CATEGORIES:

Department of Education employees, consultants, others performing personal services for the Department of Education, and Education Department programs that do not maintain a system of records adequate to monitor receivables and for which individuals owe the Department monies under a loan/award agreement.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix: Loan/award programs under which the Department collects receivables: Bilingual Education Fellowship program.

[FR Doc. 82–15393 Filed 6–4–82, 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and

Conservation Act (42 U.S.C. 6272), the following meeting notices are provided:

I. A meeting of Subcommittee A of the Industry Advisory Board of the International Energy Agency (IEA) will be held on June 15 and 16, 1982, at the Instituto Di Aggiornamento E Formazione ENI, Castelgandolfo, Italy, beginning at 9:30 a.m. on June 15. This meeting is being held in order to permit representatives of some of the members of Subcommittee A to participate in a meeting being held on June 15 and 16 of a joint government/industry Design Group for the preparation of the fourth IEA Allocation System Test.

The agenda for the meeting is as follows:

1. Preparation of the fourth test of the IEA Allocation System:

(a) Testing of pricing principles, and

(b) Other matters arising from the second meeting of the group.

2. Future meetings.

II. A meeting of Subcommittee A of the Industry Advisory Board of the IEA will be held on June 17, 1982, at the Instituto Di Aggiornamento E Formazione ENI, Castelgandolfo, Italy, beginning at 9:30 a.m.

The agenda for the meeting is as follows:

1. Opening remarks.

2. Stocks and stock policies for supply disruptions:

(a) IEA/SEQ(82)9 entitled—Stocks and Stock Policies for Supply Disruptions Covering IEA/GB (82)2;

(b) IEA/SEQ(82)16 entitled—Options for Calculating Emergency Reserve Commitment; and

(c) IEA/SEQ(82)17 entitled—Adjustment During Emergency Allocation for Pre-Emergency Stockdraw.

3. AST–4 matters including Design Group Chairman's report.

4. Quarterly Oil Forecast, second quarter 1982 through first quarter 1983—IEA/SEQ(82)15.

5. IEA Secretariat's May 1982 Assessment—IEA/SEQ(82)19.

6. Emergency Reserves—Emergency Management Manual revision—IEA/SEQ(82)14.

7. ISAG staffing.

8. Future work program and meeting schedule.

III. A meeting of Subcommittee C of the Industry Advisory Board of the IEA will be held on June 17, 1982, at the Instituto Di Aggiornamento E Formazione ENI, Castelgandolfo, Italy, beginning at 2:00 p.m.

The agenda for the meeting is as follows:

1. Opening remarks.

2. IEA Dispute Settlement Centre, including:

(a) Report of the Director;

(b) Schedule of fees and expenses; and

(c) Status of consents to arbitration.

3. Status of U.S. statutory antitrust defense, including:

(a) Legislation; and

(b) Plan of Action.

4. Status of application for legal clearance under Treaty of Rome.

5. Availability of contract breach defense, including:

(a) Status of defense in participating countries; and

(b) Effect of Choice of Law clause.

6. Future work program.

IV. A meeting of the Industry Advisory Board of the IEA will be held on June 18, 1982, at the offices of Ente Nazionale Idrocarburi (ENI), Piazzale Enrico Mattei 1, Rome, Italy, beginning at 9:30 a.m.

The agenda for the meeting is as follows:

1. Opening remarks; Adoption of the agenda of the meeting; approval of record notes of the February 17, 1982, Industry Advisory Board meeting.

2. Correspondence and communication with Reporting Companies, including distribution of documents.

3. Evaluation of the world oil balance, and short run trends of supply and demand: Report of Subcommittee A on documents:

(a) May Assessment—IEA/SEQ(82)19; and

(b) Quarterly Oil Forecast—IEA/SEQ(82)15.

4. Further evaluation of future patterns of oil supply. Discussion and report of Subcommittee A on document entitled Stock and Stock Policies for Supply Disruptions—IEA/SEQ(82)9.

5. Progress report, AST–4 Design Group.

6. Report of Subcommittee C on its June 17, 1982, meeting.

7. The staffing of committees and groups.

8. Next Industry Advisory Board meeting.

V. A meeting of the Industry Working Party (IWP) of the IEA will be held on June 23, 1982, at the offices of the IEA, 2 Rue Andre Pascal, Paris 16, France, beginning at 10:30 a.m. The purpose of this meeting is to permit attendance by representatives of the IWP at a meeting of an *Ad Hoc* Working Group of the IEA Standing Group on the Oil Market (SOM) which is being held in Paris on that date.

The agenda for the meeting is under the control of the SOM *Ad Hoc* Working Group. It is expected that the following provisional agenda will be followed:

1. Adoption of the provisional agenda.

2. Review of the Crude Oil Information Systems:

(a) Paper by the Secretariat; and

(b) Note by the IWP.

3. Other business.

4. Date of next meeting.

VI. A meeting of the Industry Advisory Board of the IEA will be held on June 23, 1982, at the offices of the IEA, 2 Rue Andre Pascal, Paris 16, France, beginning at 9:30 a.m. The purpose of this meeting is to permit attendance by representatives of members of the Industry Advisory Board at a meeting of the IEA Standing Group on Emergency Questions (SEQ) which is being held in Paris on that date.

The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of the Draft Agenda.

2. Record of minutes and matters arising.

3. Oil supply and demand:

(a) May Assessment;

(b) Quarterly Oil Forecast;

(c) Base Period Final Consumption; and

(d) Monthly Oil Statistics.

4. Stocks and stock policies:

(a) Adequacy of stock levels;

(b) Need to maintain stock levels despite temporary declines in oil imports for reasons other than structural change;

(c) Role and use of stocks in disruptions of less than 7%;

(d) Movement of oil into the supply system; and

(e) Implications of a reduction in countries' stocks prior to allocation.

5. AST–4 Design Group: Report by the Design Group Chairman on the April and June Meetings of the Group.

6. General matters:

(a) U.S. legislation;

(b) Summary of Demand Restraint reviews;

(c) Revision of EMM;

(d) Dispute Settlement Center—Designation of Panel Members; and

(e) 1983 SEQ/IEA Secretariat Work Program.

VII. A meeting of the Industry Working Party (IWP) of the IEA will be held on June 24 and 25, 1982, at the offices of the IEA, 2 Rue Andre Pascal, Paris 16, France, beginning at 9:30 a.m. on June 24. The purpose of this meeting is to permit attendance by representatives of members of the IWP during portions of a meeting of the IEA Standing Group on the Oil Market (SOM) which is being held in Paris on those dates.

The agenda for the meeting is under the control of the SOM. It is expected

that the following provisional agenda will be followed, and that IWP members will participate in discussion of some but not all of the items listed:

1. Adoption of the provisional agenda.
2. Approval of the Summary Record of the 40th Session.
3. Objectives, activities and information requirements of the SOM:
(a) Paper by the Secretariat;
(b) Report by the Chairman of the Ad Hoc Working Group to Review the Crude Oil Information System; and
(c) Note by the IWP.
4. Oil market developments:
(a) Current oil market and stocks situation—end May assessment;
(b) Structural changes in the world oil market, note and presentation by Mr. J. R. Roeber, of J. R. Roeber Associates, on Government Involvement in Crude Oil Purchases;
(c) Past, present, and future trends in oil reserves and OPEC production capacity;
(d) Product price controls in IEA countries (oral report by the Secretariat); and
(e) Round-table reports on notable developments in the oil sector in participating countries.
5. Consultations on oil futures markets with the New York Mercantile Exchange and the International Petroleum Exchange.
6. Analysis of the IEA Financial Information System data, note and presentation by Mr. A. Anderson.
7. Other business.
8. Date of next meeting.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, these meetings will not be open to the public.

Issued in Washington, D.C., June 1, 1982.

Craig S. Bamberger,

Assistant General Counsel, International Trade and Emergency Preparedness.

[FR Doc. 82-15418 Filed 6-4-82; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Additional Field Hearings on Proposed 1982 Wholesale Power Rate Adjustment; Additional Field Hearings

AGENCY: Bonneville Power Administration (BPA) DOE.

ACTION: Notice of additional field hearings on proposed 1982 wholesale power rate adjustment.

SUMMARY: On March 31, 1982, BPA published in the **Federal Register** (47 FR 13710) its "Notice of Proposed Wholesale Power Rate Adjustment, Public Hearings, and Opportunities for Public Review and Comment." BPA conducted the eight field hearings as scheduled in that Notice and an additional hearing in Everett, Washington, (see 47 FR 16066, April 14, 1982) during the period April 12–23, 1982. In response to requests from the public, BPA now proposes to conduct seven additional field hearings on June 28, 1982, to offer the public an opportunity to comment on its proposed wholesale rate adjustment after the close of the formal portion of the rate hearings held in Portland. BPA Area or District staff will preside at these field hearings, and all comments will be transcribed and made part of the official record in the proceeding. Registration for the hearings will be at 7 p.m., and the hearings will begin at 7:30 p.m. Locations are: Burley, Idaho, Burley Inn, Cassia Room, 800 North Overland Avenue; Eugene, Oregon, Eugene Hilton, Wilder Room, 66 East Sixth Avenue; Missoula, Montana, Holiday Inn, Grizzly Den, Highway 10 West and East Mullen Road; Richland, Washington, Federal Building Auditorium, 825 Jadwin Avenue; Everett, Washington, Everett Pacific Hotel, Orcas Room, 3105 Pine Street; Spokane, Washington, Ramada Inn, Spokane International Airport; Vancouver, Washington, Clark County Public Utility District Operations Center, 8600 NE. 117th Avenue.

FOR FURTHER INFORMATION CONTACT:

Donna L. Geiger, Public Involvement Coordinator, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212, 503–230–3478. BPA maintains toll-free lines for the use of persons within the region. Oregon callers outside of the Portland area may use the toll-free line, 1–800–452–8429; callers in Washington, Idaho, Montana, Utah, Nevada, Wyoming, and California may use 1–800–547–6048. Additional information is also available from:

Mr. George Gwinnutt, Area Manager, Suite 288, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4451.
Mr. Ladd Sutton, District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–345–0311.
Mr. Ronald H. Wilkerson, Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.
Mr. Gordon H. Brandenburger, District Manager, P.O. Box 758, Kalispell, Montana 59901, 406–755–6202.
Mr. Ronald K. Rodewald, District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.
Mr. Richard D. Casad, Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206–442–4130.
Mr. Roy Nishi, Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–525–5500, Extension 701.
Mr. Robert N. Laffel, District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Issued in Portland, Oregon, May 28, 1982.

Earl E. Gjelde,

Acting Administrator.

[FR Doc. 82-15343 Filed 6-4-82; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

County Fuel Company, Inc.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to County Fuel Company, Inc., 5711 O'Donnell Street, Baltimore, Maryland 21224. This Proposed Remedial Order charges County with pricing violations in the amount of $197,305.49 exclusive of interest connected with the sale of motor gasoline during the period March 1, 1979 through March 18, 1980.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Robert J. McKee, Jr., Director, Philadelphia Field Office, ERA, (215) 597–3870. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 "M" Street, NW, Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Philadelphia, Pennsylvania on the 24th day of May 1982.

Robert J. McKee, Jr.,

Director, Philadelphia Field Office, Economic Regulatory Administration.

[FR Doc. 82-15390 Filed 6-4-82; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of April 5 Through April 9, 1982

During the week of April 5 through April 9, 1982, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Dresser Industries, Inc., 4/5/82, HFA-0045

Dresser Industries filed an Appeal from a partial denial by the Director of the DOE Office of Classification of a Request for Information which the firm had submitted

under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that certain documents which were initially withheld under Exemptions 4 and 5 should be remanded to the Director of the Office of Classification. The DOE directed him to either release those documents or issue a new determination which (i) adequately describes the subject matter of each document withheld under Exemptions 4 and 5, and (ii) adequately justifies the application of Exemption 4 to materials withheld under that exemption. The Director was further required to furnish sufficient information, including citation to an appropriate exemption, to substantiate why three other documents were withheld.

Vinson and Elkins, 4/6/82, HFA–0029

On January 15, 1982, the law firm of Vinson and Elkins filed an Appeal from a denial by the Director, Office of Oil and Gas, Energy Information Administration of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). Certain information filed by gasoline resellers on Form EIA–460 for a period prior to decontrol was initially withheld under Exemption 4. In the Appeal the DOE determined that in view of the age and the limited nature of the information, the submitters of that information would not suffer any competitive harm as a result of its release. Accordingly, the Director was ordered to release information concerning weighted average selling price for gasoline in June 1978 contained on Form EIA–460.

Requests for Exception

Mt. Lake Co-op Oil Association, 4/8/82, HEE–0006

On December 8, 1981, Mt. Lake Co-op Oil Association (Mt. Lake) filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its submission, Mt. Lake requested that it be relieved of the requirement to file Form EIA–9A, No. 2 Distillate Price Monitoring Report, for the period January 1982 through March 1982. In considering Mt. Lake's request, the DOE determined that the firm should not be relieved of its filing obligation. However, the DOE also determined that Mt. Lake should be given until April 30, 1982 to file EIA–9A forms for the period January through March 1982.

Frank Rofinot, 4/8/82, HEE–0010

Frank Rofinot filed an Application for Exception from EIA reporting requirements in which the firm sought to be releived of the requirement to file Form EIA–9A, No. 2 Distillate Price Monitoring Report. In considering the request, the DOE found that exception relief was necessary to relieve Rofinot of a disproportionate burden as compared with other firms in complying with the EIA–9A reporting requirements. This conclusion was based upon the firm's current operating posture, including a reduction in its level of sales and a lack of personnel able to complete the EIA–9A forms.

Silver Eagle Refining Company, 4/8/82, BEE–1694

Silver Eagle Refining Company filed an Application for Exception from the provisions of 10 C.F.R. § 211.67 in which the firm sought relief that would permit it to wells previously issued entitlements that it had been unable to sell to date as a result of an entitlements purchase default by Southwestern Refining Company. In considering the request, the DOE found that exception relief was not warranted because Silver Eagle had itself defaulted on an entitlements purchase obligation. Accordingly, the Application for Exception was denied.

Supplemental Order

Tony Barbaria, d.b.a. Barbaria Shell Service, 4/7/82, HRX–0018

The DOE issued a Supplemental Order to Tony Barbaria, d.b.a. Barbaria Shell Service rescinding a Remedial Order issued to the firm on March 29, 1982. The DOE pointed out that Barbaria had already entered a consent order with the DOE, which resolved all issues outstanding in the remedial order proceeding.

Special Refund Procedures

Office of Enforcement, Economic Regulatory Administration: In the Matters of:

Adams Resources and Energy, Inc., BEF–0055
Mohegan Co./James B. Kite Operating Co., BEF–0057
T–C Oil Co., BEF–0047
N. C. Ginther, BEF–0059
D. R. Cummings, BEF–0058
Summit Transportation, BEF–0053
J&C Drilling Co., BEF–0050
Marbob Energy Corp., BEF–0052
Westland Oil Development Corp., BEF–0026
Quintana Petroleum Corp., BEF–0060
Kirkpatrick Oil and Gas Co., BEF–0061
William Gruenewald & Assoc., Inc., BEF–0062
Mabee Petroleum Corp., BEF–0068
Michaelson Producing Co., BEF–0063
Rocky Petroleum Corp., BEF–0071
Rollert-Waddell Company, BEF–0064
Coastal Corporation, BEF–0005
Homestake Prouction Co., BEF–0074
Louis H. Haring, Jr., BEF–0075
Diamond Shamrock Corp., BEF–0076
Century Refining Co., BEF–0077
Alta Loma Oil Co., BEF–0080
Benson-Montin-Greer Drilling Co., BEF–0087
BTA Oil Producers, BEF–0083
Clark & Clark, BEF–0084
Connally Oil Company, BEF–0082
Liberty Oil & Gas Co., Inc., BEF–0092
M. C. Milam, Inc., BEF–0090
Partlow & Cochonour, BEF–0091
Phoenix Resources Company, BEF–0088
Milinda Oil Co., HEF–0001
Calvin Petroleum Corp., HEF–0003
An-Son Corp., HEF–0004

The Office of Enforcement of the Economic Regulatory Administration filed a Petition for the Implementation of Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, requesting that the Office of Hearings and Appeals establish procedures for the distribution of funds received by the DOE through consent orders entered into by Adams Resources and Energy, Inc. and 32 other firms. The OHA determined that it would be appropriate to pool the funds made available through these 33 consent orders with the funds received in *Office of Enforcement*, 9 DOE ¶ 82,521 (1982). The OHA also established a first-stage refund procedure and announced that it would accept Applications for Refund from all claimants who can affirmatively demonstrate that they have been injured by the violations alleged in the consent orders.

Dismissals

The following submission was dismissed without prejudice:

Name and Case No.

Office of Safeguards and Security, BER–0119

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, New Post Office Building, 12th and Pennsylvania Ave., NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: May 27, 1982.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 82–15389 Filed 6–4–82; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Transmittal No. 53; FCC 82–208; CC Docket No. 78–371]

American Telephone & Telegraph Co. and the Bell System Operating Companies Tariff FCC No. 8 (BSOC 8); Exchange Network Facilities for Interstate Access (ENFIA); Memorandum Opinion and Order Instituting Investigation

Adopted: April 29, 1982.

Released: April 30, 1982.

By the Commission: Commissioners Quello, Jones and Dawson concurring and issuing statements; Commissioner Fogarty concurring in part and dissenting in part and issuing a statement.

1. We now consider proposed revisions filed on April 16, 1982 by the American Telephone and Telegraph Company (AT&T) and the Bell System Operating Companies (BSOCs) to the BSOC 8 Tariff. That tariff generally governs the provision of certain local exchange access facilities to other carriers used to provide services "like" AT&T's Message Telecommunications Service (MTS) and Wide Area Telecommunications Service (WATS). The BSOC 8 tariff implements the ENFIA Interim Settlement Agreement approved by the Commission on April 16, 1979. *ENFIA*, 61 FCC 2d 440 (1979) Petitions to reject were filed by Southern Pacific Corporation (SPC), MCI Telecommunications Corporation (MCI),

United States Transmission Systems (USTS), Satellite Business Systems, (SBS), and Western Union Telegraph Company (Western Union). U.S. Telephone Communications, Inc. (U.S. Tel) filed a petition to reject or suspend. On April 19, the Chief, Common Carrier Bureau issued a Public Notice which raised the possibility of a temporary, partial rate authorization under Section 204(b) of the Act, 47 U.S.C. 204(b). AT&T by letter on April 21 opposed this approach. Comments were filed by MCI, SPC, SBS, USTS, the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO) and the National Telephone Cooperative Association (NTCA), the United States Independent Telephone Association (USITA), U.S. Tel, Teltec Savings Communications Co. (Teltec), and the Association of Long Distance Telephone Companies (ALTEL).[1] Based upon our examination of the transmittal and the petitions, it is our view that the petitions do not present grounds for rejection, but do raise substantial questions concerning the lawfulness of the revisions and their conformity with the language and intent of the ENFIA Agreement. We are therefore suspending the effectiveness of the revised material for the allowed statutory period of five months and setting the issues specified below for investigation. We also are adopting measures to assure that exchange access is provided during the suspension period in a manner which protects the rights of all parties pending the conclusion of the investigation.

I. Background

2. The ENFIA agreement approved by the Commission in 1979 establishes the methods to be used to compute charges of AT&T and GTE subsidiaries for the origination or termination of certain interstate telecommunications services provided by carriers other than telephone companies (OCCs).[2] The OCC services that are covered by the agreement are described as services that are "like" MTS and WATS or as "Execunet/SPRINT-type interstate services." Those terms describe some services that use local exchange switches at both ends. They do not include enhanced services or basic services that cannot be used for voice communications. The origination and termination or access service covered by the ENFIA agreement does not encompass every form of access service that conceivably might be provided for an Execunet/SPRINT-type service, but is limited to the access provided at the time it was signed. Such access is provided through line side terminations into a Class 5 switch and requires the use of seven digits to enable an OCC customer to reach an OCC switch.

3. The ENFIA agreement requires that charges be computed separately for three distinct elements. Element 1 consists of the line between an OCC switch and the local exhange or Class 5 switch. Charges for similar lines in other tariffs are incorporated by reference. Element 2 consists of the use of the traffic sensitive portion of that Class 5 switch and the use of other traffic sensitive switching and trunking facilities in connection with calls that are switched through more than one Class 5 switch in the local same exchange. The charge is computed to simulate the amounts that local exchange carriers receive through settlements or divisions of revenues when comparable service is provided for MTS or WATS. A discount from that simulated charge is included to compensate for local message unit charges that OCC customers pay to access an OCC switch. Element 3 consists of the use of non-traffic sensitive local exchange facilities such as terminals, inside wiring, subscriber lines, and the non-traffic sensitive portion of a Class 5 switch. That charge is also related to a simulated charge for MTS or WATS use of such facilities. The OCC charge is currently 55% of the corresponding MTS–WATS charge. The charge specified in the ENFIA agreement were implemented in the BSOC 8 tariff.

4. The ENFIA agreement is designed to provide an interim formula for the computation of such OCC access charges until this Commission or the Congress establishes a more comprehensive access compensation system. Paragraph 6 of the ENFIA agreement provides that the interim charges will be superseded by charges filed pursuant to an order of this Commission in the *MTS–WATS Market Structure Inquiry* (CC Docket No. 78–72) or charges established pursuant to new legislation relating to that subject. If neither contingency occurs before the fifth anniversary of the effective date, the agreement will expire.

5. Paragraph 11 specifies another contingency that would end the agreement. Expiration was to occur on the third anniversary of the effective date unless this Commission had determined that an extension "is reasonable and in the public interest" and determined "an appropriate level of payment" (Factor P) for Element 3.[3]

6. By order adopted and released on April 14, 1982, *ENFIA*, FCC 82–180, the Commission recently determined that it would be in the public interest to extend the ENFIA Settlement Agreement for an additional two years at the existing 55 percent level of payment factor. At the same time, the Commission declined to freeze the dollar amount of Rate Elements 2 and 3 as some OCCs had urged, and stated that it would address the disputed issue of the proper calculation of billed minutes in the context of revisions to the BSOC 8 tariff.

7. Those revisions are now before us. AT&T proposes to increase the weighted averaged billed OCC minutes per ENFIA per month in Rate Elements 2 and 3 from 3000 to 5823 minutes and the SEP Amount from $.0595 to $.0658 per minute. As a result, Element 2 would be increased from $22.55 to $44.31 per month, and Element 3 from $99.65 to $213.90.

II. The Disputed Billed Minute Counts

8. In order to understand the dispute between AT&T and the OCCs over calculation of billed minutes it is necessary to describe the mechanism provided in the ENFIA agreement and tariff for calculating minutes of use. The agreement provides that "for OCC services covered by this Agreement, the OCCs will file with the Commission in December of each year the total OCC billed minutes of use per month for the preceding August, September, and October and the number of ENFIA per month for the same period." A footnote explains that "It is understood that reported data is subject to verification

[1] We will allow ALTEL's motion to accept the late-filed pleading.

[2] The term OCC has traditionally been used to describe a carrier that does not provide local exchange telephone service and does not participate in any joint rate offerings with carriers that do provide local exchange telephone service.

[3] Factor P represents a weighting applicable to the OCCs which approximates the cost and value differences between ENFIA connections and MTS and WATS connections. Factor P is one component of Element 3 charges, which are derived through the following formula:

Use of Jointly Used Subscriber Plant = SEP Amount × Factor P × Billed Minutes × 1.015.

The Separations Amount (SEP Amount) and Billed Minutes are to be determined according to specific procedures set forth in the tariff. The 1.015 component is a constant that provides for ENFIA-related use of Independent Telephone Company local exchange facilities involved in Bell-Independent Extended Area Service areas.

Element 2 charges for May 2, 1982 through April 15, 1983 are derived as follows:

Local switching and trunking = ($3.42 + ($.00691 × Billed Minutes)] × 1.015.

The $3.42 is a flat rate reflecting local switch termination costs. The $.00691 figure reflects local switching and trunking costs per minute less a message unit credit per minute. The 1.015 factor is the Extended Area Service component.

by the telephone companies by periodic traffic measurements." AT&T is then required to file "changes in the rate level for the following year to reflect the change in OCC average minutes of use per month per ENFIA and the change in the amount calculated under the Separations Manual for Bell's interstate, MTS and WATS minutes of use, in accordance with the formula set forth in the ENFIA tariff." Initially, the Element 2 and 3 rates were based on 3240 minutes. After negotiations with the OCCs concerning disputes as to the calculation of minutes, AT&T filed revised rates based on 3000 minutes in March 1980 for the second year of the agreement. The same figure was used after similar negotiations in the third year.

9. The OCCs did not file their 1981 reports in December as provided in the agreement. They were filed at the direction of the Chief, Common Carrier Bureau on March 19, 1982.[4] For the August–October 1981 period the major OCCs reported average billed minutes per line per month of 3276 for MCI, 1353 for SPC, and 1489 for USTS. The weighted average billed minutes based on these reports and those of other OCCs would be approximately 2417. AT&T had previously stated that its studies indicated the proper minute count to be 6950 minutes based on its measurement of average holding time.[5] In response to the OCCs' reports, AT&T contended the OCCs had seriously understated the proper minutes; it presented a number of adjustments which it claimed would correct the most obvious major flaws in the reports.[6] Based on these adjustments, AT&T reached the figure of 5823 minutes which it includes in the present tariff filing.[7] The adjustments are shown in the table below.

AT&T ADJUSTMENTS TO OCC REPORTED BILLED MINUTES OF USE PER ENFIA LINE

	USTS	MCI	SPC
3-mo average billed minutes/line as reported in Mar. 19, 1982, OCC letters	1,489	3,276	1,353
Adjustment for claimed error in number of ENFIA lines reported	1,880	3,276	1,353
Adjustment for two end ENFIA usage (interstate usage x 2)	3,760	3,276	2,706
Adjustment for failure to report off peak usage	7,094	6,181	5,106
Overall AT&T adjusted weighted average monthly billed minutes of use per ENFIA line	5,823		

[4] Initially, the OCCs argued that the reports were either moot unless the Commission extended the ENFIA Agreement or irrelevant because the Commission should, in their view, determine a fixed rate for the subsequent years of any extended agreement.

[5] Letter of James R. Billingsley to Chairman Mark S. Fowler, dated February 25, 1982.

[6] Letter of William R. Stump to Chief, Common Carrier Bureau, dated March 24, 1982.

[7] See Appendix for derivation of this figure.

A. Treatment of Nonbusiness Day and Off-Peak Minutes

1. MCI

10. MCI contends that the minutes of use contemplated in the agreement are business day minutes billed to businesses; it reports only those minutes. It argues that the purpose of the agreement was to achieve a reasonable overall rate and that the minutes of use formula was negotiated at a time when the OCCs services were expected to be business services highly concentrated during usual business hours. It claims that the parties did not expect that the number of billed minutes per ENFIA would vary greatly over time, and thus the bottom line rate would be relatively stable and affordable. MCI cites two letters written during the negotiations which it claims demonstrate an expectation that only business minutes would be counted. Since the approval of the agreement, residential service has developed into a major OCC market. This use is mainly in non-business day hours over the same ENFIA lines. MCI contends that counting these residential miutes of use would not be in accord with the intent of the parties to the ENFIA agreement and would impose rates far in excess of those contemplated when the agreement was reached. The OCCs also argue that increasing the ENFIA rates in proportion to measured use shifts the benefits of more efficient use of ENFIA to AT&T, constitutes residual cost pricing, and is inherently irrational because Element 3 facilities are non-traffic sensitive. MCI also contends, even assuming all minutes should be counted under the terms of the contract, that the contract would have to be reformed under the judicial doctrines of mistake, impracticability, and frustration. MCI cites *Aluminum Co. of America* v. *Essex Group, Inc.*, 499 F. Supp. 53 (W.D. Pa. 1980), as an analogous case where reformation of a contractual rate was allowed.

11. AT&T contends that all minutes should be counted. As an estimate ot total minutes it relies on a verification study it conducted showing that approximately 47 percent of the OCCs' MTS/WATS-like traffic is off-peak. It thus assumes that MCI's reported 3276 business day minutes to businesses represent only 53 percent of the total minutes, and that total minutes would therefore be 6181, or 89 percent higher than reported. It denies that the parties had any intent to exclude off-peak minutes, pointing out that the agreement by its terms requires rate changes based on usage changes and that AT&T itself pays usage based charges to the local exchanges under separations and settlements. It further claims that the *Aluminum Co of America* case is inapposite and not factually analogous.

2. SPC

12. In its report SPC states that it excluded minutes billed to its SPRINT LTD service which is restricted to off-peak use. It contends that SPRINT LTD is not "like" MTS/WATS because it is not available to customers during the key peak load period, and that the parties to the Agreement never intended that any such minutes be included, since the service involved did not even exist at that time. Inclusion of those minutes would increase SPC's total by about 12 percent. AT&T argues that SPRINT LTD is still an MTS/WATS like service subject to the Agreement and that the Agreement was clearly intended to apply to other services and other carriers than those active at the time. AT&T assumes that SPC has excluded all off-peak minutes, both for SPC's SPRINT LTD service and for full time services. AT&T's adjustment of the SPC total minutes is thus the same as in the case of MCI, an increase of 89 percent. In response, SPC denies that it has excluded off-peak minutes for services other than SPRINT LTD, and claims that AT&T's adjustment of its minutes is based on an erroneous assumption and is therefore unwarranted, even assuming *arguendo* that SPRINT LTD minutes should be counted. According to SPC's figures, inclusion of SPRINT LTD minutes would increase its total minutes by about 12 percent.

3. USTS

13. USTS states that in arriving at its reported minutes it "transformed" off-peak minutes to be the equivalent of peak minutes. It does not state what method was used for this "transformation" or what the quantitative effect was. AT&T apparently assumes that USTS did not count off peak minutes at all; it applies the same 89 percent adjusted increase to USTS reported minutes as it does to MCI and SPC. USTS contends that this

adjustment is incorrect and double counts the off-peak minutes.

B. Two End versus One End Minute Counts

14. SPC and USTS both report their minutes on the basis of interstate conversation minutes, that is, the total minutes billed to their customers. They claim this was the commonly understood definition of minutes used by the parties in the ENFIA agreement. The agreement requires the determination of rates on the basis of "OCC billed minutes of use per ENFIA. SPC and USTS contend that an OCC billed minute is equal to one minute ene-fo-end, not, as claimed by AT&T, two minutes. AT&T contends on the other hand that the minutes billed by the OCCs to their customers should be doubled because Execunet/SPRINT-type calls use the exchange network at both the originating and, terminating and of a call, and as a consequence each minute of a call generates two minutes of exchange network usage, one minute for each ENFIA used.

15. As a related matter SPC and MCI claim that AT&T has improperly calculated the SEP Amount by using Bell System SLU minutes (which count minutes at each end of the call as is done in the separations process) rather than Interstate Conversation Minutes as specified in the BSOC 8 tariff. SPC notes that in Rate Element 3, doubling of reported OCC minutes would cancel out the apparent disparity between the SEP Amount apparently specified in the tariff and that used for separations.[8] However, SPC argues that doubling the minutes as proposed by AT&T improperly doubles the Element 2 rate since the doubled minute figure (but not the SEP Amount) is used to calculate it.

C. The USTS Line Count

16. AT&T claims that its verification studies indicate that the number of ENFIA lines reported by USTS is roughly 25 to 30 percent higher than the lines actually installed. If USTS reported an inflated number of lines and a correct overall minute total, the average minutes of use per ENFIA line would be understated. AT&T adjusts the USTS minuted upward by 26 percent based upon this claimed line overcount.

III. OCC Petitions for Rejection

17. SPC, USTS, SBS, and Western Union contend the Commission is required to reject the proposed revisions because the agreement and the BSOC 8 tariff require that AT&T file charges based on the billed minutes of use reported by the OCCs. They argue that by filling new, proposed ENFIA rates based on minutes other than those reported by the OCCs, AT&T violates its inter-carrier contractual obligation. They note that AT&T may verify the OCC minutes by traffic measurements under the agreement, but deny that this authorizes AT&T to file its own calculations of minutes. SPC argues that AT&T lacks the practical ability to verify the OCCs' reports,[9] and therefore its adjustments represent an arbitrary and unreasonable unilateral modification of the agreement, based upon erroneous assumptions and artificial factors. USTS argues that the OCC reports of billed minutes would be superfluous if AT&T could unilaterally file a contravening tariff which would supersede the OCC reports. It suggests that AT&T can file a complaint before the Commission or seek relief from the courts if it disagrees with the OCC reports of billed minutes. Both contend that the Commission must reject the revisions as violative of the agreement, citing *MCI Telecommunications Corp. v. FCC*, 665 F. 2d 1300 (D.C. Cir. 1981). SBS asserts that AT&T should present a detailed showing in the nature of a prima facie case supporting its allegations, and in the meantime should incorporate the minutes reported by the OCCs.

18. USTS and MCI also argue that AT&T has never justified the SEP Amount which is therefore said to be subject to serious doubt. MCI also argues that because the SEP Amount is derived from the separations process, which MCI apparently claims is unlawful, it is inconsistent with the requirements of law.

19. In addition to the arguments discussed above, MCI has also claimed that the filing must be rejected because the ENFIA agreement upon which the filing is based could not lawfully be extended by the Commission after the February 1, 1982 deadline in the original BSOC 8 tariff, a date which was later amended; that it lacked an adequate record to make a public interest determination; and that it had not eliminated discrimination in local access charges, which MCI claims was a predicate for the compromise reached in the ENFIA agreement. In response to AT&T's April 21 letter, MCI and SPC present the additional argument that AT&T's asserted number of billed OCC minutes is inherently unbelievable because AT&T uses a 7 percent reduction of holding time to obtain OCC billed minutes, but uses a 14.6 to 20.9 percent reduction on its own MTS/WATS minutes. They argue that the OCCs would require a much larger reduction to reflect the additional digits which must be dialed, the delay for a second dial tone, and various other additional factors which cause unbilled time for the OCCs but not for AT&T. MCI also argues that an interim billing and collection rate would have no basis in law. It attempts to distinguish *Lincoln Telephone and Telegraph Company*, 72 FCC 724 (1979), *aff'd* 659 F.2d 1092 (D.C. Cir. 1981), by arguing for example that the amount in dispute in this case is much larger and that AT&T provided access on a non-discriminatory basis for years before the Execunet II decision, *MCI* v. *FCC*, 580 F.2d 590 (D.C. Cir. 1978). MCI and Teltec urge in addition that if the Commission errs in favor of the OCCs, that action can have no appreciable impact on AT&T or MTS/WATS customers. On the other hand, if the Commission errs in favor of AT&T the results could be disastrous for the competitive carriers. In the absence of a sound record and in view of the rapidly changing industry structure, MCI believes the Commission must move with caution.

20. The OCCs also mention other objections to the filing. SPC states that AT&T's failure to supply support information for the 5823 minute figure is a violation of § 61.38 of the Commission's rules. USTS suggests that the increased rates are anticompetitive and violative of the anti-trust laws, and section 314 of the Communications Act. It also asserts that the filing is discriminatory.[10]

[8] Since Element 3 is calculated by the formula: SEP Amount × Factor P × Billed Minutes × 1.015, halving the SEP Amount would cancel out doubling of the minutes in this Element.

[9] AT&T can measure the OCC's use of the local exchange in holding time minute, but this figure would include minutes which are not billed to OCC customers, such as the time used for dialing the longer OCC numbers, wrong numbers, no answers, and test calls.

[10] We also received petitions or comments from resale carriers U.S. Tel and Teltec and from ALTEL, a trade association which includes resale carriers. They deny that ENFIA should apply to resellers, but state that AT&T imposes ENFIA charges on them in fact. They contend that the Commission should reject the increases, which they claim could force them out of business, or not apply them to resellers. We note in this regard, however, that the Common Carrier Bureau has specifically ruled that ENFIA does nt apply to MTS/WATS at present. AT&T (ENFIA), Mimeo. No. 001153, released May 29, 1981, *recon. pending*. Moreover, although we are considering the removal of the ban against resale of AT&T's private line services if such services are used to form MTS/WATS equivalents, we have not as yet taken such action. AT&T, CC Docket No. 82-44, FCC 82-51, released February 4, 1982.

IV. Discussion

1. Rejection

21. We cannot agree with the OCCs that AT&T's filing of minutes which differ from those reported by the OCCs warrants or requires rejection of this transmittal. The procedural framework for the ENFIA agreement requires the OCCs to report each December their average monthly billed minutes of use for the prior August, September, October three month period. AT&T then has the opportunity to "verify" these minutes and to raise any disputed issues concerning the accuracy of the OCCs count or the conformity of the methodology used with the terms of the agreement. Any such disputes could then be resolved—either directly by the parties or perhaps with the intercession of the Commission—in the five months interval before AT&T would be required to file a new tariff based upon a "correct" billed minutes count in April of the following year.

22. We find little merit in the OCCs' suggestion that AT&T must fule in its April tariff the figure strictly as reported by the OCCs. This would allow the OCCs to report few or even no minutes of use with impunity and would render the agreement a nullity. Were AT&T required to file numbers it believed were legally and factually erroneous, it could be placed in the anomalous position of having to disavow or oppose its own filing, and even be subject to liability in a subsequent complaint proceeding. Moreover, as a practical matter, there was little or no possibility for AT&T to follow a different procedure here since the OCCs did not file a report of their 1981 minutes (due in December 1981) until March 19, 1982.[11] At this point, less than a month remained before a new trariff had to be filed and there was, accordingly, no realistic possibility that the disputes which had arisen could be resolved in time for "corrected" minute count to be available for a new tariff filing. Thus, even assuming, *arguendo*, that the OCC's argument here would otherwise be acceptable, their failure to file a minute count on a timely basis precluded any alternative course for AT&T. Although for reasons explained below we cannot accept AT&T's version of an appropriate minute count without further investigation, we do not believe that its actions in filing a tariff based upon an adjusted minute count were unreasonable or contrary to the agreement or that this action warrants rejection.[12]

2. The Disputed Issues

23. In our view the only reasonable interpretation of the ENFIA agreement is that it gave neither the OCCs' nor AT&T the right to unilaterally decide what the final count of billed minutes would be for tariff filing purposes. Although the OCCs' reports are not determinative, this does not mean that AT&T has an unqualified right to make any adjustments it chooses to the OCCs filed minutes. On the contrary, arbitrary or inaccurate adjustments by AT&T to the OCCs' reports would nullify the agreement in the same fashion as if the OCCs themselves filed arbitrary or inaccurate numbers.

24. In prior years, the parties negotiated this dispute and arrived at the figure of 3000 minutes which AT&T filed. The Commission is thus confronted with the minutes of use issue for the first time in this proceeding, and for the first time must approve a minutes of use figure and review the SEP Amount used in computing ENFIA rates. Any such final prescription or approval must of course be founded upon an adequate record and must conform to the language and purpose of the ENFIA agreement. From an examination of the tariff filings and the pleadings before us, however, it does not appear that we are presently in a position to make such a determination. Nor can we rely on the sharply divergent OCC or AT&T figures. The disputed issues raised in this proceeding are clearly of sufficient seriousness and complexity so that further information is required before we can make a decision as to the correct billed interstate minute count.

25. We would note that the dispute before us involves more than a disagreement over raw computations. Rather, under either AT&T's approach or the OCCs approach a determination of the correct minute count necessitates interpretation of the ENFIA agreement itself. Thus the OCC reports plainly require an interpretation of the agreement to exclude or discount off-peak minutes based not on the language of the agreement or the tariff, but on the intent of the parties. The agreement by its terms makes no apparent distinction between peak and off-peak, business and non-business minutes. We cannot conclude that such an interpretation is justified by the agreement based on the record and the legal anlyses presently before us but it does deserve careful consideration. We believe that additional responses from the parties will be enlightening. But even if we were to conclude that AT&T is correct and that all minutes should be counted equally, we do not have an adequate basis for concluding that the adjustment AT&T proposes is reasonable. The 89 percent increase in reported minutes to adjust for off-peak use is applied across the board even though each of the OCCs used different bases for their own calculations. SPC claims, for example, that its excluded off-peak minutes would amount to only an additional 12 percent rather that the 89 percent adjustment used by AT&T. In the absence of further information, we cannot conclude that either of these figures is correct. Similarly, applying this adjustment to USTS's reported minutes also is speculative in the absence of any information on the method used to "transform" off-peak minutes. The proposed downward adjustment of USTS's ENFIA lines is another factual issue which requires investigation.

26. It also appears that AT&T's position on the question of whether the minutes the OCCs bill to their customers should be doubled to reflect exchange usage at both ends of the call will likewise require interpretation, and examination of the purpose and intent of the agreement. The question turns on the meaning of the term billed minutes per ENFIA. Since the OCCs bill calls to their customers on an end-to-end basis, the use of those actual billed minutes seems reasonable under the bare language of the agreement. There is no language in the agreement itself which states that billed minutes are to be doubled, or that the method used should be equivalent to AT&T's division of revenues process. Examination of the intent of the parties in executing the interim settlement agreement may be necessary to resolve this. In addition, SPC's argument with regard to the SEP Amount and the use of doubled minutes in Element 2 suggests

[11] As noted earlier, this report was submitted at the behest of the Chief of the Common Carrier Bureau.

[12] We have also considered the further arguments for rejections raised by the OCCs and find that these issues similarly do not warrant rejection. Many of MCI's arguments are directed not to this filing, but to the question of whether the Commission had authority to extend the ENFIA agreement, and properly exercised it. Most of these arguments were considered and rejected in *ENFIA*, FCC 82-180, and insofar as they have not been explicitly rejected they can be considered should MCI seek reconsideration of that decision. USTS provides no support for its claim that the rate increase constitutes a violation of section 314 of the Act. The claim of discrimination overlooks the fact that this tariff was adopted pursuant to a negotiated settlement agreement. Support information under § 61.38 at the Rules would have been irrelevant because the rates are based on the agreement, not on costs. The agreement also provided for AT&T to file on 15 days' notice. Finally, contrary to SPC and U.S. Tel's assertions, AT&T's filed minutes are not based on holding time, but on adjustments of the OCCs' reported billed minutes.

that the BSOC 8 tariff's use of conversation minutes in the SEP Amount was inadvertent. If this is so, modification of the tariff to implement the understanding of the parties might be appropriate. At the same time, clarification of the Element 2 rate could also be required. AT&T has not addressed this issue in its filing except to claim that the ENFIA tariff should conform to the use of the SEP Amount and SLU minutes from separations. However, this begs this question of whether the agreement and the tariff so provide.

27. AT&T also has suggested that the figure of 5823 minutes is a minimum figure and that the actual minutes would more nearly approach 7000. However, the uncertainty of the legal and factual issues in this case preclude any decision that the 5823 figure is an acceptable minimum figure. Indeed, in a letter to the Chief, Common Carrier Bureau discussing a possible temporary, partial ENFIA rate increase, AT&T essentially agrees that an investigation at least of the factual issues may be necessary.[13]

V. Conclusions and Implementation

28. In view of the significant legal and factual issues which remain in dispute and must be resolved before a proper final minute of use figure can be approved or prescribed, we will set this matter for investigation. It is also apparent that if the 5823 minute figure is as substantially overstated as the OCCs claim, its use might well cause significant market disruption if it were allowed to become effective even for an interim period. If AT&T's proposed revisions took effect, the ENFIA rate would be more than doubled. Several OCCs have claimed that this level of charges would jeopardize their financial viability or their ability to offer residential service. Under these circumstances, we will suspend the effectiveness of the proposed revisions for the full statutory period.[14]

29. The determination of the proper minutes of use and SEP Amount is a vital issue which we think can and should be decided as quickly as possible in an expedited proceeding and we intend to resolve these issues within the five month suspension period. The reports of billed minutes must also be obtained in the first instance by the OCCs as required by the agreement. In order to resolve these issues we will require that the reports be complete. Specifically, we direct MCI, SPC, and USTS to report all minutes billed to all customers, business and non-business, peak and off-peak, and all ENFIA lines in August, September, and October 1981 for all services using ENFIA, without prejudice to any claims that some usage should not be counted under this agreement or should be discounted. This includes reports of all non-business minutes billed by MCI, SPRINT LTD billed minutes by SPC, and all off-peak minutes before transformation by USTS. Actual billing records and other backup material to verify these figures should be made available so that they can be submitted immediately upon Commission request. The OCCs should also separately explain and quantify all exclusions, discounts, and other adjustments used to reach what they believe are the proper figures under the agreement. USTS, for example, should specify the methodology it proposes for transforming off-peak minutes. AT&T will also be required to provide an explanation and justification for the filed SEP Amount and the billed minutes of use. In order to allow the OCCs adequate time to address the legal as well as the factual issues, we will allow 25 days for the filing. Interested persons will be allowed 15 days to comment, and the OCCs 10 days to respond. Based on these filings and the ENFIA agreement itself, the Commission will then determine the appropriate minutes of use figure.

30. We expect to conclude this investigation quickly, in no more than five months, but it is apparent that this cannot be done before the scheduled May 2 expiration date of the present rate. We believe that a situation in which no effective tariff exists covering access by AT&T's long distance competitors to Bell local distribution is not in the public interest. The continued provision of such service, at a reasonable rate, pending final determination of the minutes of use controversy, is essential to the fulfillment of the Commission's mandates under the Communications Act. In order to assure that ENFIA facilities are provided under a tariff rate pending the conclusion of this investigation, we find that the public interest requires that we invoke our authority under section 4(i) of the Communications Act, 47 USC 154(i), to specify an interim billing and collection rate during this period. *Lincoln Telephone and Telegraph Co.*, 72 FCC 2d 724 (1979), *aff'd* 659 F.2d 1092 (D.C. Cir 1981). See also *Western Union International v. FCC.* 652 F.2d 136 (D.C. Cir. 1980), which approved use of an interim prescription until adoption of a final order based on a more complete record. This arrangement will allow interconnection to continue at an interim charge. The arrangement will also be subject to adjustment on the basis of any ultimate agreement among the parties that the Commission approves or when the Commission has prescribed the minutes of use. If the interim collections are below a just and reasonable level under the agreement, we will require the OCCs to make up the difference; if the interim collections are above the just and reasonable level, we will require AT&T to refund the difference to the OCCs.

31. Any minute of use figure for the interim period must of necessity be tentative and we believe the figure should seek to protect the interests of all parties during the investigation period. The use of either the 5823 minute figure or the 2417 minute figure, would be inappropriate. We could simply continue the existing 3000 minutes rate for this period. However, the OCCs' own claim of increased average usage per line would seem to justify some increase in the proper minutes even if some adjustment for off-peak usage is made. To reflect this increased use, an increase from 3000 to 4000 minutes seems to us reasonable. Although it would increase the rates charged the OCCs by about 50 percent we do not believe it will cause disruption of the market.[15] This figure is also roughly halfway between the 2417 minutes reported by the OCCs and the figure of 5823 filed by AT&T, and might minimize any later adjustments to true-up the interim collection rate. For these reasons, and in order to protect the rights of all parties during this investigation, we direct that an interim billing and collection rate based on 4000

[13] Letter of William R. Stump to Chief, Common Carrier Bureau, dated April 21, 1982.

[14] On April 21, 1982, AT&T filed a conditional petition for emergency action in the event the Commission does not allow AT&T's transmittal to go into immediate effect. It requests (1) that any investigation be conducted on an expedited basis so that such proceedings can be concluded within the five month suspension period; (2) that the OCCs be required to file within 15 days complete information concerning the total individual billed conversation minutes of use per month as it appears in their billing systems for August to October of 1981, with back-up material and a separate statement of the basis and amounts of any exclusions; and (3) that any interim rates ordered by the Commission be subject to later adjustment so that each OCC shall be required to pay any discrepancy between the amount it has paid during the pendency of the proceedings and the amount it would have owed under whatever rates are ultimately determined to be appropriate. SBS opposes the Conditional Petition, arguing that the Commission should examine the whole range of exchange access issues in a comprehensive proceeding without time constraints. It also opposes the request for information from the OCCs and for an order making any interim rate subject to later adjustment. Our disposition of this case moots these petitions.

[15] We believe use of this figure is also responsive to MCI's request that we move with caution.

minutes of use be utilized pending our decision in this investigation. AT&T may also use the proposed $.0658 SEP Amount, since the increase in that figure is both smaller and less controversial than the increased minutes. Moreover, SPC and MCI's objections to AT&T's methodology for deriving the SEP factor would, if accepted, double the figure filed by AT&T. In sum, utilization of 4000 minutes and a $.0658 SEP Amount will produce a reasonable collection rate.

32. Accordingly, it is ordered, pursuant to sections 4(i)–(j), 201–205, and 403 of the Communications Act, 47 U.S.C. 154(i)–(j), 201–205, and 403, that an investigation is instituted into the following issues:

(1) The proper number of weighted average bill OCC minutes per ENFIA per month in August, September, and October 1981 within the meaning and purpose of the ENFIA Interim Settlement agreement; and

(2) The correct SEP Amount factor within the measuring and purpose of that Agreement.

33. It is further ordered, that AT&T, MCI, SPC, and USTS, shall be named parties to this proceeding. Any other persons who wish to participate as parties may file a notice with the Commission within 15 days of the release of this order, or by filing comments in response to the initial filings.

34. It is further ordered, that MCI, SPC, and USTS, shall submit their initial filings within 25 days of the release of this order. Other parties may file their replies or comments within 15 days thereafter. MCI, SPC, and USTS may file their responses within an additional 10 days thereafter.

35. It is further ordered, that with their initial filings, MCI, SPC, and USTS shall report the total, unadjusted, untransformed minutes billed to their customers for all services using the ENFIA lines (including non-business and off-peak use), and the total ENFIA lines for August, September, and October 1981. They shall also list separately and quantify any exclusions, adjustments, or transformation of those minutes which they believe are warranted by the terms and purpose of the ENFIA agreement, and explain the methodology used and its justification. They also shall compile backup material including billing records to be held available if requested by the Chief, Common Carrier Bureau.

36. It is further ordered, that AT&T shall file a report explaining and justifying its filed SEP Amount and the billed minutes of use within 15 days of the release of this order. Replies and responses shall be filed at the same time as those specified in paragraph 34.

37. It is further ordered, that the Chief, Common Carrier Bureau, is delegated authority to require the submission of additional information, to make further inquiries, to modify issues, dates, and procedures, and if necessary, to provide for a fuller record and more efficient proceeding.

38. It is further ordered, that the tariff revisions proposed by AT&T and the Bell System Operating Companies in Transmittal No. 53 are suspended for a period of five months.

39. It is further ordered, that the petitions to reject filed by SPC, USTS, MCI, SBS, and Western Union are denied.

40. It is further ordered, that the petition to reject or suspend filed by U.S. Tel. is granted to the extent indicated herein, but otherwise is denied.

41. It is further ordered, that the conditional petition for emergency action filed by AT&T is dismissed as moot.

42. It is further ordered, that in the interim period, pending completion of this investigation, AT&T must bill and persons taking service under BSOC 8 must pay an interim billing and collection rate based on 4000 billed minutes of use and a $.0658 SEP Amount.

43. It is further ordered, that in the interim period pending an agreement among the parties approved by the Commission or the prescription by the Commission of a proper minutes of use figure and SEP Amount, AT&T must provide and the OCCs must take ENFIA Lines pursuant to the terms and conditions stated in the BSOC 8 tariff. Additional charges or refunds may be applied retroactively in the manner described in paragraph 30 of this order.

44. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting, or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number that proceeding to which it relates. *See generally*, Section 1.1231 of the Commission's rules, 47 CFR 1.1231.

45. It is further ordered, that this action is effective immediately.

46. It is further ordered, that the Secretary shall cause this order to be published in the **Federal Register.**

47. This order is exempt from the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* It involves a rule applicable to particular rates and to practices relating to such rates within the meaning of the exemptions contained in 5 U.S.C. 601(2).

Federal Communications Commission.[16]

William J. Tricarico,

Secretary.

APPENDIX.—AT&TD'S CALCULATION OF WEIGHTED AVERAGE MONTHLY BILLED MINUTES OF USE PER ENFIA LINE

OCC	3-mo average number of ENFIA lines (per AT&T counts)	3-mo average minutes per ENFIA line	Average monthly usage
TELTEC	179	3,614	647,085
SATELCO	86	5,096	438,256
USTS	3,696	7,094	26,219,424
MCI	30,932	6,181	191,135,063
SPC	21,330	5,106	108,910,908
Total	56,214		327,350,808

NOTE.—Overall AT&T adjusted weighted average monthly billed minutes of use per ENFIA line: 5,823.

April 29, 1982.

Concurring Statement of FCC Commissioner James H. Quello

In re: AT&T and Its Bell System Operating Companies Tariff F.C.C. No. 8 (BSOC 8), Exchange Network Facilities for Interstate Access (ENFIA), Transmittal No. 53

Again, we are asked to rule on the terms of extension of the ENFIA agreement without any real basis for coming to a decision. Having concurred with my colleagues that

[16] Statements of Commissioners Quello and Fogarty attached Statements of Commissioners Jones and Dawson to be issued at a later date.

the P Factor should remain at 55 percent, I must again concur that this interim prescription of 4000 minutes of use is within some vague "zone of reasonableness" although the record appears bereft of support for that figure.

We have no choice but to suspend and investigate the BSOC 8 tariff since the actual minutes of use question is not clearly answered on the record. It is my sincere hope that we can complete the investigation within the five month suspension period and that we can begin to make some reasoned judgments in the area of access charges. That hope, however, represents a triumph over experience since we have fallen far short of our goals in this area.

The ENFIA agreement represents the roughest of "rough justice" to set charges in the face of the Commission's inability to do so in a timely fashion. Three years of rough justice have brought us to the admission that we still cannot make reasoned decisions in this important area. Now, we are going to investigate this tariff and, in five months, bring forth an understanding which has eluded us lo these many years.

In the words of Publius Terentius Afer, a Roman playwright, in the second century B.C.: "You believe easily that which you hope for earnestly." In that spirit, I believe that we are taking a reasonable approach in trying to resolve this difficult matter.

Therefore, I concur in the result.

Statement of Commissioner Joseph R. Fogarty

Concurring in Part, Dissenting in Part

In Re: Exchange Network Facilities for Interstate Access—Transmittal No. 53

The decision to suspend AT&T's proposed BSOC 8 tariff amendments for the full statutory period and prescribe an interim collection rate based on 4,000 minutes is wrong. The public interest requires that the Commission permit the tariff amendments to take effect subject to a one-day suspension, an expedited investigation, and an accounting order.

The question of the proper number of weighted average OCC billed minutes of use (MOUs) to be used in setting Rate Elements 2 and 3 is critical because the actual dollar amount that the OCCs will pay for interconnection hinges on this figure. On the one hand, we do not want to pick an unreasonably high number for fear of unduly impairing the competitiveness of the OCCs. On the other, there's no such thing as a free lunch—the OCCs must pay their fair share. To pick an unreasonably low number would force the MTS/WATS rate-payers to pick up the tab and to continue to subsidize OCC customers at a time when we are trying to correct the MTS/WATS rate structure. This would be unfair to the vast majority of those interstate ratepayers.

After carefully weighing and balancing public policy considerations, the record before us and Commission precedent, I believe that a one-day suspension combined with an investigation and an accounting order offers the best solution. Not only is the interim prescription legally inappropriate, but from an equitable standpoint, it rewards the obstructionist tactics of the OCCs again, at the expense of most interstate ratepayers. The arguments raised by the OCC's in opposition to the BSOC 8 revisions are unpersuasive. For example, there is nothing in the ENFIA agreement which indicates that business, residential, peak or off-peak minutes should be accounted for separately. Citations to contemporaneous statements and the intent of the OCCs cannot supplant the clear terms of the ENFIA contract. *See, e.g., Williston on Contracts,* Third Edition, Sections 610, 610A. As a consequence, we have no basis on which to reject AT & T's tariff revisions. *See, e.g., Associated Press v. FCC,* 448 F. 2d 1095 (D.C. Cir. 1971).[1] Moreover, the decision to prescribe 4,000 MOUs on an interim bais is arbitrary because we have no record to justify the figure. In fact, it now appears that, contrary to the majority's conclusion, the average of the AT&T and OCC positions is not 4,000 minutes but 4,675 minutes. *See* letter from W. R. Stump to Chief, Common Carrier Bureau, dated April 21, 1982. This is neither a compromise nor rough justice.

Since the OCCs figures are admittedly jiggled and too confused to be used, AT&T's proposed 5,823 MOUs figure is the only number on which we have a record to act. The Commission's only proper course of action, therefore, would have been to permit the use of 5,823 minutes pending investigation. The OCC's would have been fully protected by an accounting order. Because it should take no more than three months to complete the investigation,[2] it is doubtful that any OCC would have suffered significantly in the event that the Commission ultimately found the 5,823 figure too high—a result which I do not foresee.

But at least in this decision the Commission finally and decisively orders the OCCs to report all billed minutes not just the minutes that the OCCs wish to report. The lack of a sufficient record upon which to base a decision has caused the delay in determining a proper ENFIA rate. This in turn was caused, in substantial part, by the OCCs failure to produce their MOUs in a forthright manner. The OCCs have delayed reporting their MOUs in an attempt, I believe, to delay an inevitable and equitable rate increase. The fact that the major OCCs failed to file reports of their billed 1981 MOUs until directed to do so by the Chief, Common Carrier Bureau disturbs me. I am even more disturbed that in the face of the Bureau Chief's order, the OCCs undertook to report only part of their overall billed minutes. If the OCCs had not used these obstructionist tactics and had instead reported their minutes when they were supposed to, a suspension and an investigation would not be necessary. With this information, we could have prescribed the proper number of minutes in this order. If the OCCs do not report their minutes as we require in this order, the Commission must take strong action.

I trust that the Commission will move forward promptly with the investigation we are initiating. I hope that the 4,000 minute figure does not become permanent because of a reluctance on the part of the Commission to act. Further, the time has come to move forward in the *Access Charge* docket. In the interim, ENFIA must not be held hostage to issues, such as the proper allocation of nontraffic-sensitive equipment, which are more appropriately considered by the Joint Board in Docket 80–286 and the Commission in Docket 78–72. To do so, would be unfair to the American ratepayer. To the extent that the Order finally requires specific performance of the ENFIA contract by the OCCs with regard to reporting their actual billed MOUs, I concur. To the extent that the Order still permits the OCCs to escape their liability under the contract, I dissent.

[FR Doc. 82–15353 Filed 6–4–82; 8:45 am]

BILLING CODE 6712–01–M

[1] I must note that recently in a far more eggregious tariff case, the Commission neither suspended the paticular tariff for the full statutory period nor prescribed an interim tariff. Instead, the Commision simply suspended the tariff for one day subject to an investigation and an accounting order. *See* RCA American Communications, Inc. —— FCC 2d —— (1982). What we have here is disparate treatment of two carriers.

[2] SBS argues that the Commission should focus on issues other than those related to interpretation of the ENFIA contract. I disagree. Such issues are already under consideration in Docket 78–72, the *Access Charge* proceeding. It would not be appropriate to burden this ENFIA tariff case with those issues.

[BC Docket No. 82–287, File No. BP–20, 872; BC Docket No. 82–288, File No. BP–781205 AI]

Aurio Matos and Otilio Serrano Serrano; Application for Construction Permit

In the matter of applications of Aurio Matos, Aguada, Puerto Rico, Req: 1410 kHz, 500 W, DA–1, U (BC Docket No. 82–287, File No. BP–20, 872); and Otilio Serrano Serrano, San Sebastian, Puerto Rico, Req: 1410 kHz, 1 kW, DA–1, U (BC Docket No. 82–288, File No. BP–781205AI), for construction permit; hearing designation order designating applications for consolidated hearing on stated issues.

Adopted: May 20, 1982.

Released: May 27, 1982.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications for new AM broadcast stations in communities approximately 13 miles apart.

2. *Aurio Matos.* Applicants for new broadcast stations are required by § 73.3580 of the Commission's Rules to give local notice of the filing of their applications. Since we have no evidence that Mr. Matos has done so, we will require him to correct the apparent deficiency.

3. *Otilio Serrano Serrano.* Analysis of the financial data this applicant submitted reveals that $120,608 will be required to construct the proposed

station and operate for three months. He plans to finance this with $25,000 existing capital and a $200,000 bank loan. $70,000 of the loan has not been shown to be available, because it will require a mortgage on property that does not appear on Mr. Serrano's balance sheet. However, the remaining funds have been shown to be available, and they more than adequately cover estimated costs. Accordingly, no issue is warranted.

4. *Other Matters.* The two proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining, pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will also be specified.

5. Both applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

6. 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 subsequent order, upon the following issues:

1. To determine the areas and populations which would receive primary service from each proposal and the availability of other primary aural service to such areas and populations.

2. To determine, in light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient, and equitable distribution of radio service.

3. To determine, in the event it be concluded that a choice between the applications should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, better the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, that whichever application be granted, the construction permit shall contain the following condition:

Operation with the facilities specified herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro 1981, and to bilateral and other multilateral agreements between the United States and other countries.

8. It is further ordered, that Aurio Matos shall publish local notice of his application (if he has not already done so) and shall file a statement of publication with the presiding Administrative Law Judge on or before July 7, 1982.

9. It is further ordered, that to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's rules, the applicants shall within 20 days of the mailing of this order, in person or by attorney, file with the Commission in triplicate written appearances stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this order.

10. It is further ordered, that pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, the applicants shall give notice of the hearing as prescribed in the rule, and shall advise the Commission of the publication of the notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division.

[FR Doc. 82-15359 Filed 6-4-82; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 82-301, File No. BPH-810122AK 4318; BC Docket No. 82-302, File No. BPH-810701AG]

Bowie County Broadcasting Co., Inc. and Freeway Broadcasting Co., Inc.; Applications for Construction Permit

In re applications of Bowie County Broadcasting Co., Inc., New Boston, Texas, Req: 95.9 MHz, Channel 240A, 3 kW, 300 feet (BC Docket No. 82-301, File No. BPH-810122AK 4318); and Freeway Broadcasting Co., Inc., Hooks, Texas, Req: 95.9 MHz, Channel 240A 3 kW 300 feet (BC Docket No. 82-302, File No. BPH-810701AG), for construction permit for a new FM station; hearing designation order designating applications for consolidated hearing on stated issues.

Adopted: May 25, 1982.

Released: June 1, 1982.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications filed by Bowie County Broadcasting Co., Inc. (Bowie) and Freeway Broadcasting Co., Inc. (Freeway).

2. *Bowie.* Freeway proposes independent programming while Bowie proposes to duplicate some of the programming of its commonly-owned station KNBO(AM). Therefore, evidence regarding program duplication will be admissible under the standard comparative issue. When duplicated programming is proposed, the showing permitted will be limited to evidence concerning the benefits to be derived from the proposed duplication which would offset its inherent inefficiency. *Jones T. Sudbury*, 8 FCC 2d 360, 10 RR 2d 114 (1967).

3. Section 73.1125 of the Commission's rules requires that the main studio of an FM station be located within the city of license, but that on a showing of good cause the main studio may be located outside that community. Bowie proposes to locate its main studio north of New Boston, but has failed to set forth circumstances showing good cause under § 73.1125. Accordingly, an issue will be specified.

4. *Freeway.* Analysis of the financial portion of Freeway's application reveals that it will require $233,280 to construct the proposed facility and operate for three months, itemized as follows:

Equipment	$157,835
Building	6,000
Miscellaneous and other costs	37,000
Operating costs (three months)	32,445
Total	233,280

Freeway plans to finance construction and operation with $1,000 cash on hand and a loan in the amount of $120,000 from the principal, William H. Freeman, Sr. Mr. Freeman's balance sheet discloses only $24,014 in net liquid assets. Although he intends to rely upon a bank loan, Mr. Freeman's letter of commitment from the Texarkana National Bank fails to comply with the requirements of paragraph 4(e) of Section III of FCC Form 301 in that it does not specify the interest rate of the loan or the terms of repayment, and also states that the bank "will be glad to consider" his request for a loan, a phrase too indefinite to be considered assurance that the bank will lend Mr. Freeman the money. Finally, although Freeway relies on leasing equipment on a deferred credit basis from an equipment supplier, the applicant has failed to provide a letter from such equipment supplier setting forth the terms and conditions of the credit plan. As a result, Freeway has shown only $25,014 available to meet a commitment of $233,280. Accordingly, a financial issue will be specified.

5. Applicants for new broadcast stations are required by § 73.3580(f) of the Commission's rules to give local notice of the filing of their applications. They must then file with the Commission the statement described in § 73.3580(h) of the Rules. We have no evidence that Freeway published the required notice. To remedy this deficiency, Freeway will be required to publish local notice of its application and to file a statement of publication with the presiding Administrative Law Judge.

6. The respective proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining, pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will also be specified.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

8. 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 subsequent Order, upon the following issues:

1. To determine the areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations.

2. To determine, pursuant to § 73.1125, whether good cause exists for Bowie County Broadcasting Co., Inc.'s proposed location of its main studio outside the community of license.

3. To determine with respect to Freeway:

(a) The source and availability of additional funds over and above, the $25,014 indicated; and

(b) Whether in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

4. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

5. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, better serve the public interest.

6. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if any, of the applications should be granted.

9. It is further ordered, that, Freeway file a statement of publication of local notice of its application with the presiding Administrative Law Judge in accordance with § 73.3580(h) of the Commission's rules.

10. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 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.

11. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing 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 § 73.3594(g) of the rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-15296 Filed 6-4-82; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 82-285, File No. BPH-801219 AC; BC Docket No. 82-286, File No. BPH-810410 AF]

M. Crawford Clark, et al.; Applications for Construction Permit

In the matter of applications of M. Crawford Clark and John Shideler, d/b/a Montgomery County Broadcasters, Coffeyville, Kansas, Req: 92.1 MHz, Channel 221A, 3.0 kW (H&V), 300 feet (H&V) (BC Docket No. 82-285, File No. BPH-801219AC); and the Midwest Broadcasting Co., Inc., Coffeyville, Kansas, Req: 92.1 MHz, Channel 221, 3.0 kW (H&V), 300 feet (H&V) (BC Docket No. 82-286, File No. BPH-810410AF), for construction permit for a new FM station; hearing designation order designating applications for consoidated hearing on stated isues.

Adopted: May 20, 1982.

Released: May 27, 1982.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by M. Crawford Clark and John Shideler, d/b/a Montgomery County Broadcasters, (Montgomery) and The Midwest Broadcasting Co., Inc. (Midwest).

2. *Montgomery.* Analysis of the financial data submitted by Montgomery reveals that $47,858 will be required to construct and operate for three months, itemized as follows:

Cash Equipment Purchase	$1,967
Equipment Down Payment	9,646
Equipment Payments (3 months)	2,870
Loan Interest (3 months)	1,200
Miscellaneous	19,000
Operating Costs (3 months)	13,175
Total	47,858

The applicant intends to rely on deferred credit from an equipment supplier. However, Montgomery has submitted two commitment letters. The December 14, 1980 letter from Continental Electronics fails to specify the cost of the equipment to be purchased on deferred credit, and is deficient. Since the July 14, 1980 letter from Rockwell International specifies the same cost figure used by the applicant in completing Paragraph 1 (c) of Section III, FCC Form 301, and appears to comply with our standards for such commitments, our analysis assumes reliance upon the Rockwell International proposal.

The partners, M. Crawford Clark and John Shideler each have agreed to loan $40,000 to the partnership.[1] Analysis of the balance sheet of Clark shows sufficient liquid assets to meet his expenditure. Analsysis of the balance sheet of Shideler shows liquid assets of $39,188.00 with liabilities of $120,497.00 of which $2,255.00 are short term and the remaining $118,239.00 is long term. However, Mr. Shideler has failed to include a payment schedule for these liabilities, as required. We are therefore unable to determine if he has sufficient liquid assets over and above his liabilities to meet his $40,000.00 commitment. Accordingly, a financial issue will be specified.

3. *Midwest.* Analysis of the financial data submitted by Midwest reveals that $127,919 will be required to construct and operate for three months, itemized as follows:

[1] We note that the partnership agreement of the applicant requires M. Crawford Clark to provide 51% of the capital and John Shideler to provide 49%, although material submitted as financial exhibits states that they will contribute equally initially. Although Montgomery's response in column (g) of Table I, Section II, FCC Form 301, indicates that both partners each hold a 51% interest, it is assumed this is an error, and the partnership interests of Messrs. Clark and Shideler are 51% and 49%, respectfully, as reflected in their agreement.

Equipment	$67,590
Land	11,250
Buildings	2,500
Miscellaneous	19,579
Operating Costs (3 months)	27,000
Total	127,919

Midwest proposes to finance the station by existing capital, profits from existing operations and a $57,000 bank loan net from the First National Bank of Coffeyville. However, analysis of the balance sheet of the applicant shows only $5,402 in liquid assets above current liabilities. Profits from operation of Station KGGF, Coffeyville, would provide $53,000 during the period of construction and first three months operation of the FM Station. The bank letter does not show the terms of repayment of the loan and is deficient. Thus, Midwest has shown only $58,402 to be available to meet projected costs of $127,919. Accordingly, a financial issue will be specified.

4. Data submitted by the applicants indicates that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would recieve FM service of 1mV/m or greater intensity, together with the availability of other primary aural services, in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference whould accrue to either of the applicants.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. 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 specifeid in a subsequent Order, upon the following issues:

1. To determine with respect to Montgomery:

(a) The source and availability of additional funds over and above the $40,000.00 indicated; and

(b) Whether, in the light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

2. To determine with respect to Midwest:

(a) The source and availability of additional funds over and above the $58,402.41 indicated; and

(b) Whether, in the light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 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 § 73.3594 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 § 73.3594(g) of the rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-15358 Filed 6-4-82; 8:45 am]

BILLING CODE 6712-01-M

[FCC 82-221; BC Docket No. 82-265, File No. BRH-801001 UZ; BC Docket No. 82-266, File No. BPH-801229AE]

Dena Pictures, Inc., et al.; Applications for Construction Permit

In the matter of applications of Dena Pictures, Incorporated and Alexander Broadcasting Company, a joint venture d/b/a Kaye-Smith Enterprises, Has: 99.9 MHz, Channel 260, 100kW (H&V) 1150 feet, For Renewal of License of Station KISW(FM), Seattle, Washington (BC Docket No. 82-265, File No. BRH-801001UZ); and Vincent L. Hoffart, d/b/a Hoffart Broadcasting, Seattle, Washington, Req: 99.9 MHz, Channel 260, 100 kW (H&V), 1148 feet; (BC Docket No. 82-266, File No. BPH-801229AE); for construction permit; memorandum opinion and order, designating applications for consolidated hearing on stated issues.

Adopted: May 13, 1982.

Released: June 1, 1982.

By the Commission:

1. The Commission has before it for consideration: (a) The above-captioned application of Dena Pictures, Incorporated and Alexander Broadcasting Company, a joint venture d/b/a Kaye-Smith Enterprises ("Kaye-Smith" or "licensee") for renewal of license of Station KISW(FM), Seattle, Washington; (b) the mutually exclusive application of Vincent L. Hoffart d/b/a Hoffart Broadcasting ("Hoffart") for a construction permit for a new station to operate on the KISW(FM) frequency;[1] (c) a petition to dismiss Hoffart's application filed by Kaye-Smith and Hoffart's opposition thereto; (d) a petition to deny Hoffart's application filed by Kaye-Smith;[2] (e) Hoffart's "Motion to Strike" the petition to deny; (f) Kaye-Smith's opposition; and (g) Hoffart's reply thereto. In addition, this Order will also consider Kaye-Smith's "Petition for Expedited Relief" and various pleadings associated with that petition.[3]

Kaye-Smith's Petition to Dismiss

2. On March 21, 1981, Kaye-Smith filed a petition to dismiss the Hoffart application. In the petition, Kaye-Smith claims that portions of Hoffart's application were not complete at the time of filing. As a result, Kaye-Smith asserts, Hoffart has failed to establish his ascertainment and financial qualifications or the availability of a transmitter site. For these reasons, the licensee asked that the Hoffart application be dismissed and not accepted for filing. This request, however, is based upon a misunderstanding of our requirements for acceptance for filing. It is well established that an application may be

[1] On January 12, 1981, Kaye-Smith filed an application to assign the KISW(FM) license to Alexander Broadcasting Company. Alexander Broadcasting Company is the 20% owner of Kaye-Smith Enterprises. The joint venture partner, Dena Pictures, Inc., owns 80% of the licensee. The assignment will be from the joint venture to Alexander Broadcasting Company. For the reasons discussed in ¶19, *infra*, the assignment application will be held in abeyance pending the outcome of this proceeding.

[2] Kaye-Smith's petition is, in essence, a pre-designation petition to specify issues. Since such petitions are no longer permitted, it will be dismissed. *Processing of Contested Broadcasting Applications*, 72 FCC 2d 202 (1979) Kaye-Smith, however, will have an opportunity to raise the issues contained in the petition post designation pursuant to § 1.229.

[3] Those pleadings include: Hoffart's "Response to Kaye-Smith Filing dated 6-23-81, Opposition Thereto and Ex Parte Allegations"; his "Opposition to Petition for Expedited Relief"; a reply to Hoffart's opposition filed by Kaye-Smith; and Hoffart's "Motion to Strike" Kaye-Smith's reply.

acceptable for filing as substantially complete pursuant to § 73.3564 of the Commission's rules and yet not demonstrate the qualifications required for grant. *KALE, Inc.*, 56 FCC 2d 1033 (1975); *Central Florida Enterprises, Inc.*, 22 FCC 2d 260 (1970). The Hoffart application may be deficient in certain respects (see ¶5–¶13, *infra*), but it was substantially complete for the purpose of acceptance for filing.[4]

3. Kaye-Smith also asserts that the Hoffart application should be dismissed for failure to specify an available transmitter site. In his application, Hoffart specified the transmitter and antenna site currently occupied by Kaye-Smith. The licensee, however, has submitted letters from the lessor of its site, Ratelco, Inc., which state the site will be unavailable to Hoffart. By letter dated March 5, 1981, Ratelco stated it had received no inquiry from Hoffart regarding use of the KISW(FM) site should he prevail in a comparative hearing with Kaye-Smith. Further, Ratelco stated that as it did not have evidence of Hoffart's financial capability, it would not lease the site to him. In opposition, Hoffart noted that Ratelco's letter was based on the assumption that Hoffart was not financially qualified and that absent other reasons, Hoffart would be able to allay Ratelco's objections by establishing his financial qualifications. He further stated that no site availability issue should be specified as the Commission has established a conclusive presumption that a renewal applicant's site will be available to a competing applicant, citing *George E. Cameron Jr. Communications*, 71 FCC 2d 460 (1979).

4. It is the policy of the Commission to defer all questions of site availability until completion of the hearing process. *Cameron supra*, as clarified by *Belo Broadcasting Corporation* (WFAA), 88 FCC 2d 922 (1981). Kaye-Smith claims failure to specify a site availability issued would violate its statutory right to a full hearing. However, as we stated in *Belo*, deferral does not affect the licensee's right to a hearing on the issue. If a challenger continues to specify the site of the licensee and that challenger is found comparatively superior, "whatever evidence the incumbent wishes to present will be evaluated to the extent appropriate at the time the Commission considers any modification of the proposed transmitter sites." *Belo, supra*, at 927. The burden remains on the challenger to obtain an approved site and to construct within specified time limits. In view of the foregoing, Kaye-Smith's petition to dismiss Hoffart's application will be defined.

Hoffart's Construction Permit Application

5. *Local Public Notice.* Applicants for new broadcast stations are required by § 73.3580(f) of the Commission's Rules to give local notice of the filing of their applications. They must then file with the Commission, pursuant to § 73.3580(h), a statement describing the text of the notice, the dates on which it was published and the newspaper in which that notice appeared. Included with the original filing of Hoffart's application was the text of a public notice which Hoffart stated he would place in the Seattle Post Intelligence on certain specified dates in January 1981. This statement, however, does not comply with the requirements of § 73.3580(h) as it was submitted prior to publication of local notice. Thus, we cannot determine whether the notice was actually published.[5] Accordingly, if he has not already done so, Hoffart will be required to publish local notice of the filing of his application and to file a statement of publication with the presiding Administrative Law Judge within 40 days of the mailing of this Order.

6. *Financial.* Hoffart indicates that $250,500 will be required to construct the proposed facility and operate for three months, itemized as follows:

Equipment (4 months payments)	$12,227
Site Lease (3 months)	3,000
Building (lease, included in operating costs):	
Legal fees	5,000
Engineering Fees	1,000
Installation Costs	5,000
Miscellaneous	7,895
Operating Costs (3 months)	187,225
Contingencies	29,153
Total	250,500

7. Hoffart has stated he will lease the transmitter and antenna site presently leased by Kaye-Smith, estimating his lease payments at $1,000 per month. However, we cannot determine the basis for applicant's estimate of his site lease cost. In pleadings submitted to the Commission pertaining to the availability of the site (see paras. 3 and 4, *supra*), Hoffart admits that he never contacted Ratelco, Inc. concerning lease of the site. Hoffart also failed to submit any evidence to indicate the cost Kaye-Smith currently incurs for leasing the site. Accordingly, this matter must be explored at hearing to determine the basis and actual cost of leasing the site.

8. Hoffart has estimated his equipment lease costs will be $12,227 for the first 3 months (payments of $3056.83/month plus an amount equivalent to one month's rental as a "down payment"). Accordingly to Hoffart, the amount of the equipment lease and the terms of lease agreement were quoted over the telephone by a sales representative of McMartin Industries, an equipment manufacturer. Hoffart, however, has not submitted written documentation verifying the cost and terms of the lease. Accordingly, further inquiry is warranted.

9. To meet his expenses, Hoffart relies on anticipated station revenues of $400,000 for the first 3 months of operation.[6] This amount is equivalent to Hoffart's estimate of what Kaye-Smith earns in a three month period. Hoffart thus claims that $400,000 should be credited to offset his projected costs as he will be continuing operation of an existing station and should be able to generate income "from Day 1". Projected advertising revenues, however, may not be used to determine Hoffart's financial qualifications. The Commission has stated that in situations where a new applicant is competing against the licensee of a station with an established record of advertising revenues, the new applicant still must show that availability of sufficient funds to contruct and operate the proposed station for three months *without* revenues. *Calojay Enterprises, Inc. [WTLC(FM)]*, 33 FCC 2d 690 (1971); *Orange Nine, Inc.*, 7 FCC 2d 788 (1967). Accordingly, Hoffart may not rely on $400,000 in projected advertising revenues to establish his financial qualifications.

10. As an alternative method of financing, Hoffart relies upon $489,123 itemized as follows:

[4] As to ascertainment, we note that for commercial radio stations, the Commission has eliminated the formal ascertainment requirements outlined in the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971) which was in effect at the time of filing of the Hoffart application. *In the Matter of Deregulation of Radio* ("Report and Order"), 84 FCC 2d 968 (1981), recon. denied, 87 FCC 2d 797 (1981). Issues which pertain to an application which was filed prior to the effective date of the Report and Order (April 3, 1981) and which involve questions of the sufficiency of an ascertainment or the failure of an applicant to follow the steps outlined in the *Primer* are no longer specified.

[5] In reply to a letter of inquiry from the Chief of the FM Branch of the Broadcast Bureau dated May 5, 1981, Hoffart included a statement that he had spent over $300 on publication notices alone. This would indicate that local notice was given. Hoffart, however, has not filed a statement in compliance with Commission rules. Therefore, the Commission does not have notice of actual publication.

[6] Hoffart proposed two methods of financing for his proposed station. For discussion of his alternative method of financing, see ¶10, *infra*.

Existing Capital	$27,156
Stocks	[1] 64,759
Real Estate	60,000
"Cash due"	270
Loan (net value)	336,938
Total	489,123

[1] Estimated value of $74,759 minus $10,000 for income tax ans sales commissions on stocks.

Section III, Question 2(a) of FCC Form 301 requires an applicant to submit a detailed balance sheet dated within 90 days of the filing of the application and setting forth the applicant's assets and liabilities. Hoffart submitted an undated financial statement which did not indicate liabilities. Therefore, we cannot determine whether Hoffart has sufficient current and liquid assets in excess of current liabilities to meet his financial commitment. Even assuming the financial statement was dated, Hoffart has not established the marketability and liquidity of his stock and real estate interests.[7] Thus, we could not determine whether these sources of funds would be available. Further, Hoffart has not submitted independent verification that the "cash due" is collectible. Therefore, we could not determine whether the amount specified would be available to the applicant.

11. Moreover, assuming the above funds were available, Hoffart has stated that all funds specified are the joint property of applicant and his wife, Alvina C. Hoffart. While Hoffart indicates his wife has no objections to "use of the money for investment purposes", he has not submitted a statement from his wife confirming that the funds listed would be available for construction and operation of the proposed station.

12. Hoffart also intends to rely on a net loan of $336,938 ($350,000 less 3 monthly payments totaling $13,062). However, Hoffart has not submitted a letter from a financial institution or an individual indicating a willingness to make a loan in the amount and on the terms specified by Hoffart, as required by Section III, Question 4 of FCC Form 301. Accordingly, we cannot determine whether this source of funding would be available to the applicant.

13. In light of this analysis, the total costs necessary to construct and operate the proposed station and the availability of funds to meet anticipated expenses are unclear. Accordingly, a general financial issue will be specified.[8]

Other Matters

14. In its "Petition for Expedited Relief", Kaye-Smith requests the Commission to expedite action on its petition to dismiss Hoffart's application by dismissing his application or designating the KISW(FM) renewal application and Hoffart's construction permit application for comparative hearing. In addition, Kaye-Smith requests that, in the event the applications are designated for hearing, the Commission direct that the hearing proceed on an expedited basis and that "the matter * * * be resolved without any reference to the Review Board". Petition, p. 3.

15. We believe our action in this Order designating the applications for a comparative hearing moots Kaye-Smith's request for expedited action on processing of these applications. As to Kaye-Smith's request that the hearing be expedited, no justification has been set forth for the Commission to take such action. Accordingly, we will deny Kaye-Smith's request. The Commission, however, is confident that the Administrative Law Judge appointed to preside over this case will handle it in a manner which will provide an efficient and expeditious resolution of the matters under consideration.

16. In regard to Kaye-Smith's request that this matter be resolved without reference to the Review Board, we note that at the time of Kaye-Smith's request, decisions of Administrative Law Judges in matters pertaining to the renewal or revocation of broadcast licenses were referred directly to the Commission. They were not reviewed by the Review Board. However, on November 12, 1981, the Commission adopted new rules and procedures pertaining to the Review Board and its functions. *In the Matter of Amendment of Parts 0 and 1 of the Commission's Rules to revise delegation of authority to the Review Board*, FCC 81–526 (released November 20, 1981). Effective January 1, 1982, the Review Board was given authority to review decisions of Administrative Law Judges in all adjudicative proceedings (including renewal and revocation of broadcast licenses) unless at the time of designation the Commission specifies otherwise.[9] Thus, the Commission may direct that matters pertaining to certain comparative renewal proceedings not be referred to the Review Board. Kaye-Smith, however, has not presented any public interest jusification as to why the Commission should take such action as regards this matter. Accordingly, Kaye-Smith's request will be denied.

17. On July 2, 1981, Hoffart filed a pleading with the Commission wherein he alleges Kaye-Smith has engaged in prohibited ex parte contacts with decision-making personnel at the Commission. Hoffart claims that as he did not receive service of a copy of the licensee's "Petition for Expedited Relief," Kaye-Smith has filed an ex parte communication with the Commission. We find however, that there is no merit to Hoffart's allegation. Section 1.1201(g) of the Commission's Rules defines a written ex parte presentation as "any written presentation, made to decision-making personnel by any other person, which is not served on the parties to the proceeding." Under the provisions of §§ 1.47(d) and 1.47(f) of the rules, documents may be served upon a party by mailing a copy to the last known address, such service being complete upon actual mailing of the document. Kaye-Smith has submitted a copy of a *Certificate of Service* dated June 19, 1981, which attests to the mailing of the "Petition for Expedited Relief" to Vincent L. Hoffart on that date.[10] Accordingly, no further consideration of this matter is required.

Conclusion

18. Examination of Kaye-Smith's renewal application indicates it is legally, technically and otherwise qualified to operate as proposed.[11] However, since the Kaye-Smith and Hoffart applications are mutually exclusive, they must be designated for comparative hearing.

19. In designating these applications for hearing, the Commission must address the effect of a pending assignment application for KISW(FM).

[7] Stocks valued at $2,360 were identified, including 38 shares of RCA Common stock ($1,000), 250 shares of Chester Mining ($300), 70 shares of American General Enterprise Mutual ($560) and 80 shares of Founders Growth Fund ($500). Only the RCA common stock could be credited as a marketable and liquid asset.

[8] As part of his financial showing, Hoffart will be required to submit information concerning his sources of funds and his contingency planning in case the licensee's site remains unavailable. See *Belo, supra* at 927, n. 27.

[9] New § 0.361(a) General Authority.

[10] We note the "Petition" was sent to the same address that Commission records show Hoffart has maintained for a number of years. Thus, it appears that a problem occurred in the delivery of the petition to Hoffart. We note, however, that on July 6, 1981, after becoming aware that Hoffart had not received a copy of the petition, Kaye-Smith mailed another copy to Hoffart which he received on July 10, 1981.

[11] Vincent Hoffart filed a petition to deny and informal objections to the 1980 license renewal applications filed by Kaye-Smith for its Washington and Oregon stations, including (KISW(FM). In a *Memorandum Opinion and Order* adopted today, the Commission concluded that Hoffart's pleadings did not raise a substantial and material question of fact as to Kaye-Smith's qualifications to remain a Commission licensee. That Order therefore denied Hoffart's petition to deny and informal objections.

On January 12, 1981, Kaye-Smith Enterprises filed an application to assign the station's license to Alexander Broadcasting Company. This followed by approximately two weeks Hoffart's filing of a competing application for the KISW(FM) frequency. A question is therefore raised as to which parties should be comparatively evaluated in the hearing proceeding—Kaye-Smith Enterprises and Hoffart or Alexander Broadcasting Company and Hoffart. The Commission's normal practice is to compare the qualifications of the licensee and the new applicant. This is consistent with the intent of section 310(d) of the Communications Act of 1934, as amended, which limits the Commission's consideration in assignment and transfer of control situations to the proposed assignee only. In several cases, however, the Commission has concluded that the public interest is better served by comparing the qualifications of the parties intending to operate the station—namely the proposed assignee and the construction permit applicant. *1400 Corp. (KBMI),* 4 FCC 2d 715 (1966); *Northwest Broadcasters, Inc. (KBVU),* 3 FCC 2d 571 (1966); *Arthur A. Cirilli (WIGL),* 2 FCC 2d 692 (1966). These cases involved unique situations where the parties holding the license did not intend to continue operation of the station (i.e., license held by trustee in bankruptcy, station silent for long period of time). Additionally, in each case, the assignment application was filed at least three months prior to the filing of the competing application. The facts in the cases cited, however, are distinguishable from those in this matter. In this case, the assignment application was filed subsequent to the competing application. Further, there is no unique situation regarding the operation of the station. Kaye-Smith Enterprises presumably will continue to operate KISW(FM) until such time as a determination is made on the matters discussed herein. It would therefore appear that the hearing should involve a comparative evaluation of the qualifications of Kaye-Smith Enterprises and Hoffart Broadcasting. Accordingly, the assignment application will be held in abeyance pending the outcome of the hearing proceeding.

20. Accordingly, it is ordered, that, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications of Dena Pictures, Inc. and Alexander Broadcasting Company, a joint venture d/b/a Kaye-Smith Enterprises and Vincent L. Hoffart d/b/a Hoffart Broadcasting are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Hoffart Broadcasting is financially qualified to construct and operate the proposed station.

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 issues, which of the applications should be granted.

21. It is further ordered, that the petition to dismiss filed by Kaye-Smith on March 20, 1981 is denied and the petition to deny filed by Kaye-Smith on January 18, 1982, is dismissed.

22. It is further ordered, that the "Petition for Expedited Relief" filed by Kaye-Smith is dismissed in part and otherwise denied.

23. It is further ordered, that, within forty (40) days of the mailing of this Order, Vincent L. Hoffart d/b/a Hoffart Broadcasting shall publish, if he has not already done so, local notice of the filing of his application and file a statement of publication with the presiding Administrative Law Judge.

24. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within twenty (20) 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.

25. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 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 the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

26. It is further ordered, that the Secretary shall send, by Certified Mail—Return Receipt Requested, a copy of this *Memorandum Opinion and Order* to each of the parties to this proceeding.

Federal Communications Commission.

William J. Tricarico,
Secretary.

[FR Doc. 82-15299 Filed 6-4-82; 8:45 am]
BILLING CODE 6712-01-M

[BC Docket No. 82-284, File No. BP-781130AD]

Happy Broadcasting Co., Inc.; Application for Construction Permit

In the matter of application of Happy Broadcasting Company, Inc., WPWC, Dumfries-Triangle, Virginia, Has: 1530 kHz, 250 W, D (Quantico, Virginia), Req: 1480 kHz, 500 W, DA-2, U (Dumfries-Triangle, Virginia), for Construction Permit (BC Docket No. 82-284, File No. BP-781130AD); Memorandum opinion and order designating application for hearing on stated issues.

Adopted: May 20, 1982.

Released: May 27, 1982.

By the Chief, Broadcast Bureau.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it for consideration the above-captioned application of Happy Broadcasting Company, Inc. to modify the facilities and change the city of license of its station WPWC, now licensed to Quantico, Virginia. Nationwide Communications, Inc. (licensee of station WLEE, Richmond, Virginia) and Commonwealth Communications Corporation (licensee of station WPRW, Manassas, Virginia) have filed petitions to deny the Happy application, both alleging contour overlap prohibited by § 73.37(a) of the Commission's Rules. Happy, in response, has amended its application to eliminate all overlap with the contours of station WPRW, mooting in the process the Commonwealth petition to deny.[1] The Nationwide petition remains for resolution, however.

2. Nationwide alleges, and Happy denies, that Happy's proposed daytime 0.025 mV/m contour would penetrate the measured 0.5 mV/m contour of co-channel station WLEE, and its proposed daytime 0.5 mV/m contour the measured 0.5 mV/m contour of first-adjacent-channel station WCVA, Culpeper, Virginia. Each party supports its position with measurements ostensibly taken along the same radials under conditions similar to those of its opponent. We cannot, on the basis of information before us, determine why these measurements differ to the extent that they do.[2] Neither WLEE's shifts

[1] As we no longer require a detailed showing of financial qualifications from applicants for modified facilities, *Public Notice,* FCC 80-20, 45 FR 6165 (1980), Commonwealth's challenge to this aspect of Happy's proposal is moot as well.

[2] Nor can we account for the significant discrepancy between Nationwide's calculations concerning WLEE here and those included in the station's June 1975 proof of performance.

from directional to non-directional operation nor its initial failure to file antenna resistance measurements explain the significant discrepancies in the parties' showings. Nor do seasonal temperature variations alone justify the wide variety of measurements offered on WCVA's behalf. A further record is necessary to ascertain which, if any, measurements are reliable under these circumstances. Hence, though Happy is otherwise qualified to construct and operate as proposed, we will designate its application for hearing.

3. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the application of Happy Broadcasting Company, Inc., is designated for hearing, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine whether the contours of the proposed station would overlap those of Station WLEE, Richmond, Virginia, or WCVA, Culpeper, Virginia, in violation of § 73.37(a) of the Commission's Rules.

2. To determine, in light thereof, whether the application should be granted.

4. It is further ordered, that the petition to deny filed by Commonwealth Communications Corporation is dismissed as moot, the petition to deny filed by Nationwide Communications, Inc. is granted to the extent indicated herein, and Nationwide is made a party to this proceeding.

5. It is further ordered, that in the event this application be granted, the construction permit shall contain the following condition:

Operation with the facilities specified herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro 1981, and to bilateral and other multilateral agreements between the United States and other countries.

6. It is further ordered, that to avail themselves of the opportunity to be heard and pursuant to § 1.221 (c) and (e) of the Commission's Rules, the parties herein shall within 20 days of the mailing of this order, in person or by attorney, file with the Commission in triplicate written appearances stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this order.

7. It is further ordered, that pursuant to section 311(a) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, the applicant shall give notive of the hearing as prescribed in the rule, and shall advise the Commission of the publication of the notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division.

[FR Doc. 82-15357 Filed 6-4-82; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 82-294, File No. BPCT-791227KE, etc.]

Lakeland Telecasters, Inc., et al.; Applications for Construction Permit

In the matter of Applications of Lakeland Telecasters, Inc., Lakeland, Florida (BC Docket No. 82-294, File No. BPCT-791227KE); Plaza Broadcasting, Inc., Lakeland, Florida (BC Docket No. 82-295, File No. BPCT-800521KE); Figgie Communications, Inc., Lakeland, Florida (BC Docket No. 82-296, File No. BPCT-800521KF); Mid Florida Telecasters, Inc., Lakeland, Florida (BC Docket No. 82-297, File No. BPCT-800521KG); Public Interest Corporation, Inc., Lakeland, Florida (BC Docket No. 82-298, File No. BPCT-800521KH); Channel 32, Inc., Lakeland, Florida (BC Docket No. 82-299, File No. BPCT-800521KI); and Manning Telecasting, Inc., Lakeland, Florida (BC Docket No. 82-300, File No. BPCT-800521KJ) For a construction permit; Memorandum opinion and order designating applications for consolidated hearing of stated issues.

Adopted: May 24, 1982.

Released: June 3, 1982.

By the Chief, Broadcast Bureau.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-capitioned mutually exclusive applications of Lakeland Telecasters, Inc. (Lakeland Telecasters), Plaza Broadcasting, Inc. (Plaza), Figgie Communications, Inc. (Figgie),[1] Mid Florida Telecasters, Inc. (Mid Florida), Public Interest Corporation (PIC), Channel 32, Inc. and Manning Telecasting, Inc. (Manning) [2] for a new commercial television station to operate on Channel 32 in Lakeland, Florida. The Commission received the following objections to the construction of Mid Florida's proposed tower: a petition signed by 2,107 residents of Lake County, Florida; letters from the mayors of Clermont, Groveland and Minneola, Florida, three cities near the proposed tower; resolutions passed by the city councils of Clermont, Groveland and Minneola; a resolution passed by the South Lake Aviation Authority; a letter from the Mascotte (Florida) Chamber of Commerce; letters from twenty-six individuals and families; and an informal objection filed by Charles and Jan Sunderman, area residents. The Commission also received a response to the Sunderman objection filed March 5, 1982 by Mid Florida.

Mid Florida Telecasters, Inc.

2. *Environmental Impact.* The objections filed against Mid Florida's application question whether a grant of that application will significantly affect the quality of the human environment.[3] In accordance with the Commission's obligation under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4361, as implemented by Sections 1.1301-.1319 of the Commission's Rules, the staff will prepare a draft environmental impact statement (EIS). Our rules, however, do not expressly anticipate the instant situation where, regardless of the environmental impact occasioned by one competing applicant's proposal, a hearing must be held to detemine which application will be granted. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *reconsideration denied*, 83 FCC 2d 337 (1980), *appeal dismissed mem. sub nom, United States* v. *Federal Communications Commission*, No. 80-2559 (D.C. Cir. July 2, 1981). *See also Golden State Broadcasting Corp.*, 46 RR 2d 1207 (1979) (final EIS finds no significant adverse impact). Because of the delay which will result if designation for hearing is deferred until we prepare a draft EIS, we have determined that the public interest would be best served by bifurcating the procedure in this case. *See Golden State Broadcasting Corp.*, 71 FCC 2d at 230-31. Therefore, we will waive Section 1.1317 of the

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[1] On February 22, 1982, this applicant filed an amendment which change its corporate name from A-T-O Communications, Inc. to Figgie Communications, Inc. That amendment is accepted pursuant to Section 73.3522(a)(2) of the Commmission's Rules.

[2] The following amendments are accepted pursuant to Section 73.3522(a)(2) of the Commission's Rules: Plaza's amendments filed December 8, 1980, April 1, 1981 and July 16, 1981; Figgie's amendments filed July 28, 1981 and February 22, 1982; Mid Florida's amendments filed January 28, 1982 and February 16, 1982; PIC's amendment filed August 14, 1980; Channel 32, Inc.'s amendments filed September 9 and 16, 1980 and February 23, 1982. The applicants cannot derive any comparative advantage from these amendments because they were filed after the predesignation period for filing amendments as a matter of right. *See Revised Procedures for the Processing of Contested Broadcast Applications*, 72 FCC 2d 202, 210 (1979). *See also Mid Florida Television Corp.*, 76 FCC 2d 158, 163 (1980).

[3] Mid Florida's response to this objection is discussed in paragraph 6 *infra.*

Commission's Rules[4] to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed and we will designate these applications for a comparative hearing at this time. The staff will prepare a draft and final EIS. Because the conclusion reached by such a statement is not yet known, a contingent environmental impact issue will be specified. Accordingly, while the qualifications and comparative portions of this proceeding can proceed, final action must be withheld pending disposition of the environmental questions raised by Mid Florida's application.

3. *Informal Objections.* Mid Florida proposes to construct a tower 1,845 feet above ground level (AGL) approximately three miles southwest of Clermont in Lake County, Florida. The proposed tower will be approximately thirty-three miles north of the city of license, which is in Polk County. In their informal objections, the local residents and governments state that construction of the proposed tower will destroy or significantly detract from the natural beauty of an area of lakes, rolling hills, orange groves and residences. They state that because the proposed tower will be located in a rural county with no large towns and no industrial or commercial development, it will be out of harmony with the community's natural beauty. The objectors protest the height, general appearance and obstruction lighting of the proposed tower. They are concerned that a tower of 1,845 feet (AGL), with the requisite obstruction lighting, would be visible for miles by a majority of the area's residents and would destroy the visual harmony of the rurality. They contend that the tower would be an eyesore and an offensive structure especially because the strobe lights would be totally incompatible with the surrounding area and a continuing nuisance to the community. The objectors are also concerned that the location of this tower in their community could lead to the construction of other towers in the locale. The safety of the proposed tower was also questioned by some objectors. The mayors, city councils and other objectors fear that construction of the proposed tower will hinder local development because the site is central to an area of residential growth around the lakes. They are concerned that the site is in the path of Clermont's projected growth and other land available for future growth is limited. Other objections expressed concern about the potential decrease in property values which may result from construction of the tower. Some objectors indicated that the proposed site is in an area extensively used for fishing, boating, hunting and other recreational activities. Many objections noted that the proposed location of Mid Florida's tower is in Lake County, although the facility will primarily serve Lakeland, which is in Polk County. In addition, the objectors state that the area around the proposed tower site is already well served by Tampa and Orlando television stations and by cable television service and thousands of undeveloped, uninhabited acres of land closer to the city of license may be available as a site for the applicant's tower. Many individual objections expressed concern that Mid Florida's local public notice (required by Section 73.3580 of the Commission's Rules) was published in a Lakeland newspaper but not in a Clermont area newspaper. The South Lake Aviation Authority, created by the Florida legislature to select a site for the construction of a general aviation airport in south Lake County, stated that construction of the proposed tower would be detrimental to future commercial, agricultural and general aviation in the area. It requested that the Commission deny Mid Florida's application because the proposed tower site is close to the areas currently in consideration as a site for a general aviation airport. Similar concerns about the effect of the proposed tower on aerial crop spraying and the safety of small aircraft traffic were expressed by other objectors.

4. The Sundermans' filing and other objections contained a discussion of the local zoning proceedings involving Mid Florida's site. They allege that the applicant's actions on the local level suggest deception and that the applicant's representatives made misleading statements to local officials to influence their decision to grant Mid Florida a conditional use permit. The objectors question the adequacy of Mid Florida's notice to other property owners as part of the local zoning procedures. The objectors are also concerned that local officials were not accurately informed on the size of the proposed structure. The Sudermans and others protest Mid Florida's proposal on environmental grounds, stating that the Commission is obligated under NEPA to give appropriate consideration to the effect of the proposed tower on the environment. The Sundermans state that the proposed tower is a threat to the esthetic quality of the environment. They also allege that Mid Florida failed to consider the environmental impact of its proposed facility and did not consult with appropriate local and state agencies regarding potential environmental impact. They also state that the environmental narrative statement filed as a part of Mid Florida's application was deficient. The Sundermans' objection also alleges that Mid Florida's application was defective and incomplete in four respects: the site photographs provided by the applicant are not aerial photographs and do not adequately show the low and wetland nature of surrounding terrain; the applicant failed to list all landing areas within ten miles of the site; no financial statement was submitted for Mr. Lester Cole, a stockholder; and Mr. Henry Czech, a community leader Mid Florida listed as one it interviewed for ascertainment, was not actually interviewed about community problems.

5. *Response to Informal Objections.* Mid Florida responded to the Sundermans' informal objection on March 5, 1982, stating that the objection is unfounded and involves local land use and zoning matters properly left to local authorities. Mid Florida further states that if the Commission chooses to consider environmental issues, it must do so as a part of the predesignation process. Mid Florida contends that the allegations that it engaged in deception to secure local zoning approval for its tower site are refuted by transcripts included with the Sundermans' objection. Mid Florida further argues that the Sundermans' objection itself shows that Mid Florida complied with the public notice requirements of local zoning laws, that the Sundermans, and other local area residents were notified of all proceedings before local authorities and that these individuals met with Mid Florida's local counsel before the proceedings began.

6. Mid Florida states that the environmental narrative statement filed as a part of its application is adequate and the informal objection does not raise serious environmental issues warranting Commission scrutiny. Mid Florida emphasizes that the environmental concerns raised by the informal objection were properly considered in the local zoning proceedings. It also states that if the Bureau decides to address the environmental matters raised by the objections, it must do so prior to any designation for hearing and that the Commission may designate an environmental impact issue for hearing only after following the procedures

[4] Section 1.1317 provides in part that the final EIS will be considered by the Commission in determining whether to grant the application or designate it for hearing on an environmental issue.

provided by Sections 1.1311–.1319 of the Commission's Rules.

7. Mid Florida states that its application was not defective or incomplete. The photographs submitted with its application, Mid Florida states, fully complied with Commission rule requirements and adequately depicit the surrounding terrain. Mid Florida also states that the omission of two local landing areas in its application was inadvertent and the FAA circulated notice of the proposed towers to all appropriate airport operators. No financial statement must be submitted for Mr. Cole, Mid Florida explains, because he already purchased stock and his personal resources are not relied on as a source of funds. Finally, Mid Florida states that Mr. Czech was interviewed by a Mid Florida representative during the ascertainment process and submits a copy of its interview form indicating some discussion of local broadcasting needs.

8. *Discussion.* Many of the objections to Mid Florida's tower involve issues of zoning and land use: preservation of the area's natural beauty and visual harmony, prevention of incompatible land uses, effect on area development and future growth, effect on property values and recreational land use, and the effect on the planning and future construction of a general aviation airport. These objections question the availability of Mid Florida's site based on local zoning approval. The proposed site is owned by Giddens Groves, Inc., (Giddens Groves) which will lease the land to the applicant. WKRG–TV, Inc. owns 100% of Giddens Groves and 87.5% of Mid Florida; all the voting stock of WKRG–TV, Inc. is owned by Mr. Kenneth Giddens. On May 13, 1980, the Board of County Commissioners of Lake County granted Giddens Groves a conditional use permit allowing the construction, operation and maintenance of a television tower and transmitter building on the proposed site. (Sunderman Informal Objection, exhibit D–3). In an amendment filed January 28, 1982, Mid Florida informed the Commission that two lawsuits have been filed in the Florida courts seeking a reversal of the decision of the local zoning authorities. *See* para. 9 *infra.* The Board of County Commissioners, however, has not rescinded the conditional use permit. A letter from the clerk of the Board to the Commission, filed as a part of the Sundermans' informal objection (exhibit D4–A), informs the Commission that local opposition to the proposed tower is growing but does not indicate that the Board is reconsidering the zoning approval.[5] An applicant must show "reasonable assurance" that the proposed site is available, *Radio Ridgefield, Inc.*, 47 FCC 2d 106, 109 (Rev. Bd. 1974), and "reasonable assurance" that it will obtain local zoning authorization, Grace Broadcasting Systems, Inc., 48 RR 2d 936, 940 (Adm. L. Judge 1980) (assumption approval is forthcoming). *Cf. Northbanke Corp.*, 46 RR 2d 453 (1979) (assumption rebutted); *WLCY–TV, Inc.*, 43 FCC 2d 818 (Rev. Bd. 1973) (assumption rebutted). We find that Mid Florida has shown it has reasonable assurance of site availability and reasonable assurance of local zoning approval. In determing whether to specify a site availability issue, the Commission has held that "local requirements for land use will be left to local authorities and that issues inquiring into such matters will not be specified, absent a 'reasonable showing' that the applicant will be unable to obtain approval of his plans from local authorities." *Radio Ridgefield, Inc.*, 47 FCC 2d at 109. *Accord, Gainesville Media, Inc.*, 37 RR 2d 178 (Rev. Bd. 1976). Because the objectors have not made a reasonable showing that Mid Florida's conditional use permit will be rescinded, we will not specify a site availability issue.

9. The Sundermans also allege that Mid Florida engaged in deception before the local zoning authorities, apparently requesting specification of a character qualifications issue. In its response filed March 5, 1982, Mid Florida informed the Commission that the Sundermans and another local property owner instituted actions in the Florida Courts to have the conditional use permit for the site declared null and void. *Sunderman Groves, Inc. v. Board of Lake County Commissioners and Giddens Groves, Inc.*, No. 80–1302–CA–01 and *Ruby Lee v. Board of Lake County Commissioners and Giddens Groves, Inc.*, No. 81–1937–CA–01. Becaude these lawsuits will likely resolve the allegations that local zoning approval was obtained through deception, the outcome of these cases may reflect on Mid Florida's character qualifications to be a Commission licensee. In addition, since the lawsuits seek to declare the conditional use permit null and void, the outcome may affect the availability of Mid Florida's site. Therefore, any grant of a construction permit to Mid Florida will be without prejudice to any action the Commission may deem warranted as a result of any final determination reached in these two civil actions. Mid Florida timely informed the Commission of the local controversy concerning its proposal and of the filing of the two lawsuits, in compliance with the requirements of § 1.65 of the Commission's rules. Therefore, no §1.65 issue is warranted.

10. The objections also question Mid Florida's selection of the proposed site. Some objectors were concerned that the proposed facility will serve Lakeland which is in Polk County, rather than Lake County, where the tower will be located. They state that alternative sites closer to Lakeland are available to Mid Florida which would not be objectionable to Lake County residents. Since the proposal will place an 80 dBu signal over Lakeland, the city of license, as required by § 73.685(a) of the Commission's rules, no issue is warranted regarding Mid Florida's site selection. In addition, although Mid Florida would be obligated to provide city grade service to Lakeland, it would also be obligated to provide secondary service to Clermont and Lake County. *See Sixth Report and Order in Dockets 8736, 8975, 9175 & 8976,* 41 FCC 148, 167 (1952) (television table of assignments).

11. The FAA has determined that the applicant's proposal will not be a hazard to air navigation. The FAA has also determined that obstruction lighting is necessary in the interests of air traffic safety. "The Commission has followed a policy of relying upon the expertise of the FAA in the matter of air hazard and in the absence of substantial evidence to the contrary, the Commission has not challenged the FAA's determination." *State of Florida, Department of Transportation,* 29 RR 2d 511, 512 (1974). Therefore, no air hazard issue will be specified.

12. Although Mid Florida did not publish its local public notice in Clermont, its notice complied with § 73.3580(c) of the Commission's rules which requires an applicant for a new television station to publish a local public notice of the filing of its application "in the community in which the station is * * * proposed to be located." Because Mid Florida fulfilled this requirement, no issue will be specified.

13. The site photographs submitted with Mid Florida's application were taken in eight different directions from

[5] The Commission received a copy of a letter, filed March 31, 1982, from the Department of Environmental Regulation of the State of Florida (DER) to Mid Florida's local counsel. DER indicates that although it has received no information regarding the placement of the proposed facility or the proximity of ancillary support structures, such information is necessary to determine whether state dredge and fill permits will be required prior to construction. Since DER has not determined whether permits are required and, if required, whether to grant the permits, we will not specify a site availability issue based on this letter.

an elevated position on the ground and clearly show the site area. These photographs, therefore, are acceptable in lieu of aerial photographs, in compliance with the requirements of Section V–C, page 3, item 16 of FCC Form 301. Therefore, no issue will be specified. In its response to Section V–G, item 5 of FCC Form 301, Mid Florida failed to list two landing areas within ten miles of the antenna site. This information is requested to determine whether the proposed tower would be a hazard to air navigation. Since the FAA has determined that no air hazard would exist and we defer to that determination, *see* para. 11 *supra*, no issue is warranted. Mid Florida was not required to submit a financial statement for Mr. Cole because he had already purchased stock of the applicant. *See* Section III, page 3, item 4(b) of FCC Form 301. Therefore, no issue will be specified. The Sundermans' objection to the ascertainment portion of Mid Florida's application is not properly considered at this time. Under the Commission's revised procedures, ascertainment issues will no longer be specified for determination in comparative hearings and the filing and review of ascertainment surveys will be deferred until after the grant of a construction permit. *Commission Interim Policy in Regard To Filing of the Ascertainment of Community Needs*, 49 RR 2d 1577 (Public Notice July 31, 1981). Therefore, no issue will be specified.

14. The environmental issues raised by the Sundermans' and other objections will be considered as part of the staff's preliminary review of the environmental impact of Mid Florida's application. *See* para. 2 *supra*. In addition, we find that Mid Florida's environmental impact statement complies with the requirements of Section 1.1311 of the Commission's Rules and, therefore, no issue will be specified.

15. *Conclusion.* For reasons discussed above, the informal objections filed against Mid Florida's application do not raise any issues which will be specified at this time. Therefore, the informal objections will be denied.

Lakeland Telecasters, Inc.

16. *Financial qualifications.* The applicant estimates it will require $722,175 to construct and operate for three months. To meet its costs, Lakeland Telecasters relies on a loan of $722,175 from Fred and Marilyn Button. The balance sheet submitted by the Buttons reveals they do not have sufficient net liquid assets to meet their commitment. An appropriate financial issue will be specified.

Public Interest Corporation

17. *Conditional grant.* Richard E. Adams, vice president and 20.4% owner of PIC is also vice president, director and 25% owner of Radio Station WBAR, Inc., licensee of radio station WBAR, Bartow, Florida. Section 73.636(a)(1) of the Commission's Rules sets forth our policy against granting television construction permits to applicants who directly or indirectly own, operate, or control a radio station which is completely encompassed by the predicted Grade A contour of the proposed television station. The predicted Grade A contour of the applicant's proposed television station completely encompasses the city of license of Radio Station WBAR. The applicant states, however, that Adams will dispose of his stock and resign as an officer and director of WBAR if a construction permit is granted to PIC. Accordingly, any grant of a construction permit to PIC will be appropriately conditioned.

Channel 32, Inc.

18. *Financial qualifications.* Channel 32, Inc. indicates that it will require $685,457 to construct and operate for three months. To meet these expenses, the applicant relies on stock subscriptions and loans from its principals totalling $680,000 and existing capital of $25,800. The applicant's principals have agreed to provide the following amounts: Joseph E. Steuer, $127,500; Phillip H. Derse, $42,500; Jacquie Hur, $85,000; Dr. John R. E. Lee, Jr., $127,500; and John G. Chamberlain, $42,500. Analysis of the balance sheets of Steur, Derse and Hur reveals they do not have sufficient net liquid assets to meet their respective commitments. In addition, Lee and Chamberlain have not submitted current balance sheets (dated within 90 days of the filing of the application). We therefore cannot determine their ability to meet their commitments. Channel 32, Inc.'s balance sheet shows $18,191 of prepaid expenses but it has not demonstrated that these prepaid expenses will reduce its projected costs. In addition, Channel 32, Inc.'s balance sheet shows the availability of only $7,609 of existing capital. Thus, the applicant has demonstrated the availability of funds totalling only $262,609 to construct and operate as proposed. An appropriate financial issue will be specified to detrermine whether Channel 32, Inc. has the additional $422,848 to construct and operate as proposed.

Manning Telecasting, Inc.

19. *Financial qualifications.* Manning estimates its total construction and operating costs will be $214,000. Since Manning has not provided for any legal costs, we cannot determine its actual total costs. Manning proposes to lease $2.6 million of equipment and facilities from Hadar Leasing International Company (Hadar) with monthly payments deferred until eighteen months after installation. To meet operating and miscellaneous expenses of $214,000 the applicant relies on a $225,000 loan from Hadar and supplemental financing in the form of a $250,000 loan from Chalbank, a Merchant bank based in Northern Ireland. On March 27, 1981, however, Hadar filed a debtor's voluntary petition for relief in the United States Bankruptcy Court for the Southern District of New York, seeking relief under Chapter 11 of Title 11 of the United States Code. *In re Hadar Leasing International Co.*, No. 81–B–1068–9.[6] In that petition, Hadar claims liabilities of $4,150,000 and assets of $2,600,000. Therefore, Manning cannot rely on Hadar as a source of equipment or funds and we cannot determine Manning's total costs. Hadar proposed to purchase equipment from Philips Broadcast Equipment Corporation (Philips) for lease to the applicant. This purchase would be financed through Hundred East Credit Corporation (Hundred East), a financing affiliate of Philips. On March 20, 1981, Hundred East filed a civil complaint against Hadar and several individual defendants for fraud and breach of contract. Under these circumstances, Manning cannot reasonably rely on financing from Hundred East or Hadar. In addition, Manning has not submitted any documentation of Chalbank's willingness to extend a loan. Therefore, we are unable to find that Manning will have any funds to finance this proposal. Appropriate financial issues will be specified.

20. *Other matters.* Manning proposes an aural to visual power ratio of approximately 9 percent. Section 73.682(a)(15) of the Commission's rules provides: "The effective radiated power of the aural transmitter shall not be less than 10 percent nor more than 20 percent of the peak radiated power of the visual transmiter." Since Manning's

[6] We take official notice of Hadar's bankruptcy petition which was filed with the Commission as an addition to an application for transfer of control of WDHO–TV, Toledo, Ohio (file no. BTCCT–810330KE).

proposal does not comply with this rule, an appropriate issue will be specified.

Air Hazard Issues

21. We have not received a determination from the FAA that the tower heights and locations proposed by Figgie and Manning would not constitute a hazard to air navigation. In addition, the data on file with the FAA for Plaza and PIC is inconsistent with the data filed with the Commission. Therefore, it has not been determined whether the tower structures proposed by these applicants will constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

Conclusion and Order

22. Except for the possible addition of an environmental issue against Mid Florida Telecasters, Inc., and the issues specified below, the Commission finds the applicants legally, financially, technically and otherwise qualified. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that a grant of the applications will serve the public interest, convenience and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues set out below.

23. Accordingly, it is ordered that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, on the following issues:

1. To determine, with respect to Plaza Broadcasting, Inc., Figgie Communications, Inc., Public Interest Corporation and Manning Telecasting, Inc., whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation and, therefore, whether the applicants are technically qualified.

2. To determine, with respect to Lakeland Telecasters, Inc., the availability of funds to meet the applicant's costs and, therefore, whether the applicant is financially qualified.

3. To determine, with respect to Channel 32, Inc., whether the applicant has an additional $422,848 available to construct and operate as proposed and, therefore, whether the applicant is financially qualified.

4. To determine, with respect to Manning Telecasting, Inc.:

(a) The total costs to construct and operate as proposed;

(b) The availability of funds to meet those costs;

(c) Whether the applicant's technical proposal complies with the requirements of § 73.682(a)(15) of the Commission's rules regarding the effective radiated power of the aural transmitter;

(d) Whether, in light of the evidence adduced pursuant to (a) through (c) above, and issue 1, the applicant is qualified to construct and operate as proposed.

5. With respect to Mid Florida Telecasters, Inc.:

(a) If the final environmental impact statement concludes that the proposed facilities are likely to have an adverse effect on the qualify of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1.1319 of the Commission's rules.

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

6. To determine, which of the proposals would, on a comparative basis, best serve the public interest.

7. To determine, in light of the evidence adduced pursuant to the foregoing issues which application should be granted.

24. It is further ordered that § 1.1317 of the Commission's rules is waived, to the extent indicated herein.

25. It is further ordered that final acton on the applications shall be withheld pending Commission disposition of a final environmental impact statement as to the proposal of Mid Florida Telecasters, Inc.

26. It is further ordered that any action on Mid Florida Telecasters, Inc.'s application is without prejudice to whatever action, if any, the Commission deems warranted as a result of any final determination reached in the actions entitled *Sunderman Groves, Inc. v. Board of Lake County Commissioners and Giddens Groves, Inc.*, No. 80–1302–CA–01 and *Ruby Lee v. Board of Lake County Commissioners and Giddens Groves, Inc.*, No. 81–1937–CA–01, now pending in the courts of the State of Florida.

27. It is further ordered that the informal objections filed against Mid Florida's application are denied.

28. It is further ordered that if Public Interest Corporation's application is granted, the construction permit shall be conditioned to require Richard E. Adams to certify to the Commission, prior to the commencement of operation, that he has severed all interest in or connection with the licensee of Radio Station WBAR.

29. It is further ordered that the Federal Aviation Administration is made a party to the proceeding with respect to issue 1.

30. It is further ordered that, to avail themselves of the opportunity to be heard, the applicants and party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 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.

31. It is further ordered that the applicants herein shall pursuant to § 311(a)(2) of the Communications Act of 1934, as amended, and § 73.594 of the Commission's Rules, give notice of the hearing 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 § 73.3594(g) of the rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82–15298 Filed 6–4–82; 8:45 am]

BILLING CODE 6712–01–M

[BC Docket No. 82–282; File No. BRH–790601F6 et al.]

Mid-Ohio Communications, Inc. et al.; Designating Applications for Consolidated Hearing on Stated Issues

In re Applications of Mid-Ohio Communications, Inc. For Renewal of License of Station WBBY(FM), Westerville, Ohio, Has: 103.9 MHz, Channel 280 2 kW (H&V), 280 feet, (BC DOCKET NO. 82–282, File No. BRH–790601F6); Metro Broadcasting, Inc., Westerville, Ohio For Construction Permit Req: 103.9 MHz, Channel 280 2 kW (H&V), 360 feet, (BC DOCKET NO. 82–283 File No. BPH–790904AK) William R. Bates (Transferor) and QNP Corporation (Transferee) For Transfer of Control of Mid-Ohio Communications Inc., Licensee of Station WBBY(FM), Westerville, Ohio, (File No. BTCH–800314GQ) Memorandum Opinion and Order.

Adopted: May 20, 1982.

Released: June 1, 1982.

1. The Commission has before it for consideration the application of Mid-Ohio Communications, Inc. (Mid-Ohio) for renewal of license of Station WBBY(FM), Westerville, Ohio, and the application of Metro Broadcasting, Inc. (Metro) for a construction permit for the

frequency presently licensed to WBBY(FM). Since the applications are mutually exclusive, they must be designated for a comparative hearing.[1] Also before us is the above-captioned application to transfer control of Mid-Ohio from William R. Bates to QNP Corporation (QNP).

Mid-Ohio

2. Certain background information concerning Mid-Ohio and its principles requires discussion. Mid-Ohio, the licensee of Station WBBY(FM), is owned 50.1 percent by William R. Bates, 24.9 percent by Richard P. Nourse and 25 percent by QNP. In December 1977, Mid-Ohio, through the action of the majority of its Board of Directors, brought suit against William R. Bates in the Court of Common Pleas of Delaware County, Ohio. *Mid-Ohio Communications, Inc.* v. *William R. Bates,* Case No. 77–CIV–454. On December 6, 1977 and February 7, 1978, the Court of Common Pleas issued a Temporary Restraining Order and a Preliminary Injunction, respectively, with respect to Mr. Bates. These Orders restrained and enjoined Mr. Bates from, *inter alia,* entering on the premises of the radio station; interfering with its operation in any way; and calling a shareholders' meeting for the purpose of removing any directors or for any purpose affecting the licensee's business. The injunction was based upon findings that certain actions and omissions of Mr. Bates demonstrated a lack of business knowledge and judgment which jeopardized the station's license and that he had "on occasion been publicly disruptive and annoying" and had caused the loss of significant business clients. The Court characterized Mr. Bates' behavior as "bizarre" and concluded that he was "suffering from a medical condition which has severely impaired his ability to function with or on behalf of" the licensee.[2]

3. On December 18, 1978, the above-captioned transfer application was tendered for filing seeking Commission consent to the transfer of control of Mid-Ohio, from William R. Bates to QNP. The application was tendered without the signature of Mr. Bates, the licensee's controlling stockholder. In addition, in early 1978, Mr. Bates become involved in a divorce proceeding which ultimately resulted in his divorce from his wife. Pursuant to Judgment Entries of the Court of Common Pleas, Franklin County, Ohio, Division of Domestic Relations in Case No. 78 DR–02–404, Mr. Bates was ordered to convey his 50.1 percent stock interest in Mid-Ohio to an escrow account maintained by Chapman Company, Inc. until sale of the stock at the highest price received through sealed bids. By letter dated September 10, 1979, J. William Chapman stated: "This is official notice the QNP Corporation is the successful high bidder. The escrow money is being placed immediately in our escrow account awaiting final closing (confirmation) after FCC Aproval." The Court also directed Mr. Bates to sign all documents and applications necessary for consent of the Commission to a transfer. Upon failing to sign the pending transfer application, the domestic relations court directed David M. Buda, Esquire, to act on behalf of Mr. Bates and to execute the transfer application. The application was subsequently amended on March 14, 1980, pursuant to the Court's order.

4. While the transfer application for Mid-Ohio was pending, an application was filed for the assignment of license of AM Station WRFD, Columbus-Worthington, Ohio, to QNP. Both Metro Broadcasting, Inc. and Mr. Bates filed separate petitions to deny the WRFD application. In addition to raising issues against QNP regarding misrepresentations and a premature transfer of control over the operation of WRFD, Metro alluded, without specific allegations of fact, to QNP's "attempts to take control of [Mid-Ohio] without prior Commission approval." Mr. Bates' petition challenged the qualifications of QNP solely on the basis of the controversy and litigation surrounding Mid-Ohio and Mr. Bates' stock interest therein. Before these issues were addressed and resolved by the Commission, the application for assignment of the WRFD license was dismissed at the request of the assignor.

5. For the reasons set forth below in paragraphs 8–14, we find that Metro's allegations concerning QNP's misrepresentations in the WRFD transaction and its premature assumption of control of WRFD fail to present substantial and material questions of fact as to QNP's qualifications to be a Commission licensee. Before addressing these matters, however, we believe it appropriate to discuss the pending captioned application to transfer control of Mid-Ohio, the WBBY(FM) licensee, from William R. Bates to QNP.[3]

6. As stated previously, in late 1977 and early 1978, a majority of Mid-Ohio's directors removed Mr. Bates as President of the licensee corporation and obtained orders from an Ohio court restraining and enjoining him from interfering in any way with the operation of the station. Further, in early 1978, Mr. Bates became involved in divorce proceedings, which resulted in the sale of his 50.1 percent ownership interest in WBBY(FM) to QNP.[4] The money for that stock was placed in an escrow account to await final approval of a transfer application by the Commission. Thus, at this point in time there is no one with an unemcumbered legal right to vote the 50.1 percent stock interest. This situation is critical, especially in view of the fact that the licensee expects the imminent resignation of Mr. Bates' son, who has served as the general manager.

7. Considering the unique circumstances presented by the above facts, the pending transfer application will be granted. Significantly, we note that there has been no trustee or conservator appointed regarding Mr. Bates' interests in Mid-Ohio. In fact, that controlling ownership interest now resides in an escrow account, pending action by the Commission. While substantive changes in the ownership structure of a license renewal application that faces a comparative hearing are not normally allowed, unless the instant transfer application is granted at this point in time, (WBBY)(FM) will remain hamstrung, with resulting adverse effect on its ability to operate in the public interest.

[1] Metro's mutually exclusive construction permits application was filed on September 4, 1979. On that date, William R. Bates also filed a construction permit application for WBBY(FM)'s facilities. However, by letter dated December 3, 1981, his application was dismissed for failure to prosecute pursuant to § 73.3568(b) of the Commission's Rules.

[2] On June 4, 1979, the Court issued a Permanent Injunction enjoining Mr. Bates from numerous actions concerning WBBY(FM). The Permanent Injunction was appealed by Mr. Bates and the appeal was dismissed.

[3] On December 23, 1981, an FCC Form 316 application (BTC–811223HW) was filed to transfer control WBBY(FM) to QNP. The application was precipitated by the proposed resignation of WBBY(FM)'s general manager (Mr. Bates' son) which is to take effect no later than six months from December 1981. QNP believes it must hire a general manager, infuse additional capital in the station and take other steps it claims are necessary to protect its existing stockholder interest in the licensee. It is seeking action on the Form 316 application as interim relief. Metro has opposed the application alleging, primarily, that the use of a Form 316 application is inappropriate under the Commission's rules and that the actions which QNP proposes to take at WBBY(FM) are not consistent with Ohio law. In view of our action today granting the long-form 315 application, this 316 application and the pleadings directed thereto will be dismissed as moot.

[4] Although Metro has referred to improprieties, without supporting facts, and Mr. Bates has stated his opposition to the actions of Mid-Ohio and the courts, the Commission is not the proper forum for determining whether the Ohio court's actions were proper under Ohio law. In fact, Mr. Bates' appeals of the court orders were rejected by those forums with the jurisdiction over such matters.

Also, grant of the instant transfer application is the only reasonable course of action that would ensure that a meaningful comparison will be made. Accordingly, our grant of the transfer application would best serve the public interest by ensuring continued operation of the station during the pendency of the hearing proceeding.

8. We now turn to the unresolved allegations concerning QNP and its prinicipals which were raised in the WRFD proceeding. Metro, in its petition to deny the WRFD assignment application, alleged that QNP had intentionally misrepresented the names and positions of the persons who conducted the assignee's community leader ascertainment survey. In an exhibit prepared by Donald L. Shaw, its vice president, QNP stated that the community leader interviews were conducted by WRFD's general manager, Joseph Bradshaw and by several QNP principals, namely, Messrs. Carl Nourse, Donald Shaw, and Paul Aselin. Moreover, the assignee's community leader selections were said to be "made by personal familiarity with Community and various published lists of Public and Civic Leaders." Metro maintained that those statements were false, contending that the majority of the interviews were conducted by other persons hired for that purpose and that those individuals, not QNP or the aforenoted principals, chose the leaders to be interviewed.

9. In affidavits and materials submitted with its opposition pleading and in response to a letter from the Chief of the Broadcast Bureau's Renewal and Transfer Division requesting full particulars regarding the WRFD community leader survey, Mr. Shaw denied any intent to deceive or mislead the Commission or the public.[5] He explained that Mr. Bradshaw and each of the principals personally interviewed a number of community leaders. In addition, he stated that he and Messrs. Nourse and Aselin also directed and supervised Mr. Aselin's wife and certain of their other business employees and associates, whom they had selected to assist them in surveying the remaining persons included in the community leader categories assigned to each QNP principal. Since the assignment application form did not call for a listing of each and every individual who held an interview, only the QNP principals and Mr. Bradshaw, who had directed and conducted the ascertainment interviews and who would be responsible for using the knowledge of those results, were listed. Disclaiming any attempted concealment of the other interviewers who participated in the community leader survey, Mr. Shaw pointed out that summary survey forms, which were signed by those interviewers and by the QNP principal who reviewed them, were initially included in the WRFD public inspection filed and later made available to one of Metro's principals, Mark Litton.[6]

10. It is uncontroverted that Mr. Bradshaw and Messrs. Nourse, Shaw, and Aselin conducted community leader interviews; and Mr. Shaw's statement to that effect in the WFRD assignment application was both accurate and complete. That other persons had also made community leader interviews, however, was not obvious from the face of that ascertainment exhibit; and to that extent, the description of QNP's leadership survey activities was incomplete. Metro believes that this omission was designed to mislead. However, the arguments propounded in support of Metro's view are not convincing. QNP has proferred a plausible explanation for its failure to include the other interviewers in the description of its leadership survey activities. From the materials before us, it does not appear that the information was omitted in an attempt to conceal their participation. Indeed, the placement in the station public inspection file of the community leader interview forms used by those persons, together with the WRFD assignment application and the subject ascertainment exhibits, would be incongruous with such motivation on QNP's part. Metro's contrary opinion notwithstanding, the subsequent removal of those interview forms from the WRFD file does not detract from the significance of the public availability of the information in the first instance. Under the foregoing circumstances, we do not believe that this matter which was apparently inadvertent, warrants further exploration in an evidentiary hearing.

11. Metro next alleged that Carl Nourse, one of QNP's principals, misrepresented himself to the principals of the WRFD licensee as an experienced broadcaster, specifically claiming that he exercised positive control over the licensee of WBBY(FM) and that at one time he had owned 20 percent of station WLW, Cincinnati, Ohio. Mr. Nourse, in an affidavit, stated that he never claimed he had owned 20 percent of WLW, or exercised any control over WBBY(FM); and further stated that none of QNP's principals serve as officers or directors of Mid-Ohio, the WBBY(FM) licensee. We find that Metro's unsupported allegation is adequately refuted by Mr. Nourse's sworn denial and does not present a material question of fact warranting further inquiry.

12. Metro also alleged that QNP had prematurely assumed control of Station WRFD by having the licensee hire a new general manager, John Fraim, whom QNP proposed to retain as its general manager. The hiring of Mr. Fraim was purportedly taken after consultations between WRFD and Mr. Nourse and at Mr. Nourse's direction. Metro further contended that Fraim met two or three times a week with QNP's principals and that an (unidentified) "official" of QNP met with WRFD's present employees to plan a new advertising rate card. QNP denied these allegations. Mr. Nourse, in an affidavit, stated that Mr. Fraim was hired by WRFD without any collusion with QNP, noting that the contract for the sale of WRFD provided for the termination of all existing WRFD contracts by December 31, 1979. He further stated that QNP played no role in program decisions regarding WRFD or in the revision of the rate card for WRFD.

13. The WRFD licensee submitted statements in support of QNP to the effect that: it had not relinquished any control of WRFD; its prior general manager resigned on October 11, 1979, to go into the insurance business; Carl Nourse, thereafter, discussed the availability of John Fraim, an established Columbus radio personality, with principals of WRFD; WRFD hired Fraim after warning him that his present job would end when the station was sold to QNP; and Fraim took orders only from WRFD's principals, who also were the sole determiners of WRFD's rate card. WRFD also submitted an affidavit of John Fraim asserting that he was actually hired at WRFD by its vice-president with the awareness that his job would not be secure after the station was sold; that he spoke with Mr. Nourse, but was given no assurance by

[5] Also supplied was an affidavit of QNP's president, Carl Nourse, who affirmed Mr. Shaw's statements concerning the assignee's ascertainment activities, including the avowal that QNP in conducting its community leader ascertainment survey had mistakenly followed guidelines for license renewal applicants. Only after the filing of the Metro petition to deny did QNP become aware of separate Commission Primers for license renewal applicants and for applicants filing assignment, transfer of control and construction permit applications and that it, thereupon, reconducted its defective survey in accord with the requirements for assignment applications.

[6] Metro alleged that a subsequent request to inspect those forms was denied and those forms were removed from the public file. Section 73.3526 of the Commission's Rules does not require such forms to be kept available in a station's public file in connection with an assignment application.

him that he would be hired by QNP; that he, Fraim, recommended increasing the rate card; and, that he occasionally met with Nourse to keep him apprised of station happenings, but never to receive instructions as to the operations of WRFD.

14. We reject Metro's allegation that WRFD's hiring of John Fraim raised a question of an unauthorized transfer of control. While Metro charged that QNP was surreptitiously responsible for Fraim's hiring, and that Fraim was in fact QNP's agent, no specific allegations or affidavits that would bear this out were presented. In *Radio Corpus Chrtisti, Inc.*, 70 FCC 2d 1555 (1979), we concluded that no question of an unauthorized transfer of control arose, *per se*, from an assignor hiring a former employee of the assignee. In the instant case, Fraim was not even a former employee and, under the factual situation presented, we find that Fraim's occasional consultations with the proposed future owners of WRFD did not raise substantial and material questions of fact concerning an unauthorized transfer of control. No specific information has been presented that control over the operation of WRFD was being exercised in any way by QNP.[7]

Metro

15. Corporate applicants must file with their applications one copy of their by-laws certified by an appropriate official of the corporation. (FCC Form 301, Section II, Paragraph 3) Although Metro stated that it would file its by-laws as soon as they were prepared, review of the Commission's records indicates that it has not yet filed them. Accordingly, Metro will be directed to file a certified copy of its by-laws.[8]

16. Metro's application reveals the following estimated cost for construction and three month's operation:

Equipment	$103,643
Land (included in operating costs) to be leased	
Building	4,000
Legal and Miscellaneous	11,000
Operating Costs	30,000
Total	148,643

To meet these estimated costs, Metro states it will have $176,614.16, consisting of $50.00 in existing capital, $76,614.16 in net deferred credit from its equipment supplier, and $99,950.00 in new capital from its principals. To raise its new capital, Metro states that each principal will purchase his shares by tendering to the corporation the sum of $62.50 per share in addition to signing a note for $187.50 per share, which is to be paid at the time Metro receives a construction permit. However, Metro has not provided stock purchase agreements or balance sheets indicating that each principal has the ability to comply with the terms of a stock purchase agreement. Thus, the Commission is unable to determine whether each principal will be able to meet his obligation to Metro and, therefore, whether Metro will have sufficient funds to operate as proposed. Accordingly, a financial issue will be specified.[9]

17. In view of the foregoing, we conclude that the parties to the transfer of control application are qualified to effectuate the transaction, and that the grant of the transfer application would serve the public interest, convenience and necessity. Furthermore, we also conclude that, except for the issues specified herein, Mid-Ohio and Metro are qualified to operate as proposed. However, since their applications are mutually exclusive, they must be designated for a comparative hearing.

18. Accordingly, it is ordered, that the application (BTCH–800314GQ) to transfer control of Mid-Ohio from William R. Bates to QNP Corporation is granted, and the application (BTC–811223HW) filed on Form 316 for the same purpose is dismissed as moot.

19. It is further ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the renewal application of Mid-Ohio Communications, Inc. and the construction permit application of Metro Broadcasting, Inc. are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine with respect to Metro Broadcasting, Inc:

(a) Whether it has sufficient funds to meet its proposed costs of construction and operation for three months; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

(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 issues, which of the applications should be granted.

20. It is further ordered, That Metro Broadcasting, Inc. shall file a properly certified copy of its by-laws with the presiding Administration Law Judge within 30 days of the release of this Order.

21. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall 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 the Order within 20 days of the mailing of this Order pursuant to § 1.221(c) of the Commission's Rules

22. It is further ordered, That the applicants herein shall give notice of the hearing pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, either individually or jointly, if feasible and consistent with the Rules, within the time and in the manner prescribed in Rule 73.3594, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

23. It is further ordered, That the Secretary shall send by Certified Mail-Return Receipt Requested a copy of this Memorandum Opinion and Order to each of the parties to this proceeding.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82-15278 Filed 6-4-82; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 82-290; File No. BPCT-800325KE et al.]

Ohio Telecasting, Inc. et al.; Designating Applications for Consolidated Hearing on Stated Issues

In re Applications of Ohio Telecasting, Inc., Akron, Ohio (BC Docket No. 82–290, File No. BPCT–800325KE); Ebony Blackstar Broadcasting Corporation, Akron, Ohio (BC Docket No. 82–291 File No. BPCT–800806KH); Rhema Television Corporation, Akron, Ohio (BC Docket

[7] Metro also contended that Nourse had attempted to hire an advertising manager for WRFD, but this allegation was devoid of specificity and was unsupported by affidavit.

[8] On March 12, 1982, Metro filed a petition for leave to amend its application pursuant to § 1.65 of the Commission's rules. The amendment provides that on February 10, 1982, Robert Casagrande was made a 16.6% shareholder and director of Metro. Metro states that it does not propose to integrate Mr. Casagrande into the management of the station and thus disclaims any comparative advantage. Accordingly, the petition for leave to amend is granted and the amendment is accepted.

[9] The financial information contained in Metro's application fails to show that Metro is financially qualified. On March 12, 1982, Metro amended its application to certify that it was financially qualified. Because the only information on file indicates that Metro is not financially qualified, and because it has not stated that its financial plan has been amended, we cannot credit its certification.

No. 82-292 File No. BPCT-800806KI); Akron Telecasting, Inc., Akron, Ohio (BC Docket No. 82-293, File No. BPCT-800806KJ).

Memorandum Opinion and Order

Adopted: May 20, 1982
Released: June 1, 1982.

1. The Commission, by the Chief, Broadcasting Bureau, has before it the above-captioned mutually exclusive applications of Ohio Telecasting, Inc. (OTI),[1] Ebony Blackstar Broadcasting Corporation (Ebony Blackstar), Rhema Television Corporation (Rhema) and Akron Telecasting, Inc. (ATI), for a new commercial television station to operate on Channel 55 in Akron, Ohio; [2] petitions to deny the applications of OTI and Rhema filed by Summit Radio Corp. (Summit) and related pleadings.

Standing

2. Summit, the licensee of television station WAKR-TV, Channel 23, Akron, Ohio, filed petitions to deny the applications of OTI and Rhema. Summit claims standing as a party in interest within the meaning of Section 309(d) of the Communications Act of 1934, as amended, on the grounds that the station proposed by each applicant would directly compete with WAKR-TV for audience and advertising revenues. We find that Summit has standing. *See Federal Communications Commission v. Sanders Brothers Radio Station*, 309 U.S. 470 (1940).

De Facto Reallocation

3. Summit contends that a grant of OTI's proposal would constitute *de facto* reallocation of Channel 55 from Akron to Cleveland. Summit presents three grounds on support of this contention: 1) OTI proposes a transmitter location 8.2 miles from Akron and 22.3 miles from Cleveland; 2) OTI proposes to directionalize its antenna to place a strong signal over Cleveland, but the proposed transmitter location will cause shadowing so that OTI will not place the requisite 80 dBu contour over the entire city of Akron; and 3) the ascertainment portion of OTI's application evinces an intent to serve Cleveland rather than Akron. OTI responds that the comparative distances between its proposed transmitter location and the two cities do not raise a *de facto* reallocation question. OTI states that it proposes a directional antenna to provide equivalent coverage to Akron at a lower cost than with a nondirectional antenna. OTI also states that any signal radiated toward Cleveland is likely to experience severe shadowing and shadowing in parts of Akron would be minimal. To correct any shadowing problems, OTI proposes to use one or more translators.

4. Summit also contends that grant of Rhema's application would constitute *de facto* reallocation of Channel 55 to Cleveland based on the following grounds: 1) Rhema proposes to sidemount its antenna on an existing tower located midway between Cleveland and Akron, which is used by two Cleveland radio stations: and 2) Rhema's proposed city grade contour will include Cleveland, but Canton, a major city southwest of Akron, will be encompassed by only a Grade B contour. In response, Rhema states: 1) its proposed transmitter location is in compliance with Commission Rules since it will place a city grade contour over the entire city of Akron; 2) its main studio will be in Akron; and 3) Summit did not present any evidence that Rhema will abandon or neglect its responsibility to serve Akron.

5. The *de facto* reallocation doctrine was defined by the Commission in *Central Alabama Broadcasters, Inc.*, 68 FCC 2d 1339, 1340 (1978): "*De facto* reallocation requires that there be an element of removal of the channel from one city and an effective use in another city; there can be no reallocation if either element is missing." In *Hall Broadcasting Co., Inc.*, 71 FCC 2d 235, 237 (1979) (footnote omitted), the Commission restated the doctrine, "*(D)e facto* reallocation involves an attempt to utilize a channel assigned to one community in order to establish a broadcast service in another community, thereby depriving the assigned community of service from that channel." The Commission continued, "so long as it appears that an applicant will provide service to the assigned community, additional service rendered by it to other communities does not result in a *de facto* reallocation." *Id.* Our analysis of the relevant cases reveals that the *de facto* reallocation doctrine is most often applied to applications for major modifications of existing facilities which propose relocation of the transmitter. *See, e.g., Communications Investment Corp. v. Federal Communications Commission*, 641 F. 2d 954 (D.C. Cir. 1981); *Louisiana Television Broadcasting Corp. v. Federal Communications Commission*, 347 F. 2d 808 (D.C. Cir. 1965) (per curiam); *Wometco Enterprises, Inc. v. Federal Communications Commission*, 314 F. 2d 266 (D.C. Cir. 1963) (per curiam); *Hall Broadcasting Co. Inc.; Central Alabama Broadcasters, Inc.*, 68 FCC 2d 1339 (1978); *Great Trails Broadcasting Corp.*, 59 FCC 2d 916 (1976). In the *Communications Investment Corp.* case, the Commission granted without a hearing the applications of two FM stations licensed to Ogden, Utah, to relocate their transmitters to a site used by Salt Lake City stations, 18 miles from Salt Lake City (population 176,000) and 41 miles from Ogden (population 72,000). The court reversed and remanded, identifying nine factors of decisional significance the Commission should consider in determining whether an applicant realistically proposes to serve another, usually larger, community rather than the city of license. These factors were gathered from cases where the court or the Commission required an evidentiary hearing on a *de facto* reallocation issue. The factors discussed in the *Communications Investment Corp.* case provide a framework for our analysis of OTI's and Rhema's proposals.

6. *Ohio Telecasting, Inc.* The factors indicating that OTI intends to serve Akron, the city of license, are: (1) the ratio of the distance between OTI's proposed site and Akron (8.2 miles) to the distance between its proposed site and Cleveland (22.3 miles) is 1:2.7; (2) proposing to operate with maximum permissible effective radiated visual power (ERP), 5,000 kW, OTI will place a 108 dBu contour over Akron, with minor shadowing in parts of the city, and an 89 dBu contour over Cleveland;[3] (3) OTI's

[1] OTI requested authorization to operate subscription television (STV) on its proposed facilities (File No. BSTV-800325KF). In the *Second Report and Order in Docket 21502*, F.CC. Release No. 81-13 (released March 25, 1981), the Commission decided not to consolidate STV authorization request with applications designated for hearing where some propose STV operation and others propose conventional facilities. Accordingly, OTI's STV authorization request will not be consolidated for hearing in this proceeding.

[2] The following amendments are accepted pursuant to Section 73.3522(a)(2) of the Commission's Rules: OTI's amendments filed December 31, 1980, February 3, 1981, April 1, 1981 and November 24, 1981; Rhema's amendments filed January 29, 1981, June 2, 1981 and November 12, 1981; ATI's amendments filed December 16, 1980, March 3, 1981, March 17, 1981, June 2, 1981 April 17, 1981, June 15, 1981, November 19, 1981, February 4, 1982 and March 15, 1982. The applicants cannot derive any comparative advantage from these amendments because they were filed after the predesignation period for filing amendments as a matter of right. *See Revised Procedures for the Processing of Contested Broadcast Applications*, 72 F.C.C. 2d 202, 210 (1979). *See also Mid Florida Television Corp.* 76 F.C.C. 2d 158, 163 (1980).

[3] OTI will place a 100 dBu contour over the Akron city limit farthest from the proposed transmitter site and a 116 dBu contour over the Akron city limit closest to the site; the median signal strength over Akron will be 108 dBu. OTI will place an 83 dBu contour over the Cleveland city limit farthest from the site and a 95 dBu contour over the Cleveland city limit closest to the site; the median signal strength over Cleveland will be 89 dBu.

proposed site is used by two radio stations licensed to Akron; (4) OTI has not shown a prior interest in obtaining a license to operate a television station in Cleveland; and (5) OTI's studio will be located in Akron. Two factors which might suggest that OTI intends to serve Cleveland, rather than Akron: (1) the ratio of the population of Akron (275,425) to that of Cleveland (750,903) is 1:2.7; and (2) OTI has not shown any unique advantage to the proposed site. In *Communications Investment Corp.*, 641 F. 2d at 969, the court noted, "The importance of (the distance ratio) factor is obvious." Here, as in *Central Alabama Broadcasters*, 68 FCC 2d at 1340, there is no claim that OTI will not provide city grade service to the city of license; there is no claim that the transmitter will be substantially closer to Cleveland than to Akron nor that the main studio will be located in Cleveland rather than in Akron; there is no claim that Cleveland will receive a stronger signal than Akron. The only indications of OTI's alleged intent to serve Cleveland rather than Akron are the population ratio and the lack of unique advantage to the proposed site. We find both essential elements of *de facto* reallocation—removal of the channel and effective use in another city—are missing in this case. *See id.* No *de facto* reallocation issue will be specified based on the shadowing of OTI's signal in Akron because any shadowing will be minor and OTI's proposal complies with Section 73.685(a) of the Commission's Rules which requires stations operating on Channel 55 to provide at least an 80 dBu contour over the entire city of license. *See* para. 11, *infra.* In addition, because OTI has made an appropriate showing of need in support of its proposal to use a directional antenna, *see* para. 10 *infra*, the proposed use of such an antenna does not support a *de facto* reallocation issue. We do not find that OTI's application is an attempt to alter the balance of public interest considerations underlying the Table of Assignments and, therefore, no *de facto* reallocation issue will be specified against OTI.[4]

7. *Rhema Television Corp.* Four factors suggest that Rhema intends to serve Cleveland rather than Akron: 1) the ratio of the population of Akron (275,452) to Cleveland (750,903) is 1:2.7; 2) proposing to operate with less than half the maximum permissible effective radiated visual power (ERP), 2,300 kW, Rhema will place a stronger signal over Cleveland;[5] 3) Rhema's proposed site is used by two radio stations licensed to Cleveland; and 4) no unique advantage to the proposed site. The ratio of the distance between Rhema's proposed site and Akron (15 miles) to the distance between the site and Cleveland (15 miles) is 1:1. Divining intent is a difficult task, at best. Looking at the overall picture with respect to Rhema's proposal, we see a situation where a proposal which purports to be for Akron specifies a transmitter location among the transmitters of Cleveland radio stations and it is not suggested that this site has unique advantages for service to Akron. A stronger signal will be provided to Cleveland than to Akron. The proposed site is midway between Akron and Cleveland, whereas a strong signal (Grade B or better) could be provided from a site much closer to Akron. There is apparently no interest in serving the area south of Akron, with major communities such as Canton. We cannot say with confidence that Rhema intends to construct its station primarily for the purpose of serving Cleveland; we do say, however, that there is sufficient question as to its intent to warrant thorough scrutiny in the hearing which must be ordered. Because of the doubts as to Rhema's intentions, in the light of the factors which we have discussed, an appropriate issue will be specified.

Ohio Telecasting, Inc.

8. *Section 307(b).* Summit also asserts that a grant of OTI's proposal would be inconsistent with the allocation principles of Section 307(b) of the Communications Act and § 73.606 of the Commission's rules, the Table of Assignments. Summit relies on *Central Coast Television*, 14 F.C.C. 2d 985 (Rev. Bd. 1968), in which the Review Board found that, although a proposed transmitter relocation would not constitute *de facto* reallocation, it would be inconsistent with the allocation principles of the Communications Act. That case involved the degradation or deprivation of existing service to part of the community of license solely to provide additional service to already well-served areas. *Id.* at 990. Unlike the applicant in *Central Coast Television*, OTI has not shown any intent to dilute service to Akron to bring additional service to Cleveland. For reasons discussed above, we do not find that the OTI proposal will contravene or subvert the allocation principles of Section 307(b) and Rule 73.606 because OTI proposes secondary service to Cleveland, but will primarily serve Akron. Therefore, no Section 307(b) issue will be specified.

9. *Site availability.* In its petition to deny, Summit contends that OTI did not demonstrate the availability of its proposed transmitter site. On November 14, 1980, OTI amended its application to include a letter from the owner of the tower site which documents the availability of this property. Therefore, no site availability issue will be specified.

10. *Directional Antenna.* Summit also contends that OTI failed to make an appropriate showing of need in support of its proposal to use a directional antenna, as required by Section 73.685(e) of the Commission's Rules. OTI states that use of a nondirectional antenna at the proposed location, providing equivalent coverage to Akron, would involve substantially increased expenses. The Commission has stated, "[D]irectional antennas may be employed for improving service or for the purpose of using a particular site." *Sixth Report and Order in Dockets 8736, 8975, 9175 & 8976*, 41 F.C.C. at 213. If OTI operated at the same power, 5000 kW, from the same site with a nondirectional antenna, its coverage of Akron would be reduced. OTI's proposal to use a directional antenna at its proposed site will improve service to the city of license and will allow optimum use of the site. Therefore, the Commission finds that OTI has made an appropriate showing of need in support of its proposal to use a directional antenna and no such issue will be specified.

11. *Shadowing.* Summit also requests that an issue be specified concerning OTI's failure to provide an 80 dBu contour to the entire city of Akron as required by Section 73.685(a) of the Commission's Rules. The Commission finds that any shadowing which would occur in parts of Akron would be minimal and notes that OTI proposes to correct any shadowing problems with one or more translators. *See WSTE-TV, Inc. v. Federal Communications Commission*, 566 F. 2d 333 (D.C. Cir. 1977). Therefore, no shadowing issue will be specified.

12. *Financing.* Summit also challenges OTI's financial qualifications. On April

[4] The Commission recently stated that it will revisit its current *de facto* reallocation policy. The staff was directed to prepare an item for the Commission's consideration to reexamine that policy. *Son Broadcasting, Inc.*, 88 F.C.C. 2d 635 (1981). If and when the Commission's *de facto* reallocation policy is changed, the new policy will apply to all pending applications, including those in hearing.

[5] Rhema will place an 89 dBu contour over the Akron city limit farthest from the proposed transmitter site and a 100 dBu contour over the Akron city limit closest to the site; the median signal strength over Akron will be 94.5 dBu. Rhema will place a 93 dBu contour over the Cleveland city limit farthest from the site and a 107 dBu contour over the Cleveland city limit closest to the site; the median signal strength over Cleveland will be 100 dBu.

1, 1981, OTI petitioned for leave to amend its application to include a bank letter documenting the availability of funds to meet its construction and operating costs. Since this amendment eliminates the need to specify a financial issue against OTI, it has made a good cause showing in accordance with § 73.3522(a)(2) of the Commission's rules and the petition for leave to amend will be granted.

13. *Ascertainment.* Summit also raises a number of objections to OTI's ascertainment of community needs. Under the Commission's revised procedures, ascertainment issues will no longer be specified for determination in comparative hearings and the filing and review of ascertainment surveys will be deferred until after the grant of a construction permit. *Revised Procedures for the Processing of Broadcast Applications,* 49 R.R. 2d 1219 (1981). Therefore, no ascertainment issue will be specified.

14. *Air Hazard.* Since the Commission has not received a determination from the FAA that the tower height and location proposed by OTI would not constitute a hazard to air navigation, an appropriate issue will be specified.

15. We find that, except with respect to Rhema's application, Summit has raised no substantial or material questions of fact. Its petition to deny will, therefore, be granted with respect to Rhema and otherwise will be denied.

Ebony Blackstar Broadcasting Corporation

16. *Financial qualifications.* Ebony Blackstar indicates that $299,072 would be required to construct and operate its proposed facility for three months. To meet these expenses, Ebony Blackstar relies on a bank loan and stock subscriptions. Ebony Blackstar submitted a letter from the Provident Bank indicating the bank will lend $100,000 if collateral acceptable to the bank is pledged to secure the loan. Since we do not know whether Ebony Blackstar is willing to pledge such collateral, we cannot determine whether this loan is available to the applicant. The applicant also relies on $14,525 in existing capital received through stock subscriptions and $100,000 to be received under the terms of its stock subscription agreement signed by, or on behalf of, eight subscribers. Because balance sheets for subscribers Reginald J. Whitehead and James B. Marshall, Jr. show current liabilities in excess of liquid assets, the applicant cannot rely on these two individuals to provide funds according to the subscription agreement. Ebony Blackstar can rely on the commitments of the other five individual subscribers, totalling $45,000 and the $50,000 commitment of Broadcast Management Corporation. An appropriate issue will be specified to determine whether the remaining $189,547 is available to the applicant to construct and operate its proposed facility. In determining the financial qualifications of the applicant, the financial commitments made by the principals of Ebony Blackstar in connection with other pending applications will be considered.

Conclusion and Order

17. Except as indicated by the issues specified below, the Commission finds the applicants legally, technically, financially and otherwise qualified. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that a grant of the applications will serve the public interest, convenience and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues set out below.

18. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order on the following issues:

1. To determine, with respect to the application of Rhema Television Corporation, whether it is realistically a proposal to serve Cleveland, Ohio, rather that Akron, Ohio, and whether a grant of the application would constitute a *de facto* reallocation of the channel from Akron to Cleveland.

2. To determine, with respect to Ohio Telecasting, Inc., whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation and, if so, whether the applicant is qualified.

3. To determine, with respect to Ebony Blackstar Broadcasting Corporation, whether the applicant has the additional $189,547 available to meet its total cost of $299,072 for construction and three months operation and, therefore, whether the applicant is qualified.

4. To determine, on a comparative basis, which of the proposals would best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

19. It is further ordered, that, if Ohio Telecastings, Inc.'s application is granted, the construction permit shall be subject to the following conditions:

(1) Operation with effective radiated power in excess of 1,000 kW after July 1, 1982 is subject to a further extension of consent by Canada.

(2) Prior to the construction of the TV tower authorized herein, permittee shall notify AM station WCUE so that the AM station may determine operating power by the indirect method and, if necessary, request temporary authority from the Commission in Washington to operate with parameters at variance to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects on the radiation pattern of the AM station. Both prior to construction of the TV tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by § 73.154(a) of the Commission's rules, shall be conducted to establish that the array of the AM station has not been adversely affected. The results shall be submitted to the Commission and the AM station. Thereafter, the TV station may commence *Limited Program Tests.*

20. It is furthered ordered, That, if Ebony Blackstar Broadcasting Corporation's application is granted, the construction permit shall be subject to the condition that operation with effective radiated power in excess of 1,000 kW after December 1, 1982 is subject to a further extension of consent by Canada.

21. It is further ordered, That if Rhema Television Corporation's application is granted, the construction permit shall be subject to the following conditions:

(1) Operation with effective radiated power in excess of 1,000 kW after December 1, 1982 shall be subject to a further extension of consent by Canada.

(2) During installation of the TV antenna, AM station WWWE shall determine operating power by the indirect method. Upon completion of the installation, antenna impedance measurements of the AM antenna shall be made. The results shall be submitted to the Commission along with a tower sketch of the installation, in an application for station WWWE to return to the direct method of power determination. Thereafter, the TV station may commence *Limited Program Tests.*

(3) Prior to the construction of the TV tower authorized herein, permittee shall notify AM station WBBG so that the AM station may determine operating power by the indirect method and, if necessary,

request temporary authority from the Commission in Washington to operate with parameters at variance to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects on the radiation pattern of the AM station. Both prior to construction of the TV tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by § 73.154(a) of the Commission's Rules, shall be conducted to establish that the array of the AM station has not been adversely affected. The results shall be submitted to the Commission and to the AM station. Thereafter, the TV station may commence *Limited Program Tests.*

22. It is further ordered, That, if Akron Telecasting, Inc.'s application is granted, the construction permit shall be subject to the condition that operation with effective radiated power in excess of 1,000 kW after December 1, 1982 is subject to a further extension of consent by Canada.

23. It is further ordered, That the petition for leave to amend filed by Ohio Telecasting, Inc., is granted.

24. It is further ordered, That the petition to deny filed herein by Summit Radio Corp. is granted to the extent indicated herein and otherwise is denied.

25. It is further ordered, That Summit Radio Corp. is made a party respondent with respect to Issue 1 and the Federal Aviation Administration is made a party respondent with respect to Issue 2.

26. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and parties respondent herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 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.

27. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing 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 § 73.3594(g) of the rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-15361 Filed 6-4-82; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 82-303; File No. 22861-CD-P(1)-81 et al.]

Ivan A. Wiley d.b.a. Lafayette Radiotelephone Co. et al., Designating Applications for Consolidated Hearing on Stated Issues

In re Applications of Ivan A. Wiley d.b.a. Lafayette Radiotelephone Co., (CC Docket No. 82-303 File No. 22861-CD-P-(1)-81) For a construction permit for an additional one-way channel for Station KKB365 to operate on frequency 158.70 MHz at Lafayette, Indiana, South Shore Radio-Telephone, Inc., (CC Docket No. 82-304 File No. 22128-CD-P-(1)-81) For a construction permit for a new one-way channel to operate on frequency 158.70 MHz at West Lafayette, Indiana

Order Designating Applications for Hearing

Adopted May 27, 1982.

Released June 1, 1982.

By the Common Carrier Bureau:

1. Presently before the Chief, Mobile Services Division, pursuant to delegated authority are the captioned applications of Ivan A. Wiley d.b.a. Lafayette Radiotelephone Company (Lafayette) and South Shore Radio-Telephone, Inc. (South Shore).[1] These applications are electrically mutually exclusive because they both request the same frequency in the same general area; therefore, a comparative hearing will be held to determine which applicant would better serve the public interest. South Shore has filed a petition to deny the application of Lafayette. Responsive pleadings have been filed.

2. South Shore in its petition claims that Lafayette has provided an insufficient need showing, that its application is defective for not complying with the interim standards of Docket 20870[2] and § 22.501(d)(2) of the Commission's Rules, and that Lafayette's application is a strike application filed for the purpose of impeding South Shore's entry into the West Lafayette market.

3. The elements to be considered in determining whether an application is a strike application were set forth by the Commission in *Grenco, Inc.*, 28 FCC 2d 66 (1971). The elements include: (1) The timing of the application; (2) the economic and competitive benefit occurring from the application; (3) the good faith of the applicant; and (4) questions concerning frequency allocation. A review of the South Shore strike allegations relative to the *Grenco* criteria shows that the allegations raise no material or substantial questions on this issue. The mere fact that Lafayette filed its application on the last day of the cut-off period established by South Shore's filing does not demonstrate that a strike application was filed. In addition, South Shore's assertion that Lafayette's application did not demonstrate sufficient need to justify the grant of the additional channel requested, and thus was filed to impede South Shore's entry into the West Lafayette market, is insufficient to raise a substantial and material issue whether Lafayette's application was filed for strike purposes. Thus, we will not designate a strike issue against Lafayette.

4. We do find, however, that Lafayette has not demonstrated sufficient need for an additional one-way channel. The amended traffic load study filed by Lafayette shows a maximum usage in any hour of its study period of only 18 minutes or .3 Erlangs. The Commission has consistently applied a policy requiring at least 50% usage (.5 Erlangs) during the bouncing busy hour[3] in order to justify the grant of an additional one-way channel. Accordingly, there exists a material and substantial question whether there is a sufficient public need for the additional one-way facility proposed by Lafayette. Thus, we will designate for hearing an issue as to whether Lafayette has adequately demonstrated a need for an additional one-way channel.

5. South Shore's argument that the Lafayette application is defective for not complying with the standards of Docket 20870 is without merit. The standards of Docket 20870 apply to applications for two-way stations only. Therefore, an application for an additional one-way frequency is not defective if it does not comply with those standards.

6. In addition, South Shore argues that the Lafayette application is defective for failing to comply with § 22.501(d)(2), which requires an applicant to show that its proposed one-way service cannot be provided on its existing two-way facilities. On May 14, 1982, the Commission released its First Report

[1] We note that while South Shore is applying to construct new facilities, Lafayette is seeking to add an additional frequency for its existing Station KKB365. A grant of either application would preclude a grant of the order.

[2] Order FCC 81-30, released March 6, 1981.

[3] See Docket 20870 for a definition of bouncing busy hour.

and Order in Docket 80–183. In that order the Commission eliminated § 22.501(d)(2) of the rules and stated that the elimination of § 22.501(d)(2) was applicable to all pending one-way applications and applications filed after the adopted date (April 29, 1982) of the Order.[4] Therefore the Lafayette application does not require such a showing and is not defective.

7. Accordingly, it is ordered that the Petition to Deny, filed by South Shore Radio-Telephone, Inc. is granted in part and is denied in part, to the extent noted here, and the application filed by Ivan A. Wiley d.b.a. Lafayette Radiotelephone Company (File No. 22861–CD–P–(1)–81), and the application of South Shore Radio-Telephone, Inc. (File No. 22128–CD–P–(1)–81), are designated for hearing in a consolidated proceeding pursuant to Section 309 of the Communications Act of 1934, as amended, upon the following issues:

(a) To determine whether Ivan A. Wiley, d.b.a. Lafayette Radio-Telephone Company has demonstrated a need for the additional one-way paging channel it requests;[5]

(b) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(c) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 43 dBu contours,[6] based upon the standards set forth in § 22.504(a) of the Commission's Rules,[7] and to determine and compare the relative demand for the proposed services in said areas; and

(d) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

8. It is further ordered that with respect to issue (a) the burden of proof and the burden of proceeding with the introduction of evidence are placed upon Ivan A. Wiley d.b.a. Lafayette Radiotelephone Company.

9. It is further ordered that with respect to issues (b) and (c), the burden of proof and the burden of proceeding with the introduction of evidence are placed jointly on the applicants as the issues affect them, and that the ultimate burden of proof with respect to issue (d) is similarly placed on each of the applicants.

10. It is further ordered that the hearing shall be held at the Commission offices, at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

11. It is further ordered that the Chief, Common Carrier Bureau, is made a party to the proceeding.

12. It is further ordered that the applicants shall file written notices of appearance under § 1.221 of the Commission's Rules within 20 days of the release date of this Order.

13. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

William F. Adler,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 82–15360 Filed 6–4–82; 8:45 am]

BILLING CODE 6712–01–M

[4] General Docket 80–183, FCC 82–202, Mimeo 31355, Pages 18 & 19.

[5] If Lafayette does not demonstrate need for an additional one-way channel, it will not be necessary to decide comparative issues (b) and (c).

[6] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504 in which the ratio of desired-to-undesired signal is always equal to or greater than 4 in FCC Report No. R–6406, equation 8.

[7] Section 22.504(a) of the Commission's rules and regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service on frequencies in the 150 MHz band. Propagation data set forth in Section 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding. (The applicants should consult Bureau counsel in an effort to submit joint technical exhibits.)

TIAG Definitions and Rules Subcommittee; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the TIAG Definitions and Rules Subcommittee scheduled to meet on Tuesday, June 29, 1982. The meeting will be held at 9:30 a.m. in Conference Room A–B (10th Floor) of the AT&T offices located at 1120 20th Street, NW., Washington, D.C. and will be open to the public. The agenda is as follows:

I. General Administrative Matters.
II. Review of Minutes of Previous Meeting.
III. Discussion of Individual Assignments.
IV. Other Business.
V. Presentation of Oral Statements.
VI. Adjournment.

With prior approval of Subcommittee Chairman John Utzinger, oral statements, while not favored or encouraged, may be allowed if time permits and if the Chairman determines that an oral presentation is conducive to the effective attainment of Subcommittee objectives. Anyone not a member of the Subcommittee and wishing to make an oral presentation should contact Mr. Utzinger (203/965–2830) at least five days prior to the meeting date.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 82–15355 Filed 6–4–82; 8:45 am]

BILLING CODE 6712–01–M

TIAG Steering Committee and Definitions and Rules Subcommittee; Joint Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a TIAG Definitions and Rules Subcommittee meeting in which the Steering Committee will also participate. The meeting will be held at 9:30 a.m. on Tuesday, June 22, 1982, in Conference Room A–B (10th Floor) of AT&T's offices located at 1120 20th Street, NW., Washington, D.C., and will be open to the public. The agenda is as follows:

I. General Administrative Matters.
II. Review of Minutes of Previous Meeting.
III. Presentation of Engineering Synopses.
IV. General Discussion of Engineering Proposals.
V. Other Business.
VI. Presentation of Oral Statements.
VII. Adjournment.

With prior approval of Subcommittee Chairman John Utzinger, oral statements, while not favored or encouraged, may be allowed if time permits and if the Chairman determines that an oral presentation is conducive to the effective attainment of Subcommittee objectives. Anyone not a member of the Subcommittee and wishing to make an oral presentation should contact Mr. Utzinger (203/965–2830) at least five days prior to the meeting date.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 82–15354 Filed 6–4–82; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3,

Pub. L. 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Hadag Cruise-Line GmbH & Co., Hadag Seetouristik and Fahrdienst AG. and Astor United Cruises Inc., c/o Astor United Cruises, Inc., P.O. Box 13140, Port Everglades Station, Fort Lauderdale, FL 33316.

Dated: June 1, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82–15269 Filed 6–4–82; 8:45 am]

BILLING CODE 6730–01–M

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Donald Franklin Simpson, 310 Selvidge Street, Dalton, GA 30720

John H. Duncan, d.b.a. John H. Duncan Forwarding Co., 2712 Arroyo, Apt. 107, Dallas, TX 75219

By the Federal Maritime Commission.

Dated: June 2, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82–15379 Filed 6–4–82; 8:45 am]

BILLING CODE 6730–01–M

[Independent Ocean Freight Forwarder License No. 1571]

Air-Sea Brokers, Inc.; Order of Revocation

On April 19, 1982, Air-Sea Brokers, Inc. Air Cargo Terminal, Logan International Airport, East Boston, MA 02128 requested the Commission to revoke its Independent Ocean Freight Forwarder License No. 1571.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 1571 issued to Air-Sea Brokers, Inc., be revoked effective June 1, 1982 without prejudice to reapplication for a license in the future.

It is further ordered, that Independent Ocean Freight Forwarder License No. 1571 issued to Air-Sea Brokers, Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Air-Sea Brokers, Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82–15380 Filed 6–4–82; 8:45 am]

BILLING CODE 6730–01–M

Independent Ocean Freight Forwarder License No. 223–R]

Freedman & Slater, Inc.; Order of Revocation

On May 24, 1982, Freedman & Slater, Inc., 11 Broadway, New York, NY surrendered its Independent Ocean Freight Forwarder License No. 223–R for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 223–R issued to Freedman & Slater, Inc. be revoked effective May 24, 1982 without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Freedman & Slater, Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82–15384 Filed 6–4–82; 8:45 am]

BILLING CODE 6730–01–M

[Independent Ocean Freight Forwarder License No. 1684]

Ro-Modal International; Order of Revocation

On May 20, 1982, Ro-Modal International, P.O. Box 10280, Palo Alto, CA 94303 surrendered its Independent Ocean Freight Forwarder License No. 1684 for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 1684 issued to Ro-Modal International be revoked effective May 20, 1982, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Ro-Modal International.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82–15382 Filed 6–4–82; 8:45 am]

BILLING CODE 6730–01–M

[Independent Ocean Freight Forwarder License No. 1015]

Virginia Shipping Co.; Order of Revocation

On May 26, 1982, Virginia Shipping Company, 1230 Maritime Tower, 234 Monticello Avenue, Norfolk, VA 23510 surrendered its Independent Ocean Freight Forwarder License No. 1015 for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 1015 issued to Virginia Shipping Company be revoked effective May 26, 1982, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Virginia Shipping Company.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82–15381 Filed 6–4–82; 8:45 am]

BILLING CODE 6730–01–M

[Independent Ocean Freight Forwarder License No. 513]

Wolf & Gerber, Inc.; Order of Revocation

On May 24, 1982, Wolf & Gerber, Inc., 156 William Street, New York, NY 10038 surrendered its Independent Ocean Freight Forwarder License No. 513 for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 513 issued to Wolf & Gerber, Inc. be revoked

effective May 24, 1982, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Wolf & Gerber, Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82-15383 Filed 6-4-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Virginia Banks, Inc.*, Falls Church, Virginia; to acquire 100 percent of the voting shares of First Virginia Bank-Tazewell, Tazewell, Virginia, The successor by merger to Tazewell National Bank, Tazewell, Virginia. Comments on this application must be received not later than July 1, 1982.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Southern Bancorp, Inc.*, Waycross, Georgia; to acquire at least 55.2 percent of the voting shares or assets of The Exchange Bank, Douglas, Georgia. Comments on this application must be received not later than July 1, 1982.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Affiliated Bank Corporation of Wyoming*, Casper, Wyoming; to acquire 100 percent of the voting shares or assets of Fossil Butte National Bank, Kemmerer, Wyoming. Comments on this application must be received not later than July 1, 1982.

D. **Secretary, Board of Governors of the Federal Reserve System,** Washington, D.C. 20551:

1. *First City Bancorporation of Texas, Inc.*, Houston, Texas; to acquire 100 percent of the voting shares or assets of First City Bank-Northchase, N.A., Houston, Texas, a proposed new bank. This application may be inspected at the Federal Reserve Bank of Dallas. Comments on this application must be received not later than July 1, 1982.

Board of Governors of the Federal Reserve System, June 1, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-15260 Filed 6-4-82; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Shares by Bank Holding Company

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *National Bancshares Corporation of Texas*, San Antonio, Texas; to acquire 100 percent of the voting shares or assets of Rockdale State Bank, Rockdale, Texas. Comments on this application must be received not later than June 27, 1982.

Board of Governors of the Federal Reserve System, June 1, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-15263 Filed 6-4-82; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Company; Proposed De Novo Nonbank Activities

The bank holding company listed in this notice has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to the application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on the application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for the application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than July 1, 1982.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *BankAmerica Corporation.* San Francisco, California (industrial loan company, financing, servicing, and insurance activities; Washington): To engage, through its proposed indirect subsidiary, FinanceAmerica Industrial Loan Company, a proposed Washington Coporation, in the activities of acting as an industrial loan company under the

Washington Industrial Loan Companies Act; making or acquiring for its own account loans and other extensions of credit; servicing loans and other extensions of credit; and offering credit-related life insurance and credit-related accident and health insurance in the State of Washington. Such activities will include, but not be limited to, issuing investment certificates (pledged as security), making consumer installment loans, purchasing installment sales finance contracts, making loans and other extensions of credit to small businesses, making loans secured by real and personal property, and offering credit-related life and credit-related accident and health insurance directly related to extensions of credit made or acquired by both FinanceAmerica Industrial Loan Company and FinanceAmerica Corporation. It is further proposed that another indirect subsidiary, FinanceAmerica Corporation, a Washington corporation, will engage in the activities of making or aquiring for its own account loans and other extensions of credit such as would be made or acquired by a finance company; servicing loans and other extensions of credit; and offering credit-related life insurance and credit-related accident and health insurance. Credit-related property insurance will not be offered in the State of Washington by either corporation. The activities of both corporations will be conducted from a *de novo* office located in Bellevue, Washington, servicing the entire State of Washington.

Board of Governors of the Federal Reserve System, June 1, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-15258 Filed 6-4-82; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 25.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo (or continue to engage in an activity earlier commenced de novo)*, directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely realted to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than June 26, 1982.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation*, New York, New York (finance, servicing, and leasing activities; Northeastern U.S.): To engage through its indirect subsidiary, Chase Commercial Corporation, in making or acquiring, for its own account or for the account of others, loans and other extensions of credit such as would be made by a commercial finance, equipment finance or factoring company, including factoring accounts receivable, making advances and over-advances on receivables and inventory and business installment lending as well as unsecured commercial loans; servicing loans and other extensions of credit; leasing personal property on a full payout basis and in accordance with the Board's Regulation Y, or acting as agent, broker or advisor in so leasing such property, including the leasing of motor vehicles. These activities would be conducted from an office in Rochester, New York serving northern New York State, and the states of Connecticut, Maine, New Hampshire, Rhode Island, Massachusetts and Vermont.

b. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Continental Illinois Corporation*, Chicago, Illinois (making or acquiring loans and other extensions of credit and servicing loans and other extensions of credit for any person; entire State of Illinois): To engage, through its existing subsidiary, Continental Illinois Commercial Corporation, in the following activities: making or acquiring, for its own account or for the account of others, secured and unsecured loans and other extensions of credit (including issuing letters of credit and accepting drafts) to or for business, governmental and other customers (excluding direct consumer lending), and servicing such loans and other extensions of credit. These activities will be conducted from an office in the City of Rolling Meadows, Illinois serving the entire State of Illinois.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *BankAmerica Corporation*, San Francisco, California (industrial loan company, financing, servicing, and insurance activities; Tennessee): To engage through its indirect subsidiary, FinanceAmerica Corporation a Tennessee corporation (whose name will be changed to FinanceAmerica Thrift Corporation), in the additional activities of acting as an industrial loan company under the Tennessee Industrial Loan and Thrift Companies Act, and to continue to engage in the activities of making or acquiring for its own account loans and other extensions of credit such as are made or acquired by a finance or industrial loan company, servicing loans and other extensions of credit, and offering credit-related life, credit-related accident and health, and credit-related property insurance in the State of Tennessee. Such activities will include, but not be limited to, issuing investment certificates (intrastate only), making consumer installment loans, purchasing installment sales finance contracts, making loans and other extensions of credit to small businesses, making loans secured by real and personal property and offering credit-related life insurance, credit-related accident and health insurance, and credit-realted property insurance in connection with extensions of credit made or acquired by FinanceAmerica Corporation. These activities will be conducted from three existing offices located in Chattanooga, Goodlettsville, and Knoxville, Tennessee, serving the State of Tennessee.

Board of Governors of the Federal Reserve System, June 1, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-15259 Filed 6-4-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that request a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Georgia Peoples Bankshares, Inc.*, Baxley, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples State Bank & Trust, Baxley, Georgia. Comments on this application must be received not later than June 25, 1982.

2. *Keystone Securities, Inc.*, Keystone Heights, Florida; to become a bank holding company by acquiring at least 51 percent of the voting shares of Keystone State Bank, Keystone Heights, Florida. Comments on this application must be received not later than June 27, 1982.

B. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Butte Bancorporation, Inc.*, Billings, Montana; to become a bank holding company by acquiring 85 percent of the voting shares of Montana Bank of Butte, N.A., Butte, Montana. Comments on this application must be received not later than June 23, 1982.

2. *First Rushmore Bancshares, Inc.*, Rushmore, Minnesota; to become a bank holding company by acquiring 80 percent of the voting shares of First State Bank of Rushmore, Rushmore, Minnesota. Comments on this application must be received not later than June 27, 1982.

3. *Roundup Bancorporation, Inc.*, Billings, Montana; to become a bank holding company by acquiring 85 percent of the voting shares of Montana Bank of Roundup, N.A., Roundup, Montana. Comments on this application must be received not later than June 23, 1982.

C. **Secretary, Board of Governors of the Federal Reserve System,** Washington, D.C. 20551:

1. *Capitol Bancorporation, Inc.*, Pierre, South Dakota; to become a bank holding company by acquiring 97 percent of the voting shares of First National Bank in Pierre, Pierre, South Dakota. This application may be inspected at the Federal Reserve Bank of Minneapolis. Comments on this application must be received not later than June 27, 1982.

Board of Governors of the Federal Reserve System, June 1, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-15261 Filed 6-4-82; 8:45 am]

BILLING CODE 6210-01-M

Maryland National Corporation; Proposed Acquisition of Central Industrial Bank

Maryland National Corporation, Baltimore, Maryland, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Central Industrial Bank, Aurora, Colorado.

Applicant states that the proposed subsidiary would engage in the activities of an industrial bank in the manner authorized by Colorado law, so long as it does not both accept demand deposits and make commercial loans, and would engage in the sale, as agent, of credit life, credit disability, credit accident and health, loan redemption and loan cancellation insurance in connection with extensions of credit by bank and nonbank subsidiaries of Maryland National Corporation. These activities would be performed from offices of Applicant's subsidiary in Aurora, Colorado, and the geographic areas to be served are the entire United States. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Richmond.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received no later than July 1, 1982.

Board of Governors of the Federal Reserve System, June 1, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-15262 Filed 6-4-82; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Contractor's Qualifications and Financial Information (GSA Form 527)

AGENCY: General Services Administration

ACTION: Notice of information collection; reinstatement.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Services Administration proposes to request the Office of Management and Budget to review and approve the reinstatement of an information collection requirement.

DATE: Comments on the proposed information collection must be submitted on or before Jume 30, 1982.

FOR FURTHER INFORMATION CONTACT: Anthony Artigliere, Acting Chief, Directives, Reports, and Publications Branch (202-566-0666).

ADDRESSES: Send comments to Franklin S. Reeder, OMB Desk Officer, Room 3208, NEOB, Washington, DC 20503, and to Anthony Artigliere, GSA Clearance Officer, General Services Administration (ORAI), Washington, DC 20405.

SUPPLEMENTARY INFORMATION: The purpose of this information collection is to provide GSA with the necessary data for the proper performance of its functions in evaluating financial capabilities of prospective construction

contractors wanting to do business with the agency. A copy of the information collection proposal may be obtained from the Directives, Reports, and Publications Branch (ORAI), Room 3011, GS Building, Washington, DC 20405, telephone 566–1164.

Dated: May 28, 1982.

William A. Clinkscales, Jr.,

Director of Oversight.

[FR Doc. 82–15339 Filed 6–4–82; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Rape Prevention and Control Advisory Committee; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix 1), announcement is made of the following national advisory body scheduled to assemble during the month of July 1982.

Rape Prevention and Control Advisory Committee

July 25–27—Open
July 25, 1:00 p.m.
Hyatt Hotel, 400 New Jersey Avenue, NW., Washington, D.C. 20001
Contact: Mary Lystad, Ph.D., Executive Secretary, 5600 Fishers Lane, Room 15–99, Rockville, Maryland 20857 (301) 443–1910

Purpose: The Rape Prevention and Control Advisory Committee advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, through the National Center for the Prevention and Control of Rape (NCPCR), on matters regarding the needs and concerns pertaining to activities to be undertaken by the Department to address the problems of rape.

Agenda: The entire meeting will be open to the public. It will include reporting on the research program announcement, meeting with liaison groups, and the writing of annual reports.

Substantive program information may be obtained from the contact person listed above. A summary of the meeting and a roster of the Committee members will be furnished upon request from Ms. Helen W. Garrett, Committee Management Officer, National Institute of Mental Health, Room 17C26, Parklawn Building, Rockville, Maryland 20857, telephone (301) 443–4333.

Dated: June 1, 1982.

Elizabeth A. Connolly,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 82–15271 Filed 6–4–82; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

[N 82–1130]

Urban Development Action Grants; Revised Minimum Standards for Large Cities and Urban Counties

AGENCY: Department of Housing and Urban Development.

ACTION: Notice.

SUMMARY: In accordance with 24 CFR 570.452(b)(1), the Department is providing Notice of the most current minimum standards of physical and economic distress for large cities (metropolitan cities and other cities over 50,000 population), and urban counties for the Urban Development Action Grant program.

This notice revises the Notice published April 8, 1981 (46 FR 21140) because the six minimum standards of distress have now changed generally as a result of new data from the Bureau of the Census and the Bureau of Labor Statistics.

This Notice contains three lists: The first list identifies those cities and urban counties which qualify as distressed communities based upon the new minimum standards; the second list identifies those cities and urban counties which did not qualify when the April 1981 list was published but which do qualify now; the third list identifies those cities and urban counties which were classified as distressed on the April 8, 1981 list, but which no longer qualify under the new minimum standards.

EFFECTIVE DATE: This Notice replaces the April 8, 1981 Notice which listed the large cities which passed the previous minimum standards.

FOR FURTHER INFORMATION CONTACT: Frank Ridenour, Office of Action Grants, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C. 20410, Telephone: 202/755–6784.

SUPPLEMENTARY INFORMATION: A Notice published by the Department on April 8, 1981 provided the minimum standards of physical and economic distress which were applicable up to the effective date of this Notice for large cities and urban counties which met the standards published at that time.

Part I of this Notice now specifies the new minimum standards of physical and economic distress. Part II of this Notice contains a revised list of all the large cities and urban counties which meet the new standards. Part III of this Notice lists those large cities and urban counties which, based upon the new minimum standards, appear on the list in Part II but did not qualify when the April 1981 list was published. Part IV is a list of those cities which were classified as distressed on the April 1981 list but which no longer qualify under the new minimum standards. These cities listed in Part IV have a period of time, as specified in Part IV, during which they may submit Action Grant applications.

The new minimum standards are based on updated data from the Bureau of Census and Bureau of Labor Statistics for large cities as of fiscal year 1982. The updated Census data are 1980 population, 1977 per capita income and 1970 poverty and housing counts (adjusted to reflect boundary changes as of the 1980 Census). The previous Census data were 1978 population, 1977 per capita income and 1970 poverty and housing counts (adjusted for boundary changes through 1979). The Bureau of Labor Statistics data are updated from 1979 unemployment rates to 1981 unemployment rates.

This Notice is published pursuant to 24 CFR 570.452(b)(1).

I. A large city or urban county must pass three minimum standards of physical and economic distress, except, if the poverty is less than half the minimum standard, the city or urban county must pass four standards. The most current minimum standards of physical and economic distress are:

A. Age of Housing. At least 33.98 percent of the applicant's year-round housing units must have been constructed prior to 1940, based on U.S. Census data, in order to meet this minimum standard;

B. Per Capita Income. The net increase in per capita income for the period 1969–1977 must have been $2,683 or less, based on U.S. Census data, in order to met this minimum standard;

C. Population Lag/Decline. For the period 1960–1980 the percentage rate of population growth (based on corporate boundaries in 1960 and as of the 1980 Census) must have been 19.82 percent or less, based on U.S. Census data, in order to meet the minimum standard.

D. Unemployment. The average rate of unemployment for 1981 must have been 7.24 percent or greater, based on data compiled by the Bureau of Labor Statistics, in order to meet this minimum standard.

E. Job/Lag/Decline. The rate of growth in retail and manufacturing employment for the period 1972–1977 must have increased by 6.75 percent or

less, based on U.S. Census data, in order to meet this minimum standard. If data are not available for both retail and manufacturing employment, the percentage used will be the median for either retail employment or manufacturing employment, based upon the median for those cities on which both sets of data are available.

F. Poverty. The percentage of persons within the applicant's jurisdiction at or below the poverty level must be 10.87 percent or more, based on 1970 U.S. Census data, in order to meet this minimum standard.

II. A. The following cities meet the current minimum standards of physical and economic distress:

Alabama

Anniston
Birmingham
Florence
Gadsden
Huntsville
Mobile
Montgomery
Tuscaloosa

Arkansas

Fort Smith
Little Rock
Pine Bluff
Texarkana

California

Alameda
Alhambra
Baldwin Park
Berkeley
Chico
Compton
Fresno
Long Beach
Los Angeles
Norwalk
Oakland
Ontario
Pasadena
Pico Rivera
Pomona
Porterville
Richmond
San Bernadino
San Francisco
Santa Cruz
Santa Monica
Seaside
Stockton
Tulare

Colorado

Denver
Greeley
Pueblo

Connecticut

Bridgeport
Hartford
Manchester
Meriden
New Britian
New Haven
New London
Norwalk
Norwich
Waterbury
West Haven

Delaware

Wilmington

District of Columbia

Washington

Florida

Bradenton
Cocoa
Jacksonville
Lakeland
Miami
Miami Beach
Panama City
Pensacola
St. Petersburg
Tampa
West Palm Beach

Georgia

Albany
Atlanta
Augusta
Columbus
Savannah

Illinois

Berwyn
Champaign
Chicago
Cicero
Decatur
East St. Louis
Joliet
Kankakee
Moline
Oak Park
Peoria
Rantoul
Rockford
Rock Island
Springfield
Urbana
Waukegan

Indiana

Anderson
Bloomington
East Chicago
Elkhart
Evansville
Fort Wayne
Gary
Hammond
Indianapolis
Kokomo
Lafayette
Muncie
South Bend
Terre Haute
West Lafayette

Iowa

Cedar Rapids
Council Bluffs
Davenport
Des Moines
Dubuque
Iowa City
Sioux City
Waterloo

Kansas

Kansas City
Lawrence

Kentucky

Ashland
Covington
Hopkinsville
Louisville
Owensboro

Louisiana

Alexandria
Lake Charles
Monroe
New Orleans

Maine

Auburn
Bangor
Lewiston
Portland

Maryland

Baltimore
Cumberland
Hagerstown

Massachusetts

Arlington
Boston
Brockton
Brookline
Canbridge
Chicopee
Fall River
Fitchburg
Haverhill
Holyoke
Lawrence
Lowell
Lynn
Malden
Medford
New Bedford
Pittsfield
Quincy
Somerville
Springfield
Waltham
Weymouth
Worcester

Michigan

Battle Creek
Bay City
Benton Harbor
Dearborn
Detroit
Flint
Grand Rapids
Jackson
Kalamazoo
Lansing
Lincoln Park
Muskegon
Muskegon Heights
Pontiac
Saginaw

Minnesota

Duluth
Minneapolis
St. Cloud
St. Paul

Mississippi

Biloxi
Gulfport
Moss Point
Pascagoula

Missouri

Joplin
Kansas City
St. Joseph
St. Louis
Springfield

Montana

Great Falls

Nebraska

Omaha

New Hampshire

Dover
Manchester
Portsmouth

New Jersey

Asbury Park
Atlantic City
Bayonne
Bloomfield
Bridgeton
Camden
East Orange
Elizabeth
Irvington
Jersey City
Long Branch
Millville
Newark
New Brunswick
Passiac
Peterson
Perth Amboy
Trenton
Union City
Vineland

New Mexico

Las Cruces

New York

Albany
Binghamton
Buffalo
Elmira
Glens Falls
Middletown
Mount Vernon
Newburgh
New Rochelle
New York
Niagara Falls
Poughkeepsie
Rochester
Rome
Schenectady
Syracuse
Troy
Union Town
Utica
Yonkers

North Carolina

Asheville
Burlington
Concord
Gastonia
Hickory
High Point
Salisbury
Wilmington
Winston
Salem

Ohio

Akron
Canton
Cincinnati
Cleveland
Cleveland Heights
Columbus
Dayton
Elyria
Hamilton City
Lima
Lorain
Mansfield
Marietta
Middletown
Newark
Springfield
Steubenville
Toledo
Warren
Youngstown

Oklahoma

Lawton

Oregon

Portland

Pennsylvania

Allentown
Altoona
Bethlehem
Bristol Township
Chester
Easton
Erie
Harrisburg
Hazelton
Johnstown
Lancaster
Lower Merion
Philadelphia
Pittsburgh
Reading
Scranton
Sharon
Upper Darby
Wilkes-Barre
Williamsport
York

Rhode Island

Cranston
East Providence
Pawtucket
Providence

South Carolina

Anderson
Charleston
Florence
Greenville
North Charleston
Rock Hill
Spartanburg

Tennessee

Bristol
Chattanooga
Clarksville
Johnson City
Knoxville
Memphis

Texas

Brownsville
Denison
Edinburg
El Paso
Fort Worth
Galveston
Harlingen
Killeen
Laredo
McAllen
Marshall
Orange
Pharr
Port Arthur
San Benito
Texarkana
Waco

Utah

Ogden
Provo
Salt Lake City

Vermont

Burlington

Virginia

Danville
Lynchburg
Norfolk
Petersburg
Portmouth
Richmond
Roanoke

Washington

Bellingham
Everett
Seattle
Spokane
Tacoma
Yakima

West Virginia

Charleston
Huntington
Parkersburg
Weirton
Wheeling

Wisconsin

Beloit
Eau Claire
Kenosha
La Crosse
Milwaukee
Oshkosh
Racine
Sheboygan
Superior
Wausau

Puerto Rico

Arecibo Municipio
Bayamon Municipio
Caguas Municipio
Carolina Municipio
Mayaguez Municipio
Ponce Municipio
San Juan Municipio
Toa Baja Municipio
Trujillo Alto Municipio

Other Cities Over 50,000

Aguadilla Municipio, P.R.
Guam
Virgin Islands

II. B. The following urban counties meet the current minimum standards of physical and economic distress:

Fresno, California
Kern, California
Polk, Florida
Madison, Illinois
St. Clair, Illinois
Essex, New Jersey
Hudson, New Jersey
Erie, New York
Orange, New York
Allegheny, Pennsylvania
Beaver, Pennsylvania
Luzerne, Pennsylvania
Washington, Pennsylvania
Westmoreland, Pennsylvania

III. The following large cities and urban counties which have been added to the list under Section II, above, meet the new standards of physical and economic distress:

Little Rock, Arkansas
Alameda, California
Manchester, Illinois
Moline, Illinois
Rantoul, Illinois
St. Clair County, Illinois
Cedar Rapids, Iowa
Davenport, Iowa
Waterloo, Iowa
Lake Charles, Louisiana
Weymouth, Massachusetts
Dearborn, Michigan
Omaha, Nebraska
Dover, New Hampshire
Portsmouth, New Hampshire
Middletown, New York
Orange County, New York
Concord, North Carolina
Winston Salem, North Carolina
Bristol Township, Pennsylvania
Bellingham, Washington
Weirton, West Virginia

IV. The following list contains the names of those large cities and urban counties which met the minimum standards of physical and economic distress but which no longer meet those standards. In accordance with § 570.452(b)(2), cities which cease to meet the minimum standards of physical and economic distress by virtue of a change in the data used by HUD will be permitted to submit an application during the two quarters following the change in data. HUD will continue to consider those applications which have been submitted and are under review prior to a change in the minimum standards which other wise make them ineligible. The final date for submission of an application by the cities listed below is October 31, 1982.

South Gate, California
Daytona Beach, Florida
Melbourne, Florida
Macon, Georgia
Nashua, New Hampshire
Clifton, New Jersey
Union County, New Jersey
Warwick, Rhode Island
Beaumont, Texas
San Antonio, Texas
Charlottesville, Virginia
Newport, News, Virginia
Pasco, Washington

Dated: May 28, 1982.

Stephen J. Bollinger,

Assistant Secretary for Community Planning and Development.

[FR Doc. 82-15294 Filed 6-4-82; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[INT DEIS 82-20]

Draft Riley Grazing Management Environmental Impact Statement; Public Meeting and DEIS Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Public meeting on Riley grazing management DEIS.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a Draft Environmental Impact Statement for the Riley EIS area. The proposal involves implementing a livestock grazing program on public lands within the Riley EIS area of the Burns District in central Oregon.

Public reading copies will be available for review at the following locations:

Bureau of Land Management, Office of Public Affairs, 825 N.E. Multnomah Street, Portland, Oregon
Bureau of Land Management, Burns District Office, 745 Alvord St., Burns, Oregon
Library, University of Oregon, Eugene, Oregon Central Oregon Community College, College Way, Bend, Oregon
Library, Portland State University, 727 SW Harrison, Portland, Oregon
Harney County Library, 80 West D, Burns, Oregon
Library, Oregon State University, Corvallis, Oregon

A limited number of copies are available upon request to the BLM Oregon State Office or the Burns District Office.

An informal public information meeting will be held on July 14, 1982 at 7:30 p.m. in Burns, Oregon in the Club Room of The Harney County Museum.

Written comments on the draft EIS may be sent to: State Director (935), Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Comments should be postmarked on or before August 3, 1982 to be considered in preparation of the Final Riley EIS.

FOR FURTHER INFORMATION CONTACT: Gerry Fullerton, Oregon State Office, Telephone: (503) 231-6955.

Dated: May 13, 1982.

Herbert L. Haglund,

Chief, Division of Resources.

[FR Doc. 82-15293 Filed 6-4-82; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Mines

Advisory Committee on Mining and Mineral Research; Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. I) and the Office of Management and Budget Circular No. A63, Revised.

The Advisory Committee on Mining and Mineral Research will meet from 8:00 a.m. to 4:00 p.m. (or completion of business) on July 1, 1982, in room 1042, Columbia Plaza Office Building, 2401 E Street, NW., Washington, D.C. 20241.

The meeting will deal with the following subjects:

1. Review of minutes of meeting of May 27, 1982.
2. Review of recommendations for Centers of Generic Mineral Technology.
3. Current status of program.
4. New business.

The meeting of this committee is open to the public. Approximately 25 visitors

can be accommodated on a first come first served basis. Written statements concerning the subjects are welcome.

Visitors who expect to attend should make this known no later than June 28, 1982, to Dr. Ronald Munson, Acting Chief, Office of Mineral Institutes, Bureau of Mines, room 1040, Columbia Plaza Office Building, 2401 E Street, NW., Washington, D.C. 20241, phone (202) 634–1332.

James F. McAvoy,

Deputy Director.

[FR Doc. 82-15342 Filed 6-4-82; 8:45 am]

BILLING CODE 4310-53-M

Bureau of Reclamation

[INT-FES 82-19]

Anderson Ranch Powerplant Third Unit Boise Project Idaho; Availability of Final Environmental Statement/ Feasibility Report

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a combined final environmental statement and feasibility report on a proposal for the Bureau of Reclamation to increase power generation at the existing Anderson Ranch Powerplant located in Elmore County, Idaho, on the South Fork of the Boise River. Other functions included in the proposed plan are fish enhancement, outdoor recreation, and environmental quality.

Copies are available for inspection at the following loctions:

Department of the Interior, Office of Environmental Affairs, Room 7622; Bureau of Reclamation, Washington, D.C. 20240, Telephone: (202) 343–4991

Division of Management Support, Library Branch, Room 450, Building 67, Denver Federal Center, Denver, Colorado 80225, Telephone: (303) 234–3019

Regional Director, Bureau of Reclamation, Federal Building, Box 043–550 West Fort Street, Boise, Idaho 83724, Telephone: (208) 334–1209

Central Snake Projects Office, Bureau of Reclamation, 214 Broadway Avenue, Boise Idaho 83702, Telephone: (208) 334–1460

Single copies of the statement may be obtained upon request to the Office of Environmental Affairs, Bureau of Reclamation, or the Regional Director, at the above addresses. Copies will also be available for inspection in libraries in the project vicinity.

Dated: May 25, 1982.

Robert N. Broadbent,

Commissioner of Reclamation.

Approved:

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 82-15271 Filed 6-4-82; 8:45 am]

BILLING CODE 4310-09-M

Office of the Secretary

Privacy Act of 1974; Establishment of New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of the Interior, Office of Personnel, proposes to establish a new system of records. The new records system is titled "Arbitrators Evaluation Records—Interior, Office of the Secretary—73." The records system will be used by management to facilitate the screening and selection of arbitrators for arbitration hearings. The system notice is published in its entirety below.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment. The Office of Management and Budget, which has oversight responsibilities under the Act, requires a 60-day period in which to review proposals to establish new records systems. Therefore, written comments on this proposal can be addressed to the Department Privacy Act Officer, Office of the Secretary (PIR), U.S. Department of the Interior, Washington, D.C. 20240. Comments received on or before August 6, 1982 will be considered. This system shall be effective as proposed without further notice unless comments are received which would result in a contrary determination.

As required by section 3 of the Privacy Act of 1974 (5 U.S.C. 552a(o)), the Director, Office of Management and Budget, the President of the Senate, and the Speaker of the House of Representatives have been notified of this action.

Dated: May 27, 1982.

Richard R. Hite,

Deputy Assistant Secretary of the Interior.

Interior/OS–73

SYSTEM NAME:

Arbitrators Evaluation Records—Interior, Office of the Secretary—73

SYSTEM LOCATION:

a. For Departmental Records: Office of the Secretary, Office of Personnel, Division of Labor Management Relations, 19th & C Streets, NW, Washington, D.C. 20240. b. For BIA: Bureau of Indian Affairs, Division of Personnel Management, 1951 Constitution Avenue., NW, Washington, D.C. 20245. c. For EBM: Bureau of Mines, Branch of Personnel, 4th Floor, Columbia Plaza, Washington, D.C. 20037. d. For EGS: Geological Survey, 215 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092. e. for FNP: National Park Service, Personnel Management Division, 19th & C Streets, NW., Washington, D.C. 20240. for FWS: U.S. Fish and Wildlife Service, Division of Personnel Management and Organization, 19th & C Streets, NW, Washington, D.C. 20240. g. For LBR: Bureau of Reclamation, Division of Personnel and Management, 19th & C Streets, NW, Washington, D.C. 20240. g. For LBR: Bureau of Reclamation, Division of Personnel and Management, 19th C Street, NW., Washington, D.C. 20240. h. For LLM: Bureau of Land Management, Division of Personnel (530), 19th & C Streets, NW, Washington, D.C. 20240. i. For SOL: Office of the Solicitor, Division of General Law, 19th & C Streets, NW, Washington, D.C. 20240. j. For ESM: Office of Surface Mining, Reclamation and Enforcement, Division of Personnel, 1951 Constitution Avenue., NW, Washington, D.C. 20245.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Arbitrators referred through the Federal Mediation and Conciliation Service (FMCS).

CATEGORIES OF RECORDS IN THE SYSTEM:

These records consist of evaluation forms submitted by field and headquarters representatives. The only personal identifier contained on the form is the arbitrator's name. The form is used to evaluate the performance of the arbitrator with respect to the conduct of the hearing and the arbitration decision.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VII of Civil Service Reform Act of 1978.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Data are collected after each hearing and used to record an evaluation of the arbitrator and the arbitration decision. This evaluation record is then used by management as part of the basis for evaluating the arbitrator the next time his/her name appears on an FMCS list or if the parties jointly desire to consider using the same arbitrator again. After

evaluation, the arbitrators referred will be ranked in order of preference for the current hearing.

This ranking must be considered by local management prior to meeting with union representatives to select an arbitrator. Disclosure outside the Department of the Interior may be made (1) to other Government agencies requesting this information for the purpose of evaluating prospective arbitrators; (2) to the U.S. Department of Justice when related to litigation or anticipated litigation; (3) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforceing or implementing the statute, rule, regulation, order or license; (4) from the record of an individual in response to an inquiry from a Congressional office made at the request of the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are maintained by arbitrator's name.

SAFEGUARDS:

Records are kept in locked files with access limited to employees whose official duties require access.

RETENTION AND DISPOSAL:

Destroy 5 years after final resolution of the case.

SYSTEM MANAGER(S) AND ADDRESS:

For records at location (a): Chief, Division of Labor Management Relations, Office of Personnel, Office of the Secretary, Department of the Interior, 19th & C Streets, NW, Washington, D.C. 20240. For records at location (b): Labor Relations Officer, Bureau of Indian Affairs, Division of Personnel Management, 1951 Constitution Avenue, NW, Washington, D.C. 20245. For records at location (c): Labor Relations Officer, Bureau of Mines, Division of Personnel, Branch of Compensation and Labor Relations, 5th Floor, Columbia Plaza, Washington, D.C. 20037. For records at location (d): Personnel Officer, Geological Survey, National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092. For records at location (e): Labor Relations Officer, National Park Service, Personnel Management Division, 19th & C Streets, NW, Washington, D.C. 20240. For records at location (f): Labor Relations Officer, U.S. Fish and Wildlife Service, Division of Personnel Management and Organization, 19th & C Streets, NW, Washington, D.C. 20240. For records at location (g): Labor Relations Officer, Bureau of Reclamation, Division of Personnel and Management, 19th & C Streets, NW, Washington, D.C. 20240. For records at location (h): Labor Relations Officer, Bureau of Land Management, Division of Personnel (530), 19th & C Streets, NW, Washington, D.C. 20240. For records at location (i): Office of the Solicitor, Division of General Law, 19th & C Streets, NW, Washington, D.C. 20240. For records at location (j): Labor Relations Officer, Division of Personnel, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW, Washington, D.C. 20245.

NOTIFICATION PROCEDURES:

An individual may inquire whether or not the system contains a record pertaining to him/her by contacting the systems manager. He/she must also follow the Department's Privacy Act regulations regarding request for notification of existence of records (43 CFR 2.60).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records in this system should contact the system manager and furnish the following information for their records to be located and identified: Name, including all former names. He/she must also follow the Department's Privacy Act regulations regarding verification of identity and access to records (43 CFR 2.63).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records in this system should contact the system manager and furnish their name, including all former names. They must also follow the Department's Privacy Act regulations regarding amendment of records (43 CFR 2.70).

RECORD SOURCE CATEGORIES:

The information in this system is obtained from the following sources: individuals designated to represent management by the Director of Personnel.

[FR Doc. 82-15392 Filed 6-4-82; 8:45 am]

BILLING CODE 4310-10-M

INTERSTATE COMMERCE COMMISSION

Long-and-Short-Haul Application for Relief (Formerly Fourth Section Application)

June 1, 1982.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. within 15 days from the date of publication of the notice.

No. 43698, Trans-Continental Freight Bureau, Agent (No. 566), reduced rates on wheat, threshed from stations in Montana and North Dakota to stations on the North Pacific Coast. The rates are to be published in tariff ICC TCFB 4045-0. Grounds for relief—market competition.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-15281 Filed 6-4-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

The following applications were filed in Region I: Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 116661 (Sub-1–1TA), filed May 25, 1982. Applicant: BRIDAL VEIL TOURS, INC., 9470 Niagara Falls Boulevard, Niagara Falls, NY 14304. Representative: Robert D. Gunderman, Can-Am Building, 101 Niagara Street, Buffalo, NY 14202. *Passengers and their baggage, in special operations, in round-trip sightseeing tours, limited to the transportation of not more than 14 passengers in any one vehicle but not including the driver thereof and not including children under 10 years of age who do not occupy a seat or seats,* beginning and ending at Niagara Falls, NY and points in Niagara County, NY within 6 miles thereof, and extending to ports of entry on the US-CN Boundary line at Niagara Falls and Lewiston, NY. Supporting shipper: The Bel-Aire Motel, 9470 Niagra Falls Boulevard, Niagara Falls, NY.

MC 73444 (Sub-1–2TA), filed May 25, 1982. Applicant: FRANK L. CASTINE, INC., d.b.a. CASTINE MOTOR SERVICE, 1235 Chestnut Street, Athol, MA 01331. Representative: Donald R. Castine (same as applicant). *Contract carrier:* irregular routes: *Household goods and personal effects belonging to transferring personnel of General Electric Company, Plastics Operations and/or products, supplies and equipment of General Electric Company, Plastics Operations,* between all points in the U.S. under continuing contract(s) with General Electric Company, Plastics Operations, Pittsfield, MA. Supporting shipper: General Electric Company, Plastics Operations, 1 Plastic Avenue, Pittsfield, MA 01201.

MC 161929 (Sub-1–1TA), filed May 21, 1982. Applicant: CENTRAL DISTRIBUTORS, INC., 70 Commercial Street, Lewiston, ME 04240. Representative: John C. Lightbody, Esq., Murray, Plumb & Murray, 30 Exchange Street, Portland, ME 04101. *Contract Carrier;* irregular routes: *Bottled water,* from Poland Spring, ME to points in CT, MA, MD, NC, NY, NJ, OH, PA, Providence and Cumberland, RI and VA, under continuing contract(s) with Poland Spring Corporation of Poland Spring, ME. Supporting shipper: Poland Spring Corporation, Box #499, Poland Spring, ME 04274.

MC 162133 (Sub-1–1TA), filed May 21, 1982. Applicant: COMMUTER BUS LINE, INC., 1515 Jefferson Street, Hoboken, NJ 07030. Representative: Sidney J. Leshin, Esq., 3 East 54th Street, New York, NY 10022. *Contract carrier:* irregular routes: *Passengers and their baggage,* between Staten Island, NY and Manhattan, NY via New Jersey, under continuing contract(s) with South Shore Commuters Association, Staten Island, NY. Supporting shipper: South Shore Commuters Association, 134 Rye Avenue, Staten Island, NY 10312.

MC 155370 (Sub-1–2TA), filed May 24, 1982. Applicant: KEM CONTRACT CARRIERS, INC., Kirkwood Industrial Park, P.O. Box 1245, Binghamton, NY 13902–1245. Representative: Do ald C. Carmien, Esq., Suite 501 Midtown Mall, 15 Chenango Street, P.O. Box 1922, Binghamton, NY 13902–1922. *Contract carrier;* irregular routes: *Shoes, boots and related raw materials and supplies* (a) from Endicott Johnson Corp's subsidiary Nobil Shoes Warehouse, Akron, OH to the facilities of Endicott Johnson Corp. Endicott, NY (b) from ports of New York, NY, Philadelphia, PA and Baltimore, MD to Endicott, NY, having prior water movement under continuing contract(s) with Endicott Johnson Corp., Endicott, NY. Supporting shipper: Endicott Johnson Corp., 1100 East Main St., Endicott, NY 13760.

MC 35906 (Sub-1–2TA), filed May 24, 1982. Applicant: JOHN LESTICIAN TRUCKING, INC., 500 Breunig Ave., Trenton, NJ 08638. Representative: Raymond A. Thistle, Jr., Five Cottman Ct., Homestead Rd. & Cottman St., Jenkintown, PA 19046. *(1) Mattresses, box spring mattresses, sofa-beds, lounges, frames, bed-ends, and materials, supplies and accessories used in the manufacture and distribution thereof,* between Middlesex County, NJ, on the one hand, and on the other, points in CT, VA, Baltimore, MD, and DC. Supporting shipper: The Stearns & Foster Co., Wyoming Ave. & Williams St., Cincinnati, OH 45215.

MC 146596 (Sub-1–4TA), filed May 24, 1982. Applicant: FRED McCALL TRUCKING, INC., 2079 Railroad Street, P.O. Box 258, Ontario, NY 14519. Representative: James E. Brown, 36 Brunswick Road, Depew, NY 14043. *Stone products, concrete and concrete products* between points in MA and NH, on the one hand, and, on the other, points in CT, ME, MA, NH, NJ, NY, PA, RI, and VT. Supporting shipper: Landscape Products, Inc., 2450 Boston Road, Wilbraham, MA 10095, Syrstone, Inc., P.O. Box 247, N. Syracuse, NY 13212.

MC 162161 (Sub-1–1TA), filed May 24, 1982. Applicant: SHELBURNE LIMESTONE CORPORATION, P.O. Box 115, Route 7 North, Winooski, VT 05404. Representative: Robert J. Douglas (same as applicant). *Cement, in bulk,* from Glens Falls, NY to Burlington, VT. Supporting shipper: S. T. Griswold & Company, Inc., Griswold Industrial Park, Williston, VT 05495.

MC 162100 (Sub-1–1TA), filed May 24, 1982. Applicant: JOSEPH WRIGHT, d.b.a. SUCCESS DELIVERY SERVICE, 101 Keer Avenue, Newark, NJ 07112. Representative: Rick A. Rude, Esq., Suite 611, 1730 Rhode Island Avenue, NW., Washington, DC 20036. *Contract carrier:* Irregular Routes: *General Commodities, (except classes A and B explosives, Household Goods, and Commodities in Bulk,)* between points in the U.S., except AK and HI, under continuing contract(s) with Inter State Express, Inc., Brooklyn, NY. Supporting shipper: Inter State Express, Inc., 120 Apollo Street, Brooklyn, NY 11222.

MC 161952 (Sub-1–1TA), republication, filed May 12, 1982. Applicant: UTILITY PROPANE COMPANY, One Elizabethtown Plaza, Elizabeth, NJ 07207. Representative: Eric Meierhoefer, Joseph L. Steinfeld, Jr., Suite 1000, 1029 Vermont Avenue, NW., Washington, DC 20005. *Liquefied natural and petroleum gases, bulk heating oil, and diesel fuel* between points in NJ, on the one hand, and, on the other, points in MA, NH, VT, RI, CT, ME, NY, PA, and DE. Supporting shipper(s): New Jersey Natural Gas Co., 601 Bangs Avenue, Asbury Park, NJ 07712; Public Service Electric and Gas Company, 80 Park Pl., P.O. Box 570, Newark, NJ 07101; South Jersey Gas Company, Number One South Jersey Plaza, Folsom, NJ 08037. The sole purpose of this republication is to clarify the commodity description on previous publication of May 24, 1982.

MC 148893 (Sub-1–14TA), filed May 21, 1982. Applicant: WREN TRUCKING, INC., 1989 Harlem Road, Buffalo, NY 14212. Representative: James E. Brown, 36 Brunswick Road, Depew, NY 14043. *Clay in bags* from Mayfield, KY to Buffalo, NY, restricted to traffic destined to Wikel Mfg. Co. of NY, Inc. Supporting shipper: Wikel Mfg. Co. of NY, Inc., 205 Reiman Street, Buffalo, NY 14212.

MC 1250526 (Sub-1–4TA), filed May 24, 1982. Applicant: YARMOUTH LUMBER, INC., North Street, Box 46, Yarmouth, ME 04069. Representative: William H. Phipps (same as applicant). *Contract carrier;* Irregular routes:

Packaged oil and lubricants, from points in PA and NJ to points in ME, under continuing contract(s) with Maine Lubrication Services, Inc., of Portland, ME. Supporting shipper: Maine Lubrication Services, Inc., P.O. Box 732, Portland, ME 04104.

The following applications were filed in region 2. Send protests to: ICC, Fed. Res. Bank Bldg., 101 North 7th St. Rm. 620, Philadelphia, PA 19106.

MC 162238 (Sub-II–1TA), filed May 27, 1982. Applicant: BENNIE ANGERER, 5191 Marland SW, Navarre, OH 44662. Representative: Richard H. Brandon, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017. *Contract; Irregular: vegetable oil, in bulk,* from Decatur, IN, to Navarre, Martins Ferry, Lima and Fremont, OH, under continuing contract(s) with Nickles Bakery, Inc., Navarre, OH, for 270 days. Supporting shipper: Nickles Bakery, Inc., Navarre, OH 44662.

MC 112430 (Sub-II–2TA), filed May 26, 1982. Applicant: BIG BOY'S RIGGING SERVICE, INC., 4312 Pistorio Rd., Baltimore, MD 21229. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. *Machinery* from Baltimore, MD to Florence, KY. An underlying ETA seeks 120 days authority. Supporting shipper(s): Yamazaki Machinery Corp., 8025 Production Dr., Florence, KY 41042.

MC 86690 (Sub-II–6TA), filed May 25, 1982. Applicant: BOND TRANSFER CO., INC., 1301 Towson St., Baltimore, MD 21230. Representative: Leonard W. Smith, III (same address as applicant). Contract, irregular: *General commodities (except Classes A & B explosives, household goods, building materials, and commodities in bulk),* between points in MD, CT, MA, NJ, NY, PA, VA and DC, under continuing contract(s) with The Hechinger Co., Inc. Supporting shipper(s): Hechinger Co., Inc., 3500 Pennsy Dr., Landover, MD 20785.

MC 142723 (Sub-II–7TA), filed May 24, 1982. Applicant: BRISTOL CONSOLIDATORS, INC., 108 Riding Trail Lane, Pittsburgh, PA 15215. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219. *Contract; irregular: Steel drums and materials, equipment and supplies used in the manufacture thereof* between McKees Rocks and Neville Island, PA, on the one hand, and, on the other, pts. in the US, under a continuing contract(s) with Calig Steel Drum Co. of McKees Rocks, PA, for 270 days. Supporting shipper: Calig Steel Drum Co., 1400 Fleming Ave., McKees Rocks, PA 15136.

MC 162185 (Sub-II–1TA), filed May 25, 1982. Applicant: BRITTAIN TRUCKING CO., P.O. Box 265, Pioneer, OH. Representative: Eugene D. Anderson, 1001 Connecticut Ave., NW., Suite 838, Washington, DC 20036. (1) *Brick,* from pts. in IN, OH and PA to Grand Rapids, Howard City, Calendonia, Holland, Lansing and Ludington, MI; and (2) *Lawn and garden products,* between pts. in MI, OH, KY, IN, IL, and NY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Belden Brick & Supply Co., Inc., 620 Leonard St., N.W., Grand Rapids, MI 49504; Valley Enterprises, 6970 Sylmar Ct., Dayton, OH 45424; Darling Builder Supply, Inc., 1600 Turner St., Lansing, MI 48906.

MC 158860 (Sub-II–2TA), filed May 25, 1982. Applicant: CAVALIER FREIGHT INC., 5741 Bayside Rd., Suite 106, Virginia Beach, VA 23455. Representative: Carroll B. Jackson, 1810 Vincennes Rd., Richmond, VA 23229. (1) *Bakery products, food products, dust, meal, peanuts and (2) materials, equipment and supplies used in the manufacture, distribution and sale of the commodities in (1) above,* between the facilities of Nabisco Brands, Inc., at or near Richmond, VA, on the one hand, and, on the other, points in CA, FL, GA, MA, OR, RI, TX and WA. An underlying ETA seeks 120 days authority. Supporting shipper: Nabisco Brands, Inc., East Hanover, NJ 07936.

MC 162225 (Sub-II–1TA), filed May 27, 1982. Applicant: DAILY JUICE PRODUCTS, INC., 1 Daily Way, Verona, PA 15147. Representative: Jack L. Schiller, 123–60 83rd Ave., Kew Gardens, NY 11415. *Contract irregular:* (1) *such commodities as are dealt in by grocery and food business houses (except commodities in bulk)* between points in NJ, NY, OH and Baltimore, MD, on the one hand, and, on the other, the facilities of Fox Grocery Co., Belle Vernon, PA; and (2) *knocked down containers* from Detroit, MI, to the facilities of Packaging Specialists, Inc., at or near Pittsburgh, PA, under account in (1) with Fox Grocery Co., Belle Vernon, PA and in (2) with Packaging Specialists, Inc., Pittsburgh, PA for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Fox Grocery Co., P.O. Box 29, Belle Vernon, PA 15012; Packaging Specialists, Inc., P.O. Box 16272, Pittsburgh, PA 15242.

MC 162062 (Sub-II–1TA), filed May 27, 1982. Applicant: EAGLE EXPRESS, 1300 Brussells St., St. Marys, PA 15857. Representative: J. Bruce Walter, P.O. Box 1146, Harrisburg, PA 17108. *Sand, in bulk, in dump vehicles,* between St. Marys and Punxsutawney, PA, on the one hand, and, on the other, Manumuskim or Millville, NJ, for 270 days. Supporting shipper: Airco Carbon Division, 606 Liberty Ave., Pittsburgh, PA 15222.

MC 154048 (Sub-II–TA), filed May 27, 1982. Applicant: LAMAR K. HAAS, INC., R. D. 2, Box 652, Slatington, PA 18080. Representative: Lamar K. Haas (same as applicant). *Such commodities as are dealt with in food and feed business houses and materials, equipment and supplies used in the manufacture, sale and distribution,* between pts. in PA, NJ, NY, VA, MD, DE, CT, MA, VT, NH, ME, OH, IN, IL, RI, MI and DC, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Ralston Purina Co., P.O. Box 248, Camp Hill, PA 17011.

MC 98725 (Sub-II–1TA), Filed May 25, 1982. Applicant: Anthony LaFace, D.B.A. LaFACE EXPRESS, 864 River Ave., Pittsburgh, PA 15212. Representative: Raymond A. LaFace (same as applicant). *Contract; irregular; Sanitary paper products,* between Harmony, PA on the one hand and on the other, pts. in OH, WV, MD, NY, NJ, and DC, under continuing contract(s) with Weyerhaeuser Co., Harmony, PA, for 270 days. An underlying ETA seeks 120 days authority. Supporting Shipper: Weyerhaeuser Co., Zeigler St., Harmony, PA 16037.

MC 13267 (Sub-II–4TA), Filed May 25, 1982. Applicant: MOUNTAINSIDE TRANSPORT, INC., 4828 Hollins Ferry Rd., Baltimore, MD 20227. Representative: A. David Millner, 7 Becker Farm Rd., P.O. Box Y, Roseland, NJ 07068. Contract, irregular: *Such commodities as are dealt in by wholesale and chain grocery and food business houses, department stores and variety stores and materials, equipment and supplies used in the conduct of such businesses,* from points in CT, DC, DE, MD, NJ, NY, PA, VA to Landover, MD and Chester, VA, under a continuing contract(s) with Safeway Stores, Inc. An underlying ETA seeks 120 days authority.

Supporting shipper(s): Safeway Stores, Inc., Oakland, CA 94660.

MC 161924 (Sub-II–1TA), Filed May 27, 1982. Applicant: PENN MOUNTAIN TRUCKING CO., P.O. Box 258, R.D. 1, Hunlock Creek, PA 18621. Representative: Peter Wolff, 722 Pittston Ave., Scranton, PA 18505. *Granite, lumber and pallets (except when requiring special equipment)* between points in CT, NJ, NY and PA on the one hand, and, on the other, points in NC, SC and VA, for 270 days. An underlying ETA seeks 120 days.

Supporting shipper(s): The North Carolina Granite Corp., P.O. Box 151,

Mount Airy, NC; Emerson Phares Lumber Co., Box 1698, Elkins, WV 26241.

MC 161394 (Sub-II–1TA), Filed May 25, 1982. Applicant: H. M. WHITE TRANSPORTATION CO., INC., 822 E. Washington St., Suffolk, VA 23434. Representative: Herman M. White (same address as applicant). *Passengers and their baggage, in special and charter operations,* beginning and ending in Suffolk, Portsmouth, Norfolk, Virginia Beach, Hampton, Newport News, Williamsburg, Franklin, Emporia, Petersburg, Courtland, Windsor and Isle of Wight County, VA and Elizabeth City, Sunbury, Gates and Gatesville and Pasquotank County, NC, and extending to points in the U.S. (including AK but excluding HI), for 180 days. An underlying ETA seeks 120 days authority.

Supporting shipper(s): There are eleven supporting statements attached to this application which may be examined at the Phila. Regional office.

The following applications were filed in Region 3. Send protests to: ICC, Regional Authority Center, Room 300, 1776 Peachtree Street, NE., Atlanta, GA 30309.

MC 159141 (Sub-3–1TA), filed May 25, 1982. Applicant: RANDEL LANCE, d.b.a. M & R PRODUCE DISTRIBUTORS, #25 Garden Heights Apt. Redbud Rd., Calhoun, GA 30701. Representative: James M. Parrish, P.O. Box 1365, Marietta, GA 30061. *Contract* Carrier: Irregular: *Such commodities as are used in the manufacturing of pizzas,* from the plant site of Doskocil Sausage Co., at or near Hutchinson, KS, to Atlanta, GA, Charlotte, NC, Greenville, SC, Montgomery, AL, Orlando, FL and Raleigh, NC; and from Lakeland, FL, to Atlanta, GA, and Hutchinson, KS. Supporting shipper: Doskocil Sausage Co., 321 North Main Street, Hutchinson, KS 67505.

MC 161809 (Sub-3–1TA), filed May 24, 1982. Applicant: B & S TRANSPORTATION, INC., 915 Visco Drive, Nashville, TN 37210. Representative: Rebecca Lyford, Suite 916, J.C. Bradford Building, Nashville, TN 37219. *General commodities (except class A & B explosives, household goods and commodities in bulk)* in interstate and foreign commerce (a) between points in Williamson, Rutherford, Dickson, Davidson, Wilson, Montgomery, Cheatham, Robertson and Sumner Counties, TN, on the one hand, and on the other, points in Christian, Todd, Caldwell, Muhlenberg, Hopkins, Webster, McLean, Henderson and Davies Counties, KY, and Vandersburg County, IN; (b) between points in Williamson, Rutherford, Dickson, Davidson, Cheatham Counties, TN, on the one hand, and Montgomery County, TN on the other; and (c) between points in Christian, Todd, Caldwell, Muhlenberg, Hopkins, Webster, McLean, Henderson and Davies Counties, KY, on the one hand, and Vandersburg County, IN on the other. There are 32 supporting shippers whose statements can be examined at the ICC office in Atlanta, GA. Applicant will interline at Nashville, TN, Owensboro, KY, and Evansville, IN.

MC 2934 (Sub-3–47TA), filed May 18, 1982. Applicant: AERO MAYFLOWER TRANSIT CO., INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same as above). *Contract:* Irregular: *General commodities (except Class A & B explosives);* between points in the US, under continuing contracts with Control Data Corporation, 8100 34th Avenue South, Minneapolis, MN 55402, Supporting Shipper: Control Data Corporation, 8100 34th Avenue South, Minneapolis, MN 55402.

MC 139802 (Sub-3–2TA), filed May 24, 1982. Applicant: BPB TRANSPORTATION, Highway 27 N. Commercial Terminal, P.O. Box 397, Haines City, FL 33844. Representative: Ralph Reese, 2074 Thelma Drive N.W., Winter Haven, FL 33880. *Contract:* Irregular: *Imported Clay Products* between Laredo, TX on the one hand and points in CA, CO, FL, GA, and TN on the other under continuing contract(s) with AL Barrera Corporation, 1 H 35 North P.O. Box 1910, Laredo, TX 78041. Supporting shipper: AL Barrera Corporation, 1H 35 North, P.O. Box 1910, Laredo, TX 78041.

MC 142655 (Sub-3–5TA), filed May 27, 1982. Applicant: BAKER TRANSPORT, INC., P.O. Box 668, Hartselle, AL 35640. Representative: Donald B. Sweeney, Jr., P.O. Box 2366, Birmingham, AL 35201. *Paper and paper products* between the facilities of Lin-Pac Corrugated, Inc., Atlanta, GA, on the one hand, and, on the other, points in AL, GA, FL, TN, and SC. Supporting shipper: Lin-Pac Corrugated, Inc. 655–A Selige Drive, S.W., Atlanta, GA 30336.

MC 151463 (Sub-3–4TA), filed May 27, 1982. Applicant: BIGBEE TRANSPORTATION, INC., P.O. Box 32, Columbus, MS 39701. Representative: Norman J. Philion III, 1920 N Street, N.W., Washington, D.C. 20036. *Contact carrier,* irregular routes; *General commodities (except classes A and B explosives);* between points in the US, under continuing contract(s) with World-Wide Transportation Services, Inc. Supporting shipper: World-Wide Transportation Services, Inc., P.O. Box 344, Romulus, MI 48174.

MC 85530 (Sub-3–4TA), filed May 28, 1982. Applicant: BLALOCK TRUCK LINE, INC., P.O. Box 734, Charleston, SC 29402. Representative: Wilmer B. Hill, Suite 366, 1030 Fifteenth Street, N.W., Washington, D.C. 20005. *Contract* Carrier; Irregular; *General commodities (except classes A and B explosives household goods, and commodities in bulk)* between points in AL, AR, FL, GA, IL, IN, KY, LA, MD, MS, NJ, NC, OH, PA, SC , TN, TX, VA, WV, and DC under continuing contract(s) with Lowe's Companies, Inc., North Wilkesboro, NC. Supporting shipper: Lowe's Companies, Inc., P.O. Box 1111, Highway 268 East, North Wilkesboro, NC 28656.

MC 161850 (Sub-3–1TA), filed May 24, 1982. Applicant: CARSON ROBERT CURLEE, Route 7, Box 810, Salisbury, NC 28144. Representative: Carson Robert Curlee (same address as applicant). *Passengers,* between Rowan, Cabarrus, and Mecklenberg counties NC on the one hand, and, on the other, Catawba Project, York county, SC. There are five (5) supporting shippers whose statements can be examined in the regional office in Atlanta, GA.

MC 154323 (Sub-3–3TA), filed May 27, 1982. Applicant: EAGLE CARTAGE CORPORATION, Route #1 Callahan Road, Knoxville, TN 37912. Representative: Fred Bachschmidt (same address as above). *Expanded plastic materials, forms, packing material and supplies used in manufacturing distribution of plastic articles.* Between KY, IL, OH, NC, MI, FL, MN, NY, MA, MD, NJ, MO, IN, and LA. Supporting shipper: Foam Design, Inc., 44 Transport Court, P.O. Box 12178 Lexington, KY 40511.

MC 159963 (Sub-3–1TA), filed May 27, 1982. Applicant: EAST-WEST TRANSPORTATION, INC., P.O. Box 2187, Thomasville, NC 27360. Representative: Fletcher W. Miller, Rt. 3 Box 365, Trinity, NC 27370. *Contract carrier,* irregular routes; *New Furniture, Furniture Parts, Materials, and Supplies used in the manufacturing of New Furniture,* between points in Guilford County, NC, on the one hand, and on the other, points, in US. Supporting shipper: Myrtle Desk Company, P.O. Box 2490, High Point, NC 27261.

MC 161769 (Sub-3–1TA), filed May 7, 1982. Applicant: ECONO–TOURISTIC ASSOCIATES, INC., 60 Lockwood Boulevard, Charleston, SC 29401. Representative: Merrill A. Cox, 5600 Rivers Avenue, P.O. Box 10726, N. Charleston, SC 29411. *Passengers and their baggage, in the same vehicle with*

passengers, in round-trip charter operations, beginning and ending at points in NC, SC, GA, AL, TN, FL, VA, LA, MS and DC, and extending to Knoxville, TN (and its commercial zone) and Fontana Dam, NC (and its commercial zone). Supporting shippers: Charlestowne Travel, 60 Lockwood Blvd., Charleston, SC 29401 and Econo-Touristic Associates, Inc., agent for Fontana Village Resort, 60 Lockwood Blvd., Charleston, SC 29401.

MC 143364 (Sub-3–1TA), filed May 26, 1982. Applicant: ASSOCIATED CAB CO., INC., d.b.a. GRAY LINE OF ATLANTA, 3745 Zip Industrial Blvd., S.E., Atlanta, GA 30354. Representative: Bruce E. Mitchell, Esq., 3390 Peachtree Rd., N.E., Suite 520, Atlanta, GA 30326. *Passengers and their baggage, in charter and special operations* beginning and ending at Augusta, GA, and Columbia and Greenville, SC, and extending to Knoxville, TN, the site of the World's Fair. Supporting shipper: Ambassador Travel, Inc. of Georgia, d.b.a. Rich's Travel Agency, 45 Broad Street, Atlanta, GA 30302.

MC 160275 (Sub-3–4TA), filed May 27, 1982. Applicant: TOM MILLER TRUCKING COMPANY, INC., P.O. Box 99, Claremont, TN 28610. Representative: D. R. Beeler, P.O. Box 482, Franklin, TN 37064. *Such commodities as are dealt in by retail and wholesale home improvement centers* between the facilities of Lowe's Companies, Inc. located on and east of the Mississippi River. Supporting shipper: Lowe's Companies, Inc., Box 1111, North Wilkesboro, NC 28656.

MC 161231 (Sub-3–2TA), filed May 27, 1982. Applicant: PLATEAU EXPRESS, INC., Route 11, Box 226, McMinnville, TN 37110. Representative: Roland M. Lowell, 5th Floor, 501 Union Street, Nashville, TN 37219. *Contract,* irregular *metal articles and scrap materials,* between points in the U.S. (except AK and HI), under continuing contract with Hill's Scrap and Salvage, Inc., of McMinnville, TN. Supporting shipper: Hill's Scrap and Salvage, Inc., Route 11, Box 483, McMinnville, TN 37110.

MC 160384 (Sub-3–2TA), filed May 25, 1982. Applicant: W. L. SAVAGE, d.b.a. SAVAGE TOUR & CHARTER, Box 3367, Route #3, Clayton, GA 30525. Representative: W. L. Savage (address same as applicant). *Passengers and their baggage in special and charter operations* between Stephens and Habersham County, GA and Knox County, TN. Supporting shippers: There are 8 statements of support attached to the application which may be reviewed at the regional ICC office in Atlanta, GA.

MC 162145 (Sub-3–1TA), filed May 27, 1982. Applicant: THOMAS BROTHERS TRUCKING CO., INC., Route 2, Box 509, Hayneville, AL 36040. Representative: Robert S. Richard, 57 Adams Avenue, Montgomery, AL 36197. *Lumber and plywood* between points in AL, AR, FL, GA, KY, LA, MS, NC, OK, SC, TN, TX, VA, and WV. Supporting shipper: There are eight statements in support attached to this application which may be examined at the I.C.C. Regional Office in Atlanta, GA.

MC 147402 (Sub-3–5TA), filed May 21, 1982. Applicant: WACO DRIVERS SERVICE, INC., 138 Atando Avenue, Charlotte, NC 28206. Representative: Carl L. Helms (same address as applicant). *Contract carrier:* irregular: *Pulp, Paper and Related Products,* (1) between Dekalb and Fulton Counties, GA, on the one hand, and, on the other, points in AL, FL, KY, MS, NC, SC, TN, VA and WV, and (2) between Dekalb and Fulton Counties, GA, on the one hand, and, on the other, points in GA having prior or subsequent movement via rail. Supporting shipper: Paper and Pulp Exchange, Inc., 245 West Wieuca Road, Suite 200, Atlanta, GA 30342.

MC 145154 (Sub-3–18TA), filed May 28, 1982. Applicant: YOUNG'S TRANSPORTATION CO., 3401 Norman Berry Drive, Suite 246, East Point, GA 30344. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Avenue, N.W., Washington, DC 20005. *Maintenance and sanitary chemicals and related products (except in bulk),* between Atlanta, GA, and Dallas, TX, and points in their commercial zones, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Zep Manufacturing Company, P.O. Box 2015, 1310 Seaboard Industrial Boulevard, Atlanta, GA 30301.

The following applications were filed in region 4. Send protests to: ICC, Complaint and Authority Branch, P.O. Box 2980, Chicago, IL 60604.

MC 13367 (Sub-4–1TA), filed May 21, 1982. Applicant: AG TRUCKING, INC., P.O. Box 1046, Elkhart, IN 46515. Representative: Paul D. Borghesani, Katz & Borghesani, 300 Communicana Bldg., 421 So. Second Street, Elkhart, IN 46516, Phone: (219) 293–3597. *Coke* from Indianapolis, IN to points in MI, OH, WI, IA, IL, KY, and MO. Supporting shipper: Citizens Gas & Coke Utility, 2950 Prospect St., Indianapolis, IN 46203.

MC 15735 (Sub-4–19TA), filed May 21, 1982. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Avenue, Broadview, IL 60153. Representative: Richard V. Merrill, P.O. Box 4403, Chicago, IL 60680. *Contract* irregular: *Household goods between points in the U.S. (except AK and HI) Under a continuing contract with Standard Oil Company of Indiana. Supporting shipper: Standard Oil Company of Indiana, Chicago, IL.*

MC (Sub-4–1TA), filed May 21, 1982. Applicant: UNITED FREIGHT DISPATCH, INC., 2220–1 Toledo Road, Elkhart, IN 46516. Representative: Paul D. Borghesani, Katz & Borghesani, 300 Communicana Bldg., 421 So. Second Street, Elkhart, IN 46516, phone: (219) 293–3597. *Contract* irregular: *Musical instruments and materials, equpment, and supplies* used in the manufacture and distribution of musical instruments from Altanta, GA, Cleveland, OH, Elkhart and Goshen, IN, Niles and Chicago, IL, Abilene, TX, Nogales, AZ, and Sparks, NV, to points in the United States (except AK and HI). Restricted to traffic moving under continuing contract with Mardan Corp., d/b/a C.G. Conn Ltd. Supporting shipper: Mardan Corp., d/b/a C.G. Conn Ltd., Elkhart, IN.

MC 138575 (Sub-4–3TA), filed May 24, 1982. Applicant: GWINNER OIL CO., INC., P.O. Box 38, Gwinner, ND 58040. Representative: James B. Hovland, 525 Lumber Exchange Bldg., Minneapolis, MN 55402. *Anhydrous ammonia,* between ports of entry on the International Boundary Line between the U.S. and Canada located in MT, on the one hand, and, on the other, points in MT. Shipper: N-Ren Corporation, P.O. Box 418, South St. Paul, MN 55075.

MC 143501 (Sub-4–4TA), filed May 21, 1982. Applicant: R.G.C. CARGO CARRIERS, INC., 16651 S. Vincennes Rd., S. Holland, IL 60473. Representative: Dean N. Wolfe, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877. *Contract;* Irregular: *Such commodities as are dealt in or used by manufacturers of mirrors and mirrored tiles,* between Chicago, IL, Atlanta, GA, and Carson, CA, on the one hand, and, on the other, points in the U.S. (except AK and HI) under contract with Hoyne Industries, Inc. Underlying ETA seeks 120 days authority. Supporting shipper: Hoyne Industries, Inc., 5829 W. Ogden Ave., Chicago, IL 60650.

MC 143776 (Sub-4–24TA), filed May 24, 1982. Applicant: C.D.B., INCORPORATED, 155 Spaulding, S.E., Grand Rapids, MI 49506. Representative: Karl L. Gotting, 1200 Bank of Lansing Building, Lansing, MI 48933. *Contract;* Irregular; *Food and related products* between various points in the U.S. (except AK and HI) under continuing contract(s) with Chef Pierre, Inc. An underlying ETA seeks 120-day authority. Supporting shipper: Chef Pierre, Inc., P.O. Box 1009, Traverse City, MI 49684.

MC 146758 (Sub-4–9TA), filed May 21, 1982. Applicant: LADLIE TRANSPORTATION, INC., 1701 Margaretha Street, Albert Lea, MN 56007. Representative: Phillip H. Ladlie (address same as applicant). *Charcoal briquettes* between points in Dent County, MO, on the one hand, and on the other, points in and west of WI, IN, MO, AR and LA. Supporting shipper: Floyd Charcoal, P.O. Box 549, Salem, Missouri 65560.

MC 155242 (Sub-4–3TA), filed May 21, 1982. Applicant: ADVANCE POOL DISTRIBUTION, INC., 3700 Central Avenue, Detroit, MI 48120. Representative: Alex J. Miller, 555 South Woodward Ave., Suite 512, Birmingham, MI 48011. *Such commodities as are dealt in or used by retail stores,* between Grand Rapids, MI on the one hand and on the other points in the Lower Peninsula of MI for K-Mart Corporation. Supporting shipper: K-Mart Apparel Corp., 7373 West Side Avenue, North Bergen, NJ 07047.

MC 160411 (Sub-4–2TA), filed May 24, 1982. Applicant: VIRGIL JAEGER, d.b.a 8–J'S TRUCKING, Box 3, Washburn, ND 58577. Representative: Charles E. Johnson, Box 2056, Bismarck, ND 58502. Contract, irregular (1) *Chemicals and janitorial supplies (except in bulk)* from Minneapolis, MN, and Chicago, IL, and points in their commercial zones to points in ND and (2) *soda ash* from Sweetwater County, WY, to points in ND. Underlying ETA seeks 120-day authority. Supporting shipper: Mon-Dak Chemicals, Washburn, ND 58577.

MC 162095 (Sub-4–2TA), filed May 21, 1982. Applicant: TRI-LINE TRANSPORTATION, INC., 14 East 5th Street, Ada, MN 56510. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309. *Lumber and wood products,* between points in CA, ID, MT, OR and WA, on the one hand, and, on the other, points in IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, OK, PA, SD, TX and WI. Supporting shipper: There are seven supporting shippers.

MC 162135 (Sub-4–1TA), filed May 21, 1982. Applicant: KRUEGER & STIENFEST, INC., Route 2, P.O. Box 159, Antigo, WI 54409. Representative: James A. Spiegel, Attorney, Olde Towne Office Park, 6333 Odana Road, Madison, WI 53719. *Limestone and related products* from Schoolcraft County, MI, to Marathon County, WI. An underlying ETA seeks 120 days authority. Supporting shipper: Weyerhaeuser Company, Box 200, Rothschild, WI 54474.

MC 162156 (Sub-4–1TA), filed May 24, 1982. Applicant: GALE BURKHALTER, an Individual, d.b.a. BURKHALTER TRUCKING, Route 1, Kendall, WI 54638. Representative: James A. Spiegel, Attorney, Olde Towne Office Park, 6333 Odana Road, Madison, WI 53719. *Contract;* irregular; *building materials and wood products* between Warren County, NY, on the one hand and, on the other hand, points in the U.S. (except AK and HI). Restriction: restricted to transportation to be performed under continuing contract(s) with Outdoorsman, Inc., David Grethen, dba Pine Ridge Distributing, and Lincoln Logs, Ltd. An underlying ETA seeks 120 days authority. Supporting shippers: Outdoorsman, Inc., Box 250, Necedah, WI 54646; David Grethen, dba Pine Ridge Distributing, Route 1, Mallard, IA 50562; and Lincoln Logs, Ltd., Box 135, Riverside Drive, Chestertown, NY 12817.

MC 162157 (Sub-4–1TA), filed May 24, 1982. Applicant: DELTA TRANSPORTATION, LTD., P.O. Box 8043, Madison, WI 53708. Representative: Stanley C. Olsen, Jr., 5200 Willson Road, Suite 307, Edina, MN 55424. *Contract;* irregular, *Food and related products,* between points in the U.S. (except AK and HI) under continuing contract(s) with Alpha Distributors, Ltd., of Madison, WI. Supporting shippers: Alpha Distributors, Ltd., P.O. Box 8043, Madison, WI 53708.

MC 6992 (Sub-4–5TA), filed May 26, 1982. Applicant: AMERICAN RED BALL TRANSIT CO., INC., 1335 Sadlier Circle, East Drive, Indianapolis, Indiana 46239. Representative: John F. Spickelmier (same as applicant). *New automotive castings* between points in St. Joseph County, IN on the one hand, and, on the other, points in Webb County, TX. Supporting shippers: Jenther Inc., Mishawaka, IN.

MC 74755 (Sub-4–4TA), filed May 26, 1982. Applicant: SUELZER MOVING & STORAGE, INC., 4325 Meyer Road, Fort Wayne, IN 46806. Representative: Richard A. Huser, One Indiana Square, Suite 2120, Indianapolis, Indiana 46204. *Contract:* Irregular; *Household goods (as defined by the Commission).* Between Fairfield and New Haven Counties, CT; Dallas, Kaufman, Rock Wall, Tarrant, Denton, Collin, Hunt, Ellis, Johnson, Parker and Wise Counties, TX; Hamilton, Marion, Boone, Madison and Hancock Counties, IN; on the one hand, and, on the other, points in the United States. Restricted to service performed under continuing contract(s) with GTE Service Corporation, Telephone Operations Headquarters Group. 1 Stanford Forum Stanford, CT.

MC 113751 (Sub-4–15TA), filed May 26, 1982. Applicant: HAROLD F. DUSHEK, INC., 10th & Columbia St., Waupaca, WI 54981. Representative: James A. Spiegel, Attorney, Olde Towne Office Park, 6333 Odana Road, Madison, Wisconsin 53719. *Agricultural chemicals, pharmaceuticals, cleaning compounds, and such commodities as are dealt in or used by grocery stores, food businesses, or variety stores* between Peoria and East Peoria, IL, on the one hand and, on the other hand, points within MI, MN and WI. An underlying ETA seeks 120 days authority. Supporting shipper: Federal Warehouse Company, P.O. Box 1329, Peoria, IL 61654.

MC 123092 (Sub-4–1TA), filed May 27, 1982. Applicant: HERBERT F. JAUQUET, d.b.a. HERB JAUQUET TRUCKING, Box 175, Channing, MI 49815. Representative: John R. Wood, 127 South Cedar Street, Manistique, MI 49854. *Contract* irregular: *groundwood papers in rolls or sheets on or off skids and other property of Manistique Papers, Inc.* between Manistique, MI and points in WI and OH, under contract with Manistique Papers, Inc. of Manistique, MI. Supporting shippers: Manistique Papers, Inc., P.O. Box 111, Manistique, MI 49854.

MC 126853 (Sub-4–2), filed May 25, 1982. Applicant: PRINCL TRANSFER LINES, INC., Route 2, Mishicot, WI 54228. Representative: Frank M. Coyne, 25 West Main St., Madison, Wisconsin 53703. *Road Asphalts, Residual Fuel Oil* and *Petroleum Products,* in bulk, from Whiting, IN to points in WI. Supporting shipper: A. W. Oakes & Son, Inc., 2234 S. Green Bay Rd., Racine, WI, 53406; Ram Construction Inc., P.O. Box 98, Byron, WI 53009.

MC 127651 (Sub-4–4TA), filed May 26, 1982. Applicant: EVERETT G. ROEHL, INC., East 29th Street, Box 7, Marshfield, WI 54449. Representative: Richard A. Westley, Attorney, 4506 Regent St., Suite 100, P.O. Box 5086, Madison, WI 53705–0086, 608–238–3119. Lumber from the facilities of Taylor Lumber, Inc. at or near McDermott, OH to all points in CA. An underlying ETA seeks 120 day authority. Supporting shipper: Taylor Lumber, Inc., Route 2, Box 66, McDermott, OH 45652.

MC 128837 (Sub-4–26), filed May 26, 1982. Applicant: TRUCKING SERVICE, INC., P.O. Box 229, Carlinville, IL 62626. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. *Contract,* irregular: *Alcoholic beverages,* between Elizabeth and Scobeyville, NJ on the one hand, and on the other, Chicago, IL. Restricted to traffic moving under continuing contract(s) with W. A. Taylor & Company. Supporting shipper: W. A. Taylor & Comany, 825 So. Bayshore Dr., Miami, FL 33131.

MC 145465 (Sub-4–4TA), filed May 26, 1982. Applicant: GURN ENTERPRISES, INC., Rt. 6, Box 8, Allegan, MI 49010. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. *Contract,* Irregular *Furniture, auditorium seats, convention hall seats and theatre furniture and seats, including equipment, materials and supplies* used in the manufacture, repair and installation thereof, between Belding, MI, including its commercial zone, on the one hand, and, on the other, points in the United States in and east of ND, SD, NE, KS, OK and TX, for the account of Country Roads, Inc. An underlying ETA seeks 120 days' authority. Supporting shipper: Country Roads, Inc., 1122 S. Bridge St., Belding, MI 48809.

MC 147771 (Sub-4–5TA), filed May 25, 1982. Applicant: RALPH J. MARQUARDT & SONS, INC., P.O. Box 1040, Yankton, SD 57078. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501, (402) 475–6761. *Magnesium chloride, potash, salt and salt products,* from Weber county, UT, to points in ND, SD, MN, IA, MO, WI and IL. Supporting shipper: Great Salt Lake Minerals and Chemicals Corporation, P.O. Box 1190, Ogden, UT 84402.

MC 151791 (Sub-4–2TA), filed May 25, 1982. Applicant: LES LINDEMAN & SON, INC., 117 West Main Street, Morenci, MI 49256. Representative: David E. Jerome, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. *Contract* irregular: *Caustic soda beads,* from Lenawee county, MI, to Florence, KY, under a continuing contract with Vulcan Material Co. Supporting shipper: Vulcan Material Co., P.O. Box 12283, Wichita, KS 67277.

MC 152232 (Sub-4–2TA), filed May 24, 1982. Applicant: TYLER TRANSPORTATION, INC., 2020 Old State Road 31–E, Jeffersonville, IN 47130. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, Kentucky 40202. *Transporting food and related products* from Louisville, KY and its commercial zone to points in AL, GA, FL, TN, IL, and MO. Supporting Shipper: Paramount Foods, Inc., P.O. Box 32150, Louisville, KY 40232.

MC 154432 (Sub-4–5TA), filed May 25, 1982. Applicant: FORTY EIGHT TRANSPORT, INC., 17135 Westview, So. Holland, IL 60473. Representative: Philip A. Lee, 120 W. Madison St., Chicago, IL 60602. *Photochemicals* and related commodities; *Glassware; Electric wire; Transport chains, belting, agricultural-iron implement parts* and related articles; *steel* and *brass screws* and *nuts,* between Chicago, IL on the one hand, and on the other Mobile & Birmingham, AL; Phoenix, AZ; Little Rock, AR; CA; Denver, CO; Clinton & Stamford, CT; Dover & Claymont, DE; Orlando & Miami, FL; Atlanta, GA; Indianapolis, IN; IA; KS; Louisville, KY; Baton Rouge, LA; Augusta, ME; MD: MA; Detroit & Rochester, MI; MN; Cleveland, MS; MO; Helena, MT; NE; Carson City, NV; Concord, NH; NJ; NY; NC; Newburg & Bismarck, ND; OH; Oklahoma City, OK; Portland, OR; PA; Providence, RI; Sumter, SC; Rapid City & Pierre, SD; Chattanooga & Nashville, TN; TX; Salt Lake City, Ut; Burlington, VT; VA; WI; and Cheyenne, WY. Supporting shippers: Pheoll Mfg. Div. Allied Prod., Inc., 5700 W. Roosevelt Rd., Chicago, IL 60650; Rexnord, Inc., 13943 Park, Dolton, IL 60419; Owens Illinois, Inc., Kimble-Products, 12th & Arnold St., Chicago, IL 60411; Edwal Scientific Products Division, 12110 S. Peoria St., Chicago, IL 60643.

MC 156148 (Sub-4–2), filed May 27, 1982. Applicant: AMERICAN CHARTER, INC., 2907 11th Street, Rock Island, IL 61201. Representative: Abraham A. Diamond, 29 South La Salle St., Chicago, IL 60603. *Passengers and their baggage,* in the same vehicle with passengers, in round-trip, charter and special operations, beginning and ending at points in Platte, Clay and Jackson Counties, MO, and extending to points in the United States. Supporting shippers: There are eight statements of support attached.

MC 161620 (Sub-4–1TA), filed May 25, 1982. Applicant: METRO TRANSPORT, INC., 30021 Wixom Road, Wixom, MI 48096. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. *Contract* irregular: *Sulphates,* in bulk, in dump vehicles, between Wayne, Oakland and Macomb Counties, MI, and Union County, OH, on the one hand, and, on the other, Indianapolis and Lake County, IN, and Union County, OH, under continuing contract with Crown Chemical Company. Supporting shipper: Crown Chemical Co., Inc., P.O. Box 2225, Indianapolis, IN 46206.

MC 161845 (Sub-4–1), filed May 27, 1982. Applicant: OBERLANDER LITTLE ACRES INC., 605 North Burke St., Wolcott, IN 47955. Representative: Allen Oberlander, 605 North Burke St., Wolcott, IN 47955. *Contract irregular: Metal products* (no tank or bulk movements) Between Watseka, IL and points in and east of MD, SD, NE, KS, OK, TX. Restricted to traffic moving under a continuing contract with T & D Metal Products, 601 East Walnut St., Watseka, IL. Supporting shipper: T & D Metal Products, 601 East Walnut St., Watseka, IL.

MC 162177 (Sub-4–1TA), filed May 24, 1982. Applicant: SPORTS TRIPS, INC., 4081 Brindlewood Court, Elgin, IL 60120. Representative: William L. Fairbank, 2400 Finanical Center, Des Moines, IA 50309. *Passengers and their baggage, in charter operations,* beginning and ending at points in Du Page, Cook and Kane Counties, IL and extending to points in Fayette County, WV. Supporting shipper: Whitewater Adventures, Inc., 20 Allen Drive, Elgin, IL 60120.

MC 162178 (Sub-4–1TA), filed May 24, 1982. Applicant: WAYNE C. SPICHER, an individual, d.b.a. TRIPLE S TRANSPORT, 7993 First Road, Bremen, IN 46506. Representative: Paul D. Borghesani, Katz & Borghesani, 300 Communicana Bldg., 421 So. Second Street, Elkhart, IN 46516, Phone: (219) 293–3597. *Contract,* irregular: *Round and flat steel wire, conduit, strand, nylon tubing liner, wooden reels, spools, and machinery,* between South Bend, IN; Blytheville and Des Arc, AR; Milan, TN; Fairfield, IA; Adrian, MI; Sedalia and Moberly, MO; N. Haven, CT; Lodi, NJ; Monessen, Exeter, Sunbury, Wilkes-Barre, and West Pittston, PA under continuing contract(s) with Acco Industries, Inc. Supporting shipper: Acco Industries, Inc., 1217 Walnut Street, South Bend, Indiana 46619.

MC 162203 (Sub-4–1TA), filed May 26, 1982. Applicant: OLAND INC., Union Stockyards, West Fargo, ND 58078. Representative: Kent Oland (same). *Metal buildings,* in motor vehicles, from Henry County, IA, and points in IL, to points in ND. Supporting shipper: Dakota Grain Systems, Main Avenue, West Fargo, ND.

The following applications were filed in region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102.

MC 96878 (Sub-5–6TA), filed May 24, 1982. Applicant: CONSOLIDATED TRANSFER AND WAREHOUSE CO., INC., 1251 Taney, North Kansas City, MO 64116. Representative: Alfred L. King (same as applicant). *Insulating materials* between Kansas City Commercial Zone (Kansas City, MO and KS) and points in KS, MO, AR, OK, TX, LA, MS, GA, AL, KY, TN, IL, IN, OH, MI, CO, WI, MN, UT, AZ, IA, NE, ND, and SD. Supporting shipper: Owens Corning Fiberglas, Sunshine and Fiberglas Rd., Kansas City, KS.

MC 147868 (Sub-5–1TA), filed May 25, 1982. Applicant: OKLAHOMA WESTERN LINES, INC., 1100 North

Broadway, Checotah, OK 74426. Representative: Thomas A. Stroud, 109 Madison Ave., Memphis, TN 38103. *Grout and thinsett, and materials and supplies used in the manufacture and distribution thereof,* between points in AL, on the one hand, and, on the other, points in AR, OK, TX, LA, MS and TN. Supporting shipper: Diversified Manufacturers, Inc., 640 First Ave., N, Birmingham, AL 35203.

ICC MC 148138 (Sub-5–1TA), filed May 24, 1982. Applicant: F & F TRANSFER, INC., 3316 Plaza Drive, Chalmette, LA 70043. Representative: Frank J. Heim Sr. (same as applicant). *General commodities* between Orleans Parish, LA on the one hand, and on the other, the states of LA, MS, AL, TX, having prior or subsequent movement by rail. Supporting shipper: Hub City of Louisiana Terminals, Inc., 1919 Veterans Boulevard, Suite 201, Kenner, LA 70062.

MC 151118 (Sub-5–17 TA), filed May 24, 1982. Applicant: MDR CARTAGE, INC., 516 West Johnson, Jonesboro, AR 72401. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. *Metal products* between points in Smith County, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Texas Imperial American, Inc., P.O. Box 878, Tyler, TX 75710.

MC 153723 (Sub-5–13 TA), filed May 24, 1982. Applicant: A & M ENTERPRISES, INC., Post Office Box 884, Springdale, AR 72764. Representative: George Spencer, 7 North Block, Fayetteville, AR 72701. *Evaporative Air Coolers and Accessories* between Pulaski County, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Essick Air Products, Inc., 313 Phillips Road, North Little Rock, AR 72114.

MC 154121 (Sub-5–12 TA), filed May 24, 1982. Applicant: TRAILINER CORP., 2169 E. Blaine, Springfield, MO 65803. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *General commodities (except classes A and B explosives, household goods, and commodities in bulk),* between the facilities used or utilized by Sterling Drug, Inc. at points in the US (except AK and HI) on the one hand, and, on the other, points in the US (except AK and HI). Supporting shipper: Sterling Drug, Inc., 90 Park Ave., New York, NY 10016.

MC 154234 (Sub-5–3 TA), filed May 24, 1982. Applicant: LAMBERT TRANSFER CO., 666 Grand Ave., Des Moines, IA 50309. Representative: Kenneth L. Kessler, P.O. Box 855, Des Moines, IA 50304. *Building materials* between points in MN, on the one hand, and, on the other, points in WY, KS, MT, ND, SD, MO, IA, WI, IL, MI, and IN. Supporting shipper: The Mac Gillis & Gibbs Co., P.O. Box 12576, New Brighton, MN 55112.

MC 154813 (Sub-5–2 TA), filed May 24, 1982. Applicant: DALLAS SERVICE CORPORATION, P.O. Box 1841, Des Moines, IA 50306. Representative: R. J. Denkhoff, 3000 Grand, Des Moines, IA 50312 *Cement,* from Des Moines, IA, to points in NE. Supporting shipper: Monarch Cement Co., Humboldt, KS 66748.

MC 156336 (Sub-5–1TA), filed May 24, 1982. Applicant: OSCEOLA WASTE MATERIALS, INC., P.O. Box 752, Industrial Drive, Osceola, AR 72370. Representative: Thomas B. Staley, 1550 Tower Building, Little Rock, AR 72201. *Beer and malt beverages* from St. Louis, MO, to West Memphis, AR. Supporting shipper: Arkansas Distributing Company, Inc., 800 East Barton Street, West Memphis, AR 72301.

MC 161635 (Sub-5–1TA), filed May 24, 1982. Applicant: ORVAL E. AND LILLIAN T. SMITH, d.b.a. SPRINGFIELD-SEDALIA EXPRESS, 2335 E. Parkwood, Springfield, MO 65803. Representative: Orval E. Smith (same address as applicant). *General commodities, (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk),* between Booneville, Cole Camp, Columbia, Cross Timbers, Fristoe, Hermitage, Knob Knoster, LaMonte, Lincoln, Louisburg, Marshall, Preston, Sedalia, Smithton, Springfield, Tipton, Urbana, Warrensburg, Warsaw, and Windsor, MO, and their commercial zones. Supporting shippers: 10.

Note.—Applicant intends to interline.

MC 162092 (Sub-5–1TA), filed May 24, 1982. Applicant: RAY'S TRUCKING COMPANY, P.O. Box 2808, Bryan, TX 77801. Representative: Nelson M. Davidson, Jr., P.O. Box 1148, Austin, TX 78767. *Mercer Commodities,* between points in CO, LA, NM, OK, WY, KS, and MS on the one hand and, on the other, points in TX. Supporting shippers: 8.

MC 162150 (Sub-5–1TA), filed May 24, 1982. Applicant: ORMSTON TRANSPORTATION, INC., 3801 Trailmobile, Houston, TX 77013. Representative: James M. Doherty, P.O. Box 1945, Austin, TX 78767. (1) *Machinery, equipment, materials, and supplies used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, (2) machinery, materials, equipment, and supplies used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof, and (3) earth drilling machinery and equipment, materials, supplies, and pipe incidental to, used in, or in connection with, (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells between* points in AK, AZ, AR, CA, CO, ID, KS, LA, MS, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WY. Supporting shippers: 23.

MC 162151 (Sub-5–1TA), filed May 24, 1982. Applicant: NORTH SIDE PRODUCE COMPANY, 6029 North 16 Street, Omaha, NE 68101. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Contract; Irregular. *Meat and packinghouse products* from Grand Island, NE to points in IA and KS under continuing contract(s) with Nash-Finch Company of Minneapolis, MN. Supporting shipper: Nash-Finch Company, 3636 Stolley Park Road, Grand Island, NE 68801.

MC 162152 (Sub-5–1TA), filed May 24, 1982. Applicant: BILL JORDAN TRUCKING, INC., 5210 Oates Road, Houston, TX 77013. Representative: Paul S. Broussard, 501 Crawford, Suite 401, Houston, TX 77002. *Mercer commodities, construction equipment and supplies, pipe, when not used as oilfield equipment, metal and metal products, and earth drilling machinery and equipment* between points in AZ, AR, CA, CO, ID, IA, KS, LA, MN, MS, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, and WY. Supporting shippers: 12.

MC 26825 (Sub-5–27TA), filed May 27, 1982. Applicant: ANDREWS VAN LINES, INC., P.O. Box 1609, Norfolk, NE 68701. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501. *Clay products,* between points in Thomas County, GA, on the one hand, and, on the other, points in the U.S. Supporting shipper: Waverly Mineral Products Company, Quality Meigs, Thomas County, GA 31765.

MC 37640 (Sub-5–2TA), filed May 26, 1982. Applicant: TRANSPORTATION ENTERPRISES, INC., 1135 Gunter, Austin, TX 78702. Representative: Paul D. Angenend, 1806 Rio Grande, P.O. Box

2207, Austin, TX 78768. *Passengers and their baggage, in charter and special party operations* beginning at points in Bexar and Comal Counties, TX, and extending to points in the United States (except AK and HI). Supporting shippers: 17.

MC 88368 (Sub-5–15TA), filed May 27, 1982. Applicant: CARTWRIGHT VAN LINES, INC., 11901 Cartwright Avenue, Grandview, MO 64030. Representative: C. Max Stewart (same as applicant). *Fork Lift Trucks,* between Memphis, TN, on the one hand, and, on the other, Kansas City, KS and points within 200 miles of Kansas City, KS. Supporting shipper: Oram Equipment, Inc., 1034 S. 8th St., Kansas City, KS 66105.

MC 131031 (Sub-5–2TA), filed May 26, 1982. Applicant: COM–TRAN, INC., P.O. Box 12574, North Kansas City, MO 64116. Representative: James M. Hagan, 4625 Highway 80 East, Mesquite, TX 75150. *Food and Related articles,* between TX, LA and states east of ND, SD, NE, CO, NM. *Building, Roofing and Paving materiels,* between AR and TX. Supporting shippers: 5.

MC 144858 (Sub-5–15TA), filed May 28, 1982. Applicant: DENVER SOUTHWEST EXPRESS, INC., P.O. Box 9799, Little Rock, AR 72219. Representative: Scott E. Daniel, P.O. Box 9799, Little Rock, AR 72219. *Teletypewriters and materials, parts and supplies used in the manufacture and distribution of teletypewriters,* between Stueben County, NY, and Pulaski County, AR. Supporting shipper: Teletype Corporation, 8000 Interstate No. 30, Little Rock, AR 72209.

MC 145970 (Sub-5–4TA), filed May 28, 1982. Applicant: SKILLETT & SONS, INC., P.O. Box 196, Rush Center, KS 67575. Representative: William B. Barker, P.O. Box 1979, Topeka, KS 66601. *Metal Products and Machinery,* Between points in KS on and West of U.S. Hwy 81, on the one hand, and on the other, points in the U.S. (except AK and HI). Supporting shippers: 6.

MC 146853 (Sub-5–8TA), filed May 28, 1982. Applicant: FRANK F. SLOAN, d.b.a. HAWKEYE WOODSHAVINGS, Route 1, Runnells, IA 50327. Representative: Richard D. Howe, Myers, Knox & Hart, 600 Hubbell Building, Des Moines, IA 50309. *(1) Wood windows, sliding glass doors, wood folding doors, partitions, and lumber, and (2) materials and supplies (except in bulk) used in the manufacture, sale, or distribution of the commodities in (1),* from Pella, IA, to points in WA, OR, and CA. Supporting shipper: Pella Rolscreen Company, Pella, IA.

MC 146853 (Sub-5–9TA), filed May 28, 1982. Applicant: FRANK F. SLOAN, d.b.a. HAWKEYE WOODSHAVINGS, Route 1, Runnells, IA 50327. Representative: Richard D. Howe, Myers, Knox & Hart, 600 Hubbell Building, Des Moines, IA 50309. *Sugar,* from Ovid, Sterling, Loveland, Ft. Morgan, and Weld County, CO; Torrington, WY; Twin Falls and Nampa, ID; Kansas City, MO; Moorhead, Crookston, Bongards, and E. Grand Forks, MN; Fredericksburg, Mason City, and Des Moines, IA; Chicago and Belividere, IL; Schofield, Wisconsin Rapids, Fond du Lac, and Owen, WI; Goodland, KS; and Billings, MT, to points in CO, IA, IL, IN, KS, MI, MN, MO, MT, NE, ND, OH, OK, PA, SD, TX, and WI. Supporting shipper: International Distributing Corp., 4240 Utah Street, St. Louis, MO 63116.

MC 147135 (Sub-5–1TA), filed May 28, 1982. Applicant: WAYNE'S DELIVERY SERVICE, INC., 2226 Bentley Manor Drive, Fenton, MO 63023. Representative: Thomas P. Rose, P.O. Box 205, Jefferson City, MO 65102. (1) *Pallets, Frames and Shipping Containers* from St. Louis, MO to points in IL, and (2) *Materials and Supplies used in the manufacture of the commodities named in (1) above* from points in IL to St. Louis, MO. Supporting shipper: Innovative Enterprises, Inc., 7208 Weil Avenue (P.O. Box 13049), St. Louis, MO 63119.

MC 147196 (Sub-5–52TA), filed May 27, 1982. Applicant: ECONOMY TRANSPORT, INC., P.O. Box 10686, Jefferson, LA 70181–0686. Representative: Martin White, P.O. Box 5387, Richardson, TX 75080. *Plastic articles* between TX and points in the U.S. Supporting shipper: Metroplex Foam, 950 S. Sixth Ave., Mansfield, TX.

MC 147196 (Sub-5–53TA), filed May 27, 1982. Applicant: ECONOMY TRANSPORT, INC., P.O. Box 10686, Jefferson, LA 70181–0686 Representative: Martin White, P.O. Box 5387, Richardson, TX 75080. *Bonded, plain, or duraflex synthetic NOI, staple or other than staple, carpet, cushions, pads or padding noi,* between TX and points in the U.S. Supporting shipper: Hobbs Bonded Fibers, P.O. Box 151, Groesbeck, TX 76642.

MC 149157 (Sub-5–8TA), filed May 28, 1982. Applicant: STYLE CRAFT TRANSPORT, INC., Highway 71 South, Milford, IA 51351. Representative: Foster L. Kent, P.O. Box 285, Council Bluffs, IA 51502. *Contract;* Irregular. *Such merchandise as is dealt in, or used by, distributors of electronic games,* from Los Angeles, Milpitas and San Diego, CA and Seattle, WA, to Omaha, NE. Supporting shipper: Central Distributing Co., 3814 Farnam, Omaha, NE 68131.

MC 156606 (Sub-5–2TA), filed May 28, 1982 Applicant: ROBERT L. LAVER AND WILMA J. LAVER, d.b.a. LAVER TRUCKING, Route 1, LaHarpe, KS 66751. Representative: Eugene W. Hiatt, Hiatt, Hiatt & Carpenter, Chartered, 207 Casson Building, 603 Topeka Boulevard, Topeka, KS 66603. *General Commodities* between TX, OK, KS, NE, AR, MO, LA, SD, CO, IA. Supporting shippers: Our Own Hardware Burnsville, MN; Ralph Cummins Truck & Equipment Sales, Gas City, KS; Humboldt Industries, Humboldt, KS; Brown-Strauss, Kansas City, KS; Our Own Hardware, Ottawa, KS.

MC 157061 (Sub–5–9TA), filed May 26, 1982 Applicant: ATLAS CARRIERS, INC., 800 S. Main St., Searcy, AR 72143. Representative: R. Connor Wiggins, Jr., 100 N. Main Bldg., Suite 909, Memphis, TN 38103. (1) *Pumps and windmills, and related accessories* from facilities of Valley Pump Group, Inc. at Conway, AR, to points in the U.S., except AK and HI; and, (2) *components, materials and supplies used in the manufacture of pumps and windmills* from points in the U.S., except AK and HI, to facilities of Valley Pump Group, Inc. at Conway, AR.

MC 162006 (Sub–5–4TA), filed May 27, 1982. Applicant: T&M CONSTRUCTION CO., INC., Highway 33, Box 589, Watonga, OK 73772. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154. *Oil field commodities (except drilling rigs),* between points in AR, LA, MS, OK, TX and WY for the account of Petco Armstrong Fishing and Rental Tools. Supporting shipper: Petco Armstrong Fishing and Rental Tools, 3500 N. Cimarron Road, Oklahoma City, OK 73099.

MC 162242 (Sub–5–1TA), filed May 28, 1982 Applicant: COMMERCIAL TERMINAL SERVICE, INC., 723 South 12th Street, Omaha, NE 68102. Representative: James F. Crosby & Associates, 7363 Pacific St., Suite 210B, Omaha, NE 68114. *General commodities, (except commodities in bulk, household goods, and Classes A & B explosives).* (1) Between Boone and Des Moines, IA; Kansas City, KS; Minneapolis-St. Paul, MN; Kansas City, MO; and Fremont, Lincoln, and Omaha, NE (and points in their respective commercial zones) on the one hand, and, on the other, points in IA, KS, MN, MO, NE, ND, and SD. Restriction: Restricted to shipments having a prior or subsequent movement via rail. (2) Between points in NE on the one hand, and, on the other, points in IA, KS, MN, MO, NE, and SD. Restriction:

Restricted to shipments having a prior or subsequent movement via rail. Supporting shippers: 1. Burlington Northern, Executive Tower, 1405 Curtis St., Denver, CO 80202; 2. National Piggyback Service, Inc., 11325 Pegasus St., Suite S118, Dallas, TX 75238; 3. Kawasaki Motors Corporation, USA, 5500 NW 27th Street, Lincoln, NE 68521.

MC 162243 (Sub–5–1TA), filed May 28, 1982 Applicant: DALE H. WILLIAMS, an individual, 7309 So. 78th Street, Omaha, NE 68128. Representative: James F. Crosby & Associates, 7363 Pacific Street, Suite 210B, Omaha, NE 68114. *Food and related products,* from Chicago and Decatur, IL; Cedar Rapids and Keokuk, IA; and Lincoln, NE (and points in their commercial zones) to Phoenix, AZ; Portland, OR; Rexburg, ID; Las Vegas, NV; Salt Lake City, UT (and points in their commercial zones) and points in Los Angeles, Riverside, Orange, Alameda, San Francisco, San Mateo, Santa Clara, Marin, Contra Costa, Tulare, and Sacramento Counties, CA. Supporting shipper: Basic Foods Company, 1211 E. OLympic Blvd., Los Angeles, CA 90021.

The following applications were filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, P.O. Box 7413, San Francisco, CA 94120.

MC 151638 (Sub-6–1TA) filed May 21, 1982. Applicant: M. D. NICHOLS d.b.a. BECO-BANNER EXPRESS CO., P.O. B. 3452, Fremont, CA 94539. Representative: M. D. Nichols (same as applicant). *Contract Carrier,* Irregular routes: *Petroleum products and related products* which are the property of Western Lubricants company, between all points within CA, AR, NM, TX OK, CO, UT, and NV, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Western Lubricants, Inc., 1213 Lincoln Ave., San Jose, CA 95125.

MC 160161 (Sub-6–2–TA) filed May 21, 1982. Applicant: COASTMASTER TRANSPORT, 4904 Lacey Blvd. S.E., Lacey, WA 98503. Representative: Kenneth R. Mitchell, 2320A Milwaukee Wy, Tacoma, WA 98421. *Contract Carrier,* Irregular routes: *1) Truck brake drums and 2) Pulp and Paper Manufacturing Machine Parts,* from Washington County, OR to points in AL, AZ, AR, CA, CO, FL, GA, ID, IL, MN, MT, NJ, NC, NY, OH, OK, PA, SC, TX, UT and WA., for 270 days. Supporting shipper: Durametal Corporation, 9560 SW Herman Rd. (P.O. B. 606) Tualatin, OR 97602.

MC 162183 (Sub-6–1TA) filed May 25, 1982. Applicant: PETER CORDOVA & WALTER MAXWELL d.b.a. LAS VEGAS CHARTER TOURS, 12703 Lorca Rd., La Mirada, CA 90638. Representative: Walter Maxwell, 433 Baskin, Valinda, CA 91744. *Passengers and their baggage* in the same vehicle in charter or special operation between Los Angeles, CA on the one hand and points in Las Vegas, NV on the other for 180 days. Supporting shippers: Compton Social Club, 1224 S. Stoneacre, Compton, CA 90221; Good Shepherd Club, Mt. Carmel Baptist Church, 11702 S. Tarbon, Hawthorne, CA 90250; All Nations Citizens Senior Club, 2317 Michigan Ave., Los Angeles, CA 90033.

MC 162166 (Sub-6–1TA), filed May 24, 1982. Applicant: O & B TRANSPORTATION, INC. 2118 S. Fern, Ontario, CA 91761. Representative: Donald R. Hedrick, POB 4334, Santa Ana, CA 92702. *Chemicals and related products,* from points in Los Angeles and Orange County, CA to points in OR, WA, MT, WY, ID, CO, UT, NM, AZ, NV and TX, for 270 days. Supporting shippers: DeSoto, Inc., 615 W. Grove, Orange, CA 92668; Borden, Inc., 14557 E. Bonelli Ave., City of Industry, CA 91745.

MC 142311 (Sub-6–5TA), filed May 24, 1982. Applicant: QUALITY STEAKS TRANSPORTATION CO., INC., 5100 Race Ct., Denver, CO 80216. Representative: Charles M. Williams, 665 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. *Such Commodities as are dealt in or used by manufacturers and distributors of dairy products (except in bulk),* From points in IL, MN, MO, KS, TN, OH, and WY, to the facilities of Gillette Dairy, Inc. at or near Norfolk, NE, for 270 days. Supporting shipper: Gillette Dairy, Inc., Box 19, Norfolk, NE 68701.

MC 146724 (Sub-6–4TA), filed May 21, 1982. Applicant: DEAN RAPPLEYE, INC., 7444 South 2200 West, P.O.B. 204, West Jordan, UT 84084. Representative: Daniel O. Hands, 205 West Touhy Ave., Suite 200A, Park Ridge, IL 60068. *Hydrated lime and fertilizer* (except in bulk), from the ports of entry along the U.S.–C.D. International Boundary Line at points in ID, MT and WA to points in ID, MT, OR and WA. Supporting shipper: North Pacific Lumber d.b.a. North Pacific Trading Co., 1505 S. E. Gideon, Portland, OR 97203.

MC 162182 (Sub-6–1TA), filed May 25, 1982. Applicant: DANNY F. SHUSS d.b.a. SHUSS TRUCKING, 4918 Hiwy 348, Olathe, CO 81425. Representative: Danny F. Shuss (same as applicant). *Steel and mining supplies* between points in CO on the one hand, and, on the other, TX, NM, UT, WY, AZ, OK, NE and ID for 270 days. Supporting shippers: Clearfield Mfg., Inc., 352 S. Main, Clearfield, UT 84015; H & H Bolt and Supply, Inc., 686 Industrial Blvd., Delta, CO 81416.

MC 160929 (Sub-6–3TA), filed May 24, 1982. Applicant: T–N–T SERVICES, INC., 711 N. Fairview, Santa Ana, CA 92703. Representative: Charles J. Kimbal, 1600 Sherman St., #665, Denver, CO 80203. *Contract,* irregular; *Commodities dealt in by manufacturers and distributors of fiberglass products,* between the facilities of Kimbstock, Inc., at or near Santa Ana, CA, Dallas, TX and Pasco, WA, on the one hand, and points in the U.S. in and east of U.S. Highway 85, on the other, under contract(s) with Kimstock Inc. for 270 days. Supporting shipper: Kimstock, Inc., 2200 South Yale Avenue, Santa Ana, CA 92704.

MC 162165 (Sub-6–1TA), filed May 24, 1982. Applicant: WILSON TRUCKING, Box 619, Evansville, WY 82636. Representative: Darrell Wilson (same as applicant). *Mercer authority,* machinery, material, equipment and supplies, used in, or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission and distribution of natural gas and petroleum and their products and by products. Between WY, MT, CO, ID, NM, AZ, UT, ND, SD, NE, WA, OR, and NV, for 270 days. Supporting shipper: There are 8 shippers. Their statements may be examined at the Regional office listed.

MC 162146 (Sub-6–1TA), filed May 24, 1982. Applicant: FRANK J. BRAZIL TRUCKING CO., 500 Richards Blvd., Sacramento, CA 95814. Representative: Frank J. Brazil (same as applicant). *General commodities,* except hazardous wastes, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between counties in California north of, and including Monterey, San Benito, Fresno, and Alpine counties, for 270 days. An underlying ETA seeks 120 days. Applicant proposes to interline at Sacramento, California. Supporting shippers: Roadway Express, Inc., Box 471, 1077 Gorge Blvd., Akron, OH 44309. Acme Fast Freight Inc., P.O.B. 1226, Sacramento, CA 95806. High Sierra Express, Inc., P.O.B. 7040, Reno, NV 89510.

MC 146076 (Sub-6–1TA), filed May 25, 1982. Applicant: L. K. FARMER, INC., 786–10th St., Meeker, CO 81614. Representative: Keith Tempel, 594 Main St., P.O.B. 839, Meeker, CO 81641. *Contract Carrier;* Irregular Routes: *Coal* from the Salt Creek Coal Mine located 17 miles north of Loma, CO to Rock Springs, WY for 270 days. Supporting

shipper: Island Creek Coal Sales, CO., 9745 E. Hampden, Suite, 300, Denver, CO 80231.

MC 162197 (Sub-6–1TA), filed May 25, 1982. Applicant: G.E.M. TRANSPORTATION, INC., P.O.B. 426, 2232 S. 7200 W., Magna, UT 84044. Representative: Macoy A. McMurray, 800 Beneficial Life Tower, 36 S. State St., Salt Lake City, UT 84111. *Contract Carrier;* Irregular Routes: *General Commodities* (except Class A & B explosives) between ID, MT, NV, UT, & WY for 270 days. Supporting shipper: Monroc, Inc., 1730 Beck St., Salt Lake City, UT 84103.

MC 136798 (Sub-6–2TA), filed May 27, 1982. Applicant: FORTUNE CORPORATION d.b.a. MAUST TRANSFER, 1762 6th Ave., Seattle, WA 98124. Representative: B. F. Brown, 581 Strander Blvd., Seattle, WA 98188. *Food and related products,* between Commercial Zone of Seattle, WA, and Whatcom, Skagit and Pierce counties, in WA, for 270 days. Supporting shippers: There are six shippers. Their statements may be examined at the Regional Office listed above.

MC 162212 (Sub-6–1TA), filed May 24, 1982. Applicant: URIAS R. MAYS d.b.a. MAYS DELIVERY SERVICE, 1817 W. 77th St., Los Angeles, CA 90047. Representative: Patricia M. Schnegg, 707 Wilshire Blvd., #1800, Los Angeles, CA 90017. *Prepared Animal Feed* from Peoria, IL to Los Angeles County, CA, for 270 days. Supporting shipper: Gardina Seed and Feeding Corp., 4800 S. Boule Ave., Vernon, CA 90058.

MC 144476 (Sub-6–1TA), filed May 26, 1982. Applicant: METZ BEVERAGE CO., INC., P.O.B. 828, Sheridan, WY 82801. Representative: Timothy R. Stivers, P.O.B. 1576, Boise, ID 83701. *(1) Malt Beverages and related advertising materials and (2) empty used beverage containers and materials and supplies used in and dealt in by breweries,* between the facilities utilized by the Adolph Coors Co. in Jefferson County, CO, on the one hand, *And,* on the other, points in WY and NE, for 270 days. Supporting shipper: Adolph Coors Co., Golden, CO 80401.

MC 162196 (Sub-6–1TA), filed May 25, 1982. Applicant: SUPERIOR INSTALLATION SERVICES, INC., 2034 S. Clayton, Denver, CO 82010. Representative: Joseph E. Rebman, 314 N. Broadway, Suite 1300, St. Louis, MO 63102. *Contract Carrier;* Irregular Routes: *Such commodities as are dealt in by retail department stores,* between the facilities of H. S. Pogue Company, in Hamilton Couty, OH, on the one hand, and, on the other, points in Franklin, Dearborn, Ripley, Ohio and Switzerland Counties, IN, and Campbell, Kenton, Boone, Bracken, Pendleton, Grant, Gallatin and Owen Counties, KY, under a continuing contract(s) with H. S. Pogue Company for 270 days. Supporting shipper: H. S. Pogue Company, Fourth & Race Sts., Cincinnati, OH 45202.

MC 161199 (Sub-6–2TA), filed May 24, 1982. Applicant: WESTERN FREIGHT LINES, INC., 300 Elliott Ave. W., Suite 220, Seattle, WA 98119. Representative: Henry C. Winters, 200 Jafco Office Bldg., 12600 S.E. 38th St., Bellevue, WA 98006. *Contract Carrier,* Irregular routes: *Food and related products* from facilities of Superior Packing Co. at Ellensburg, WA, and Dixon, CA, to points in CA, IL, MA, NJ, NY, OH, and WA, under continuing contract(s) with Superior Packing Co. for 270 days. Supporting shipper: Superior Packing Co., P.O.B. 277, Ellensburg, WA.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–15280 Filed 6–4–82: 8:45 am]

BILLING CODE 7035–01–M

[Volume No. 263]

Motor Carriers; Permanent Authority Decisions; Restriction Removals Decision-Notice

Decided: May 28, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR Part 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

CANADIAN CARRIER APPLICANTS: In the event an application to transport property, filed by a Canadian domiciled motor carrier, is unopposed, it will be reopened on the Commission's own motion for receipt of additional evidence and further consideration in light of the record developed in Ex Parte No. MC–157, *Investigation Into Canadian Law and Policy Regarding Applications of American Motor Carriers For Canadian Operating Authority.*

FINDINGS:

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Shaffer, Ewing, and Williams.

Agatha L. Mergenovich,

Secretary.

MC 5709 (Sub-9)X, filed May 14, 1982. Applicant: PEHLER AND SONS, INC., Arcadia, WI 54612. Representative: Edward H. Instenes, P.O. Box 676, Winona, MN 55987. Lead, broaden (1) to "general commodities (except classes A and B explosives)" from general commodities with usual exceptions, "food and related products, chemicals and related products and farm products" from flour and feeds; "farm products" from apples; and "chemicals and related products and food and related products" from fertilizers, meat tankage and bone meal; (2) Arcadia and Dodge, WI to Trempealeau County; Buffalo, WI to Buffalo County; Winona, MN and points in MN within 35 miles thereof to Winona, Wabasha, Olmsted, Fillmore and Houston Counties; Winona, MN to Winona County; Ettrick, WI to Trempealeau County, North Bend, Franklin and Melrose, WI to Jackson County; Hamilton, WI to LaCrosse County; Caledonia, Gale, Preston to Trempealeau County; Galesville, WI and points within 50 miles thereof to Trempealeau, LaCrosse, Jackson, Buffalo, Monroe and Vernon Counties; Red Wing, MN to Goodhue County; Dubuque, IA to Dubuque County; Burnside, Lincoln, Pigeon, Summer, Buffalo, Cross, Dover, Glencoe, Montana and Waumandee to Trempealeau and Buffalo Counties, and (3) to radial authority.

MC 59517 (Sub-3)X, filed March 30, 1982, noticed in FR May 4, 1982, republished to notice the following omissions: Applicant: HARRY E. SHEA SONS, INC., 701 U.S. Route 130, Riverton, NJ 08077. Representative: Lester R. Gutman, 805 McLachlen Bank Building, 666 Eleventh Street, NW., Washington, DC 20001. Lead: broaden (1) agricultural commodities to "farm products, food and related products, tobacco products, and chemicals and related products," (2) lime to "chemicals

and related products, clay, concrete, glass, or stone products, and ores and minerals," (3) lumber to "building materials," and (4) Riverton, NJ, and points within 25 miles of Riverton to "points in Camden, Gloucester, Burlington, Atlantic, Ocean, Mercer, Hunterdon, and Monmouth Counties, NJ, and Philadelphia, Delaware, Chester, Montgomery, and Bucks Counties, PA."

MC 119557 (Sub-12)X, filed May 24, 1982. Applicant: KENNETH L. STUART, d.b.a. K & S TANKLINE, P.O. Drawer R, Copperhill, TN 37317. Representative: K. Edward Wolcott, 235 Peachtree St., NE., Suite 1200, Atlanta, GA 30303. Sub-8 certificate: Broaden to (1) "chemicals and related products" from sulphur dioxide, in bulk, in tank vehicles, and (2) radial authority.

MC 120171 (Sub-5)X, filed April 27, 1982, noticed in FR May 14, 1982, republished to notice the following omissions: Applicant: FAIRSIDE TRUCKING, INC., 7 Chilton Road, Brockton, MA 02401. Representative: Francis E. Barrett, Jr., Esq., 10 Industrial Park Road, Hingham, MA 02043. Sub-No. 1: broaden from "points in Vermont, New Hampshire, and Maine, south of a line extending in an easterly direction from Charlotte, VT, to Augusta, ME, and west of a line extending in a southerly direction from Augusta, ME, passing through Gardiner and Bath, ME, to the Atlantic Coast, including the points specified" to "points in Vermont in and of Chittenden, Washington, and Caldonia Counties, points in New Hampshire, and points in Maine in, south, and west of Oxford, Androscoggin, Kennebec, and Sagadahoc Counties."

MC 142040 (Sub-8)X, filed May 21, 1982. Applicant: AMBER DELIVERY SERVICE, INC., 25 Franklin St., Malden, MA 02148. Representative: Joseph T. Bambrick, Jr., P.O. Box 216, Douglassville, PA 19518. Subs 1 and 3: remove the restricted against the transportation of packages or articles weighing in the aggregate more than 500 pounds from one consignor to one consignee in/on any day.

MC 144858 (Sub-50)X, filed May 21, 1982. Applicant: DENVER SOUTHWEST EXPRESS, INC., P.O. Box 9799, Little Rock, AR 72219. Representative: Scott E. Daniel, P.O. Box 9799, Little Rock, AR 72219. Sub 39F (1) broaden confectionary to "food and related products"; (2) remove the facilities limitation at Chicago, IL and (3) to radial authority.

MC 147576 (Sub-1)X, filed April 26, 1982, previously noticed in the FR of May 7, 1982, republished as corrected this issue. Applicant: AWC TRANSPORTATION INC., 2113 West 30th St., Jacksonville, FL 32209. Representative: Martin Sack, Jr., 203 Marine National Bank Bldg., 311 W. Duval St., Jacksonville, FL 32202. Lead certificate: broaden to county-wide authority: facilities-Jacksonville, to Duval, Nassau, Baker, Bradford, Clay, and St. Johns Counties, FL. The purpose of this republication is to correct the territorial scope by adding St. Johns County to those previously published.

MC 150601 (Sub-5)X, filed May 20, 1982. Applicant: MCBURNEY TRANSPORT LTD., P.O. Box 427, Hagersville, Ontario, CD NOA 1HO. Representative: William J. Hirsch, 1125 Convention Tower, 43 Court St., Buffalo, NY 14202. Sub 3 certificate: (1) broaden frozen fruits, frozen berries, and frozen vegetables to "food and related products"; (2) broaden ports of entry at or near the Detroit, Niagara, St. Clair, St. Mary's and St. Lawrence Rivers to ports of entry located in New York and Michigan; (3) remove the restriction limiting traffic to shipments moving to or from points in Canada; and (4) remove the restriction against the transportation of shipments from Detroit or Port Huron, MI, to the International Boundary on the Detroit or St. Clair Rivers.

[FR Doc. 82-15282 Filed 6-4-82; 8:45 am]
BILLING CODE 7035-01-M

[I.C.C. Order No. 83; Service Order No. 1344]

Consolidated Rail Corp., et al; Rerouting Traffic

To: Consolidated Rail Corporation; Chesapeake and Ohio Railway; Grand Trunk Western Railroad Company; Michigan Northern Railway Company, Soo Line Railroad Company.

In the opinion of J. Warren McFarland, Agent, the Detroit and Mackinac Railway Company is unable to transport promptly all traffic offered for movement via Straits Car Ferry between St. Ignace and Mackinaw City, Michigan, because the car ferry is out of service. As this matter is considered to be outside the scope of a single railroad as provided by Ex Parte No. 376, this action by the Commission is required.

It is ordered:

(a) *Rerouting traffic.* The Detroit and Mackinac Railway Company being unable to transport promptly all traffic offered for movement via Straits Car Ferry between St. Ignace and Mackinaw City, Michigan, because the car ferry is out of service, those lines named above are authorized to reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. All traffic accepted for movement via this routing must be rerouted in accordance with this order and will not be subject to diversion or other charges beyond those covered by paragraph (d) of this order. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting. This order vacates Reroute Orders DM 1–82 and MN 1–82.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided for under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective 12:00 noon, May 21, 1982.

(g) *Expiration date.* This order shall expire at 11:59 p.m., June 30, 1982, unless otherwise modified, amended or vacated.

This order shall be served upon the Association of American Railroads, Transportation Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall

be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., May 21, 1982.

Interstate Commerce Commission,

J. Warren McFarland

Agent.

[FR Doc. 82-15284 Filed 6-4-82; 8:45 am]

BILLING CODE 7035-01-M

[I.C.C. Order No. 82; Service Order No. 1344]

Rerouting Traffic

To: Consolidated Rail Corporation; Michigan Interstate Railway Company; Chesapeake and Ohio Railway; Grand Trunk Western Railroad Company; Michigan Northern Railway Company; Green Bay and Western Railroad Company; Chicago and North Western Transportation Company; Soo Line Railroad Company; Norfolk and Western Railway Company, and Detroit, Toledo and Ironton Railroad Company.

In the opinion of J. Warren McFarland, Agent, the Ann Arbor Railroad System (Michigan Interstate Railway Company—Operator) is unable to transport traffic over its line north of Ann Arbor, Michigan, and to Kewaunee and Manitowoc, Wisconsin, via Frankfort, Michigan, due to the termination of its Designated operations for the State of Michigan. As this matter is considered to be outside the scope of a single railroad as provided by Ex Parte No. 376, and based on an apparent consensus of the parties involved on the need for such authority, this action by the Commission is necessary.

It is ordered:

(a) *Rerouting traffic.* The Ann Arbor Railroad System (AA) (Michigan Interstate Railway Company–Operator) being unable to transport promptly all traffic over its line north of Ann Arbor, Michigan, and to Kewaunee and Manitowoc, Wisconsin, via Frankfort, Michigan, due to the termination of its Designated operations between those points (See AA Embargo 2–82, Amendment 2, 4/23/82), that line and its connections are authorized to reroute any traffic routed via the points indicated. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. All traffic accepted for movement via this routing must be rerouted in accordance with this order and will not be subject to diversion or other charges beyond those covered by paragraph (d) of this order. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier reouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided for under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 12:00 noon, May 20, 1982.

(g) *Expiration date.* This order shall expire at 11:59 p.m., May 31, 1982, unless otherwise modified, amended or vacated.

This order shall be served upon the Association of American Railroads, Transportation Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., May 20, 1982.

Interstate Commerce Commission.

J. Warren McFarland,

Agent.

[FR Doc. 82-15283 Filed 6-4-82; 8:45 am]

BILLING CODE 7035-01-M

[No. 38749]

Motor Carriers; UTF Carriers, Inc.—Petition for Exemption From Tariff Filing Requirements Under 49 U.S.C. 10761(b)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: UTF Carriers, Inc., a motor contract carrier, has requested exemption from the requirement of 49 U.S.C. 10761(a) that it may provide transportation or service only if the rate for the transportation or service is contained in a tariff on file with the Commission. The sought relief is provisionally granted.

DATES: Comments are due within 15 days from the date of publication of this notice in the **Federal Register.** The sought relief will become effective 15 days after the close of the comment period if no adverse comments are received.

ADDRESS: An original and, if possible, 15 copies of comments should be sent to: Interstate Commerce Commission, Room 5356, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275–7277.

SUPPLEMENTARY INFORMATION: UTF Carriers, Inc. (UTFC) is a wholly owned subsidiary of Uniroyal, Inc. It provides transportation service for Uniroyal and USCO Services, Inc. (USCO), another subsidiary of Uniroyal, under permit No. MC–151583 (Sub-No. 1), issued June 9, 1981. Additionally, UTFC provides contract service for Delta Tire Corporation under a temporary authority permit issued July 23, 1981, in Docket MC–151583 (Sub-No. 1–2TA). Delta warehouses tires for Uniroyal and other tire manufacturers at Chattanooga, TN. UTFC transports the various manufacturers' tires to Uniroyal distribution areas.

UTFC argues that, because its business is so closely related to the business of its corporate affiliates, Uniroyal and USCO, it is not practical for UTFC to publish and supplement formal tariffs containing extensive rate information. UTFC also points out that its particular method of computing rates is extremely complex and burdensome and involves the use of numerous and extensive motor carrier rate bureau tariffs.

Section 10702(b) of the Interstate Commerce Act requires contract carriers to file actual and minimum rates for the transportation they provide. Section 10761 prohibits transportation without a

tariff. Section 10762 sets forth general tariff requirements, including contract carrier authority to file only minimum rates in certain instances.[1] Each of these sections authorizes the Commission to grant relief to contract carriers when in the public interest and consistent with the transportation policy of section 10101.

UTFC's request for relief appears rasonable. We note that much of the relief could otherwise be obtained through the compensated intercorporate hauling exemption in 49 U.S.C. 10524(b). Moreover, in this case, the limited public benefit gained by having UTFC's tariffs on file would not seem to justify requiring UTFC to bear the substantial administrative burden of publishing them. It appears that the requirement that this carrier file tariffs covering its operations is not in the public interest and that relief will promote the transportation policies of 49 U.S.C. 10101.

We therefore provisionally grant the sought exemption. If we receive timely filed adverse comments, we will issue a further decision addressing them and deciding whether this tentative approval ought to be made final.

This decision would not appear to have a significant effect on either the quality of the human environment or conservation of energy resources. However, comments may be submitted on these issues.

(49 U.S.C. 10702(b), 10761(b), and 10762(f))

Decided: May 28, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham, Sterrett, Andre, and Simmons. Commissioner Simmons did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-15286 Filed 6-4-82; 8:45 am]

BILLING CODE 7035-01-M

Water Carrier Temporary Authority Applications

The following was filed with the Regional Offices. Petition for Reconsideration is to be filed, within 20 days of this publication with the Regional Office noted in each caption summary. Replies to petition may be filed within 20 days of the date petition is filed. The following application was filed in region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102.

[1] UTFC has, apparently, concluded that the authority of Section 10762 to publish only minimum rates is not applicable.

WC 1349 filed May 26, 1982.

Applicant: INLAND RIVER TRANSPORATION CORPORATION, 10 South Brentwood Boulevard, St. Louis, MO 63105. Representative: Keith G. O'Brien, Esquire, 1729 H Street NW., Washington, D.C. 20006. Contract water *carbon (graphite) electrodes,* over all available waterways, between Pensacola, FL and Memphis, TN, under continuing contract(s) with Union Carbide Corp.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-15285 Filed 6-4-82; 8:45 am]

BILLING CODE 7035-01-M

Agricultural Cooperative to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

June 2, 1982.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Fur Breeders Argicultural Cooperative
(2) P.O. Box 295, Midvale, UT 84047
(3) P.O. Box 295, 8400 S. 600 W., Midvale, UT 84047
(4) Irene Warr, Suite 280, 311 S. State, Salt Lake City, UT 84111.

(1) South Texas Farm Freight Lines. Inc.
(2) Box 678, Combes, TX 78535
(3) 3700½ N. Commerce, Harlingen, TX 78535
(4) Jim Harlin, Box 678, Combes, TX 78535

(1) Sun Valley Growers, Inc.
(2) P.O. Box 2116, Mansfield, OH 44905
(3) 457 Walfield St., Mansfield, OH 44905
(4) Donald A. Long, P.O. Box 2116, Mansfield, OH 44905

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-15372 Filed 6-4-82; 8:45 am]

BILLING CODE 7035-01

[Finance Docket No. 29914]

Rail Carriers; Burlington Northern Railroad Company—Exemption—Abandonment Between Casselton and Amenia, ND

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the abandonment by the Burlington Northern Railroad Company of approximately 6.08 miles of railroad between Casselton and Amenia, ND, from the requirements of 49 U.S.C. 10903, subject to conditions for protection of employees.

DATES: The exemption is effective on July 7, 1982. Petitions for reconsideration must be filed on or before June 28, 1982, and Petitions for stay must be filed on or after June 17, 1982.

ADDRESSES: Send Pleadings to:

(1) Section of Finance, Room 5414, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, DC 20423

and (2) Petitioner's representative:

Thomas A. Ehlinger, Burlington Northern Railroad Company, 176 East Fifth Street, St. Paul, MN 55101.

Pleadings should refer to Finance Docket No. 29914.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, contact: T. S. Info Systems, Inc., Room 2227, Interstate Commerce Commission, Washington, D.C. 20423, (202) 289-4357—D. C. Metropolitan Area, (800) 424-5403—Toll free for outside D.C. Area.

Decided: May 27, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham, Sterrett, Andre and Simmons.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-15371 Filed 6-4-82; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (82-31)]

American Innovation, Inc.; Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to American Innovation, Inc., Arlington, Virginia, a limited, exclusive, royalty-bearing, revocable license to practice the invention described in U.S. Patent No. 3,996,464 for "Mass Spectrometer with Magnetic Pole Pieces Providing the Magnetic Fields for both the Magnetic Sector and an Ion-Type Vacuum Pump" issued December 7, 1976, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by August 6, 1982.

ADDRESS: National Aeronautics and Space Administration, Code GP-4, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, Director of Patent Licensing, (202) 755-3954.

Dated: May 20, 1982.

S. Neil Hosenball,

General Counsel.

[FR Doc. 82-15264 Filed 6-4-82; 8:45 am]

BILLING CODE 7510-01-M

[Notice (82-32)]

Behavioral Engineering Corps.; Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to Behavioral Engineering Corporation, Metairie, Louisiana, a limited, exclusive, royalty-bearing, revocable license to practice the invention described in U.S. Patent No. 3,769,834 for "Whole Body Measurement Systems," issued November 6, 1973, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent-Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by August 6, 1982.

ADDRESS: National Aeronautics and Space Administration, Code GP-4, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, Director of Patent Licensing, (202) 755-3954.

Dated: May 20, 1982.

S. Neil Hosenball,

General Counsel.

[FR Doc. 82-15266 Filed 6-4-82; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN-50-528-OL, STN-50-529-OL, and STN-50-530-OL]

Arizona Public Service Co., et al. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3 Operating License Proceeding); Resumption of Hearing

June 1, 1982.

The evidentiary hearing in the above identified proceeding will resume on June 22, 1982 at 9:30 a.m., local time, in Courtroom 4 (6th floor) of the Federal Building, 230 N. First Avenue, Phoenix, Arizona 85025.

It is so ordered.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 82-15304 Filed 6-4-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293]

Boston Edison Co. (Pilgrim Station, Unit 1); Issuance of Director's Decision

On January 18, 1982, the Office of Inspection and Enforcememt (I&E) issued to the Boston Edison Company (BECo) a Notice of Violation and Proposed Imposition of Civil Penalties. A fine of $550,000 was proposed in the Notice. On March 19, 1982, BECo paid the proposed fine in full. On the same day, I&E received a letter from the General Counsel of the Executive Office of Energy Resources, Commonwealth of Massachusetts (EOER) asking that the Commission in some way arrange for the penalty money to be turned over to the EOER for use in a weatherization/conservation program. On April 26, 1982, I&E received a second letter from the General Counsel of the EOER, further urging that the BECo penalty money be turned over to the EOER.

Upon consideration of the information provided by the EOER through the two letters of its General Counsel, I have determined not to grant the request of the EOER. The reasons for this decision are set forth in a "Director's Decision Under 10 CFR 2.206", which is available for inspection in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555, and in the local public document room at the Plymouth Public Library, North Street, Plymouth, Massachusetts 02360. A copy of the decision will also be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Maryland, this 28 day of May, 1982.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 82-15300 Filed 6-4-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293]

Boston Edison Co.; Issuance of Amendment to Facility Operating License

The Nuclear Regulatory Commission (the Commission) has issued

Amendment No. 61 to Facility Operating License No. DPR-35 issued to Boston Edison Company (the licensee) which revised the Technical Specifications for operation of the Pilgrim Nuclear Power Station (the facility) located near Plymouth, Massachusetts. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications to clarify and modify surveillance requirements and limiting conditions for operation for degraded grid voltage protection equipment and procedures.

The application for the amendment 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 license amendment. Prior public notice of this amendment was not required since it does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment 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 the issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated February 26, 1982, (2) Amendment No. 61 to License No. DPR-35, and (3) 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, N.W., Washington, D.C., and at the Plymouth Public Library on North Street in Plymouth, Massachusetts 02360. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 28th day of May 1982.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 82-15301 Filed 6-4-82; 8:45 am]

BILLING CODE 7590-01-M

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

On January 6, 1982, the Nuclear Regulatory Commission (NRC) published in the **Federal Register** as final, certain amendments to 10 CFR Parts 71 and 73 (effective July 6, 1982), which require advance notification to governors or their designees concerning transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in Part 73 is for spent nuclear reactor fuel shipments and the notification for Part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR Part 73.)

The following list denotes the names, addresses and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the **Federal Register** on or about June 30, to reflect any changes in information.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS

States	Part 71	Part 73
Alabama	Col. Jerry Shoemaker, Director, Alabama Department of Public Safety, P.O. Box 1511, Montgomery, AL 36192-0501, (205) 832-5069.	Same.
Alaska	Ernst W. Mueller, Commissioner, Alaska Department of Environmental Conservation, Pouch O, Juneau, AK 99811, (907) 465-2600.	Same.
Arizona	Charles F. Tedford, Director, Arizona Radiation Regulatory Agency, 925 South 52nd Street, Suite 2, Tempe, AZ 85281, (602) 255-4845, After hours: (602) 998-4662.	Same.
Arkansas	E. F. Wilson, Director, Division of Environmental Health Protection, Arkansas Department of Health, 4815 West Markham Street, Little Rock, AR 72201, (501) 661-2301, After hours: (501) 661-2316.	Same.
California	E. E. Kynaston, Chief, California Highway Patrol, P.O. Box 898, Sacramento, CA 95804, (916) 445-6211.	Same.
Colorado	Duty Officer, Colorado State Patrol, Attn.: Captain John Callahan, 4201 E. Arkansas Avenue, Denver, CO 80222, (303) 757-9422.	Same.
Connecticut	The Honorable Stanley J. Pac, Commissioner, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06115, (203) 566-2110.	Same.
Delaware	William J. O'Rourke, Secretary, Department of Public Safety, Highway Administration Building, Dover, DE 19901, (302) 736-4321.	Same.
Florida	Wallace Johnson, Public Health Physicist Supervisor, Department of Health and Rehabilitative Services, Radiological Health Services, P.O. Box 15490, Orlando, FL 32858, (305) 299-0580.	Same.
Georgia	Ken M. Copeland, Director of the Office of Permits and Enforcement, Georgia Department of Transportation, 940 Virginia Avenue, Hapeville, GA 30354, (404) 656-5435.	Same.
Hawaii	George R. Ariyoshi, Governor, State of Hawaii, State Capitol, Honolulu, HI 96813, (808) 548-5420.	Same.
Idaho	Robert D. Funderburg, Manager, Radiation Control Section, Department of Health and Welfare Division of Environment, 450 W. State, 5th Floor, Statehouse, Boise, ID 83720, (208) 334-4107, After hours: (208) 362-5260.	Same.
Illinois	Dr. Philip F. Gustafson, Director, Illinois Department of Nuclear Safety, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704, (217) 546-8100.	Same.
Indiana	John T. Shettle, Superintendent, Indiana State Police, 301 State Office Building, 100 North Senate Avenue, Indianapolis, IN 46204, (317) 232-8248.	Same.
Iowa	John D. Crandall, Director, Office of Disaster Services, Hoover State Office Building, Des Moines, IA 50319, (515) 281-3231.	Same.
Kansas	Leon H. Mannell, P.E., Administrator, Radiological Systems, The Adjutant General's Department, Division of Emergency Preparedness, P.O. Box C-300, Topeka, KS 66601, (913) 233-9253, Ext. 321.	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

States	Part 71	Part 73
Kentucky	Donald R. Hughes, Sr., Supervisor, Radiation Control, Department for Human Resources, 275 East Main Street, Frankfort, KY 40621, (502) 564-3700.	Same.
Louisiana	Col. Grover W. "Bo" Garrison, Head, Louisiana State Polices, 265 South Foster Drive, P.O. Box 66614, Baton Rouge, LA 70896, (504) 925-6112.	Same.
Maine	John Brochu, Director, Bureau of Oil and Hazardous Materials, Department of Environmental Protection, Statehouse, Station #17, Augusta, ME 04333, (207) 289-2251 or 1-800-482-0777.	Same.
Maryland	Lt. Colonel J. G. Lough, Chief, Field Operations Bureau, Maryland State Police, 1201 Reisterstown Road, Pikesville, MD 21208, (301) 486-3101.	Same.
Massachusetts	Robert M. Hallisey, Director, Radiation Control Program, Massachusetts Department of Public Health, Room 770, 600 Washington Street, Boston, MA 02111, (617) 727-6214.	Same.
Michigan	Gene A. Rooker, Captain, Commanding Officer, Operations Division, Michigan Department of State Police, 714 S. Harrison Road, East Lansing, MI 48823, (517) 337-6100.	Same.
Minnesota	Deidre M. A. Krause, Operations Officer, Minnesota Division of Emergency Services, B5 State Capitol, St. Paul, MN 55155, (612) 296-0453, After hours: (612) 778-0800.	Same.
Mississippi	James E. Maher, Director, Mississippi Emergency Management Agency, P.O. Box 4501, Fondren Station, Jackson, MS 39216, (601) 354-7200.	Same.
Missouri	William Beaty, Director, Disaster Planning and Operations, 1717 Industrial Drive, P.O. Box 116, Jefferson City, MO 65102, (314) 751-2321, After hours: (314) 751-2748.	Same.
Montana	Mr. Larry Lloyd, Chief, Occupational Health Bureau, Department of Health and Environmental Sciences, Room A113, Cogswell Building, Helena, MT 59620, (406) 449-3671.	Col. Carlyn L. Gilbertson, Administrator, Disaster and Emergency Services, Department of Military Affairs, 1100 North Last Chance Gulch, Helena, MT 59620, (406) 449-3034.
Nebraska	Col. Elmer J. Kohmetscher, Superintendent, Nebraska State Patrol, 14th and Burnham Streets, P.O. Box 94907, Lincoln, NE 68509, (402) 471-2406.	Same.
Nevada	John Vaden, Supervisor, Radiological Health, Division of Health, Consumer Health Protection Services, 505 East King Street, Kinkead Building, Room 103, Carson City, NV 89710, (702) 885-4750.	Same.
New Hampshire	Diane Tefft, Radiation Control Officer, Office of Radiation Control, Division of Public Health, Health and Welfare Building, Hazen Drive, Concord, NH 03301, (603) 271-4588.	Same.
New Jersey	Frank Cosolito, Acting Bureau Chief, Bureau of Radiation Protection, 380 Scotch Road, Trenton, NJ 08628, (609) 292-8392.	Same.
New Mexico	Alphonso A. Topp, Jr., Chief, Radiation Protection Bureau, Environmental Improvement Division, Health and Environment Department, P.O. Box 968, Santa Fe, NM 87504-0968, (505) 827-5271, ext. 279, After hours: (505) 827-2275.	Same.
New York	Donald A. Devito, Director, Disaster Preparedness Program, Division of Military and Naval Affairs, Public Security Building, State Campus, Albany, NY 12226, (518) 457-2222.	Same.
North Carolina	Lt. Walter K. Chapman, Operations Officer, North Carolina Highway Patrol Headquarters, P.O. Box 27687, Raleigh, NC 27611, (919) 733-4030, After hours: (919) 733-3861.	Same.
North Dakota	Dana K. Mount, Director, Division of Environmental Engineering, North Dakota State Department of Health, 1200 Missouri Avenue, Bismarck, ND 58501, (701) 224-2348.	Same.
Ohio	James R. Williams, Nuclear Preparedness Officer, Disaster Services Agency, 2825 Granville Road, Worthington, OH 43085, (614) 889-7157.	Same.
Oklahoma	Office of the Commissioner, Oklahoma Department of Public Safety, 3600 N. Eastern Ave., Oklahoma City, OK 73111, (405) 424-4011.	Same.
Oregon	Donald W. Godard, Administrator Siting and Regulation, Oregon Department of Energy, 102 Labor and Industries Building, Salem, OR 97310, (503) 378-6469.	Same.
Pennsylvania	Kenneth R. Lamison, Director of Response and Recovery, Pennsylvania Emergency Management Agency, B-151 Transportation and Safety Building, Harrisburg, PA 17120, (717) 783-8150.	Same.
Rhode Island	William A. Maloney, Associate Administrator, Motor Carriers, Division of Public Utilities and Carriers, 100 Orange Street, Providence, RI 02903, (401) 277-2442 or (401) 277-3500.	Same.
South Carolina	Heyward G. Shealy, Chief, Bureau of Radiological Health, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201, (803) 758-7806, After hours: (803) 758-5531.	Same.
South Dakota	Robert D. Gunderson, Division Director, Emergency and Disaster Services, Capitol Building, Basement, Pierre, SD 57501, (605) 773-3231.	Same.
Tennessee	J. A. Bill Graham, Director, Division of Radiological Health, Department of Public Health, 150 Ninth Ave. N., Terra Building, Nashville, TN 37219, (615) 741-7812.	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

States	Part 71	Part 73
Texas	Dr. Robert Bernstein, Commissioner, Texas Department of Health, 1100 West 49th Street, Austin, TX 78756, (512) 835-7000.	Col. James B. Adams, Director, Texas Department of Public Safety, P.O. Box 4087, Austin, TX 78773, (512) 465-2000.
Utah	Darrell M. Warren, Director, Bureau of Radiation Control, 150 W. North Temple, P.O. Box 2500, Salt Lake City, UT 84110, (801) 533-6734.	Same.
Vermont	Raymond McCandless, Director, Division of Occupational and Radiological Health, 10 Baldwin Street, Montpelier, VT 05602, (802) 828-2886.	Same.
Virginia	Norman McTague, Office of Emergency and Energy Services, Operations Director, 7700 Midlothian Turnpike, Richmond, VA 23235, (804) 323-2300.	Same.
Washington	Nicholas D. Lewis, Chairman, Energy Facility Site Evaluation Council, Mail Stop PY-11, Olympia, WA 98504, (206) 459-6490.	Same.
West Virginia	Cecil H. Russell, Director, West Virginia Office of Emergency Services, State Capitol Building, Room EB-80, Charleston, WV 25305, (304) 348-5380.	Notification not required.
Wisconsin	Joseph L. LaFleur, Administrator, Division of Emergency Government, 4802 Sheboygan Avenue, P.O. Box 7865, Madison, WI 53707, (608) 266-3232.	Same.
Wyoming	Thomas A. Schell Wyoming State Liaison Officer, Radiological Health Services (Health and Medical Services), Hathaway Building, Cheyenne, WY 82002, (307) 777-7956, After hours: (307) 638-0123.	Same.
District of Columbia.	Herbert T. Wood, Ph. D., Acting Deputy Bureau Chief, BCHS, OESQA, Department of Environmental Services, 415 12th Street, N.W., Room 314, Washington, D.C. 20004, (202) 724-4358, After hours: (202) 529-3349.	Same.
Puerto Rico	Pedro A. Gelabert, Chairman, Environmental Quality Board, P.O. Box 11488, Santurce, PR 00910, (809) 725-8898 or (809) 725-5140	Same.
Guam	Paul M. Calvo, Governor of Guam, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, 472-8931 or 472-8939.	Same.
Trust Territory of the Pacific Islands.	Mr. Daniel J. High, Acting Deputy High Commissioner, Trust Territory of the Pacific Islands, Saipan, CM 96950, Saipan 9741.	Same.
Virgin Islands	Honorable Juan Luis, Governor, Government House, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774-0001.	Same.
American Samoa.	Honorable Peter Coleman, Governor of American Samoa, Territorial Capitol, Pago Pago, American Samoa 96799, 633-4116.	Same.
Commonwealth of the Northern Mariana Islands.	Honorable Pedro P. Tenorio, Governor, Commonwealth of the Northern Mariana Islands, Saipan, Mariana Islands, 96950, Saipan 6407.	Same.

Questions regarding this matter should be directed to Mindy Landau at (301) 492-9880.

Dated at Bethesda, Maryland this 1st day of June 1982.

For the Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

[FR Doc. 82-15303 Filed 6-4-82; 8:45 am]

BILLING CODE 7590-01-M

[License No. 45-09963-01, (EA 81-51)]

Met Lab, Inc.; Order Approving Settlement

June 1, 1982.

Pursuant to 42 U.S.C. 2282 and 10 CFR 2.205 the Director of the Office of Inspection and Enforcement issued an order imposing a civil monetary penalty of $3,000 upon respondent Met Lab, Inc., 605 Rotary Street, Hampton, Va., for allegedly violating 10 CFR 20.101(b)(1) by permitting an individual to receive a radiation dose in excess of that allowed, for the calendar quarter ending March 31, 1981 and 10 CFR 34.33(d) by failing to immediately send the individual's film badge for processing after his dosimeter was charged beyond its range. Respondent licensee requested that the matter be set for hearing as provided under 10 CFR 2.205(d). Notice that the proceeding was assigned to an administrative law judge for hearing was published in the **Federal Register** on December 10, 1981.

Effective May 24, 1982 the parties entered into a stipulation for settlement of the proceeding, which was then submitted to me for approval pursuant to 10 CFR 2.203. The stipulation of settlement is attached as an appendix and is made a part hereof. It recites steps that Met Lab, Inc. has been taking to promote radiological safety and sets forth practices and procedures it follows and agrees to pursue to accomplish that end. Commission staff concur that the action the licensee has taken and obligates itself to take is corrective and will reasonably protect the public health and safety. Upon this basis the Director of Inspection and Enforcement recommends that the $3,000 penalty assessed in the matter should be remitted in its entirety.

The stipulation for settlement of the proceeding is approved. It expressly requires Met Lab, Inc. to follow delineated procedures that are designed to keep its personnel from receiving excessive doses of radiation. The imposition of a $3,000 civil penalty only would provide an indirect incentive for respondent to take unspecified steps to accomplish that purpose. The stipulation imposes a continuing obligation on the licensee to follow the procedures set forth. The monetary forfeiture constitutes a one time penalty, limited in amount, that creates no ongoing obligation to adhere to detailed methods to promote radiological safety. The terms of the settlement agreement cannot be considered any less comprehensive or demanding of the licensee than the civil monetary penalty. In effect what is proposed is the substitution of one form of sanction for another. This is found acceptable and the settlement is approved as provided for in 10 CFR 2.203.

Upon consideration of all of the foregoing it is hereby ordered that:

1. The stipulation for the settlement of the proceeding, incorporated in this order, is approved as the basis for dismissing this proceeding;

2. The civil monetary penalty of $3,000 assessed by the Director of the Office of Inspection and Enforcement is remitted; and

3. The proceeding is hereby dismissed.

Dated at Bethesda, Maryland this 1st day of June, 1982.

Morton B. Margulies,

Administrative Law Judge.

In the matter of Met Lab, Inc., 605 Rotary Street, Hampton, VA 23661, License No. 45-09963-01 (EA 81-51).

Stipulation of Settlement

Met Lab, Inc. (MLI) and the NRC Staff hereby agree to submit this Stipulation of Settlement for approval to the Administrative Law Judge assigned to preside over this proceeding; further, they agree, contingent upon such approval, contained in a decision or order which has become final, to be bound by the terms hereof.

1. MLI affirms that the occupational dose record for Mr. David Deyo for the first calendar quarter of 1981 contains the radiation doses recorded on Mr. Deyo's film badges for that period, and that said record shall constitute the permanent record of Mr. Deyo's occupational dose.

2. In making any health and safety related decision in the conduct of its business and operations for which radiation dose is a relevant consideration—such as the reporting of events to the Nuclear Regulatory Commission or the assignment of work to radiographers—MLI shall treat film badge (or other personnel radiation monitoring device) readings as the correct measurements of an employee's dose or doses. No exception to the foregoing shall be made unless the NRC Staff concurs that a reading in a particular situation is invalid. MLI reserves the right to contest the accuracy of such readings in any future adjudications before the Nuclear Regulatory Commission.

3. MLI affirms that, beginning in February, 1981, up to the present time it has taken the following actions to support radiological safety:

a. A detailed re-enactment was conducted of the January, 1981 incident in which David Deyo, a radiographer employed by MLI, improperly manipulated a guide tube containing a radiation source;

b. A check of each Utilization Log is performed by the Radiation Safety Officer (RSO) following every job (as opposed to monthly checks);

c. Radiation safety requirements for radiographic operations, including requirements for complete surveys, have been thoroughly reviewed by the RSO with all MLI radiographers;

d. Radiographers have been instructed to call the RSO immediately whenever an emergency or situation involving unusual difficulties arises on a job.

4. MLI shall continue to implement Item 3b., and it will conduct a check no more than one week following each job. MLI shall repeat Items 3c. and 3d. semi-annually with each radiographer and radiographic assistant. Whenever a new radiographer is employed, regardless of such new employee's prior experience in radiography, steps 3c. and 3d. shall be carried out with said new radiographer prior to conducting radiograph.

5. MLI agrees that, whenever the radiation exposure badge or other personnel radiation monitoring device of any employee registers a cumulative dose of 350 millirem or more in any month, MLI shall analyze the performance of the employee in order to ascertain the causes of the dose and to implement steps to reduce radiation exposure in the future.

6. MLI agrees that its RSO shall conduct a field audit of every radiographer employed by MLI, including full-time, temporary and part-time employees, at least once per calendar quarter.

7. The NRC Staff finds that the foregoing terms and conditions constitute corrective actions which reasonable protect the public health and safety.

8. The violations set forth in the Notice of Violation have been re-evaluated under the NRC Enforcement Policy, 47 FR 9987 (March 9, 1982), and the Director of Inspection and Enforcement on the basis thereof recommends that the penalty assessed in this matter be remitted in its entirety.

9. MLI on the basis of the above withdraws its request for hearing.

Dated: May 19, 1982.
For Met Labs, Inc.

O.W. Ward, III,
President.

Dated: May 24, 1982.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,
Office of Inspection and Enforcement.

[FR Doc. 82-15305 Filed 6-4-82; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-266 and 50-301]

Wisconsin Electric Power Co.; Issuance of Amendments to Facility Operating Licenses

The Nuclear Regulatory Commission (the Commission) has issued Amendment No. 59 to Facility Operating License No. DPR-24, and Amendment No. 64 to Facility Operating License No. DPR-27 issued to Wisconsin Electric Power Company (the licensee), which revised Technical Specifications for operation of Point Beach Nuclear Plant, Unit Nos. 1 and 2 (the facilities) located in the Town of Two Creeks, Manitowoc County, Wisconsin. The amendments are effective 120 days from the date of issuance.

The amendments upgrade the surveillance requirements for hydraulic snubbers and incorporate administrative changes to the Technical Specifications.

The application for the amendments 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 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 10 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 application for amendments dated September 1, 1981, as modified by letters dated January 15 and February 12, 1982, (2) Amendment Nos. 59 and 64 to License Nos. DPR-24 and DPR-27, and (3) 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. 20555, and at the Joseph Mann Library, 1516 16th Street, Two Rivers, Wisconsin 54241. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 25th day of May, 1982.

For the Nuclear Regulatory Commission

Robert A. Clark,
Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 82-15302 Filed 6-4-82; 8:45 am]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 22518; (70-6669)]

The Connecticut Light & Power Co., The Hartford Electric Light Co., and The Connecticut Gas Co.; Relating to Additional Amounts Requested To Be Applied Toward Payment of Dividends

June 1, 1982.

The Connecticut Light and Power Company ("CL&P"), and The Hartford

Electric Light Company ("HELCO"), utility subsidiaries of Northeast Utilities ("NU"), a registered holding company, and The Connecticut Gas Company ("Gas Company"), Selden Street, Berlin, Connecticut 06037, a wholly-owned subsidiary of CL&P, have filed a post-effective amendment to the application-declaration in this proceeding pursuant to section 12(e) of the Public Utility Holding Company Act of 1935 ("Act").

By order dated April 23, 1982 (HCAR No. 22471), the Commission authorized the merger of HELCO into CL&P and the merger of Gas Company into CL&P. The supplemental indentures under which first mortgage bonds of CL&P and HELCO have been issued since the companies became subject to the Act contain restrictions on payment of common stock dividends. (Commission's Statement of Policy with respect to First Mortgage Bonds. 21 FR 1286 (1956)). The supplemental indentures for each series of bonds limit common dividends to earnings after the date of its issuance, plus an amount from the existing retained earnings equal to about one year's dividend requirements. Although a separate computation is required for each series of bonds of each issuer, the effective restrictions are those contained in the most recent series which restrict about $74 million for CL&P and $43.1 million for HELCO, a total of $117.1 million.

The merger of HELCO into CL&P would combine the retained earnings accounts and future income of the two consitituent companies. It is proposed that the merged CL&P be authorized to pay common dividends subject to restrictions equal to about the sum of the respective CL&P and HELCO indenture restrictions, of which the said $117.1 million combined restriction would be controlling. The application states that this is the proper way to give effect to such indenture restrictions following the merger, but also relies on an exception in the applicable indentures for dividends authorized by the Commission under the Act.

The application-declaration as amended by the post-effective amendment and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 24, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the application-declaration, as amended by the post-effective amendment or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-15349 Filed 6-4-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12453; (812-5045)]

Continental Illinois Bank (Canada); Filing of Application

June 1, 1982.

Notice is hereby given that Continental Illinois Bank (Canada) ("Applicant") c/o Ray F. Myers, Esq., Continental Illinois National, Bank and Trust Company of Chicago, 231 South La Salle Street, Chicago, Illinois 60693, has filed an application on December 16, 1981, and amendments thereto on March 24, 1982 and April 28, 1982 for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting the Applicant, any officer or director of the Applicant, and any underwriter for the Applicant from all provisions of the Act. All interested parties are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

The Applicant states that it is a wholly-owned subsidiary of Continental Illinois National Bank and Trust Company of Chicago ("CINB"), a national banking association incorporated under the National Bank Act, which in turn is a wholly-owned subsidiary, except for directors' qualifying shares, of Continental Illinois Corporation ("CICorp"), a Delaware business corporation and a bank holding company registered under the Bank Holding Company Act of 1956. The application states that the Applicant's principal office is located at First Canadian Place, Toronto, Ontario, Canada.

The Applicant states that it provides a wide range of commercial banking services to Canadian companies with emphasis on services to corporate, multinational, oil and gas and mining enterprises and leasing services. As of September 30, 1981, Applicant had total consolidated assets of approximately $416,148,279 (U.S.) of which approximately $388,870,921 (U.S.) or 93.44% consisted of loans and equipment leases. According to the Applicant, approximately 88% of its total income as of September 30, 1981 was loan related, and none of its income was derived from underwriting.

The application states that CINB operates a full-service commercial banking and trust business which serves individuals, businesses and governmental entities in the metropolitan area of Chicago, Illinois, in the Midwest, throughout the nation, and overseas. It receives deposits, makes and services secured and unsecured loans, is a primary dealer in U.S. government and federal agency securities, deals in and distributes municipal securities, and performs a wide variety of personal, corporate and pension trust, investment advisory and custodial services. The application further states that CINB has a large domestic and international network of correspondent and banking relationships in the United States and throughout the world and provides a wide variety of services for banks, including check clearing, transfer of funds, loan participations, investment advice, custody of securities and facilities for securities transactions. The application further states that CINB also offers computer-based services including payroll, accounts receivable and accounts payable accounting and correspondent bank demand deposit accounting.

The application states that in addition to the activities that CICorp engages in through CINB, it also is engaged, directly of through wholly-owned subsidiaries, in lease and debt financing, mortgage lending and banking, financing of energy development and exploration, asset-based financing, reinsurance directly related to extensions of credit by CINB, and in merchant banking overseas. The application further states the CICorp owns a small business investment company and an equity investment company.

The Applicant represents that as a Canadian bank chartered under the Bank Act of Canada ("Bank Act"), it is required to compile and publish annual consolidated statements of assets and liabilities, income, appropriations for contingencies and changes in shareholders' equity as well as quarterly consolidated income statements that are also sent to the Canadian Inspector General of Banks ("Inspector"). The

Applicant represents that the Inspector is permitted to examine the Applicant as often as it is deemed necessary or expedient, and in no event less than once a year.

The Applicant represents that the corporate powers that a Canadian chartered bank such as the Applicant may exercise are expressly set out in the Bank Act. Prohibited activities such as dealing in goods, wares and merchandise and managing or participating in the management of a mutual fund in Canada are also set out in the Bank Act, as are limitations on certain activities such as the purchase or sale of equity securities and securities underwriting. The Bank Act also governs matters such as reserve and liquidity requirements. The Applicant represents that the Bank Act does not, however, impose any specific lending limits on it.

The Applicant represents that it has structured a temporary program which involves the issuance of promissory notes in the United States with original maturities of 270 days or less and which are unconditionally guaranteed by CINB. The Applicant represents that these notes are only offered in minimum amounts of $150,000 to qualified investors and are being sold in private placements pursuant to the exemption from registration provided by section 4(2) of the Securities Act of 1933 ("1933 Act"). The Applicant states that A.G. Becker Incorporated has entered into an agreement with the Applicant wherein it will act as principal or agent in connection with the sale of the notes. The Applicant represents that in connection therewith, the Applicant has appointed an agent for service of process in New York City for any actions arising out of this promissory note program.

Once the Commission exemptive order under the Act is obtained, the Applicant states that it will most likely conduct its debt issuing activities in the United States pursuant to section 3(a)(2) of the 1933 Act which specifically exempts from registration the sale of notes "guaranteed by a bank" (e.g., CINB). The Applicant states that other possible alternatives besides a continuation of the private placement program are the issuance of commercial paper pursuant to the exemption from registration provided by section 3(a)(3) of the 1933 Act and registered public offerings of debt securities. Applicant states that any debt securities issued pursuant to an offering within the United States will rank *pari passu* among themselves, equally with all its other unsecured, unsubordinated indebtedness, including Applicants depost liabilities, and ahead of its equity securities.

Regardless of the alternative(s) utilized, the Applicant represents that it will appoint an agent for service of process in either New York City or Chicago, Illinois for any actions arising out of the sale of its securities and instituted in any state or federal court in the State of New York or Illinois respectively, by the holder of any such security. The Applicant represents that it will expressly accept the jurisdiction of any state or federal court in the state in which it appoints an agent for service of process in respect of any such action, except to the extent that it contests the manner of service on its agent or the scope of its agent's authority to accept process under this authorization. Applicant represents that it will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of such securities or otherwise. The Applicant represents that such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the securities have been paid.

The Applicant represents that any commercial paper issued pursuant to section 3(a)(3) of the 1933 Act will be sold in minimum denominations of $100,000, and that such commercial paper will not be advertised or offered for sale to the general public. The purchasers of such commercial paper will be the regular participants in the United States commercial paper market. The Applicant further represents that the commercial paper will have received prior to issuance one of the three highest investment grades from at least one nationally recognized statistical rating organization.

The Applicant undertakes to ensure that each offeree of commercial paper will receive prior to purchase a memorandum which briefly describes the Applicant's business and includes its most recent publicly available annual financial statements, which have been audited in accordance with Canadian accounting principles. The Applicant represents that such memorandum will describe any material differences between accounting principles applied in the preparation of such financial statements and "generally accepted accounting principles" employed by United States banks. The memorandum will be at least as comprehensive as those customarily used in offering commercial paper in the United States and will be updated promptly to reflect material changes in the Applicant's financial condition. Applicant further represents that in the case of any other offerings of debt securities in the United States, such offerings will be made only pursuant to a registration statement under the 1933 Act or pursuant to an applicable exemption from registration under such Act, and any such offering will be made on the basis of disclosure documents appropriate and customary for such registration or exemption and in any event at least as comprehensive as those used in offerings of similar debt securities in the United States by United States issuers. Applicant undertakes to ensure that such disclosure documents will be provided to each offeree who has indicated an interest in such securities prior to any sale of such securities to such offeree, except that in the case of an offering made pursuant to a registration statement under the 1933 Act, such disclosure documents will be provided to such persons and in such manner as may be required by the 1933 Act and the pertinent rules and regulations thereunder. Applicant consents to having any order granting the relief requested under section 6(c) expressly conditioned upon its compliance with the foregoing undertakings regarding disclosure documents.

The Applicant represents that it will not issue and sell any security pursuant to section 3(a)(2), 3(a)(3) and/or 4(2) of the 1933 Act until it has received an opinion of its United States legal counsel to the effect that, under the circumstances of the proposed offering, the security will be entitled to the exemption provided by the appropriate section of the 1933 Act. The Applicant will not request SEC review or approval of United States counsel's opinion letter regarding the availability of an exemption under the 1933 Act, and the Commission expresses no opinion as to the availability of any such exemption. The Applicant further represents that it is not subject to the reporting requirements of the 1934 Act and will not become subject to such requirements in connection with the issuance or sale of its securities.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that 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.

Applicant requests an order pursuant to section 6(c) of the Act exempting it from all provisions of the Act. Applicant states that an exemption would be consistent with the protection of investors because there already exists regulatory structures which afford protection to investors. Applicant represents that approval of this application is both necessary and appropriate in the public interest since an exemption would benefit not only it, but also institutional and other sophisticated investors in the United States. Without this type of exemption, these investors would be unable to purchase secutities issued by foreign banks, which are representing an increasingly important segment of the short-term, prime quality securities market.

Notice is further given that any interested person may, not later than June 28, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on an application accompanied by a statement as to the nature of his/her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he/she may request that he/she 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 Applicant 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 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. 82–15346 Filed 6–4–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 18780; File No. SR–DTC–82–2]

The Depository Trust Co.; Filing and Immediate Effectiveness of Proposed Rule Change

June 1, 1982.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 11, 1982, the Dispositary Trust Company ("DTC") Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change revises DTC's current fees for processing erroneous instructions (rejects) and for services attendant to underwritings, reorganizations, conversions and redemptions. The proposed rule change also implements new fees for certain services performed by DTC's interface department on behalf of certain participants. The proposed fee changes include: (1) Raising the fees presently charged for services associated with corporate and municipal underwritings and conversions; (2) raising the fees presently charged for processing rejects, including deposits, withdrawals and deliveries; and (3) imposing new fees for certain clerical services (ancillary services) performed on behalf of remote participants. In its filing DTC states that these fee changes are designed to allocate the cost of services to each participant in accordance with the participant's use of such services.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission on or before June 28, 1982. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR–DTC–82–2.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–15350 Filed 6–4–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 18771; (SR–OCC–80–5)]

Options Clearing Corp. ("OCC"); Order Approving Proposed Rule Change

May 28, 1982.

On June 20, 1980, OCC filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b–4 thereunder, a proposed rule change amending OCC's disciplinary rules and procedures.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16942, June 27, 1980) and by publication in the Federal Register (45 FR 45443, July 3, 1980). No written comments were received by the Commission. OCC modified in minor respects the proposed rule change in a letter to the file dated April 23, 1981. OCC further modified the proposal in a letter to the file dated April 26, 1982, by deleting its authority under existing rules to impose fines on associated persons of participants.

The Commission 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 of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-15344 Filed 6-4-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12452; (811-2439)]

The ML Corporate Income Fund Investment Plan; Filing of Application

June 1, 1982.

Notice is hereby given that ML Corporate Income Fund Investment Plan ("Applicant"), c/o Merrill Lynch, Pierce, Fenner & Smith, Inc. 125 High Street, Boston, Massachusetts 12110, registered under the Investment Company Act of 1940 ("Act") as an open-end, non-diversified, management investment company, filed an application on May 7, 1979, pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant 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 application states that Applicant, a business trust organized under the laws of Massachusetts, filed its registration statement pursuant to section 8(b) of the Act on May 13, 1974. Applicant represents that it has never made and does not propose to make a public offering of its securities.

Applicant represents that it has no debts or other outstanding liabilities and is not a party to any litigation or administrative proceeding. Applicant states that within the last 18 months it has not for any reason transferred any of it assets to a separate trust. Finally, Applicant states that it is not now engaged, and does not propose to engage, in any business activity.

Section 8(f) of the Act provides, in pertient 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, and upon the effectiveness of such order, the registration of such company under the Act shall cease to be in effect.

Notice is further given that any interested person may, not later than June 28, 1982, 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 or her interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he or she may request that he or she 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 Applicant 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. 82-15347 Filed 6-4-82; 8:45 am]

BILLING CODE 8010-01-M

Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

June 1, 1982.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Florida Progress Corporation
Common Stock, $2.50 Par Value (File No. 7-6223)
Heritage Communications Incorporated
Common Stock, $.50 Par Value (File No. 7-6224)
Integrated Energy Incorporated
Common Stock, $.10 Par Value (File No. 7-6225)
Northern California Savings, A Federal Savings & Loan Association
Common Stock, $.10 Par Value (File No. 7-6226)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 23, 1982 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-15351 Filed 6-4-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12451; (812-51470)]

MoneyMart Assets, Inc., Filing of Application

June 1, 1982.

Notice is hereby given that MoneyMart Assets, Inc. ("Applicant"), 100 Gold Street, New York, NY 10292, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on March 29, 1982, and an amendment thereto on May 14, 1982, requesting an order pursuant to section 6(c) of the Act exempting Applicant from the provisions of sections 13(a)(2), 18(f)(1), 22(f) and 22(g) of the Act in connection with a proposed Deferred Director's Fee Agreement ("Agreement") with certain of its directors, and pursuant to section 17(d) of the Act and Rule 17d-1 thereunder to permit certain joint transactions relating to the Agreement. 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.

According to the application, Applicant is a "money market fund" whose investment objective is maximum current income consistent with stability of capital and the maintenance of liquidity through investments primarily in short-term money market instruments. Applicant states that its investment adviser is Continental Illinois Bank and Trust Company of Chicago ("Adviser"), and that Bache Halsey Stuart Shields Incorporated ("Bache") is Applicant's administrator and the distributor of its shares. Applicant further represents that

as of February 22, 1982, there were 4,010,443,695 issued and outstanding shares of its common stock and Applicant's net assets were valued at $14,010,443,695.

According to the application, Applicant's board of directors consist of 10 individuals, three of whom are affiliated persons of Bache and do not receive director's fees or any other remuneration. Applicant represents that each of its directors who is not an affiliated person of Bache currently receives $8,000 per year as a director's fee, plus expenses, and an additional $1,000 per year plus expenses for service on board committees, for a total of $9,000 in director's fees. Applicant's chairman of the board of directors receives another $1,000, for a total of $10,000. Applicant further represents that during the year 1981, it paid an aggregate of $57,050 in fees and expenses to its directors.

According to the application, the purpose of the Agreement is to permit a director of the Applicant to elect to defer receipt of his director's fees, in order to avoid diminution or loss of social security benefits to which the director may otherwise be entitled, to enable the director to defer payment of income taxes on such fees, or for other reasons. Applicant represents that participation in the deferred fee arrangement will be limited to those directors who are not "interested persons" of the Applicant within the meaning of section 2(a)(19) of the Act and to one director who may be deemed to be an "interested person" of the Applicant solely by reason of his ownership of shares of common stock of Continental Illinois Corporation, the parent of the Adviser.

Applicant states that the Agreement will allow each eligible director to elect to defer receipt of all director's fees which otherwise would become payable to him for services as a director performed after the date of the Agreement. Applicant represents that the deferred fees will be accrued to the director's benefit on a daily basis and will accrue interest daily at a variable rate until paid. Applicant further represents that the rate of interest will be equivalent to the lower of (a) the prevailing rate applicable to 90-day United States Treasury bills at the beginning of each calendar quarter, or (b) the prevailing average net yield of the Applicant for the immediately preceding calendar quarter.

According to the application, a director's deferred fees and any interest thereon will become payable in cash upon termination of the director's service in such capacity, in a lump sum or in such number of annual installments as shall be determined by the Applicant in its sole discretion. Deferred amounts will continue to accrue interest until paid. Applicant states that in the event of a director's death, amounts payable to him under the Agreement will thereafter be payable to his designated beneficiary; in all other events, the director's right to receive payments will be nontransferable.

The Applicant states that its obligation to make payments of amounts accrued under the Agreement will be a general unsecured obligation payable solely from its general assets and property. Applicant represents that no shares of Applicant will be purchased for any director's account with those amounts, nor will any special fund or separate account be established for those amounts.

Applicant states that deferral of director's fees in accordance with the Agreement will have a negligible effect on Applicant's assets, liabilities, net assets and net income per share. Applicant further states that the Agreement will not obligate Applicant to retain a director in such capacity, nor will it obligate Applicant to pay any (or any particular level of) director's fees to any director.

Section 18(f)(1) of the Act prohibits any registered, open-end, management investment company from issuing senior securities except in connection with a bank borrowing. Since Applicant is an open-end investment company, it is prohibited by section 18(f)(1) of the Act from issuing senior securities unless authorized by the vote of a majority of its outstanding voting securities. Section 18(g) of the Act, in pertinent part, defines the term, senior security, as any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness.

Section 22(f) of the Act prohibits a registered, open-end investment company from restricting the transferability or negotiability of any security of which it is the issuer unless the restriction is disclosed in its registration statement and does not contravene rules and regulations prescribed by the Commission in the interests of the company's security holders. Section 22(g) of the Act generally prohibits a registered open-end investment company from issuing any of its securities for services or for property other than cash or securities.

Applicant states that these provisions of the Act, taken together, might be deemed to preclude the Applicant and its directors from implementing the Agreement, absent an exemptive order from the Commission.

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 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.

Applicant asserts that the Agreement possesses none of the characteristics of senior securities which led Congress to the restrictions on the issuance of such securities set forth in sections 18 and 13(a)(2) of the Act. In this regard, Applicant states that it would not be "borrowing" from its directors in the sense which concerned Congress and that all liabilities created by accruals under the Agreement would be offset by essentially equal assets of the Applicant which would not otherwise exist if the director's fees were paid on a current basis. Applicant further argues that the Agreement would not induce speculative investments by Applicant or provide opportunity for manipulative allocation of Applicant's expenses and profits; that control of the Applicant would not be affected; and, given the common existence of deferred compensation agreements today, the Agreement would not confuse investors, make it difficult for them to value the Applicant's shares or convey a false impression of safety.

With respect to the requested exemption from section 22(f) of the Act Applicant states that the restriction on transferability of a director's benefits would be clearly set forth in the Agreement, would be included primarily to benefit the director and would not adversely affect the interests of the director or of any shareholder of Applicant. Applicant further asserts that the Agreement would not have the effect of diluting the equity and voting power of its shareholders as prohibited by section 22(g) of the Act. According to the application, the Agreement would merely provide for deferral of payment of such fees and thus may be viewed as being "issued" not in return for services but in return for the Applicant not being requested to pay such fees on a current basis.

Section 17(d) of the Act and Rule 17d-1 thereunder provide that it shall be unlawful, with certain exceptions not here applicable, for an affiliated person

of a registered investment company or any affiliated person of such person, acting as principal, to participate in, or effect any transaction in connection with, any joint enterprise or arrangement in which any such registered company is a participant unless an application for an order of exemption regarding such arrangement has been granted by the Commission, and that in passing upon such an application, the Commission shall consider whether the participation of such registered investment company in such arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

Applicant argues that the effect of the Agreement would merely be to defer the payment of fees which the Applicant would otherwise be obligated to pay on a current basis as services are performed by the director and therefore liabilities created by the accruals under the Agreement would be offset by essentially equal assets of the Applicant which would not otherwise exist if the director's fees were paid on a current basis. Applicant further submits that there is no expectation of profits being generated through the Applicant or other investments on behalf of the director since the Applicant would be undertaking no funding or investment commitment under the Agreement and the interest earned by the director during the deferral period would be tied to the Applicant's investment return only in the unlikely event that the prevailing interest rate applicable to 90-day Treasury bills were to exceed the Applicant's average net yield during the immediately preceding calendar quarter.

For these reasons, Applicant contends that deferral of a director's fees in accordance with the Agreement would essentially maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the fees were paid on a current basis. Applicant further expresses its view that its ability to recruit and retain highly qualified directors would be enhanced if it were able to offer its directors the option of deferred payment of their director's fees.

For all the reasons stated above, the Applicant requests that the Commission enter an order pursuant to sections 6(c) and 17(d) of the Act and Rule 17(d) thereunder, permitting the Agreement and the transactions to be effected by the Applicant and certain of its directors pursuant to the Agreement.

Notice is further given that any interested person may, not later than June 28, 1982, 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 Applicant 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. 82–15348 Filed 6–4–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 18708; File No. SR–MSRB–82–4]

Municipal Securities Rulemaking Board; Filing of Proposed Rule Change

May 3, 1982.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 23, 1982, the Municipal Securities Rulemaking Board ("MSRB"), 1150 Connecticut Avenue, NW, Suite 507, Washington, D.C. 20036, filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change will amend Rule A–3 to permit a public member of the MSRB to succeed himself in office if his first term of office was less than eighteen months and he is nominated and elected to a full term on the board. The rule presently provides that all members of the MSRB's Board shall be elected for a term of three years and that no member, even those serving out the unexpired portion of a predecessor's term, may succeed himself in office. The MSRB proposed the rule change because of the difficulty it has experienced in recruiting public members to fill a vacancy on its Board. Additionally, because most new public members filling vacancies on the Board often take several months to become familiar with the MSRB's regulatory process and issues, the expiration of their shortened term causes the public and MSRB to lose the expertise and services of the public member at the very time he or she is most able to represent the public's interests. The MSRB believes that by allowing a public member who completes an unexpired term of less than eighteen months to succeed to a subsequent full term, it will be able to recruit public members to serve on its Board more easily and that the public will benefit by the continued participation of such members on the Board for an additional term. New Board members are scheduled to be elected on June 21, 1982.

The MSRB has adopted the proposed rule change pursuant to section 15B(b)(2)(I) of the Act, which establishes the MSRB's authority to adopt rules providing for its operation and administration, and section 15B(b)(2)(B) of the Act, which directs the MSRB to establish fair procedures for the nomination and election of its members.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission by June 19, 1982, in order that the Commission's determination can be made before the scheduled election on June 21, 1982, of new MSRB Board members. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR–MSRB–82–4.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in

accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, NW, Washington, D.C. Copies of the filing and any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-15345 Filed 6-4-82; 8:45 am]

BILLING CODE 8010-01-M

Pacific Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

June 1, 1982.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities and Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of:

Enserch Corporation

Common Stock, $4.45 Par Value (File No. 7-6222)

This security is listed and registered on one or more other national securities exchanges and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 23, 1982 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-15352 Filed 6-4-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 795]

Intention To Cancel Registrations of Certain Investment Advisers

Correction

In FR DOC. 82-8028 appearing at page 12897 in the issue of Thursday, March 25, 1982, make the following changes:

(1) On page 12898, third column, under *Boston Regional Office*, tenth line, "Cochrane, J. Warren" should be changed to read "Cochrane, G. Warren".

(2) On page 12899, middle column, twenty-eighth line from bottom of page, "Hops Technical Letter, 108-10750", should be changed to read "Hops Technical Letter, 801-10750".

(3) On page 12900, third column, "Conservatively Aggressive Investor, 801-06965", should be inserted below, "Conn, Maurice H., 801-02378" and above "Consolidated Investment Advisors, Inc., 801-14427".

(4) On page 12901, first column, middle of page, "McDaniel, James C., 801-06971" should be changed to read, "McDaniel, James G., 801-06971".

(5) On page 12901, middle column, eighth line from bottom of page, "Zimmerman" should be changed to read, "Zimmermann".

(6) On page 12902, middle column, fourteenth line, "Homes" should be changed to read, "Holmes".

(7) On page 12902, third column, twenty-first line from bottom of page, "Morgan, Rogers & Rogers" should be changed to read, "Morgan, Rogers & Roberts".

(8) On page 12898, third column, under *Boston Regional Office* twenty-ninth line from bottom of page, "H.M.S. Research Institue" should be changed to read "H.M.S. Research Institute".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 82-062]

Rules of the Road Advisory Council; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Rules of the Road Advisory Council. The meeting will be held on Tuesday and Wednesday June 29 and 30, 1982 in Room 2230, Department of Transportation, Nassif Building, 400 Seventh Street SW, Washington, D.C. On both days the meeting is scheduled to begin at 9 a.m. and end at 4 p.m. The agenda for the meeting consists of the following items:

1. Applicability of special rules for Western Rivers to certain other waters.

2. Rule 33 requirement of all vessels over 12 meters in length to carry a whistle and bell. Will this apply to unmanned barges?

3. Use of strobe lights as an anti-collision device.

4. Rule 24:

(a) Special flashing yellow light for the forward end of vessels being towed alongside.

(b) Minor rewriting of parts of rule.

(c) Placement of navigation lights on groups of barges being pushed ahead or towed alongside.

5. Revision or deletion of 33 CFR Part 163—Towing of Barges.

Attendance is open to the public. With advanced notice, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time.

Additional information may be obtained from Captain James T. Montonye, Executive Director, Rules of the Road Advisory Council, U.S. Coast Guard (G-NSR/14), Washington, D.C. 20593, telephone number (202) 426-0980.

Dated: May 26, 1982.

Peter J. Rots,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation.

[FR Doc. 82-15193 Filed 6-4-82; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

National Motor Carrier Advisory Committee; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Public Meeting.

SUMMARY: The FHWA announces that the National Motor Carrier Advisory Committee, establishment of which was announced in the **Federal Register** on December 3, 1981 (46 FR 58772), will hold its initial organizational meeting on June 22, 1982 at 9:00 a.m., in Washington, D.C., at the Department of Transportation's Headquarters Building, 400 Seventh Street, SW., Washington, D.C. 20590, Room 2230.

While a portion of this meeting will be devoted to organizational matters, FHWA will also present information on the Department of Transportation's Cost Allocation Study and the general issue

of commercial motor vehicle size and weight for the Committee's consideration.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Holian, Executive Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HCC–10, Room 4223, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426–0761. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday thru Friday.

Issued on: June 2, 1982.

R. A. Barnhart,

Federal Highway Administrator.

[FR Doc. 82–15391 Filed 6–4–82; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

[FRA Waiver Petition Docket HS–82–9]

Clarendon & Pittsford Railroad Co.; Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR 211.41 and § 211.9, notice is hereby given that the Clarendon and Pittsford (C&P) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91–169, 45 U.S.C. 64a(e)). That petition requests that the C&P be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The C&P seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, (Docket Number HS–82–9), and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

Communications received before June 30, 1982, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 7321A, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

(Sec. 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d))

Issued in Washington, D.C., on May 28, 1982.

Joseph W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 82–15140 Filed 6–4–82; 8:45 am]

BILLING CODE 4910–06–M

[FRA Waiver Petition Docket HS–82–8]

Michigan Northern Railroad Co.; Pettion for Exemption From the Hours of Service Act

In accordance with 49 CFR 211.41 and § 211.9, notice is hereby given that the Michigan Northern Railroad (MNR) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91–169, 45 U.S.C. 64a(e)). That petition requests that the MNR be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The MNR seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS–82–8), and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

Communications received before June 30, 1982, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 7321A, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

(Sec. 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d))

Issued in Washington, D.C., on May 28, 1982.

Joseph W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 82–15139 Filed 6–4–82; 8:45 am]

BILLING CODE 4910–06–M

[FRA Waiver Petition Docket HS–82–10]

North Stratford Railroad Co.; Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR 211.41 and § 211.9, notice is hereby given that the North Stratford Railroad (NSR) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91–169, 45 U.S.C. 64a(e)). That petition requests that the NSR be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitations.

The NSR seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that

it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS–82–10), and must be submitted in triplicate to the Docket Cleak, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Communications received before June 30, 1982, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 7321A, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

(Sec. 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d))

Issued in Washington, D.C., on May 28, 1982.

Joseph W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 82-15137 Filed 6-4-82; 8:45 am]

BILLING CODE 4910-06-M

[FRA Waiver Petition Docket HS–82–7]

Tradewater Railroad Co.; Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR 211.41 and § 211.9, notice is hereby given that the Tradewater Railroad Company has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91–169, 45 U.S.C. 64a(e)). That petition requests that the Tradewater be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the status, to seek an exemption from this twelve hour limitation.

The Tradewater seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS–82–7, and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Communications received before June 30, 1982, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date of comments, during regular business hours in Room 7321A, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

(Sec. 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d))

Issued in Washington, D.C., on May 28, 1982.

Joseph W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 82-15138 Filed 6-4-82; 8:45 am]

BILLING CODE 4910-06-M

[Docket No. RFA–305–82–1, Notice No. 3]

Consolidated Rail Corp.; Expedited Supplemental Transaction Proposals; Holyoke and Florence Secondaries

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Administrative determination regarding the transfer of the Consolidated Rail Corporation's (Conrail's) Florence and Holyoke Secondary lines in Massachusetts.

SUMMARY: FRA announces its decision to transfer two Conrail lines in Massachusetts, the Holyoke and Florence Secondaries, under a proposal that will assure continued service over those lines for a period of at least four years. FRA's plan transfers both lines to the Pinsly Railroad Company. This action is required by section 305(g) of the Regional Rail Reorganization Act of 1973 (3R Act), as added by section 1155 of the Northeast Rail Service Act of 1981 (NERSA).

DATES: This notice is effective as of the date of issuance (May 27, 1982). Conveyance of properties and transfer of service obligations will occur on or about July 1, 1982. Any petition for reconsideration of the Administrator's decision shall be submitted not later than June 7, 1982.

FOR FURTHER INFORMATION CONTACT: F. Colin Pease, Office of Federal Assistance, FRA (202) 472–9060.

SUPPLEMENTARY INFORMATION: On August 13, 1981, the President signed the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, which included NERSA. Section 1155 of NERSA added a new section 305(g) to the 3R Act that required, among other things, that the Secretary of Transportation transfer Conrail's Florence and Holyoke Secondaries, which run generally north from Westfield, Massachusetts, by December 11, 1981, provided a qualified purchaser could be found.

On December 11, 1981, the Administrator, as delegate of the Secretary, entered his decision concerning transfer of the lines, which was published in the **Federal Register** as RFA–305–81–2, Notice No. 5 on December 17, 1981 (46 FR 61603). Two firms, the Massachusetts Central Railroad Company (MC) and the New England Southern Railroad (NES), submitted proposals to acquire the Florence and Holyoke Secondaries. While the Administrator was not able to determine that either MC or NES was a "qualified purchaser" within the meaning of section 305(g) as of December 11, 1981, it appeared from available information that, given a reasonable amount of time, NES was more likely than MC to qualify as a transferee. Accordingly, the lines were transferred to NES upon the express condition that NES would fulfill certain terms and conditions by March 1, 1982.

NES did not comply with the terms and conditions by March 1, 1982. Because of the significant time and resources devoted to the project by NES, because the railroad indicated that it was continuing to attempt to comply with the terms and conditions, and because FRA wished to effect an early transfer consistent with the mandate of the section 305(g), FRA postponed reopening the transfer process for a period of time. However, by March 31, 1982 it had become clear that NES would not be able to provide assurance

that it could fulfill all of the terms and conditions by a date certain, and FRA reopened the transfer process without prejudice to the ability of NES to continue to pursue its effort to acquire the lines. The decision to reopen the transfer process, and a summary of the proceeding as it related to the Holyoke and Florence Secondaries, was published in the **Federal Register** (as RFA–305–82–1, Notice No. 1) on April 5, 1982 (47 FR 14646).[1]

Chronology of Events

On April 30, 1982 three firms submitted proposals to acquire the Holyoke and Florence Secondaries. The firms were MC, NES, and the Pinsly Railroad Company (Pinsly). An informal public meeting was held May 10, 1982 in West Springfield, Massachusetts. Each of the three firms that had submitted proposals made presentations at the meeting and responded to questions and comments from FRA and members of the audience. FRA then held negotiating sessions with Pinsly on May 13, 1982; MC on May 20, 1982; and NES on May 20 and 24, 1982. In addition, during the period between May 13 and May 25, 1982, discussions between FRA and the parties were held to clarify the positions of the parties. Final negotiating positions were provided by the parties by May 25, 1982. FRA received and considered all clarifying comments, comments on competing proposals, and expressions of support received through May 26, 1982. The substance of the negotiating sessions and discussions was reported in memoranda submitted to the public docket.

INITIAL CAPITALIZATION

	Equity	Debt
Pinsly	[1] $1,025,000	
MC	100,000	[2] $310,000
NES	[3] 275,000	[4] 120,000

[1] Includes contribution of 3 locomotives valued at estimated replacement cost of $275,000.
[2] Includes $200,000 10-year loan with interest floating at the national prime interest rate plus 2 percent, and a $110,000 line of credit with advances bearing interest at the national prime interest rate plus 2 percent. At the end of one year the line of credit is convertible to a 5 year loan if the bank grants its prior approval.
[3] Includes $300,000 proceeds from sale of common stock, less $25,000 committed to payment of start-up costs incurred to date.
[4] Eight-year loan with interest floating at the national prime interest rate plus 1⅞ percent.

SUMMARY OF PRO FORMAS (FISCAL YEARS 1983–86)[1]

	Pinsly	MC	NES
Revenues	$2,099,500	$2,395,873	$2,988,000
Expenses	1,848,000	2,006,627	2,488,000
Rev. From Rail Ops	251,500	389,246	500,000
Interest Exp	0	209,884	84,000
Taxes	74,000	40,717	43,000
Net Inc	177,500	138,645	373,000
Cash Flow From Ops	261,500	238,408	617,000

[1] Fiscal Years commence July 1. Fiscal year 1983 commences July 1, 1982. All figures are stated in fiscal year 1982 constant dollars.

SUMMARY OF CASH POSITION (FISCAL YEARS 1983–86)

	Pinsly	MC	NES
Beginning Cash	$1,025,000	$410,000	$395,000
Less Cost of Plant	230,000	230,000	230,000
Less Cost of Equip	[1] 425,000	[2] 0	[3] 85,000
Subtotal	370,000	180,000	80,000
Add Cash From Ops	261,500	238,408	617,000
Subtotal	631,500	418,408	697,000
Less Repay of Prin	0	93,316	40,000
Less Line Rehab. [4]	270,000	370,000	200,000
Ending Cash	361,500	(44,908)	457,000

[1] Includes the contribution of two 600 h.p. switchers and one 1,600 h.p. road switcher that are currently owned by Pinsly to the subsidiary that will operate the Florence and Holyoke Secondaries, and the cost of constructing an engine house and office facility at Westfield Yard.
[2] MC plans to lease a 1,600 h.p. road switcher. The lease payment is included as a transportation expense. MC will also station a 500 h.p. locomotive now owned by the company at Westfield. It has not reflected that locomotive in its capitalization.
[3] Includes purchase of one 1,000 h.p. road switcher, a truck to be used in maintenance operations, and radio equipment.
[4] Total investment in track includes both rehabilitation expenditures, shown here, and maintenance of way expense included under operating expenses. Total proposed investment in track is as follows:

	Pinsly	MC	NES
Total Track Invest	$816,000	$915,524	$770,000

Summary of Reserves and Other Service Guarantees

Pinsly—Pinsly has guaranteed to contribute a $250,000 demand note drawn against Pinsly to the subsidiary it will establish to operate the Florence and Holyoke Secondaries, which will create an immediately accessible, interest free operating reserve for the subsidiary. Pinsly also has provided a written guarantee that the subsidiary will continue to provide service for at least four years. In addition, Pinsly states that the subsidiary will be entirely debt free and thus would be in a position to borrow funds should that become necessary.

MC—MC has provided no evidence of financial reserves available to guarantee its four-year service commitment.

NES—The minority investors in NES have agreed to purchase an additional $30,000 in common stock should that become necessary to guarantee its four-year service commitment. In addition, the majority stockholders have agreed to provide a written guarantee that NES will fulfill its service and rehabilitation obligations by injecting cash as required in the form of additional equity, debt, or both. Further, the NES guarantee was extended to five years at the very end of the negotiating process.

Analysis

At the informal public meeting held at West Springfield, Massachusetts on May 10, 1982, FRA indicated to the prospective purchasers and to the public that FRA would be guided by three principal considerations in selecting a transferee for the lines. These considerations were: (1) The expressed preference of shippers on the lines; (2) the ability of the transferee selected to commence operations on or about July 1, 1982; and (3) the credibility of the transferee's four-year service commitment in light of the marginal financial prospects of the lines discussed below. The appropriateness of these considerations has not been challenged by the prospective purchasers.[2]

[1] Following the previous determination with respect to these lines (46 FR 61603; December 17, 1981), MC contended in correspondence with DOT that the determination failed to consider MC's ability to acquire the lines by providing Conrail a short-term note for the major portion of the purchase price, pending perfection of commercial debt financing. MC apparently intended to rely upon that contention as the alleged basis for a suit to overturn FRA's designation of NES before the Special Court, Regional Rail Reorganization Act of 1973 (Civil Action No. 82–8). That suit has neither been prosecuted nor dimissed. While not relevant to these negotiations, the matter of the alleged arrangement with Conrail deserves clarification to avoid future misunderstandings. When the Administrator entered his decision under Docket No. RFA–305–81–2, there was no evidence before FRA that Conrail and MC had a binding agreement for interim financing. Indeed, on December 10, 1981, counsel for MC wrote to Conrail to "supplement" MC's previous "offer" to Conrail. While FRA was aware that Conrail was willing to accept a short term note if necessary to effect the transfer of the lines, FRA also was aware that Conrail would require collateral for the note *other than the properties to be transferred* adequate to secure the note, and that MC had insufficient unencumbered assets other than the lines to be acquired to secure the note. By December 10, MC was offering to have MC's stockholders guarantee the note on a pro rata basis. Whether the stockholders had sufficient unencumbered assets that would have been of a quality attractive to Conrail for this purpose, and whether Conrail and MC could have worked out final terms and conditions, was unknown when FRA made its decision and is wholly irrelevant to the current situation. MC now is before FRA with apparently firm financing (itself not finalized until May 21, 1982) which depends on the lines and other available MC assets, as well as the personal guarantees of the principal shareholders and other persons, as collateral.

[2] These considerations are consistent with the approach taken by FRA in prior expedited transactions under section 305, as amended by NERSA. *See* e.g. 46 FR 47165, 47168 (September 21, 1981); 46 FR 61603 (December 17, 1981). FRA finds that each of the prospective purchasers would be operationally capable of providing service. The price offer of each is fair and equitable to Conrail in view of all consideration flowing between the railroads. No significant differences exist among the

In enacting section 305(g), the Congress clearly was concerned that operation of the Florence and Holyoke Secondaries might well prove to be a financially marginal proposition. The Florence Secondary carries relatively little traffic and is in poor physical condition. It would likely fall within Conrail's criteria for line abandonments. Traffic has declined recently, and a portion of the remaining traffic is susceptible to truck or intermodal carriage. For these reasons, FRA carefully considered the ability of each of the prospective purchasers to rehabilitate the lines and maintain service for at least four years should traffic continue to decline and strong truck and intermodal competition develop.

FRA conducted a comparative analysis of the proposals submitted by the prospective purchasers. FRA assumed for purposes of the analysis that each of the prospective purchasers was a "qualified purchaser" within the meaning of section 305(g) of the 3R Act. FRA also accepted for purposes of comparative analysis the pro forma statements submitted by the prospective purchasers.

Shipper Views. The Holyoke Chamber of Commerce stated in a telegram to FRA that its survey of shippers in the Holyoke area showed a majority preference for Pinsly, with MC as second choice. The Chamber told FRA that shippers cited Pinsly's ability to purchase the line for cash and thus not encumber the operation with debt service, its pledge not to impose surcharges, its commitment of substantial locomotive power, and its proven track record as a shortline operator as the reasons for selecting Pinsly. W. R. Grace Company, a major shipper on the Florence Secondary, wrote to the docket to express a preference for Pinsly, as did Graham Baycare, a major shipper on the Holyoke Secondary. Grace stated that it has enjoyed a high quality of service by a shortline owned by Pinsly at a Grace plant in South Carolina. Both shippers also cited Pinsly's pledge not to impose surcharges and its strong cash position as reasons for preferring Pinsly.

FRA found that Pinsly's willingness to forego surcharges, and to meet the operating and rehabilitation needs of the lines not covered by revenues from its cash reserves, created a comparative advantage for Pinsly over the other prospective purchasers in that Pinsly's position enhanced shipper confidence in continued rail operations and makes the lines more competitive with other modes of transportation.

The Easthampton Chamber of Commerce indicated that three shippers in the Easthampton area favored MC on the basis that it is a local concern, but asked that FRA "throughly check all aspects of (MC's) proposal and request a performance guarantee." H. B. Smith, Inc., a major shipper in Westfield, pointed to MC's good local track record and sincerity and supported the MC proposal. Two low-volume shippers on the line also supported MC. Two shippers on the Ware River Secondary (the line presently operated by MC under contract with the Commonwealth of Massachusetts) supported the MC proposal as a means of strengthening MC and spreading its fixed costs.

A prospective shipper exploring the possibility of locating a coal transshipment facility on the Holyoke Secondary urged that NES be designated as transferee of the lines.

Ability to Purchase in a Timely Fashion. All three prospective purchasers provided evidence that they could purchase the line from Conrail and commence operations on or about July 1, 1982. MC's ability to proceed was conditioned upon receipt of a loan guarantee in the amount of $150,000 from a shipper. FRA had no reason to believe that such a guarantee would not be forthcoming.

Four Year Service Guarantee. While the transferee selected by FRA to operate the Florence and Holyoke Secondaries will be bound by convenants with the FRA to rehabilitate the lines and provide service during the four-year guarantee period, there is a practical problem enforcing such a commitment if operation of the lines is not producing cash and the transferee is without assets of its own. In evaluating the credibility of the four-year service guarantee offered by each of the prospective purchasers, therefore, FRA looked to the financial resources of the prospective purchaser available to fund rehabilitation and continued operation of the lines should the cash generated by its operation fall short of the level projected in its pro forma statement.

Pinsly's initial capitalization provides sufficient resources to carry out the firm's planned track investment and provides a reserve to cover up to a $350,000 shortfall from its projected cash flow (or an actual cash loss from operations of up to $100,000). In addition, Pinsly has agreed to provide the subsidiary it would create to operate the Florence and Holyoke Secondaries with a demand note drawn against Pinsly that would provide an additional $250,000 in equity funds to the subsidiary, giving the subsidiary the ability to meet all of its commitments despite a shortfall from projected cash flow of up to $610,000 (or an actual cash loss from operations of up to $350,000). In addition, Pinsly has provided a written guarantee that is subsidiary will meet its rehabilitation and service commitments for four years, together with evidence of substantial net worth to make good on that commitment. Finally, Pinsly's initial capitalization does not encumber any of the subsidiary's assets, giving the subsidiary the ability to offer significant collateral to secure borrowing should that become necessary.

MC's initial capitalization is $283,316 less than the sum required to meet the rehabilitation and principal repayment commitments included in its May 25, 1982 final negotiating position, and thus provides no reserve against a shortfall from the cash flow projected by the company. MC's pro forma statement for the two lines lines relies on a projected cash flow from operations of $238,408 to meet its rehabilitation and principal repayment commitments and even if this cash flow is achieved leaves a cash shortfall of approximately $45,000 during the four-year service period if MC undertakes the rehabilitation and principal repayment commitments contemplated in its May 25 proposal. Only when cash flow attributable to the subsidy currently provided by the Commonwealth of Massachusetts to support MC's operation of the Ware River Secondary is added to MC's $238,408 projected cash flow from the Florence and Holyoke lines do the MC pro forma statements on hand May 25, 1982 provide a basis for finding that MC could meet its rehabilitation and service commitments to the Florence and Holyoke Secondaries during the four-year service period. MC's contract with the Commonwealth of Massachusetts is subject to renegotiation this summer, and MC agrees that the future of its Ware River Secondary operation is by no means certain. MC also has provided no indication of additional reserves should the cash generated by operations fall short of the level projected in its pro formas. [3]

proposals with regard to quality of service or employment levels. All prospective purchasers propose reasonably stable tariffs, but none promises specific limitations on existing pricing freedoms. Surcharge policies and capital infusions are discussed elsewhere in this document.

[3] On May 25 and 26, 1982 FRA staff met with MC and discussed MC's pro forma statement for the Florence and Holyoke Secondaries. On May 26 MC provided revisions to its statement that reduced the rehabilitation and expense assumptions and committed $25,000 in cash from the Ware River Secondary operation to its proposed Florence and

Comments by Prospective Purchasers. Each prospective purchaser provided comments regarding proposals submitted by the others. FRA considered these comments. However the final judgment expressed in this document are those of FRA.

In comments filed May 26, 1982, NES stated that (1) Pinsly's initial capitalization is not necessary to satisfy the four-year service guarantee and is not superior to the NES offer backed by the guarantee of NES' majority stockholder group; (2) Pinsly failed to disclose its rehabilitation plan for the Florence Secondary; and (3) FRA should be skeptical of Pinsly's assurance that it will not sell the lines within four years.

FRA agrees that Pinsly's initial capitalization exceeds the level required to meet most likely contingencies, but notes that Pinsly's large initial capital infusion will tend to assist in realizing traffic projections by permitting Pinsly to finance rehabilitation and any operating losses out of cash and thus avoid the imposition of surcharges or costly borrowing. FRA disagrees with NES' assertion that its financial position is fully equal to Pinsly's, since Pinsly's heavy initial capitalization of the subsidiary it will create to operate the Florence and Holyoke Secondaries coupled with negative convenants binding the actions of the subsidiary over a four-year period provides more certain and readily enforceable commitments not requiring assumptions concerning the disposition of third party assets over the period. Pinsly's commitment to rehabilitate and operate the lines for four years is evidenced both by its proposed infusion of capital and by its agreement to convenants with FRA assuring performance of its principal undertaking to the shipping community on the lines.

In a letter from its counsel of May 26, 1982, MC contends that FRA should consider the comparative cost of capital to the prospective purchasers. In particular, MC contends FRA should charge Pinsly's cost of capital against its revenues in making financial comparisons. FRA's principal focus in analyzing Pinsly's proposal has been on the viability and cash position of the subsidiary that would be the transferee of the lines. The cost of capital to the subsidiary over the four-year period will be 0 percent, and FRA's review of the consolidated financial statements of the parent indicates that this investment can be sustained by the parent without seriously impairing the validity of the four-year service guarantee it will provide to secure the subsidiary's four-year service guarantee.

MC also contends Pinsly's past rail operations in Vermont reflect adversely on its likely performance on the Florence and Holyoke Secondaries. MC's submission establishes no evidence of wrongdoing by Pinsly and raises no serious question concerning Pinsly's stewardship of its present rail properties. Indeed, as noted elsewhere, a major shipper on the Florence Secondary is supporting Pinsly in part on the basis of service by another of its rail subsidiaries to one of the shipper's plants in South Carolina.

Previous comments by MC and NES also have limited relevance or persuasive effect in the context of the final offers and negotiations. NES questioned both Pinsly's revenue estimate and certain of its cost estimates as being too low. It is clear Pinsly emphasized conservative revenue estimates. Nonetheless, if NES were correct on both points, there would be no material adverse net impact of the Pinsly subsidiary's performance. Both MC and NES stressed their commitment to the local area. However, NES has not attracted support among local shippers; and MC, despite substantial subsidies and four years of commendable effort, has not yet brought its Ware River operation to a break-even point. FRA concluded that the advantages of local ownership, if any, are outweighed by other factors discussed in this notice.

Other comments by the parties were reviewed by FRA but are not relevant or material to the decision announced below.

Administrative Determination

Transfer of properties. The Florence and Holyoke Secondaries and associated rail properties other than moveables shall be transferred to a wholly owned subsidiary of Pinsly.

Pinsly has the support of active shippers on the lines and has demonstrated conclusively that it has the financial capacity to fulfill its rehabilitation and service commitments for a period of at least four years on a basis consistent with its common carrier obligations.

MC has demonstrated qualified shipper support. However, MC's initial capitalization is minimal and does not fully guarantee both rehabilitation of the lines and four-year service commitment. MC did not demonstrate an ability to inject further capital into the operations if necessary.

NES has no support among active shippers. Its initial capitalization, while superior to that offered by MC, is not fully sufficient to guarantee rehabilitation of the lines and a four-year service commitment. NES demonstrated an ability to inject further funds into the operation if required, but its offer is neither as extensive nor as well defined as that offered by Pinsly.

Price. The properties shall be transferred for a price of $230,000, on the terms agreed to between Pinsly and Contrail. The price established is determined to be fair and equitable to Conrail only in view of the other terms and conditions of the transfer, including agreed-upon divisions.

Divisions. The arrangement for the division of joint rates over through routes, or for the establishment of proportional rates, shall be those agreed to by Pinsly and Conrail.

Covenants and consents. On May 27, 1982, Pinsly and FRA discussed and conditionally agreed upon a draft of convenants and consents to be executed by Pinsly and its wholly owned subsidiary created to accept transfer of the Florence and Holyoke Secondaries. Under that document, Pinsly and the subsidiary will guarantee service for four years. In addition, Pinsly and the subsidiary will pledge to (1) provide service levels consistent with the Pinsly proposal, (2) complete the rehabilitation and maintenance plans for the lines (including significant attention to the Florence Secondary), (3) capitalize the subsidiary as described above and provide additional reserves through a demand note, (4) observe limitations designed to assure the subsidiary the benefits of the capitalization plan over the four-year period, and provide other valuable undertakings. Further, Pinsly will consent to FRA access to appropriate books and records and will provide quarterly financial reports for the subsidiary.

A copy of the draft covenants and consents, which will be executed prior to transfer of the properties, will be placed in the public docket.

Holyoke Secondary operation. The revisions remove the cash shortfall in MC's pro forma statement for the Florence and Holyoke Secondaries and produce an ending cash balance of $75,000. NES' initial capitalization is $160,000 less than the sum required to meet the rehabilitation and principal repayment commitments in its May 25 final negotiating position. NES relies upon a projected cash flow from operations to meet this shortfall. Should the cash flow fall short of the $160,000 required, NES has provided a written commitment from its minority stockholders to provide an additional $30,000 in equity and a commitment from its majority stockholders guaranteeing to provide any further funds needed to meet its rehabilitation and service commitments for five years, together with evidence of a substantial net worth on the part of those majority stockholders. The commitment of the majority stockholders does not indentify the specific assets that would be pledged or whether the additional financing would be debt or equity.

In consideration of the foregoing it is ordered that Conrail shall transfer to a wholly owned subsidiary of Pinsly to be established (Subsidiary) its Florence and Holyoke Secondaries and associated rail properties upon payment by the Subsidiary of the established purchase price and after notification to Conrail from the Office of Chief Counsel, FRA, that all requisite requirements of this order have been met.

It is further ordered that:

1. The transfer date and date for commencement of operations by the transferee shall be July 1, 1982.

2. Upon transfer of the rail properties, Subsidiary shall succeed to Conrail's common carrier service obligations on the Florence and Holyoke Secondaries.

3. Prior to transfer, Pinsly and Subsidiary shall enter into covenants and consents substantially in the form agreed between FRA and Pinsly on May 27, 1982, which covenants and consents shall be deemed incorporated into this order as mandatory requirements enforceable against Pinsley and the Subsidiary according to the terms of such covenants and consents and as if published herein.

4. The Administrator shall retain jurisdiction under section 305(g) for the purpose of entering any further orders necessary and appropriate to construe this order, effect the transfers required in this order, or assure compliance with its requirements.

5. The FRA will entertain a petition for reconsideration of this determination and order submitted by an interested party. Any such petition shall be submitted to the Docket Clerk, FRA, not later than close of business June 7, 1982 and shall state with particularity the basis upon which reconsideration is sought.

(Sec. 305(g) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 745(g)), as amended by section 1155, Pub. L. No. 97–35, 95 Stat. 357, 679; and section 1.49(w) of the Regulations of the Office of the Secretary of Transportation (49 CFR 1.49(w))

Issued in Washington, D.C., on May 27, 1982.

Robert W. Blanchette,

Administrator.

[FR Doc. 82–15135 Filed 6–4–82; 8:45 am]

BILLING CODE 4910–06–M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on July 21, 1982, at 9:00 a.m., the Boise, Idaho Regional Office Station Committee on Educational Allowances shall at Room 742, Federal Building, and U.S. Courthouse, 550 West Fort Street, Boise, Idaho, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Aero Technicians, Inc., Rexburg, Idaho, should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at that time and place.

Dated: May 28, 1982.

H. L. Kuyper,

Director, VA Regional Office, 550 West Fort Street, Boise, Idaho 83724.

[FR Doc. 82–15341 Filed 6–4–82; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 109
Monday, June 7, 1982

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

1

CIVIL AERONAUTICS BOARD

[M-355, Amdt. 3; June 2, 1982]

Additions of Item to the June 3, 1982 Meeting

TIME AND DATE: 10 a.m., June 3, 1982.

PLACE: Room 1027 (open), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 8a. Dockets 34030 and 39963, Final rule prohibiting discrimination against the handicapped. (OGC)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

[S-845-82 Filed 6-3-82; 3:21 pm]

BILLING CODE 6320-01-M

2

CIVIL AERONAUTICS BOARD

[M-355, Amdt. 4; June 2, 1982]

Addition of Items to the June 3, 1982 Meeting.

TIME AND DATE: 10 a.m., June 3, 1982.

PLACE: Room 1027 (open), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

1a. Docket 40545, CAB Recommendations to the FAA concerning Slot Allocations under the Interim Operations Plan. Request for Instructions. (OGC, BDA, OEA)

1b. Docket 40176, Airport "slot" exchange agreement filed by the Air Transport Association of America. (BDA)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-846-82 Filed 6-3-82; 3:22 pm]

BILLING CODE 6320-01-M

3

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 10 a.m., Thursday, June 10, 1982.

PLACE: Board Room, sixth floor, 1700 G Street NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6679).

MATTERS TO BE CONSIDERED:

Request for Waiver Under Section 563.43(d) of the Insurance Regulations—First Federal Savings and Loan Association, Winder, Georgia

Service Corporation Application Security Vault Facility—Constitution Federal Savings and Loan Association, Stanford, Connecticut

[No. 39, June 3, 1982]

[S-844-82 Filed 6-3-82; 9:52 am]

BILLING CODE 6720-01-M

4

INTERNATIONAL TRADE COMMISSION

[USITC SE-82-22]

TIME AND DATE: 2:30 p.m., Thursday, June 17, 1982.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: 1. Investigation 731-TA-95 [Preliminary] (Stainless Steel Sheet and Strip from France)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-842-82 Filed 6-3-82; 9:17 am]

BILLING CODE 7020-02-M

5

INTERNATIONAL TRADE COMMISSION

[USITC SE-82-21]

TIME AND DATE: 9:30 a.m., Tuesday, June 15, 1982.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigations 701-TA-170/173 [Preliminary] (Certain Steel Products from Korea)—briefing and vote.
6. Investigations 701-TA-165/169 [Preliminary] (Welded Carbon Steel Pipe and Tube from Brazil, France, Italy, South Korea, and West Germany)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-843-82 Filed 6-3-82; 9:18 am]

BILLING CODE 7020-02-M

6

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 23250, May 27, 1982.

STATUS: Open/closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday, May 24, 1982.

CHANGES IN THE MEETING: Deletion/additional items. The following item will not be considered at an open meeting scheduled for Thursday, June 3, 1982, at 10:00 a.m.:

Consideration of whether to adopt Rule 10b-18 under the Securities Exchange Act of 1934 and to withdraw proposed Rule 13e-2 under that Act. If adopted, Rule 10b-18 would create a "safe harbor" from liability under certain antimanipulative provisions of the federal securities laws in connection with purchases by an issuer of its common stock. For further information, please contact, Mary Chamberlin at (202) 272-2880.

The following items will be considered at a closed meeting scheduled for Thursday, June 3, 1982, following the 10:00 a.m. open meeting:

Freedom of Information Act appeals.
Regulatory matter hearing enforcement implications.
Institution of injunctive actions.

Chairman Shad and Commissioners Loomis, Evans and Thomas determined by vote that Commission business required consideration of these matters and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Siegelbaum at (202) 272-2468.

June 2, 1982.

[S-841-82 Filed 6-2-82; 4:50 pm]

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Federal Register

Vol. 47, No. 109

Monday, June 7, 1982

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419 523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Privacy Act	523-5237
Public Inspection Desk	523-5215
Scheduling of documents	523-3187

Laws

Indexes	523-5282
Law numbers and dates	523-5282 523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235
United States Government Manual	523-5230

SERVICES

Agency services	523-4534
Automation	523-3408
Library	523-4986
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public Inspection Desk	523-5215
Special Projects	523-4534
Subscription orders (GPO)	783-3238
Subscription problems (GPO)	275-3054
TTY for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JUNE

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
June 8, 1926
(Revoked in part by PLO 6252).....24133
Proclamations:
4944.....24097
4945.....24099

5 CFR

Proposed Rules:
720.....24336

7 CFR

2.....23681, 24101
102.....23910
301.....23682, 23683
908.....24137
910.....24251
916.....23913
917.....23913
923.....23684
979.....24109
1701.....24251
1900.....24539
Proposed Rules:
54.....23725
1200.....23733, 24338

8 CFR

Proposed Rules:
214.....24596
248.....24596

9 CFR

92.....24540
Proposed Rules:
318.....23941
381.....23941

12 CFR

217.....24252
563b.....24252
701.....23685
Proposed Rules:
Ch. VII.....23747
29.....23944
202.....23738, 23741
350.....23743
701.....23750
721.....23751

13 CFR

122.....24110

14 CFR

39.....23691-23698, 24541
71.....23699-23702, 24112
97.....23703
Proposed Rules:
21.....24596
39.....24138
71.....23752, 24139-24141
75.....24597
231.....23949
298.....23949
399.....24598

15 CFR

806.....23705

16 CFR

13.....24113
455.....24542
Proposed Rules:
Ch. II.....24034

17 CFR

140.....24113
211.....23915, 23916
240.....23919
Proposed Rules:
21.....23951
240.....24338

18 CFR

157.....24254
282.....24117
284.....24254
375.....24524
Proposed Rules:
271.....23752, 24141, 24342

19 CFR

148.....24117
Proposed Rules:
134.....24344

20 CFR

416.....24274
Proposed Rules:
404.....23954
651.....23754
654.....23754

21 CFR

5.....23705
20.....24277
74.....24278
81.....24278, 24285
82.....24278
146.....24286
177.....24288
436.....23707
440.....23711
442.....23707
444.....23707
448.....23707
449.....23707
450.....23707
544.....24290

558.....23712
573.....24292

22 CFR

41.....24293
514.....24119

24 CFR

868.....24293
891.....24120

25 CFR

Proposed Rules:
250.....23755

26 CFR

26a.....24127
Proposed Rules:
1.....24112

27 CFR

9.....24293, 24295
18.....23920
240.....23920
Proposed Rules:
9.....24344

29 CFR

5.....24296, 24297
1601.....24542
Proposed Rules:
1904.....24346

30 CFR

231.....24128
270.....24129
913.....23858, 23886
943.....24130
Proposed Rules:
916.....23766
925.....23767
931.....23898

31 CFR

209.....24131

32 CFR

242b.....24297
706.....24131, 24132
1665.....24542
Proposed Rules:
1656.....24599
1660.....24599

33 CFR

117.....24543, 24544
157.....24547
175.....24548

36 CFR

7.....24298
50.....24299, 24302
800.....24306
Proposed Rules:
1.....24143
2.....24143
3.....24143
4.....24143
5.....24143
6.....24143
7.....24143
9.....23768
12.....24143
219.....24348

38 CFR

3.....24549
Proposed Rules:
1.....23954
21.....24603

39 CFR

3001.....23712

40 CFR

52.....23927, 24306, 24552
162.....23928
180.....23931-23935
401.....24534
420.....24554
723.....24308
762.....23713, 23717
Proposed Rules:
52.....23773, 23778
122.....24144
123.....23955
180.....23955, 23957, 24604
425.....23958
790.....24348

41 CFR

Proposed Rules:
9.....23780
101-41.....24357

43 CFR

Public Land Orders:
548 (Revoked in part by PLO 6252).....24133
1409 (Revoked by PLO 6254).....23935
5345 (Amended PLO 6253).....24133
6252.....24133
6253.....24133
6254.....23935
Proposed Rules:
3830.....24144

44 CFR

65.....23718, 23719
67.....23720, 24321
Proposed Rules:
67.....23780-23785, 24357

46 CFR

50.....24554
71.....24554
91.....24554
107.....24554
111.....24554
189.....24554
510.....24555
Proposed Rules:
7.....24604
502.....24377

47 CFR

2.....24557
22.....24557
73.....24572-24580
74.....24580
81.....23722
87.....23722
90.....23722, 24581
Proposed Rules:
Ch. I.....24612
73.....24144, 24613

49 CFR

1.....24581
171.....24582
172.....24582
173.....24582
175.....24582
512.....24587
575.....24593
1033.....23723, 24332
1110.....24594
Proposed Rules:
172.....24157
173.....24157

50 CFR

611.....23936
661.....24134,24136
672.....23936

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
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DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
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DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

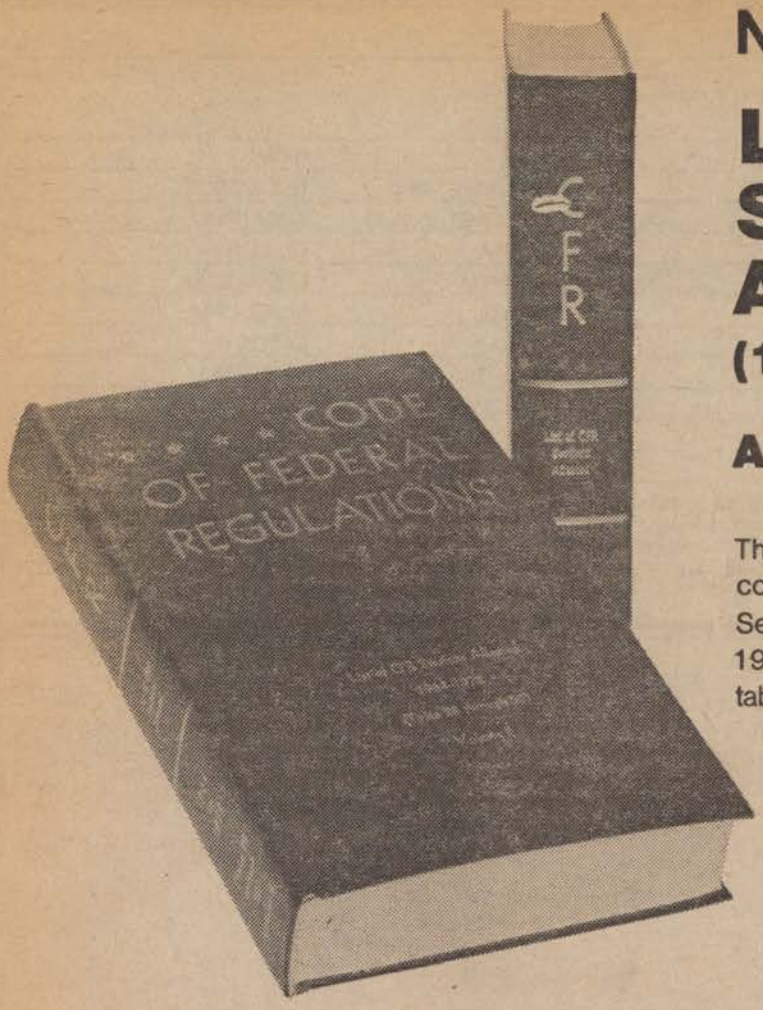
Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing June 4, 1982



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