employed in that industry and were receiving benefits under the plan as a result of such employment at the time when benefit payments to E commenced or would have commenced if E had not returned to employment.

(ii) *Trade or craft.* A trade or craft is (A) a skill or skills, learned during a significant period of training or practice, which is applicable in occupations in some industry, (B) a skill or skills relating to selling, retailing, managerial, clerical or professional occupations, or (C) supervisory activities relating to a skill or skills described in (A) or (B) of this paragraph (c)(2)(ii). For purposes of this paragraph (c)(2)(ii), the determination whether a particular job classification, job description or industrial occupation constitutes or is included in a trade or craft shall be based upon the facts and circumstances of each case. Factors which may be examined include whether there is a customary and substantial period of practical, on-the-job training or a period of related supplementary instruction. Notwithstanding any other factor, the registration of an apprenticeship program with the Bureau of Apprenticeship and Training of the Employment Training Administration of the U.S. Department of Labor is sufficient for the conclusion that a skill or skills which is the subject of the apprenticeship program constitutes a trade or craft.

*Example.* Participation in a multiemployer plan is limited solely to electricians. Electrician E retired and then became reemployed as a foreman of electricians. Because a "trade of craft" includes related supervisory activities, E remains within his trade or craft for purposes of this section.

(iii) *Geographic area covered by the plan.* The "geographic area covered by the plan" consists of any state or any province of Canada in which contributions have been made or have been required to be made by or on behalf of an employer within the immediately preceding five years and the remainder of any Standard Metropolitan Statistical Area (SMSA) which falls in part within such state. For purposes of this paragraph (c)(2)(iii), contributions shall not include amounts contributed after December 31, 1978 by or on behalf of an employer where no contributions were made by or on behalf of that employer before that date, if the primary purpose of such contribution is to allow for the suspension of plan benefits in a geographic area not otherwise covered by the plan.

*Example.* A multiemployer plan covers plumbers in Pennsylvania. All contributing employers have always been located within Pennsylvania. Accordingly, the "geographic area covered by the plan" consists of Pennsylvania and any SMSAs which fall in part within Pennsylvania. Thus, for example, in the case of the Philadelphia SMSA, Burlington, Camden and Gloucester Counties in New Jersey are within the "geographic area covered by the plan".

(3) *Employment in a maritime industry.* For plans covering employees employed in a maritime industry, as defined in § 2530.200b-6, the standard of "five or more days of service, as defined in § 2530.200b-7(a)(1)" shall be used in lieu of the standard "40 or more hours of service", for purposes of determining whether an employee is employed in section 203(a)(3)(B) service.

(d) *Suspendible amount.*—(1) *Life annuity.* In the case of benefits payable periodically on a monthly basis for as long as a life (or lives) continues, such as a straight life annuity or a quailfied joint and survivor annuity, a plan may provide that an amount not greater than the portion of a monthly benefit payment derived from employer contributions may be withheld permanently for a calendar month in which the employee is employed in section 203(a)(B)(3) service.

(2) *Other benefit forms.* In the case of benefits payable in a form other than the form described in paragraph (d)(1), a plan may provide for the permanent withholding of an amount of the employer-derived portion of benefit payments, for a calendar month in which the retiree is employed in section 203(a)(3)(B) service, not exceeding the lesser of (i) the amount of benefits which would have been payable to the employee if he had been receiving monthly benefits under the plan since actual retirement based on a single life annuity commencing at actual retirement age or (ii) the actual amount paid or scheduled to be paid to the employee for such month. Payments which are scheduled to be paid less frequently than monthly may be converted to monthly payments for purposes of this paragraph (d)(2)(ii).

Signed at Washington, D.C. this 13th day of December, 1978.

IAN D. LANOFF,
*Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration.*

[FR Doc. 78-35103 Filed 12-14-78; 8:47 am]

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[6560-01-M]

## ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 65]

[FRL 1022-4]

### DELAYED COMPLIANCE ORDERS

**Proposed Delayed Compliance Order for Phillips Petroleum Co., Clermont, Ind.**

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: U.S. EPA proposed to issue an Administrative Order to Phillips Petroleum Company. The Order requires the Company to bring the volatile organic storage and loading facility at Clermont, Indiana, (the source) into compliance with APC-15, Sections 3 and 4, part of the federally-approved Indiana State Implementation Plan (SIP). Because the Company is unable to comply with these regulations at this time, the proposed Order would establish an expeditious schedule requiring final compliance by July 1, 1979. Source compliance with the Order would preclude suits under the Federal enforcement and citizen suit provision of the Clean Air Act (the Act), for violation of the SIP regulations covered by the Order.

The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on U.S. EPA's proposed issuance of the Order.

DATES: Written comments must be received on or before December 28, 1978, and requests for a public hearing must be received on or before January 3, 1978. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after twenty-one days' prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESS: Comments and requests for a public hearing should be submitted to Director, Enforcement Division, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Materials supporting the Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Mr. Arthur E. Smith, Jr., Attorney, Enforcement Division, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, at 312-353-2082.

SUPPLEMENTARY INFORMATION: Phillips Petroleum Company owns the volatile organic materials storage and loading facility at Clermont, Indiana. The proposed Order addresses emissions from the volatile organic material storage and loading facility which is subject to APC-15, Sections 3 and 4 of the Indiana Implementation Plan. The regulation limits the emissions of volatile organics and is part of the federally-approved Indiana State Implementation Plan. The Order requires final compliance with the regulations by July 1, 1979, and the source has consented to its terms. The source has agreed to meet the Order's increments during the period of this informal rulemaking.

The proposed Order satisfies the applicable requirements of Section 113(d) of the Clean Air Act. If the Order is issued, source compliance with its terms would preclude further U.S. EPA enforcement action under Section 113 of the Act against the source for violation of the regulations covered bya the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether U.S. EPA should issue the Order. Testimony given at any public hearing concerning the Order will also be considered. After the public comment period and any public hearing, the Administrator of U.S. EPA will publish in the FEDERAL REGISTER the Agency's final action on the Order in 40 CFR Part 65.

Dated: November 24, 1978.

JOHN MCGUIRE,
*Regional Administrator, Region V.*

In consideration of the foregoing, it is proposed to amend 40 CFR Chapter 1, as follows:

## PART 65—DELAYED COMPLIANCE ORDERS

1. By adding an entry to the table in section 65.190, *Federal Delayed Compliance Orders issued under Section 113(d)(1), and (3) and (4) of the Act,* to reflect approval of the following order:

REGION V

In the matter of Phillips Petroleum Company, Clermont, Indiana; Proceeding pursuant to Section 113(d) of the Clean Air Act, as amended (42 U.S.C. Section 7413(d)).

The Order is issued this date pursuant to Sections 113(a), 113(d) and 114 of the Clean Air Act, as amended, 42 U.S.C. Section 7401 *et seq.* (Act). This Order contains a schedule for compliance, interim control requirements, and reporting requirements. Public notice, opportunity for a public hearing, and thirty (30) days notice to the State of Indiana have been provided pursuant to Section 113(d)(1) of the Act.

### FINDINGS

1. On April 12, 1978, the United States Environmental Protection Agency (U.S. EPA) issued a Notice of Violation, pursuant to Section 113(a)(1) of the Act, to Phillips Petroleum Company (Phillips), upon a finding that the Clermont Terminal, Volatile organic materials storage and loading facility, was in violation of Indiana APC-15, Sections 3 and 4, a part of the applicable implementation plan defined in Section 110(d) of the Act. This finding was based upon emission factor calculations derived from data submitted to U.S. EPA by the subject facility.

2. In satisfaction of Section 113(a)(4) of the Act, opportunity to confer with the Administrator's delegate was given to Phillips, and on May 8, 1978, an enforcement conference was held.

3. It has been determined that Phillips is unable to immediately comply with the applicable Implementation Plan.

After a through investigation of all relevant facts, including public comment, it is determined that the schedule for compliance set forth in this Order is as expeditious as practicable, and that the terms of this Order comply with Section 113(d) of the Act. Therefore, it is hereby Ordered:

### ORDER

I. Phillips shall comply with the Indiana Implementation Plan regulation APC-15, Sections 3 and 4, as approved by U.S. EPA on May 14, 1973, including a vapor collection and disposal/recovery system, in accordance with the following schedule on or before the dates specified therein.

A. In regard to the volatile organic materials storage and loading facility at Clermont, Indiana:

1. December 1, 1978—Phillips shall submit control plans for the control equipment to U.S. EPA.
2. February 15, 1979—Phillips shall award contracts for the control equipment.
3. March 15, 1979—Phillips shall initiate on-site contruction for the control equipment.
4. June 15, 1979—Phillips shall complete on-site construction.
5. July 1, 1979—Phillips shall achieve final compliance with the Indiana Implementation Plan regulation APC-15, Sections 3 and 4, as approved by the U.S. EPA on May 14, 1973.
6. After July 1, 1979, Phillips shall implement operation and maintenance procedures to maximize the control efficiency of the pollution control equipment.

II. Phillips, Clermont Terminal, volatile organic materials storage and loading facility shall use the best practicable interim system of emission reduction so as to minimize hydrocarbon emissions; avoid any imminent and substantial endangerment to the health of persons; comply with the requirements of the applicable implementation plan insofar as it is able to; and, comply with the following interim requirements:

A. Phillips shall insert fill-pipes to the bottom of the loading compartment in a vertical position. Phillips shall control flow rate so as to minimize hydrocarbon emissions.

B. Phillips shall minimize product spillage.

III. Phillips, Clermont Terminal, volatile organic materials storage and loading facility, shall comply with the following emission monitoring and reporting requirements on or before the dates specified below:

A. *Emission Monitoring.*—Until July 1, 1979, Phillips shall maintain a record of the amount of volatile organic material which travels through the facility. This shall include the volume and vapor pressure of the volatile organic material.

B. *Reporting Requirements.*—1. No later than fifteen (15) days after any date for achievement of an incremental step of final compliance, specified in this Order, Phillips shall notify U.S. EPA in writing of its compliance, or noncompliance and reasons therefore, with the requirement. If delay is anticipated in meeting any requirement of this Order, Phillips shall immediately notify U.S. EPA in writing of the anticipated delay and reasons therefore.

2. A quarterly report shall be sent to the U.S. EPA reporting the progress of the program for installation of the control equipment and information required by paragraph 1 A.

3. All submittals and notifications to U.S. EPA pursuant to this Order shall be made to Mr. Eric Cohen, Chief, Compliance Section, Enforcement Division, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604.

IV. Nothing herein shall affect the responsibility of Phillips to comply with State or local regulations, or other Federal regulations.

V. Phillips is hereby notified that its failure to achieve final compliance by July 1, 1979, at the Clermont Terminal, may result in a requirement to pay a noncompliance penalty under Section 120. In the event of such failure, Phillips will be formally notified, pursuant to Section 120(b)(3) and any regulations promulgated thereunder, of its noncompliance.

VI. This Order is effective immediately.

Date ———.

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*Administrator, U.S. Environmental Protection Agency.*

### WAIVER OF RIGHTS TO CHALLENGE ORDER

Phillips, by the duly authorized undersigned, hereby consents to the provisions of this Order and waives any and all rights under any provisions of law to challenge this Order.

Date ———.

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*(Signature of authorized representative of source).*

[FR Doc. 78-35114 Filed 12-18-78; 8:45 am]

[4110-12-M]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Office for Civil Rights

[45 CFR Parts 80, 84, 86]

### VOCATIONAL EDUCATIONAL PROGRAMS

**Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap**

AGENCY: Office for Civil Rights, Department of Health, Education, and Welfare.

ACTION: Guidelines for Vocational Education Programs—Publication for Comment.

SUMMARY: These proposed guidelines describe responsibilities of recipients of Federal funds offering or administering vocational education programs. They derive from Title VI of the Civil Rights Act of 1964 and the implementing departmental regulation (45 CFR Part 80), Title IX of the Education Amendments of 1972 and the implementing departmental regulation (45 CFR Part 86), and Section 504 of the Rehabilitation Act of 1973 and the implementing department regulation (45 CFR Part 84).

DATES: All comments must be received by January 19, 1979.

ADDRESS: Comments should be addressed to Melvyn R. Leventhal, Deputy Director, Office of Standards, Policy, and Research, Office for Civil Rights, Voc. Ed. Guidelines, Department of Health, Education, and Welfare, 330 Independence Ave., SW., Washington, D.C. 20201

FOR FURTHER INFORMATION CONTACT:

David Gerard, Office of Standards, Policy, and Research at the above address (tel. 202-245-9177).

SUPPLEMENTARY INFORMATION: The following proposed guidelines set forth the requirements of civil rights authorities applicable to vocational education programs. They are issued as a result of civil rights statutes enacted by Congress, Department regulations issued under such statutes, and injunctive orders entered by the United States District Court for the District of Columbia in *Adams* v. *Califano*. They are also issued because the Department has found evidence of continuing discrimination in vocational education programs.

A. LEGAL BASIS FOR THE GUIDELINES

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in any program or activity receiving Federal financial assistance. The Department of Health, Education, and Welfare issued regulations implementing Title VI in 1964. Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs receiving or benefiting from Federal financial assistance. The Department issued regulations implementing Title IX in 1975. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap in any program or activity receiving Federal financial assistance. The Department issued regulations implementing Section 504 in 1977. These civil rights statutes and their implementing regulations apply to vocational education programs.

In 1973, the Department of Health, Education, and Welfare was sued for nonenforcement of Title VI in a number of education areas, including vocational educational (*Adams* v. *Califano*). As a result of this litigation, the Department was directed to enforce civil rights requirements in vocational education programs through compliance reviews, a survey of enrollments and related data, and the issuance of guidelines explaining the application of Title VI regulations to vocational education.

The Guidelines that follow are issued to meet the requirements of the cited civil rights statutes and regulations and the requirements of the *Adams* court orders. They are not intended, however, to delimit the statutory prohibitions against discrimination. Rather, they derive from, and provide information supplementary to, the cited authorities; although comprehensive they do not identify every civil rights violation that may arise in a vocational education setting.

B. FACTUAL BASIS FOR THE GUIDELINES

The Guidelines are also adopted because it is apparent that vocational education programs receiving HEW funds continue to engage in the discriminatory practices identified in the *Adams* litigation and in the Department's enforcement activities. Administrators of these programs need additional guidance and support from the Department to meet their obligation to comply with civil rights authorities.

The Office for Civil Rights' 1974 survey of approximately 1,400 Area Vocational Education Schools (AVES) found a pattern of segregation based on race and sex in schools and courses. At that time, 21 schools were exclusively male or female, 9 schools were all black, and 10 schools were all white. Thus, three percent of the schools surveyed were totally segregated by race or sex. Further, a significant number of schools and courses were substantially segregated: 70 schools were more than 90 percent of one sex; 31 schools in areas with a substantial minority population were more than 90 percent white; over 1,000 schools—72 percent of those surveyed—offered five or more vocational courses attended solely by persons of one sex.

Information provided by the Office of Education's Bureau of Occupational and Adult Education for 1976 demonstrates that women are concentrated in courses traditionally identified as intended for them. Women dominate enrollments in Health Occupations (78.7 percent), Consumer and Homemaking Education (83.2 percent), Occupational Home Economics (84.7 percent), and Office Occupations (75.1 percent). Women constitute only 11.3 percent of enrollments in Technical programs, 12.7 percent in Trade and Industrial programs, and 11.3 percent in Agriculture.

Over one-half of the black students enrolled in secondary vocational education programs in 1972 were in home economics and office occupations; 22 percent were being trained in trade and industrial occupations; and 11 percent were enrolled in agricultural training. Only 3 percent of the black students enrolled in vocational courses were being trained for positions in health and technical occupations.

Minority and female students were also underrepresented in apprentice training programs. In most States, according to OCR's 1974 survey of area vocational schools, fewer than 15 percent of apprentices were minorities and fewer than 5 percent of apprentices were women.

Handicapped students are not enrolled in significant numbers in vocational education programs. Instructors often are reluctant to accept handicapped students in regular classroom settings, even when special accommodations are not needed. In addition, vocational education teachers are poorly prepared to assist handicapped students to complete their course work; only 3 percent of all vocational education teachers have completed courses on the special needs of handicapped students.

Vocational education training is often offered in locations and service areas that are inaccessible to minority and handicapped students. This is particularly evident in regional vocational schools located in suburban and rural communities.

Minority women and men are poorly represented in administrative positions in vocational education; in addition, they comprise a small percentage of the teaching staff and are disproportionately assigned to classes with predominantly minority and female enrollments.

Finally, residents of large cities are often unable to raise sufficient funds for vocational education and do not receive Federal funds in proportion to their representation in the Nation's population. The large cities—which contain 69 percent of the population—received only 51 percent of Federal vocational education funds in 1973. Federal funds for vocational school construction have been used largely for area vocational schools operated by consortia of suburban districts, to the disadvantage of urban minority youth.

There have been improvements since the 1974 survey. Fewer schools are entirely segregated on the basis of race or sex; some districts have made sincere efforts to uproot discrimination. However, recent complaint investigations and compliance reviews demonstrate that serious civil rights violations remain in the following areas:

- Distribution of Federal financial assistance for vocational education to school districts and communities;
- Access of students to vocational instruction, which includes site selection of schools and facilities, geographic boundaries for service areas, numerical limitations on student admission, and duel racial or sex-restricted branches, annexes and courses;
- Counseling and prevocational programs;
- Equal opportunity in the vocational-instructional setting, including accommodations for handicapped persons, student financial assistance, residential housing, and comparable facilities;
- Work study, cooperative education, job placement programs and apprentice training;
- Employment of faculty and staff;
- Proprietary vocational-education schools.

These Guidelines are divided into sections based on these categories. Most vocational instruction is given in the Nation's 16,000 regular-comprehensive high schools and community and junior colleges. In addition, there are more than 2,000 secondary and postsecondary vocational-education centers (often known by the term Area Vocational Education Schools, or AVES), which have as their primary or sole objective the teaching of skills that lead to employment. In many cases, these vocational-education centers are administratively and physically separate from the vocational programs of regular-comprehensive high schools and local education agencies. Whatever the organization of vocational education, it is closely tied to the skill development needs of communities, States, and regions. The variations of programs and courses number in the thousands. They include, for example, "work study" for students needing part-time employment to support their vocational studies; "cooperative education" for students who receive credit for work at jobs related to their vocational field; and "apprentice training" for students affiliated with a labor union. These Guidelines apply to all of these diverse programs. They are provided with the expectation that through voluntary compliance and enforcement by the Office for Civil Rights they will contribute to bringing an end to unlawful discrimination against persons seeking the skills necessary for gainful and meaningful employment.

In Part 80, it is proposed to add Appendix B to read as follows:

APPENDIX B—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS

I. SCOPE AND COVERAGE

A. *Application of Guidelines*

These Guidelines apply to all recipients of Federal financial assistance from the Department of Health, Education, and Welfare, including state agency recipients, offering or administering programs of vocational education or training.

B. *Definition of Recipient*

The definition of "recipient" of Federal financial assistance is established by Departmental regulations implementing Title VI, Title IX, and Section 504 (45 CFR 80.13(i), 86.2(h), 84.3(f)).

For the purposes of Title VI:

The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program (45 CFR 80.13(i)).

For the purpose of Title IX:

"Recipient" means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance, including any subunit, successor, assignee, or transferee thereof (45 CFR 86.2(h)).

For the purposes of Section 504:

"Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance (45 CFR 84.3(f)).

C. *Recipients Covered by these Guidelines*

The following education agencies, when they provide vocational education, are examples of recipients covered by these guidelines:

1. The board of education of a public school district and its administrative agency.
2. The administrative board of a specialized vocational high school serving students from more than one school district.
3. The administrative board of a technical or vocational school that is used exclusively or principally for the provision of vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market, including students seeking an associate degree through a vocational program offered by the school.
4. The administrative board of a junior college or community college or four year college that has a department or division that provides vocational education to students seeking immediate employment or an associate degree.
5. The administrative board of a proprietary (private) vocational education school.
6. A State agency recipient itself operating a vocational education facility.

D. *Schools to Which these Guidelines Apply*

The following are examples of the types of schools to which these Guidelines apply.

1. A junior high school, middle school, or those grades of a comprehensive high school that offers instruction to inform, orient, or prepare students for vocational education at the secondary level.
2. A vocational education facility operated by a State agency.
3. A comprehensive high school that has a department exclusively or principally used for providing vocational education; or that offers at least one vocational program to secondary level students who are available for study in preparation for entering the labor market; or that offers adult vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market.
4. A comprehensive high school, offering the activities described above, that receives students on a contract basis from other school districts for the purpose of providing vocational education.
5. A specialized high school used exclusively or principally for the provision of vocational education, that enrolls students from one or more school districts for the purpose of providing vocational education.
6. A technical or vocational school that provides vocational education to persons enrolled in a secondary school and to persons who have completed or left high school and who are available for study in preparation for entering the labor market, including students seeking an associate degree through a course of vocational instruction offered by the school.
7. A junior college, a community college, or four-year college that has a department or division that provides vocational education to students seeking immediate employment or an associate degree through a course of vocational instruction offered by the college.
8. A proprietary school, licensed by the State, that offers vocational education.

NOTE.—Subsequent sections of these Guidelines use the term *secondary vocational center* in referring to the institutions described in paragraphs 3, 4 and 5 above and the term *postsecondary vocational center* in referring to institutions of the type described in paragraphs 6 and 7 above.

II. RESPONSIBILITIES OF STATE AGENCIES ADMINISTERING GRANTS TO OTHER RECIPIENTS

A. *Responsibilities of State Agency Recipients*

State agency recipients may not require, approve of, or engage in any discrimination or denial of services on the basis of race, color, national origin, sex, or handicap in performing any of the following activities:

1. Establishment of criteria or formulas for distribution of Federal financial assistance or state funds to vocational programs in the state;

2. Establishment of requirements for admission to or requirements for the administration of vocational education programs;

3. Approval of action by local entities providing vocational education; (For example, a State agency must ensure compliance with Section IV of these Guidelines when it reviews a decision of an administrative board of an education agency that provides vocational education to create or change a geographic service area or select a site for a new facility);

4. Conducting its own programs; for example, in employing its staff it may not discriminate on the basis of sex or handicap.

B. *State Agency Responsibility To Obtain Compliance From Subrecipients*

The State agency responsible for the administration of vocational education programs must adopt a compliance program to prevent, identify and remedy discrimination on the basis of race, color, national origin, sex or handicap by its subrecipients. (The term *subrecipient*, in this context, refers to local agencies or vocational centers that receive Federal financial assistance through the State agency.) This compliance program must include:

1. Providing technical assistance to subrecipients;

2. Collecting compliance information from subrecipients;

3. Conducting periodic compliance reviews of subrecipients and investigating complaints it receives against subrecipients and reporting its findings to the Office for Civil Rights; upon finding unlawful discrimination, notifying the subrecipient of steps it must take to attain compliance and attempting to obtain voluntary compliance;

4. Upon failure of a subrecipient to voluntarily comply, notifying the Office for Civil Rights of such resistance;

5. Reporting its activities under the foregoing paragraphs to the Office for Civil Rights.

C. *Statement of Procedures and Practices*

Within one year from the publication of these Guidelines in final form, each State agency recipient must submit to the Office for Civil Rights the methods of administration and related procedures it will follow to comply with the requirements described in paragraphs "A" and "B" immediately above.

D. *Enforcement Policy*

A State agency recipient that meets its responsibilities under paragraphs "A" "B" and "C", above, can generally expect the Office for Civil Rights to look to subrecipients for compliance with all other provisions of these Guidelines.

III. DISTRIBUTION OF FEDERAL FINANCIAL ASSISTANCE AND OTHER FUNDS FOR VOCATIONAL EDUCATION

A. *Agency Responsibilities*

Each State agency recipient that administers grants for vocational education must distribute Federal and State funds so that no student or group of students is denied an opportunity to benefit from vocational education on the basis of race, color, national origin, sex, or handicap. All other recipients must distribute local funds for vocational education so that no student or group of students is denied an opportunity to benefit from vocational education, on the basis of race, color, national origin, sex or handicap.

B. *Distribution of Funds by Formula*

State agencies may not use a formula for distribution of either Federal or state funds which includes factors that have the effect of discriminating on the basis of race, color, national origin, sex, or handicap, unless such factors are included to compensate for past discrimination. State agencies must apply formula provisions under the Vocational Education Amendments of 1976 in a manner consistent with civil rights authorities. For example, in each State it is likely that some recipients will enroll greater proportions of minority students than the state-wide average, and a State's funding formula might result in these recipients receiving lower per pupil allocations of Federal or State funds than the state's average per pupil allocation. This pattern will establish a violation of the Department's regulations unless the State can establish the need for the formula.

C. *Distribution Through Competitive Grants or Contracts*

Each State agency that establishes criteria for controlling the award to recipients of competitive vocational education grants or contracts available through Federal funds must establish and apply the criteria without regard to the race, color, national origin, sex, or handicap or any or all of a recipient's students, except where necessary to compensate for past discrimination. The example in paragraph B, above, is applicable to competitive grant awards.

D. *Application Processes for Competitive Discretionary Grants*

State agencies must adequately disseminate information needed to satisfy the requirements of any application process for competitive or discretionary grants so that all recipients including those having concentrations of students of a particular race, color, national origin, sex, or handicap, are informed of and able to seek funds. State agencies that provide technical assistance for the completion of the application process must provide such assistance without discrimination against any one or class of recipients.

E *Alteration of Fund Distribution to Provide Equal Opportunity*

If the Office for Civil Rights finds that a State's system for distributing vocational education funds unlawfully discriminates on the basis of race, color national origin, sex, or handicap, it will require the State to adopt an alternative nondiscriminatory method of distribution.

IV STUDENT ELIGIBILITY FOR ACCESS AND ADMISSION TO VOCATIONAL EDUCATION

A *Recipient Responsibilities*

Plans of student assignment or criteria for admission to vocational education schools and programs may not discriminate on the basis of race, color national origin, sex, or handicap. A recipient may not develop, impose, approve, or implement discriminatory plans or criteria.

B. *Site Selection for Vocational Schools*

State and local recipients may not select a site for a vocational education facility for the purpose or with the effect of excluding, segregating, or otherwise discriminating against students on the basis of race, color, national origin, sex, or handicap. Such recipients must locate vocational facilities and programs at sites that are readily accessible to both white and minority communities, and that do not tend to identify the facility or program as intended for white or minority students.

C. *Eligibility for Access and Admission to Secondary Vocational Education Centers Based on Geographic Service Areas*

State and local recipients may not establish or approve geographic boundaries for secondary vocational education center service areas that unlawfully discriminate on the basis of race, color, or national origin. The Office for Civil Rights will presume, subject to rebuttal, that any one or combination of these circumstances indicates unlawful discrimination:

1. The boundaries for a secondary vocational education center exclude a contiguous school system, or part of a school system, that enrolls minority or non-minority students in significantly greater numbers or proportion than that of the secondary vocational education center;

2. Minority students who reside outside a secondary vocational education center service area, and who are ineligible to attend the center, reside, nontheless, as close to the center as nonminority students who are eligible to attend the center;

3. The over-all program of a secondary vocational education center, in comparison to the vocational program of a contiguous school system or secondary vocational education center enrolling a greater proportion of minority students, provides its students with a broader range of curricular offerings, facilities and equipment, or provides its graduates greater opportunity for employment in jobs: (a) for which there is a demonstrated need in the community or region; (b) that pay higher entry level salaries or wages; or (c) that are generally acknowledged to offer greater prestige or status.

4. The vocational offerings of a secondary vocational education service area have been located primarily or exclusively at schools that enroll predominantly students of one race or national origin.

D. *Remedies for Violations of Site Selection and Geographic Service Area Requirements*

If the conditions specified in paragraphs IV. A, B, and C, immediately above, are found and not rebutted by proof of nondiscrimination, the Office for Civil Rights will require the recipient(s) to submit a remedial plan to overcome the discrimination. The following are examples of steps that may be included in a remedial plan, where necessary to overcome discrimination: (1) the redrawing of the boundaries of the secondary vocational education center service area to include areas unlawfully excluded and/or to exclude areas unlawfully included; (2) the provision of transportation to students residing in such areas; (3) the provision of additional programs and services to students who would have been eligible for attendance at the vocational education center but for the discriminatory service area or site selection; and (4) construction of new facilities.

E. *Geographic Service Areas for Postsecondary Vocational Centers*

Recipients may not establish or approve geographic boundaries for postsecondary vocational education center service areas that are gerrymandered to exclude or include persons on the basis of race, color, national origin, sex, or handicap. If the Office for Civil Rights finds a violation of this provision, paragraph IV-D, above, shall apply.

F. *Eligibility Based on Numerical Limits Imposed on Sending Schools*

A recipient may not adopt a system for admission to a secondary vocational education center that limits admission to a fixed number of students from each sending school included in the center's service area if such a system disproportionately excludes students on the basis of race, sex, or handicap from the center. (Example: Assume 25 percent of a school district's high school students are black and that most of those black students are enrolled in one high school; the white students, 75 percent of the district's total enrollment, are generally enrolled in the five remaining high schools. This pargraph prohibits a system of admission to the secondary vocational-education center which limits eligibility to a fixed and equal number of students from each of the district's six high schools.)

G. *Remedies for Violation of Eligibility Based on Numerical Limits Requirements*

If the Office for Civil Rights finds a violation of paragraph F, above, the recipient must implement an alternative system of admissions that does not disproportionately exclude students on the basis of race, color, national origin, sex, or handicap. The recipient may also be required to undertake compensatory measures to overcome the effects of the past discriminatory exclusion.

H. *Elimination of Vocational Education Centers, Branches, Annexes, and Courses Enrolling Students of One Race or One Sex*

Recipients may not limit enrollment in a vocational education center, branch, annex, or course to students of one race or sex. The continued enrollment of one race or sex in such a facility or in any course will result in a finding of unlawful discrimination unless a recipient can demonstrate that it has taken steps such as those specified in paragraph "I", below, that should reasonably lead to the enrollment of students of the underrepresented race or sex.

I. *Remedies for Eliminating One-Race and One-Sex Facilities*

If the Office for Civil Rights finds a violation of the type described in paragraph H, above, the recipient will be required to submit a plan of remedial action to eliminate the segregation. The plan may include measures such as: (1) elimination of program duplication in the segregated facility and other proximate vocational facilities; (2) relocation of programs or courses; (3) merger of programs into one facility through school closings or new construction; (4) redrawing of service area boundaries; (5) intensive outreach, recruitment, and counseling; (6) making available to all students in the service area all programs offered in the service area and providing students transportation to such programs; notifying students and the public of this opportunity; (7) any combination of these or other measures that will most effectively overcome the segregation.

J. *Additions and Renovations to Existing Vocational Education Facilities*

A recipient may not add to, modify, or renovate the physical plant of a vocational education facility in a manner that creates, perpetuates, or increases student segregation on the basis of race, color, national origin, sex, or handicap.

K. *Admissions Criteria*

Recipients may not judge candidates for admission to vocational education programs on the basis of criteria that have the effect of disproportionately excluding persons on the basis of race, color, national origin, sex, or handicap. However, if the recipient can demonstrate that such criteria have been validated as predictors of success in the program and that alternative criteria, which do not have such a disproportionate adverse effect, are unavaliable, the criteria will be judged nondiscriminatory. Examples of criteria that must be validated in this way are standardized tests, such as the Test of Adult Basic Education (TABE), academic achievement records, prior record of disciplinary infractions, counselors' approval, teachers' recommendations, interest inventories, and high school diplomas.

An introductory, preliminary, or exploratory course may not be used as a prerequisite for admission to a program if it was not available without regard to race, color, national origin, sex, and handicap unless the recipient can demonstrate that such a course is essential to participation in the program. If such a course is essential to participation, the recipient must demonstrate that the course is presently available to those seeking enrollment for the first time and to those formerly excluded.

L. *Eligibility of National Origin Minority Persons With Limited English Language Skills*

Recipients may not restrict an applicant's admission to vocational education programs solely because the applicant, as a member of a national origin minority with limited English language skills, cannot participate in and benefit from vocational instruction to the same extent as a student whose primary language is English. It is the responsibility of the recipient to identify such applicants and assess their ability to participate in vocational instruction. Acceptable methods of identification include: (1) identification by administrative staff, teachers, or parents of secondary level students; (2) identification by the student in postsecondary or adult programs; and (3) appropriate diagnostic procedures, if necessary.

Recipients must take steps to open all vocational programs to these national origin minority students. A recipient must demonstrate that a concentration of students with limited English language skills in one or a few programs is not the result of discriminatory limitations upon the opportunities available to such students.

M. *Remedial Action for Persons With Limited English Language Skills*

If the Office for Civil Rights finds that a recipient has denied national origin minority persons admission to a vocational school or program because of their limited English language skills or has assigned students to vocational programs based solely upon their limited English language skills, the recipient will be required to submit a remedial plan that insures national origin minority students equal access to vocational education programs.

N. *Equal Access for Handicapped Students*

Recipients may not deny handicapped students access to vocational education programs, courses or schools because of the existence of architectural or equipment barriers, or because of the absence of effective auxiliary aids. If necessary, recipients must: (1) modify instructional equipment; (2) modify or adapt the manner in which the courses are offered; (3) use facilities that are readily accessible to mobility impaired students or alter facilities to make them readily accessible to mobility impaired students; and (4) provide auxiliary aids that effectively make lectures and necessary materials available to handicapped students.

Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory.

Access to vocational programs or courses may not be denied handicapped students on the ground that employment opportunities in any occupation or profession may be more limited for handicapped persons than for nonhandicapped persons.

O. *Public Notification*

Prior to the beginning of each school year, recipients must advise students, parents, and the general public that all vocational opportunities will be offered without regard to race, color, national origin, sex, or handicap. Announcement of this policy of nondiscrimination may be made, for example, in local newspapers, school publications and/or other media that reach the general public, minorities (including national origin minorities with limited English language skills), women, and handicapped persons. All program offerings and admission criteria, if any, should be included in the announcement.

When a community contains a significant number of national origin minority persons with limited English language skills, public notification materials must be disseminated to this population in its language and must mention that recipients will take steps to assure that the lack of English language skills will not be a barrier to admission and participation in vocational education programs.

V. COUNSELING AND PREVOCATIONAL PROGRAMS

A. *Recipient Responsibilities*

Recipients must insure that counseling materials and activities, including program selection, career/employment selection, promotional, and recruitment efforts do not discriminate on the basis of race, color, national origin, sex, or handicap.

B. *Counseling and Prospects for Success*

Recipients that operate vocational education programs must insure that counselors do not direct or urge any student to enroll in a particular career or program, or measure or predict a student's prospects for success in any career or program based upon the student's race, color, national origin, sex, or handicap. Recipients may not counsel handicapped students toward more restrictive career objectives than nonhandicapped students with similar abilities and interests. Where vocational program enrollments reflect a disproportionate number of male or female students, recipients must take steps to insure that the disproportion does not result from sex discrimination in counseling activities.

C. *Student Recruitment Activities*

Recipients must conduct their student recruitment activities so as not to exclude or limit opportunities on the basis of race, color, national origin, sex, or handicap. Where recruitment activities involve the presentation or portrayal of vocational and career opportunities, the curricula and programs described should not be limited to fields traditionally identified with persons of a particular race, color, national origin, sex, or handicap. Also, to the extent possible, recruiting teams should include persons of different races, national origins, sexes, and handicaps.

D. *Counseling of Students With Limited English-Speaking Ability or Hearing Impairments*

Recipients must insure that counselors can effectively communicate with national origin minority students with limited English language skills and with students who have hearing impairments. This requirement may be satisfied by having interpreters available.

E. *Promotional Activities*

Recipients may not undertake promotional efforts (including activities of school officials, counselors, and vocational staff) in a manner that creates or perpetuates stereotypes based on race, color, national origin, sex or handicap. Examples of promotional efforts are career days, parents' night, shop demonstrations, visitations by groups of prospective students and by representatives from business and industry. Literature that is part of promotional efforts may not create or perpetuate stereotypes through text or illustration. In areas where there is a substantial national origin population with limited English language skills promotional literature must be distributed to this population in its language.

VI. EQUAL OPPORTUNITY IN THE VOCATIONAL-INSTRUCTIONAL SETTING

A. *Accommodations for Handicapped Students*

Recipients must place handicapped students in the regular educational environment of any vocational education program to the maximum extent appropriate to the needs of the student unless it can be demonstrated that the education of the handicapped person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Handicapped students may be placed in a special education program only after the recipient satisfies the provisions of the Department's Regulation 45 CFR Part 84 relating to evaluation, placement, and procedural safeguards. If a separate class or facility is identifiable as being for handicapped persons, the facility, the programs, and the services must be comparable to the facilities, programs, and services offered to nonhandicapped students.

B. *Student Financial Assistance*

Recipients may not award financial assistance in the form of loans, grants, scholarships, special funds, subsidies, compensation for work, or prizes to vocational education students on the basis of race, color, national origin, sex, or handicap, except to overcome the effects of past discrimination. Recipients may administer sex restricted financial assistance where the assistance and restriction are established by will, trust, bequest, or any similar legal instrument, if the overall effect of all financial assistance awarded does not discriminate on the basis of sex. Materials and information used to notify students of opportunities for financial assistance may not contain language or examples that would lead applicants to believe the assistance is provided on a discriminatory basis. Where there is a significant national origin minority population with limited English language skills, such information must be disseminated to that population in its language.

C. *Housing in Residential Postsecondary Vocational Education Centers*

Recipients must extend housing opportunities without discrimination based on race, color, national origin, sex, or handicap. This obligation extends to recipients that provide on-campus housing and/or that have agreements with providers of off-campus housing. In particular, a recipient postsecondary vocational education program that provides on-campus or off-campus housing to its nonhandicapped students must provide, at the same cost and under the same conditions, comparable convenient and accessible housing to handicapped students.

D. *Comparable Facilities*

Recipients must provide changing rooms, showers, and other facilities for students of one sex that are comparable to those provided to students of the other sex. This may be accomplished by rotating use of the same facilities or by providing separate, comparable facilities.

Such facilities must be adapted or modified to the extent necessary to make the vocational education program readily accessible to handicapped persons.

VII. WORK STUDY, COOPERATIVE VOCATIONAL EDUCATION, JOB PLACEMENT, AND APPRENTICE TRAINING

A. *Responsibilities in Cooperative Vocational Education Programs, Work-Study Programs, and Job Placement Programs*

Recipients must ensure that students participating in cooperative vocational education programs, work study programs, and job placement programs are not discriminated against by employers or prospective employers on the basis of race, color, national origin, sex, or handicap in recruitment, hiring, placement, the assignment to work tasks, the hours of employment, the levels of responsibility, and in pay. Recipients may not honor any employer's request for students who are free of handicaps or for students of a particular race, color, national origin, or sex. In the event an employer or prospective employer is or has been subject to court action involving discrimination in employment, school officials should rely on the court's findings where the decision resolves the issue of whether the employer is in violation of its obligations under Title VI, Title IX, or Section 504.

B. *Apprentice Training Programs*

A recipient may not enter into any agreement for the provision of apprentice training for students with any labor union that discriminates against its members or applicants for membership on the basis of race, color, national origin, sex, or handicap. If a recipient enters into a written agreement with a labor union providing for apprentice training, the agreement must contain an assurance from the union: (1) that it does not engage in such discrimination against its membership or applicants for membership; and (2) that apprenticeship training will be offered and conducted for its membership free of such discrimination.

VIII. EMPLOYMENT OF FACULTY AND STAFF

A. *Employment Generally*

Recipients may not engage in any employment practice that discriminates against any employee or applicant for employment on the basis of sex or handicap. Recipients may not engage in any employment practice that discriminates on the basis of race, color, or national origin against any employee who works directly with students, any administrator, or any applicant for such positions.

B. *Recruitment*

Recipients may not restrict their faculty recruitment to schools, communities, or companies disproportionately composed of persons of a particular race, color, national origin, sex, or handicap except for the purpose of overcoming the effects of past discrimination. Every source of faculty must be notified that the recipient does not discriminate in employment on the basis of race, color, national origin, sex, or handicap.

C. *Patterns of Discrimination*

Whenever the Office for Civil Rights finds a pattern of segregation of persons or nonrepresentation of persons on the faculty of a vocational education school or program based upon race, color, national origin, sex, or handicap, it will presume that such segregation or exclusion resulted from unlawful discrimination. This presumption can be overcome by proof that qualified persons of the particular race, color, national origin, or sex, or that qualified handicapped persons are not available in the relevant labor market.

D. *Salary Policies*

Recipients must establish and maintain faculty salary scales and policy based upon the conditions and responsibilities of employment, without regard to race, color, national origin, sex, or handicap.

E. *Employment Opportunities for Handicapped Applicants*

Recipients must provide equal employment opportunities for teaching and administrative positions to handicapped applicants who can perform the essential functions of the position in question. Recipients must make reasonable accommodation for the physical or mental limitations of handicapped applicants who are otherwise qualified unless recipients can demonstrate that the accommodation would impose an undue hardship.

F. *The Effects of Past Discrimination*

Recipients must take steps to overcome the effects of past discrimination in the recruitment, hiring, and assignment of faculty. Such steps may include the recruitment or reassignment of qualified persons of a particular race, national origin, or sex, or who are handicapped.

G. *Staff of State Advisory Councils of Vocational Education*

State Advisory Councils of Vocational Education are recipients of Federal financial assistance and therefore must comply with Section VIII of the Guidelines.

H. *Employment at State Operated Vocational Education Centers Through State Civil-Service Authorities*

Where recruitment and hiring of staff for State operated vocational education centers is conducted by a State civil service employment authority, the State education agency operating the program must ensure that the civil service authority has recruited and hired staff for the vocational education center in accordance with the requirements of these Guidelines.

IX. PROPRIETARY VOCATIONAL-EDUCATION SCHOOLS

A. *Recipient Responsibilities*

Proprietary vocational education schools that are recipients of Federal financial assistance through Federal student-assistance programs or otherwise are subject to all of the requirements of the Department's regulations and these Guidelines.

B. *Enforcement Authority*

Enforcement of the provisions of Title IX of the Education Amendments of 1972 and Section 504 of the Rehabilitation Act of 1973 is the responsibility of the Department of Health, Education, and Welfare. However, authority to enforce Title VI of the Civil Rights Act of 1964 for proprietary vocational education schools has been delegated to the Veterans Admininstration.

When the Office for Civil Rights receives a Title VI complaint alleging discrimination by a proprietary vocational education school it will forward the complaint to the Veterans Administration and cite the applicable requirements of the Department's regulations and these Guidelines. The complainant will be notified of such action.

2. In Part 84, it is proposed to add Appendix B to read as follows:

APPENDIX B—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS

NOTE.—For the text of these guidelines, see 45 CFR Part 80, Appendix B.

3. In Part 86, it is proposed to add Apendix A to read as follows:

APPENDIX A—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS

NOTE.—For the text of these guidelines, see 45 CFR Part 80, Appendix B.

DAVID S. TATEL,
*Director, Office for Civil Rights, Department of Health, Education, and Welfare.*

DECEMBER 15, 1978.

[FR Doc. 78-35337 Filed 12-18-78 8:45 am]

[6712-01-M]

## FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 2, 81, 83 and 89]

[Gen. Docket No. 78-376; FCC 78-844]

### COAST GUARD DESIGNATED NEW ORLEANS VESSEL TRAFFIC SERVICES AREA

**Making the Frequencies 156.050 and 155.175 MHz Available for Port Operations Purposes**

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Amendment of the rules to make the frequencies 156.050 and 156.175 MHz available for port operations purposes in part of the Coast Guard designated New Orleans Vessel Traffic Services (VTS) radio protection area. As a result of the assignment of three maritime mobile frequencies for exclusive use for VTS purposes in the New Orleans VTS area, this proposed amendment is deemed necessary to help alleviate the burden on the remaining frequencies available.

DATES: Comments must be received on or before January 22, 1979, and Reply Comments must be received on or before Feburary 1, 1979.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

[FCC 78-844; Gen. Docket No. 78-376]

In the matter of amendment of Parts 2, 81, 83 and 89 of the rules to make the frequencies 156.050 and 156.175 MHz available for port operations purposes in the Coast Guard, designated New Orleans Vessel Traffic Services area; Proposed rule making.

Adopted: December 7, 1978.

Released: December 15, 1978.

By the Commission: Commissioner Brown absent.

BACKGROUND

1. As part of a program to implement the provisions of the "Ports and Waterways Safety Act of 1972" (Pub. L. 92-340, 86 Stat. 424, 33 USC 1221) the U.S. Coast Guard is establishing Vessel Traffic Services (VTS) systems for a number of the largest and busiest port areas in the United States. These VTS systems are, essentially, vessel movement reporting systems designed to prevent damage to or loss of vessels, bridges or other structures in U.S. navigable waters, and to protect these waters and associated natural resources from environmental harm resulting from such damage or loss. At the request of the Commandant, U.S. Coast Guard, the Commission amended the rules in order to make up to three frequencies available for exclusive use for VTS purposes within designated VTS radio protection areas.[1] Due to a scarcity of suitable frequencies it was necessary to select frequencies previously authorized for commercial (156.550 MHz) and port operations (156.600 and 156.700 MHz) purposes in the Maritime Mobile Service. Although these frequencies were extensively utilized in the large port areas involved, the Commission believed it was expected by law, and in the public interest, to assist the Coast Guard in implementing the new legislation.

2. As traffic has shifted in the affected port areas[2] from the previously available frequencies, use of the remaining frequencies has been increasing. It appears that maritime communications in the New Orleans port area have been particularly strained. Due to the size and number of vessel movements, the Coast Guard divided the New Orleans VTS area into three sectors and utilized all three of the frequencies available for assignment exclusively for VTS purposes. This has resulted in the loss of two of the seven available port operations frequencies and one of the eight commercial frequencies for vessels operating in the New Orleans VTS area.

DISCUSSION

3. In conjunction with the meetings with the Coast Guard and industry we have been studying the feasibility of utilizing frequencies in the band 156.025-156.250 MHz[3] for port operations purposes in certain VTS areas. Although this band is allocated to the land mobile Public Safety Radio Service in the United States, assignments could be made such that the use of one or more of the subject frequencies by maritime mobile stations in certain VTS areas would not result in harmful interference. As an initial step in providing some relief for maritime licensees operating in designated VTS areas, the rules were amended in Docket No. 21370[4] to make available the frequency 156.250 MHz for port operations purposes in the New Orleans and Houston VTS areas. After careful investigation it was determined that the use of the band edge frequency 156.250 MHz by maritime mobile stations in these two VTS areas would not result in harmful

[1] Report and Order, Docket No. 20444, Adopted December 2, 1975, 40 FR 57673, 56 FCC 2d 1089.

[2] The Coast Guard is in various stages of implementing VTS systems in the port areas of New Orleans, New York, Houston, Seattle, San Francisco and Valdez (Alaska).

[3] Frequencies in this band are allocated internationally to the maritime mobile service in Appendix 18 of the Radio Regulations. Therefore, they are within the operating capabilities of many existing shipboard transceivers.

[4] Report and Order, Docket No. 21370, Adopted December 7, 1977, 42 FR 6496, —— FC 2d ——.