DATE: Question and answer session: October 31, 1979.

ADDRESSES: Question and answer session: State of Illinois Building, Room 1818, 160 North La Salle Street, Chicago, Illinois 60601.

Submit written questions to: Barbara K. Christin, Office of the General Counsel, Room 8113, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (Reference Dockets Nos. RM79-14 and RM79-21).

FOR FURTHER INFORMATION CONTACT: Barbara K. Christin, Ofice of the General Counsel, Room 8113, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8079.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-32394 Filed 10-17-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 891

[Docket No. R-79-726]

Neighborhood Strategy Area (NSA) Funding

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule sets forth policies and procedures under which contract authority will be assigned to Neighborhood Strategy Areas (NSA) approved in September 1978 from the Field Office's allocation.

DATES: Effective date November 9, 1979.

FOR FURTHER INFORMATION CONTACT: Ross Kumagai, Director, Funding Control Division, Office of Housing Operations and Field Monitoring, Department of Housing and Urban Development, Rm. 6278, 451 7th Street, S.W., Washington, D.C. 20410, (202) 755-5934. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In allocating contract authority for units in NSAs which were approved in September 1978 pursuant to 24 CFR 881.304, Field Offices may use the following procedures for years two through five of the NSA schedule.

Where these procedures are applicable, contract authority will be identified for use in NSAs from the Field Office allocation before any other suballocations are made. Contract authority so identified may not exceed 20 percent of total Section 8 contract authority allocated to the Field Office. Contract authority remaining after funds for approved NSAs have been set aside will be allocated according to housing and household type proportionality as established in local Housing Assistance Plans.

Additional contract authority will be made available from Headquarters' reserve funds where the total contract authority required for the NSA program exceeds 20 percent of the Field Office's allocation for Section 8.

Because of the importance of making funds available early in Fiscal Year 1980, it has been determined that it is in the public interest to make these regulations effective as soon as possible after publication.

A finding of inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this finding of inapplicability will be available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

§ 891.404 [Amended]

Accordingly, 24 CFR, Chapter VIII, Section 891.404(a)(2) is revised by adding the following two sentences at the end: "The Field Office may identify contract authority from its metropolitan or non-metropolitan allocation, as appropriate, for use in Neighborhood Strategy Areas (NSA) approved under 24 CFR Part 881 prior to performing the actions set forth in this paragraph (a)(2). In such cases, additional contract authority will be made available from the contract authority retained by the Assistant Secretary for Housing under Section 891.403(b) where the total contract authority required for NSAs exceeds 20 percent of the Field Office allocation for Section 8 derived pursuant to Section 891.402."

In addition, the fourth sentence of Section 891.404(c)(1) is revised by adding after "housing type" the following: "(except in the case of contract authority for NSAs described in the last two sentences of paragraph (a)(2))".

Authority: Section 7(d) Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, D.C. October 11, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 79-32109 Filed 10-17-79; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7649]

Income Tax; Taxable Years Beginning After December 31, 1953; Indirect Foreign Tax Credit for Dividends From Less Developed Country Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the foreign tax credit for domestic corporate shareholders of certain foreign corporations. Changes to the applicable law were made by the Tax Reform Act of 1976. These regulations provide the public with guidance needed to comply with the law, and affect all domestic corporations receiving actual or deemed distributions from corporations which were less developed country corporations.

DATE: These regulations are effective generally for taxable years beginning after December 31, 1975.

FOR FURTHER INFORMATION CONTACT: Diane L. Renfroe of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3289, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1978, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 78, 902, and 960 of the Internal Revenue Code of 1954 (43 FR 60960). These amendments were proposed to conform the regulations to changes made by section 1033 of the Tax Reform Act of 1976 (90 Stat. 1626). One written comment suggesting a technical change in the proposed amendments was received. This comment was rejected as technically incorrect. No public hearing was requested. After consideration of all comments regarding the proposed amendments, those amendments are

adopted as revised by this Treasury decision.

Indirect Foreign Tax Credit Provisions

Sections 902 and 960 provide that domestic shareholders receiving actual dividends and deemed distributions under section 951 from certain foreign corporations shall be deemed to have paid a portion of the foreign income taxes paid or deemed paid by such corporations on or with respect to their accumulated profits. Section 78 provides that amounts of foreign taxes deemed paid under sections 902 and 960 shall be included in the gross income of the domestic shareholder. Prior to amendment by section 1033 of the Tax Reform Act of 1976, sections 902 and 960 contained a separate set of rules for computing the tax credit on distributions from less developed country corporations. In addition section 78 did not apply to foreign taxes deemed paid on distributions from less developed country corporations. Section 1033 eliminated this separate set of rules. These amendments change the regulations under each of those sections accordingly.

Minor Changes to the Notice

These regulations are being published as they appeared in the notice of proposed rulemaking with minor changes. Several parenthetical clauses have been added to examples (1) and (2) of § 1.902–2 to make it clear that certain references contained therein are to section 902 of the Code prior to amendment by the Tax Reform Act of 1976. In addition, references to the corporate tax rate assumed in the examples contained in §§ 1.960–4 and 1.960–6 have been added.

Drafting Information

The principal author of this regulation is Diane L. Renfroe of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of Amendments To The Regulations

Accordingly, the proposed amendment to 26 CFR Part 1 as published in the **Federal Register** (43 FR 60960) on December 29, 1978, is adopted with the following changes.

Paragraph 1. Examples (1) and (2) of § 1.902–2(d) as set forth in paragraph 5 of the notice of proposed rulemaking appearing in the **Federal Register** on December 29, 1978, at page 60962 are amended by:

1. Inserting the words "(under sec. 902(c)(1)(B) as in effect prior to amendment by the Tax Reform Act of 1976)" after the words "Accumulated profits" each place they appear in the computations for 1975.

2. Inserting the words "(under sec. 902(a)(2) as in effect prior to amendment by the Tax Reform Act of 1976)" after the words "Foreign income taxes of A Corp. deemed paid by M Corp." and before the parenthetical calculations in the computations for 1975.

3. Inserting the words "(under sec. 902(b)(1)(B) as in effect prior to amendment by the Tax Reform Act of 1976)" after the words "Foreign taxes of B Corp. for 1975 deemed paid by A Corp." and before the parenthetical "($240×$300/$600)" in example (2)(b).

Par. 2. Paragraph 9 of the notice of proposed rulemaking appearing in the **Federal Register** on December 29, 1978, at page 60963 is amended by inserting the words "by deleting the words 'the surtax exemption under section 11(d) being disregarded for the purposes of simplification:' in examples (1) and (3) and inserting in place thereof 'assuming a corporate tax rate of 48 percent:';" after the second semicolon.

Par. 3. Paragraph 11 of the notice of proposed rulemaking appearing in the **Federal Register** on December 29, 1978, at page 60963 is amended by inserting the words "; and by inserting the words ', assuming a corporate tax rate of 22 percent, a surtax of 26 percent and a surtax exemption of $25,000' after the words 'determined as follows for such years' and before the colon in the example" after the word "respectively" at the end of the sentence.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: September 25, 1979.

Donald C. Lubick,

Assistant Secretary of the Treasury.

§ 1.78–1 [Amended]

Paragraph 1. Section 1.78–1 is amended by deleting the words "section 902(a)(1) and § 1.902–1(b)(2)" and "section 902(a)(1)" each place they appear and inserting "section 902(a) in accordance with §§ 1.902–1 and 1.902–2" in lieu thereof; and by deleting the words "section 960(a)(1)(C) and the regulations thereunder" and "section 960(a)(1)(C)" each place they appear and inserting in lieu thereof "section 960(a)(1) in accordance with § 1.960–7".

§ 1.535–2 [Amended]

Par. 2. Section 1.535–2(a)(2)(ii) is amended by striking the words "section 902(a)(1) or section 960(a)(1)(C)." and inserting in lieu thereof "section 902(a) in accordance with §§ 1.902–1 and 1.902–2 or section 960(a)(1) in accordance with § 1.960–7."

§ 1.545–2 [Amended]

Par. 3. Section 1.545–2(a)(3)(ii) is amended by striking out the words "section 902(a)(1) or section 960(a)(1)(C)." and inserting in lieu thereof "section 902(a) in accordance with §§ 1.902–1 and 1.902–2 or section 960(a)(1) in accordance with § 1.960–7."

§ 1.902–1 [Amended]

Par. 4. Section 1.902–1 is amended as follows:

1. Paragraph (a) is amended by deleting subparagraph (6) and by redesignating subparagraphs (7) and (8) as subparagraphs (6) and (7) respectively.

2. Paragraph (b) is amended by deleting the words "or (3)" following the words "(b)(2)" in subparagraphs (1)(i) and (1)(iv); by deleting the words "section 902(a)(1)" in subparagraph (1)(iii) and inserting in place thereof "section 902(a)"; by revising subparagraph (2) to read as set forth below; and by deleting subparagraph (3).

3. Paragraph (c) is amended by deleting the words "and (3)" following the words "paragraph (b)(2)" and the words "or (3)" following the words "paragraph (c)(2)" in subparagraph (1); by revising subparagraph (2) to read as set forth below; and by deleting subparagraph (3).

4. Paragraph (d) is amended by deleting the words "and (3)" following the words "(c)(2)" and the words "or (3)" following the words "(d)(2)" in subparagraph (1); by revising subparagraph (2) to read as set forth below; and by deleting subparagraph (3).

5. Paragraph (e) is revised to read as set forth below.

6. Paragraph (f) is revised to read as set forth below.

7. Paragraph (j) is amended by deleting the words "or (3)" which follow the words "paragraph (b)(2)".

8. Paragraph (k) is amended as follows:

a. By deleting the words ", not a less developed country corporation" which follow the words "foreign corporation A" in examples (1), (3), and (5);

b. By deleting the words "sec. 902(a)(1)" in examples (1), (3), and (5), and inserting in place thereof "sec. 902(a)";

c. By revising example (2) to read as set forth below;

d. By deleting the words "sec. 902(b)(1)(A)" in example (3) and inserting in place thereof the words "sec. 902(b)(1)";

e. By deleting example (4);

f. By redesignating "Example (5)" as "Example (4)";

g. By deleting the words ", a less developed country corporation," which follow the words "foreign corporation B" and which follow the words "foreign corporation C" in example (4) as redesignated;

h. By deleting example (6);

i. By deleting each reference to the date "1975" as it appears in examples (1), (3), and (4) (as redesignated) and inserting in place thereof "1978";

j. By deleting each reference to the date "1973" or "1974" as it appears in example (4) as redesignated, and inserting in place thereof the date "1976" or "1977" respectively.

9. Paragraph (l) is amended by deleting the word "This" at the beginning of the first sentence and inserting in place thereof the words "Except as provided in § 1.902–2, this". The revised provisions read as follows:

§ 1.902–1 Credit for domestic corporate shareholder of a foreign corporation.

* * * * *

(b) *Domestic shareholder owning stock in a first-tier corporation.* * * *

(2) *Amount of foreign taxes deemed paid by a domestic shareholder.* To the extent dividends are paid by a first-tier corporation to its domestic shareholder out of accumulated profits, as defined in paragraph (e) of this section, for any taxable year, the domestic shareholder shall be deemed to have paid the same proportion of any foreign income taxes paid, accrued or deemed, in accordance with paragraph (c)(2) of this section, to be paid by such first-tier corporation on or with respect to such accumulated profits for such year which the amount of such dividends (determined without regard to the gross-up under section 78) bears to the amount by which such accumulated profits exceed the amount of such taxes (other than those deemed, under paragraph (c)(2) of this section, to be paid). For determining the amount of foreign income taxes paid or accrued by such first-tier corporation on or with respect to the accumulated profits for the taxable year of such first-tier corporation, see paragraph (f) of this section.

(c) *First-tier corporation owning stock in a second-tier corporation.* * * *

(2) *Amount of foreign taxes deemed paid by a first-tier corporation.* A first-tier corporation which receives dividends in any taxable year from its second-tier corporation shall be deemed to have paid for such year the same proportion of any foreign income taxes paid, accrued, or deemed, in accordance with paragraph (d)(2) of this section, to be paid by its second-tier corporation on or with respect to the accumulated profits, as defined in paragraph (e) of this section, for the taxable year of the second-tier corporation from which such dividends are paid which the amount of such dividends bears to the amount by which such accumulated profits of the second-tier corporation exceed the taxes so paid or accrued. For determining the amount of the foreign income taxes paid or accrued by such second-tier corporation on or with respect to the accumulated profits for the taxable year of such second-tier corporation, see paragraph (f) of this section.

(d) *Second-tier corporation owning stock in a third-tier corporation.* * * *

(2) *Amount of foreign taxes deemed paid by a second-tier corporation.* For purposes of applying paragraph (c)(2) of this section to a first-tier corporation, a second-tier corporation which receives dividends in its taxable year from its third-tier corporation shall be deemed to have paid for such year the same proportion of any foreign income taxes paid or accrued by its third-tier corporation on or with respect to the accumulated profits, as defined in paragraph (e) of this section, for the taxable year of the third-tier corporation from which such dividends are paid which the amount of such dividends bears to the amount by which such accumulated profits of the third-tier corporation exceed the taxes so paid or accrued. For determining the amount of the foreign income taxes paid or accrued by such third-tier corporation on or with respect to the accumulated profits for the taxable year of such third-tier corporation, see paragraph (f) of this section.

(e) *Determination of accumulated profits of a foreign corporation.* The accumulated profits for any taxable year of a first-tier corporation and the accumulated profits for any taxable year of a second-tier or third-tier corporation, which are taken into account in applying paragraph (c)(2) or (d)(2) of this section with respect to such first-tier corporation, shall be the sum of—

(1) The earnings and profits of such corporation for such year, and

(2) The foreign income taxes imposed on or with respect to the gains, profits, and income to which such earnings and profits are attributable.

(f) *Taxes paid on or with respect to accumulated profits of a foreign corporation.* For purposes of this section, the amount of foreign income taxes paid or accrued on or with respect to the accumulated profits of a foreign corporation for any taxable year shall be the entire amount of the foreign income taxes paid or accrued for such year on or with respect to such gains, profits, and income. For purposes of this paragraph (f), the gains, profits, and income of a foreign corporation for any taxable year shall be determined after reduction by any income, war profits, or excess profits taxes imposed on or with respect to such gains, profits, and income by the United States.

* * * * *

(k) *Illustrations.* * * *

Example (2). The facts are the same as in example (1), except that M Corporation also owns all the one class of stock of foreign corporation B which also uses the calendar year as the taxable year. Corporation B has accumulated profits, pays foreign income taxes, and pays dividends for 1978 as summarized below. For 1978, M Corporation is deemed under paragraph (b)(2) of this section, to have paid $20 of the foreign income taxes paid by A Corporation for 1978 and to have paid $50 of the foreign income taxes paid by B Corporation for 1978, and includes $70 in gross income as a dividend under section 78, determined as follows:

B Corporation

Gains, profits and income	$200
Foreign income taxes imposed on or with respect to gains, profits, and income	100
Accumulated profits	200
Foreign income taxes paid by B Corp. on or with respect to accumulated profits	100
Accumulated profits in excess of foreign income taxes	100
Dividends paid to M Corp	50
Foreign income taxes of B Corporation deemed paid by M Corporation under section 902(a) ($100 × $50/$100)	50

M Corporation

Foreign income taxes deemed paid under sec. 902(a):	
Taxes of A Corp. (from example (1))	$20
Taxes of B Corp. (as determined above)	50
Total	70
Foreign income taxes included in gross income under sec. 78 as a dividend:	
Taxes of A Corp. (from example (1))	20
Taxes of B Corp	50
Total	70

* * * * *

Par. 5. Section 1.902–2 is revised to read as set forth below.

§ 1.902–2 Rules for distributions attributable to accumulated profits for taxable years in which a first-tier corporation was a less developed country corporation.

(a) *In general.* If a domestic shareholder receives a distribution from a first-tier corporation before January 1, 1978, in a taxable year of the domestic shareholder beginning after December

31, 1964, which is attributable to accumulated profits of the first-tier corporation for a taxable year beginning before January 1, 1976, in which the first-tier corporation was a less developed country corporation (as defined in 26 CFR § 1.902–2 rev. as of April 1, 1978), then the amount of the credit deemed paid by the domestic shareholder with respect to such distribution shall be calculated under the rules relating to less developed country corporations contained in (26 CFR § 1.902–1 rev. as of April 1, 1978).

(b) *Combined distributions.* If a domestic shareholder receives a distribution before January 1, 1978, from a first-tier corporation, a portion of which is described in paragraph (a) of this section, and a portion of which is attributable to accumulated profits of the first-tier corporation for a year in which the first-tier corporation was not a less developed country corporation, then the amount of taxes deemed paid by the domestic shareholder shall be computed separately on each portion of the dividend. The taxes deemed paid on that portion of the dividend described in paragraph (a) shall be computed as specified in paragraph (a). The taxes deemed paid on that portion of the dividend described in this paragraph (b), shall be computed as specified in § 1.902–1.

(c) *Distributions of a first-tier corporation attributable to certain distributions from second- or third-tier corporations.* Paragraph (a) shall apply to a distribution received by a domestic shareholder before January 1, 1978, from a first-tier corporation out of accumulated profits for a taxable year beginning after December 31, 1975, if:

(1) The distribution is attributable to a distribution received by the first-tier corporation from a second- or third-tier corporation in a taxable year beginning after December 31, 1975.

(2) The distribution from the second- or third-tier corporation is made out of accumulated profits of the second- or third-tier corporation for a taxable year beginning before January 1, 1976, and

(3) The first-tier corporation would have qualified as a less developed country corporation under section 902(d) (as in effect on December 31, 1975), in the taxable year in which it received the distribution.

(d) *Illustrations.* The application of this section may be illustrated by the following examples:

Example (1). M, a domestic corporation owns all of the one class of stock of foreign corporation A. Both corporations use the calendar year as the taxable year. A Corporation pays a dividend to M Corporation on January 1, 1977, partly out of its accumulated profits for calendar year 1976 and partly out of its accumulated profits for calendar year 1975. For 1975 A Corporation qualified as a less developed country corporation under the former section 902(d) (as in effect on December 31, 1975). M Corporation is deemed under paragraphs (a) and (b) of this section to have paid $63 of foreign income taxes paid by A Corporation on or with respect to its accumulated profits for 1976 and 1975 and M Corporation includes $36 of that amount in gross income as a dividend under section 78, determined as follows upon the basis of the facts assumed:

1976

Gains, profits, and income of A Corp. for 1976	$120.00
Foreign income taxes imposed on or with respect to such gains, profits, and income	36.00
Accumulated profits	120.00
Foreign income taxes paid by A Corp. on or with respect to its accumulated profits (total foreign income taxes)	36.00
Accumulated profits in excess of foreign income taxes	84.00
Dividend to M Corp. out of 1976 accumulated profits	84.00
Foreign income taxes of A for 1976 deemed paid by M Corp. ($84/$84×$36)	36.00
Foreign income taxes included in gross income of M Corp. under sec. 78 as a dividend from A Corp	36.00

1975

Gains, profits, and income of A. Corp for 1975	$257.14
Foreign income taxes imposed on or with respect to such gains, profits, and income	77.14
Accumulated profits (under sec. 902(c)(1)(B) as in effect prior to amendment by the Tax Reform Act of 1976)	180.00
Foreign income taxes paid by A Corp. on or with respect to its accumulated profits ($77.14 × $180/$257.14)	54.00
Dividends paid to M Corp. out of accumulated profits of A Corp. for 1975	90.00
Foreign income taxes of A Corp. for 1975 deemed paid by M Corp. (under sec. 902(a)(2) as in effect prior to amendment by the Tax Reform Act of 1976) ($54 × $90/$180)	27.00
Foreign income taxes included in gross income of M Corp. under sec. 78 as a dividend from A Corp.	0

Example (2) The facts are the same as in example (1), except that the distribution from A Corporation to M Corporation on January 1, 1977, was from accumulated profits of A Corporation for 1976. A Corporation's accumulated profits for 1976 were made up of income from its trade or business, and a dividend paid by B, a second-tier corporation in 1976. The dividend from B Corporation to A Corporation was from accumulated profits of B Corporation for 1975. A Corporation would have qualified as a less developed country corporation for 1976 under the former section 902(d) (as in effect on December 31, 1975). M Corporation is deemed under paragraphs (b) and (c) of this section to have paid $543 of the foreign taxes paid or deemed paid by A Corporation on or with respect to its accumulated profits for 1976, and M Corporation includes $360 of that amount in gross income as a dividend under section 78, determined as follows upon the basis of the facts assumed:

Total gains, profits, and income of A Corp. for 1976	$1,500
Gains and profits from business operations	1,200
Gains and profits from dividend A Corp. received in 1976 from B Corp. out of accumulated profits of B Corp. for 1975	300
Foreign taxes imposed on or with respect to such profits and income	450
Foreign taxes paid by A Corp. attributable to gains and profits from A Corp.'s business operations	360
Foreign taxes paid by A Corp. attributable to dividend from B Corp. in 1976	90
Dividends from A Corp. to M Corp. on Jan. 1, 1977	1,050
Portion of dividend attributable to gains and profits of A Corp. from business operations. ($1,200/$1,500×$1,050)	840
Portion of dividends attributable to gains on profits of A Corp. from dividend from B Corp. ($300/$1,500×$1,050)	210

(a) *Amount of foreign taxes of A Corp. deemed paid by M Corp. on A Corp.'s gains and profits for 1976 from business operations.*

Gains, profits, and income of A Corp. from business operations	$1,200
Foreign income taxes imposed on or with respect to gains, profits, and income	360
Accumulated profits	1,200
Foreign income taxes paid by A Corp. on or with respect to its accumulated profits (total foreign income taxes)	360
Accumulated profits in excess of foreign income taxes	840
Dividend to M Corp	840
Foreign taxes of A Corp. deemed paid by M Corp. ($360 × $840/$840)	360
Foreign taxes included in gross income of M Corp. under sec. 78 as a dividend	360

(b) *Amount of foreign taxes of A Corp. deemed paid by M Corp. on portion of the dividend attributable to B Corp.'s accumulated profits for 1975.*

B Corp. (second-tier corporation):	
Gains, profits, and income for calendar year 1975	$1,000
Foreign income taxes imposed on or with respect to gains, profits, and income	400
Accumulated profits (under sec. 902(c)(1)(B) as in effect prior to amendment by the Tax Reform Act of 1976)	600
Foreign income taxes paid by B Corp. on or with respect to its accumulated profits ($400 × $600/$1,000)	240
Dividend to A Corp. in 1976	300
Foreign taxes of B Corp. for 1975 deemed paid by A Corp. (under sec. 902(b)(1)(B) as in effect prior to amendment by the Tax Reform Act of 1976) ($240 × $300/$600)	120
A Corp. (first-tier corporation):	
Gains, profits, and income for 1976 attributable to dividend from B Corp.'s accumulated profits for 1975	300
Foreign income taxes imposed on or with respect to such gains, profits, and income	90
Accumulated profits (under sec. 902(c)(1)(B) as in effect prior to amendment by the Tax Reform Act of 1976)	210
Foreign taxes paid by A Corp. on or with respect to such accumulated profits ($90 × $210/$300)	63
Foreign income taxes paid and deemed to be paid by A Corp. for 1976 on or with respect to such accumulated profits ($120 + $63)	183
Dividend paid to M Corp. attributable to dividend from B Corp. out of accumulated profits for 1975)	210
Foreign taxes of A Corp. deemed paid by M Corp. (under sec. 902(a)(2) as in effect prior to amendment by the Tax Reform Act of 1976) ($183 × $210/$210)	183
Amount included in gross income of M Corp. under sec. 78	0

Par. 6. Section 1.960–1 is amended as follows:

1. Paragraph (b) is amended by deleting subparagraph (4).

2. Paragraph (c) is amended as follows:

a. By revising subparagraph (2)(i) to read as set forth below;

b. By deleting subparagraph (2)(ii);

c. By deleting the words ", not a less developed country corporation" which follows the words "foreign corporation A" in examples (1), (3), (5), and (6) of subparagraph (4);

d. By deleting the words "section 960(a)(1)(C)" or "sec. 960(a)(1)(C)" each place they appear in examples (1), (3), (5), and (6) of subparagraph (4) and inserting in place thereof "section 960(a)(1)" or "sec. 960(a)(1)";

e. By deleting example (2) and example (4) of subparagraph (4);

f. By redesignating "Example (3)" as "Example (2)", "Example (5)" as "Example (3)", "Example (6)" as "Example (4)"; and

g. By deleting the words ", not a less developed country corporation" which follow the words "corporation B" in example (3) as redesignated.

h. By deleting the date "1965" each place it appears in example (1) and examples (2), (3), and (4) as redesignated and inserting in lieu thereof "1978".

3. Paragraph (e) is deleted.

4. Paragraphs (f), (g), and (h) are redesignated as paragraphs (e), (f) and (g) respectively.

5. Paragraph (i) is amended by redesignating it paragraph (h); by deleting the words "section 960(a)(1)(C)" in subparagraph (1)(ii) and inserting in place thereof "section 960(a)(1)"; by deleting the words ", and A Corporation is not a less developed country corporation for 1965" following the words "taxable year" in the example contained in subparagraph (3); by deleting the words "section 960(a)(1)(C)" each place they appear in that example and inserting in place thereof "section 960(a)(1)"; and by deleting the date "1965" each place it appears in that example and inserting in place thereof "1978".

§ 1.960-1 Foreign tax credit with respect to taxes paid on earnings and profits of controlled foreign corporations.

* * * * *

(c) *Amount of foreign income taxes deemed paid by domestic corporation in respect of earnings and profits of foreign corporation attributable to amount included in income under section 951*—(1) *In general.* * * *

(2) *Taxes paid or accrued on or with respect to earnings and profits of foreign corporation.* For purposes of subparagraph (1) of this paragraph, the foreign income taxes paid or accrued by a first-tier corporation or its second-tier corporation, as the case may be, on or with respect to its earnings and profits for its taxable year shall be the total amount of the foreign income taxes paid or accrued by such foreign corporation for such taxable year.

* * * * *

§ 1.960-2 [Amended]

Par. 7. Paragraph (e) of § 1.960-2 is amended as follows:

1. The words "examples (7) and (8)" in the first sentence are deleted and the words "examples (6) and (7)" are inserted in place thereof.

2. Example (2) is deleted.

3. Examples (3), (4), (5), (6), (7), and (8) are redesignated as examples (2), (3), (4), (5), (6), and (7), respectively.

4. The words ", not a less developed country corporation" which follow the words "foreign corporation A" in example (1), and examples (2), (3), (4), (5), (6), and (7) as redesignated are deleted.

5. The words "section 960(a)(1)(C)", or "sec. 960(a)(1)(C)", or "section 902(a)(1)" or "sec. 902(a)(1)" are deleted each place they appear in example (1) and examples (2), (3), (4), (5), (6), and (7) as redesignated and the words "section 960(a)(1)" or "sec. 960(a)(1)" or "section 902(a)" or "sec. 902(a)" are inserted in place thereof respectively.

6. The date "1965" is deleted each place it appears in example (1) and examples (2), (3), (4), (5), (6), and (7) as redesignated and the date "1978" is inserted in place thereof.

§ 1.960-3 [Amended]

Par. 8. Section 1.960-3 is amended by deleting the words "section 960(a)(1)(C)" and "section 902(a)(1)" each place they appear and inserting in place thereof "section 960(a)(1)" or "section 902(a)" respectively; by deleting the words ", not a less developed country corporation" following the words "corporation A" in examples (1) and (2) of paragraph (c); and by deleting the date "1965" each place it appears in examples (1) and (2) of paragraph (c) and inserting in lieu thereof "1978".

§ 1.960-4 [Amended]

Par. 9. Paragraph (f) of § 1.960-4 is amended by deleting example (4); by deleting the words ", not a less developed country corporation" which follow the words "corporation A" in examples (1) and (3); by deleting the words "the surtax exemption under section 11(d) being disregarded for the purposes of simplification:" in examples (1) and (3) and inserting in place thereof "assuming a corporate tax rate of 48 percent:"; by deleting the words "section 960(a)(1)(C)" or "sec. 960(a)(1)(C)" each place they appear in examples (1), (2), and (3), and inserting in place thereof "section 960(a)(1)" or "section 960(a)(1)" respectively; by deleting "section 904(d)" each place it appears in example (2) and inserting in place thereof "section 904(c)"; and by deleting the dates "1962", "1963", "1964", "1965", "1966", and "1967" each place they appear in examples (1), (2), and (3), and inserting in place thereof "1975", "1976", "1977", "1978", "1979", and "1980" respectively.

§ 1.960-5 [Amended]

Par. 10. Paragraph (b) of § 1.960-5 is amended by deleting the words ", not a less developed country corporation" following the words "corporation A"; by deleting the words "section 960(a)(1)(C)" and inserting the words "section 960(a)(1)" in place thereof; and by deleting the dates "1965" and "1966" each place they appear and inserting in place thereof "1978" and "1979" respectively.

§ 1.960-6 [Amended]

Par. 11. Paragraph (b) of § 1.960-6 is amended by deleting the words ", not a less developed country corporation" following the words "corporation A"; by deleting the words "section 960(a)(1)(C)" or "sec. 960(a)(1)(C)" each place they appear and inserting in place thereof the words "section 960(a)(1)" or "sec. 960(a)(1)" respectively; by deleting the dates "1965" and "1966" each place they appear and inserting in lieu thereof "1978" and "1979" respectively; and by inserting the words ", assuming a corporate tax rate of 22 percent, a surtax of 26 percent and a surtax exemption of $25,000" after the words "determined as follows for such years" and before the colon in the example.

Par. 12. Section 1.960-7 is added immediately after § 1.960-6 to read as follows:

§ 1.960-7 Effective dates.

(a) *General rule.* Except as provided in paragraph (b), the rules contained in §§ 1.960-1—1.960-6 shall apply to taxable years of foreign corporations beginning after December 31, 1962, and taxable years of U.S. corporate shareholders within which or with which the taxable year of such foreign corporation ends.

(b) *Exception for less developed country corporations.* If for any taxable year beginning after December 31, 1962, and before January 1, 1976, a first-tier foreign corporation qualified as a less developed country corporation as defined in 26 CFR 1.902-2 revised as of April 1, 1978, the rules pertaining to less developed country corporations contained in 26 CFR 1.960-1—1.960-6 revised as of April 1, 1978, shall apply to

any amounts required to be included in gross income under section 951 for such taxable year.

[FR Doc. 79-32196 Filed 10-17-79; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 853

Security Qualifications for Membership in the United States Air Force

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending its regulations by adding a new Part 853 to Subchapter E of 32 CFR, consisting of §§ 853.1 through 853.4. The new part provides policy for processing members and prospective members of the Air Force when there is a question concerning qualifications for membership in the United States Air Force. It applies to all military personnel in the Air Force, including Reserve components, and candidates or applicants for appointment or induction, whether voluntary or involuntary. This part implements DOD Directive 5210.7, September 2, 1966, and Changes 1 through 6; DOD Directive 5210.9, January 19, 1956, and Changes 1 through 7; DOD Instruction 5210.31, January 16, 1957, and Changes 1 and 2; and supersedes Air Force Regulation 35–62, August 11, 1965.

EFFECTIVE DATE: March 30, 1979.

FOR FURTHER INFORMATION CONTACT: Captain F. J. Kane, AFMPC/MPCRPP, Randolph AFB, Texas, telephone (512) 652–3363.

SUPPLEMENTARY INFORMATION: Chapter VII, Title 32 of the Code of Federal Regulations is revised by adding Part 853 to Subchapter E—Security. This part deletes all guidance on initiating investigations and processing cases (see AFR 205–32, USAF Personnel Security Program); updates policy guidance; deletes information and guidance contained in other directives; and changes the title to reduce confusion with other directives.

Title 32 of the Code of Federal Regulations is amended by adding a new Part 853 to read as follows:

PART 853—SECURITY QUALIFICATIONS FOR MEMBERSHIP IN THE UNITED STATES AIR FORCE

Sec.

Authority: 10 U.S.C. 8012.

Note.—This part is derived from Air Force Regulation 35–62, March 30, 1979.

Part 806 of this chapter states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the material referenced herein.

§ 853.1 Purpose.

This part provides policy for processing members and prospective members of the Air Force when there is a question concerning qualifications for membership in the United States Air Force. This part applies to all military personnel in the Air Force, including Reserve components, and candidates or applicants for appointment or induction, whether voluntary or involuntary. It is the authority for the final disposition of such cases. AFR 205–32, USAF Personnel Security Program, contains procedures for the commander to initiate and process cases to HQ USAF for final determination. This part implements DOD Directive 5210.7, September 2, 1966, and Changes 1 through 6; DOD Directive 5210.9, January 19, 1956, and Changes 1 through 7; and DOD Instruction 5210.31, January 16, 1957, and Changes 1 and 2.

Note.—Proposed supplements that affect any military personnel function performed at MAJCOM level or below are processed as prescribed in AFR 5–13, Publications or Communications Affecting Personnel Functions Performed at MAJCOM Level or Below.

§ 853.2 Program responsibilities.

(a) The Administrative Assistant to the Secretary of the Air Force (SAF/AA) has overall responsibility for this program.

(b) The Deputy Chief of Staff, Personnel, through the Assistant Deputy Chief of Staff, Manpower and Personnel for Military Personnel (MPC), is responsible for establishing policy for the removal or nonacceptance of individuals under this program.

(c) The Personnel Security Division, HQ USAF/DAI(S), is responsible for the procedures for processing security cases and making recommendations for action to SAF/AA for individuals who are processed under this program.

(d) The Air Force Office of Special Investigations and the Defense Investigative Service provide investigative support for this program.

(e) Each commander is responsible for initiating cases that fall under this program, and for providing any additional information required to adjudicate cases according to AFR 205–32.

§ 853.3 Policy.

(a) No person will be retained or accepted in military status in the Air Force, or its Reserve components, if there is a reasonable doubt of the individual's loyalty to the Government of the United States.

(b) The Air Force assumes that there is no reasonable doubt of the individual's loyalty unless a determination to the contrary is made.

(c) An individual will not be appointed, enlisted, or inducted into the Air Force if that individual has previously been discharged or separated under any regulation or program implementing DOD Directive 5210.9, Military Personnel Security Program, or was separated under other directives while undergoing investigation or processing under such security program directives.

(d) No individual will be processed under this part without first being presented the reasons for such action and the opportunity to present evidence in his or her behalf. Before discharge processing (AFR 36–2, Administrative Discharge Procedures (Unfitness, Unacceptable Conduct, or in the Interest of National Security), AFM 39–12, Separation of Unsuitability, Unfitness or Misconduct; Resignation or Request for Discharge for the Good of the Service, and Procedures for the Rehabilitation Program, etc.), HQ USAF/DAI(S) will advise each individual of his or her right to appeal any decision to process discharge for security reasons to the Administrative Assistant to the Secretary of the Air Force.

(e) Action should not be taken under this part if the case can be resolved by action under other Air Force regulations. Removal of an individual, or rejection of an applicant under this part may only be taken for cases which fall under the security criteria of AFR 205–32, chapter 10.

§ 853.4 Processing procedures.

(a) Investigative case files will be processed according to AFR 205–32, chapter 10.

(b) HQ USAF/DAI(S) will review case files and, when removal or nonacceptance appears appropriate, will gather necessary documentation and advise the individual.

(c) HQ USAF/DAI(S) will then notify the parent MAJCOM. An information copy of the letter will be furnished HQ AFMPC/MPCAK when it has been determined the member should not be retained.

(d) If removal action is not warranted, HQ USAF/DAI(S) will further evaluate

the individual's security clearance eligibility.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 79-32142 Filed 10-17-79; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD 79-045]

Disestablishment of Special Anchorage Area, Lake Mead, Nev.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule disestablishes Special Anchorage Area (e)(2), Lake Mead, Nevada. Portions of the anchorage extend into a narrow section of the lake which is highly transited. Disestablishment of this anchorage, in which unlighted vessels may anchor, will enhance navigational safety in the area.

EFFECTIVE DATE: November 19, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. D. W. Ziegfeld, Office of Marine Environment and Systems (G-WLE/TP11), Room 1104, Department of Transportation, U.S. Coast Guard Headquarters, 2100 Second St., S.W., Washington, D.C. 20590, (202) 426-1934.

SUPPLEMENTARY INFORMATION: On June 7, 1979, the Coast Guard published a proposed rule (44 FR 32713) concerning this amendment. Interested persons were given until July 23, 1979 to submit comments. No comments were received.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are Mr. D. W. Ziegfeld, Project Manager, Office of Marine Environment and Systems and Lieutenant J. W. Salter, Project Attorney, Office of the Chief Counsel.

§ 110.127 [Amended]

In consideration of the foregoing Part 110 of Title 33 of the Code of Federal Regulations is amended by deleting paragraph (e)(2) of § 110.127.

(Sec. 1, 30 Stat. 98 as amended (33 U.S.C. 180); sec. 6(g)(1)(B), 80 Stat. 937 (49 U.S.C. 1655(g)(1)(B)); 49 CFR 1.46(c)(2)).

Dated: October 10, 1979.

W. E. Caldwell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 79-31966 Filed 10-17-79; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[Docket No. 21502; RM-2737; FCC 79-535]

Radio Broadcast Services; Amending Rules Regarding the Subscription Television Service

AGENCY: Federal Communications Commission.

ACTION: First Report and Order.

SUMMARY: Three issues raised in a Notice of Inquiry and Rulemaking, FCC 78-848, are resolved by this action. First, the rule allowing only one television station in a given community to provide a subscription television ("STV") service is deleted. Second, the regulation allowing the existence of non-compatible STV systems is affirmed. Third, a cut-off procedure for STV applications is not adopted. The intended effect of these decisions is to provide for the growth of STV and, by so doing, provide greater program choice for television consumers. This proceeding was initiated by a petition filed on behalf of Midwest St. Louis, Inc., Liberty STV, Inc., *et al.*

EFFECTIVE DATE: November 23, 1979.

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

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, Broadcast Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

First Report and Order, 43 FR 23618, June 1, 1978.

Adopted: September 25, 1979.
Released: October 12, 1979.

By the Commission: Commissioner Quello absent.

In the matter of amendment of Part 73 of the Commission's rules and regulations in regard to § 73.642(a)(3) and other aspects of the Subscription Television Service, Docket No. 21502, RM-2737.

1. This proceeding involves various aspects of the subscription television ("STV") service.[1] Now before the Commission for consideration are the filings generated in response to a combined *Notice of Inquiry and Rule Making*,[2] FCC 77-848, 67 FCC 2d 202 (1977).

2. This document will address three of the six issues raised in the *Notice*, these three being: (1) Whether the Commission should permit more than one television station in a given community to provide an STV service; (2) whether the Commission should require compatibility of STV systems; and (3) whether the Commission should adopt a cut-off procedure for STV applications. The first and third issues were the subject of proposed rule making, while the second issue, as well as the remaining three matters, were only raised for inquiry. The issues for later resolution are: (a) Whether the Commission should allow the purchase of decoders by subscribers or the present system of permitting only the leasing of such equipment should be continued; (b) whether the Commission should consolidate proceedings where an applicant is involved in two mutually exclusive hearings, one in which he seeks a construction permit for a new television station and the other in which he seeks STV authorization;[3] and (c) whether the Commission should establish criteria for comparing two competing STV applications, as well as for comparing two competing applications for a new television station when one is for conventional use and the other contemplates STV operation. These last three issues, as well as additional STV matters not previously raised, will be the subject of a Further Notice of Proposed Rule Making soon to be released.

An Historical Development of STV Regulation

3. In order to place the first issue, which concerns relaxing the "one-to-a-community" rule, in proper perspective, we will first provide a brief history of the subscription television service. In 1957, the first of five Reports and Orders was adopted in a lengthy proceeding in Docket No. 11279. It was in this *First Report and Order* ("*First Report*"), 23 FCC 532, that the Commission concluded that it had statutory authority to authorize STV operations.

4. In that *First Report*, the Commission also began an ongoing assessment of whether authorizing STV operations would lead to increasing services and program choices available to the public without seriously affecting the quantity and quality of advertiser-financed programming that is provided free of direct charge to the public. The Commission concluded that without a

[1] Briefly described, subscription television broadcasting involves the broadcasting of a scrambled television signal which, on payment of a fee, subscribers are authorized to unscramble through use of a decoder. See *In the Matter of Subscription Television Program Rules*, 52 FCC 2d 1, at 2 (1974).

[2] A list of the parties filing formal comments and/or reply comments is contained in Appendix B.

[3] STV authorization may be issued only to an entity that already is either the licensee of a commercial television broadcast station or the holder of a construction permit for a new commercial television broadcast station.

demonstration of the service in operation, this question could not be resolved.

5. To gather the data and information necessary to answer this, as well as other issues, the Commission thought it best to authorize only trial operations. Also, in an effort to protect conventional television during this trial period, the Commission established certain limitations and conditions under which STV applications would be accepted. For instance, each STV system was permitted a trial in no more than three markets and authorizations were limited to stations in cities with at least four commercial television services including the applicant's station.

6. In a *Second Report and Order*, 16 R.R. 1529 (1958), the Commission gave notice that action on trial STV applications would be deferred in order to provide the 85th Congress an opportunity to consider pending legislation on the subject of subscription television. No national laws affecting STV, however, were then or have since been adopted. Believing that its action would be consonant with the then current Congressional concern with the development of STV, the Commission in 1959, issued a *Third Report and Order* ("*Third Report*"), 26 FCC 265, which basically readopted and affirmed the *First Report*.

7. The *Third Report* stated that the Commission was ready to consider applications for trial STV operations and take action appropriate with the public interest. STV trial operations might be conducted only in communities lying within the Grade A contours of at least four commercial television stations, including the station of the STV applicant, to assure the continued availability of substantial amounts of conventional television programming to the public. The Commission also decided that authorizations would be limited to one market per subscription system as well as one subscription system per market. Three applications for trial authorizations were filed; one was denied, one was granted but operation never commenced, and the third was granted to UHF Station WHCT, Hartford, Connecticut,[4] which began STV operations in the summer of 1962.[5]

8. Based on experience with the trial operation in Hartford, Connecticut, and a five year experimental cable operation at Etobicoke, a suburb of Toronto, Canada, the Commission adopted a *Fourth Report and Order* ("*Fourth Report*"), 15 FCC 2d 466 (1968), which established the basis for nationwide over-the-air STV service. The experience had enabled the Commission to conclude that STV could provide a beneficial supplement to conventional television programming and that, as an alternative medium, it might well provide a wholesome stimulus to free television which could lead to an improvement in overall programming available to the public. Although, as the Commission noted, a considerable amount of the information provided by the parties was speculative, the Commission did believe that the Hartford experience provided an adequate foundation for reasonable estimates about the future.

9. Nonetheless, the Commission felt it best to proceed with caution until more was known about how STV would develop on a nationwide scale. For this reason, in the *Fourth Report*, the Commission adopted regulations designed to strike what it considered a reasonable balance between the two services so as not to hamstring the development of STV and yet provide safeguards against the possibility that events would develop in a manner contrary to the public interest. The Commission was interested in maintaining the availability of conventional programming, and it restricted STV operation to communities within the Grade A contour of at least five commercial television stations including that of the STV operator. Before an STV grant could be made, at least four of the stations would have to be in operation and providing conventional television service.

10. In order to further restrict the pre-emption of time, the Commission provided that in the five station communities where STV would be permitted, only one of these stations might engage in STV operations (the "one-to-a-community" rule) and required that STV stations broadcast at least 28 hours of conventional programming per week.[6] In addition, certain program restrictions were placed on STV operations to prevent the siphoning of programs from conventional to subscription television.[7] The regulations limiting the program fare of STV were adopted because of Commission concern that the revenue derived from subscription operations would permit subscription operators to bid away the best films and sports programs perhaps reducing conventional television's capacity to meet consumer preferences. These program restrictions were also designed to enhance the diversity of program offerings broadcast on television as a whole.

11. In the last and *Fifth Report and Order*, 19 FCC 2d 559 (1969), in Docket No. 11279, the Commission adopted rules governing equipment and system performance capability. It also announced the manner in which applications for STV authorization should be filed, and it prescribed their content and form.

12. In *National Association of Theatre Owners* v. *FCC* ("*NATO*"), 420 F. 2d 194 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 922 (1970), the Court of Appeals affirmed the Commission's power to authorize nationwide STV on a permanent basis. The Court found that the Communications Act did not preclude the Commission from approving a system of direct charges to the public as a means of financing broadcasting services. Rather, the Court stated that the Act seems designed to foster diversity in the financial organization and *modus operandi* of broadcasting stations as well as in the content of programs. Further, the Commission's conclusion that the establishment of a subscription television service was consistent with these goals was upheld by the *NATO* court.

13. Also before the Court in the *NATO* case was the question of whether Commission authorization of nationwide STV operations would result in unconstitutional discrimination against people in low income groups unable to afford to subscribe. The Court rejected the assertion of discrimination and concluded that there was nothing distinguishing broadcasting from other regulated industries which would justify imposing on it alone a requirement that any service be made available to all citizens regardless of their ability to pay. The Court also upheld the Commission's effort, by promulgating restrictions governing the development of STV, to strike a balance between the possible danger to free broadcasting of allowing unfettered STV operations and the risk of stifling the growth of a new service. The Court also rejected suggestions that the STV industry should have its rates regulated as a monopoly, supporting the Commission determination that a substantial amount of economic competition would exist between STV and the other forms of entertainment

[4] The Hartford grant was affirmed by the U.S. Court of Appeals in *Connecticut Committee Against Pay TV* v. *FCC*, 301 F. 2d 835 (D.C. Cir. 1962); *cert. denied*, 371 U.S. 816 (1962).

[5] A six-and-a-half year trial STV authorization granted Station WHCT in Hartford, Connecticut, ended in 1969.

[6] See § 73.643(a). After an STV station is in operation 36 months, it is to provide conventional programming no less than 2 hours per day and not less than 28 hours per week.

[7] For a description of these STV program restrictions and a further discussion of their history, see paras. 14 and 15, *infra*.

and information available in the community. Courts should be very reluctant, said the Court in *NATO*, to declare that free market forces must be supplanted by rate regulation when neither Congress nor the agency administering the area has found that such regulation is essential.

14. Eight years after the *NATO* decision, the Court of Appeals in *Home Box Office v. F.C.C.*, 567 F. 2d 9 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 829 (1977), reviewed those Commission regulations limiting the program fare cable television systems and subscription television stations might offer to the public for a fee set on a per-program of per-channel basis. These rules, which were originally developed for STV and then applied to pay cable, (1) restricted the presentation of certain feature movies on pay cable and STV; (2) restricted those sports events which might be offered on pay cable and STV; (3) prohibited commercial advertising on pay cable and STV; and (4) limited the combined amount of sports and movies to 90% of a pay cable or STV station's programming.[8]

15. After concluding that the Commission had exceeded its authority over cable television in promulgating the pay cable rules [9] and that there was no evidence to support the need for regulation of pay cable television, the Court in *Home Box Office* vacated the pay cable rules. The Court found that the Commission had failed to state clearly the harm which its regulations sought to remedy and its reasons for supposing that this harm existed. In regard to the subscription television sphere, the Court noted that rules substantially similar to the program restrictions under review [10] had been affirmed in the *NATO* decision. At that time, the Court stated, the Commission acted on an elaborate rule making record concerning the Hartford STV experience. Since it appeared that few, if any, STV stations had begun operation in the interim, the Court believed the best information available with respect to STV was that reviewed in *NATO*, which had been called into question in the present rule making. For this reason, the Court of Appeals concluded that *NATO* required affirmance of the promulgation of the STV program restrictions under review in *Home Box Office*.[11] The Court noted, however, that petitioners' charge that these restrictions had the effect of killing the subscription television medium in its infancy by denying it access to necessary programming seemed to be supported by the then absence of viable commercial applications for STV. Even though *Home Box Office* did not vacate the STV program limitations, they were deleted by the Commission in November 1977, and April 1978,[12] in view of the Court's decision concerning pay cable. This action was taken on the basis that STV and pay cable are two communications activities in direct competition and as a result should be given equal treatment insofar as program availability is concerned.

The STV Marketplace of Today

16. Since 1969, when the *Fifth Report and Order* was adopted, ninety applications for STV authorization have been submitted to the Commission. Of this number, fifteen have been granted and fifty-nine STV applications have been accepted for filing. Of the applications granted, only six STV stations are presently operating: Station WWHT (Channels 60 and 68),[13] Newark, New Jersey; Station KBSC (Channel 52), Corona, California; Station KWHY (Channel 22), Los Angeles, California; Station WQTV (Channel 68), Boston, Massachusetts; Station WXON (Channel 20), Detroit, Michigan; and Station KNXV (Channel 15), Phoenix, Arizona. The remaining nine authorizations which have been approved, but are not yet in operation, are the following: Station KTSF (Channel 26), San Francisco, California; Station WCGV (Channel 24), Milwaukee, Wisconsin; Buford Television of Ohio for its new commercial station on Ch. 64, Cincinnati, Ohio; Cleveland Associates Company for a station on Channel 61, Cleveland, Ohio; Station WNJU (Channel 47), Linden, New Jersey; Station WSNL (Channel 67), Smithtown, New York; Station WXID (Channel 51), Fort Lauderdale, Florida; Station KMUV-TV (Channel 31), Sacramento, California; and Radio Broadcasting Co. for its new commercial station on Channel 57, Philadelphia, Pennsylvania.

17. Of those STV facilities presently operating, Station WWHT, Newark, New Jersey, licensed to Wometco Industries, was the first non-experimental STV station in the country, having commenced operation on March 1, 1977.[14] STV programming is aired on WWHT from 9 to 10:30 a.m. and after 8 p.m. on weekdays and after 7 p.m. on weekends. Before that hour, the station broadcasts conventionally. There are presently 65,000 subscribers. WWHT's STV programming consists of movies, sports, children's programs, cultural presentations, as well as educational programming. The installation fee for WWHT's STV system is $49.95. The monthly charge to subscribers is $15. A one-time returnable deposit of $200 is required on the decoder, although consumers with a line of credit can waive that for $25 cash, which also is refundable.

18. The largest STV station in the country is KBSC at Corona, California, licensed to Oak Industries. The station has a current customer list of 210,000 subscribers. KBSC operates conventionally about forty-five hours a week with STV programming commencing at 8 p.m. and continuing through midnight. The station offers its STV subscribers current movies, live coverage of local professional sports teams, as well as other major sporting events and movie specials. Ten new movies are broadcast each month and, once a week, on a program entitled "Dimension," the station presents on an STV basis a diversified format of foreign films, ballet, opera and plays. Children's movies are also offered as STV programs. Subscription charges are $19.49 per month. There is a one-time installation charge of $39.95, which includes a new, pre-cut UHF antenna for the subscriber, designed to maximize reception of KBSC's signal. The subscriber then owns this equipment, but a one-time refundable security deposit of $25 is required on the decoder.

[8] These rules, as they relate to feature films and sports, were amended soon after their adoption. The general effect of the amendment was a relaxation of the requirements. A rule prohibiting subscription exhibition of series programming, originally one of the program restrictions, was deleted in its entirety by amendment.

[9] The Court did not hold that the Commission had to find express statutory authority for its cable television regulations. It did require, however, that at a minimum, the Commission, in developing its cable television regulations, needed to demonstrate that the objectives to be achieved by regulating cable television are also objectives for which the Commission could legitimately regulate the broadcast media.

[10] See para. 14 and n. 8, *supra*.

[11] The affirmance of these rules was subject, however, to further review upon completion of additional hearings regarding *ex parte* contacts.

[12] See the *Reports and Orders* in Docket 21311, 42 FR 62372, published December 12, 1977, and in Docket 21489, 43 FR 15322, published April 12, 1978.

[13] WWHT's signal goes out over Channel 68, but, because some communities in the greater New York area have difficulty receiving that frequency, the station operates a translator on top of the World Trade Center which rebroadcasts the signal over Channel 60.

[14] The original call letters of Station WWHT were WBTV, at the time the facility was licensed to Blonder-Tongue. In 1977, Wometco Enterprises bought an eighty percent interest in the station, and the license was transferred to it in July of 1977, which the call sign being changed to WTVG. That call sign has been recently changed again to WWHT, although there has been no change in ownership of the station.

19. On July 23, 1978, Station KWHY, Los Angeles, California, licensed to Coast TV Broadcasting Corporation, began broadcasting STV programs. At present, the station has 35,000 subscribers. STV programming is aired from 2:30 to 4:30 p.m. and after 8 p.m on weeknights; from 2 to 4 p.m. and after 7 p.m. on Saturdays; and after 7 p.m. on Sundays. The basic STV service includes movies and interviews and costs $72 per year. Per program charge offerings include movies, sports events, variety programs and children's movies. Subscribers must pay a $25 decoder deposit, unless a Mastercharge or VISA credit card is used.

20. One of the relatively new stations to offer STV is WQTV, Boston, Massachusetts, licensed to Boston Heritage Broadcasting. It began operation in January of this year. On weekdays, WQTV broadcasts STV programs from 7 p.m. to sign off and on weekends from 1 p.m. to sign off. WQTV currently airs twelve or more feature films a month and specials starring top entertainers. Children's movies are also being aired. The station has 12,000 subscribers. Present customers pay $90 in installation charges and $15.95 in monthly billings. No deposit on the decoder is required if subscribers have acceptable credit.

21. Just having begun STV operation on July 1, 1979, Station WXON, Detroit, Michigan, licensed to WXON–TV, Inc. has 11,000 subscribers. It broadcasts STV programs from 8 p.m. to sign off on weekdays and for 8½ hours on Saturdays and 6½ hours on Sundays. Pay programming includes sports and movies, as well as stage performances, variety programs, filmed documentaries and classic foreign films. Present customers pay $49.95 in installation charges and $22.50 a month. A $50 returnable deposit is required on the decoder equipment.

22. The newest station to provide STV programming is KNXV, Phoenix, Arizona, licensed to New Television Corporation. It commenced operation on September 22, 1979. On weekdays, KNXV broadcasts STV programs beginning at 7 p.m. and on weekends, the station begins its STV programming at 5 p.m. Pay programming includes first run movies, sports, primarily of local origin, and taped specials. Present customers pay $39.95 in installation charges and $20.45 a month. There are probably 2,000 subscribers as of this date.

The "One-To-A-Community" Rule

23. Under the current language of § 73.642(a)(3) of the Commission's rules, only one station in a community may engage in STV operations (the "one-to-a-community" rule). Because of the significant interest being shown by broadcasters and the public in the operation of STV stations, and the recent development of the industry, we proposed in the *Notice* to consider a change in this requirement. Specifically, we asked interested parties to comment on whether the Commission should permit more than one television station in a given community to provide an STV service.

24. A significant number of commenters suggest that STV allocations be made on a market rather than a community basis. They argue that the present rule is inequitable in that it limits some markets to one STV operation but permits others comprised of a number of clustered communities, such as those in the Los Angeles market, to have more than one. As to the specific question asked, whether the "one-to-a-community" rule should be relaxed, proponents assert that doing so would bring increased competition to the field which would help develop STV to the highest attainable quality. Proponents further contend that allowing more than one STV station to a community would be a strong incentive for the production of creative programming and, as such, would provide a spur to conventional television as well. They also submit that a relaxation of the present rule, by allowing construction and operation of new STV stations, would provide additional conventional service since STV stations must broadcast a minimum number of hours of free programming. Additionally, supporters of relaxing the rule assert that a rivalry between STV and conventional television should stimulate each station to its best efforts.

25. Parties favoring a relaxation of the "one-to-a-community" rule have submitted a variety of possible formulas to use. For instance, Buford Television, Inc., recommends that the very largest markets, those with eight or more television stations, be allowed a second STV station. American Broadcasting Companies, Inc., recommends that a market be allowed a second STV station if it has available the following non-subscription services: Three network affiliated stations plus three, or two or one independent station(s) depending upon whether the market is one of the top-50, second 50, or below the top 100 in ranking. Also proposed is a rule allowing an unlimited number of STV stations in a community or market with the proviso that if circumstances presented by an STV application raised a serious possibility of adverse impact on a conventional television station, one which threatened its viability and ability to serve the public interest, the Commission would examine such circumstances in its consideration of the application. This last approach is akin to both a case-by-case approach and a waiver procedure suggested by a number of commenters.

26. Those parties opposing a relaxation of the "one-to-a-community" rule argue that the abandonment of this provision may serve as a deterrent to the development of STV. They assert that the present rule minimizes the risk of a new industry. A number of opponents also contend that until such time as one STV station per market provides a full day of truly diverse programming, no need exists to consider allowing another STV facility. They argue that the only benefit derived from additional STV service is an increase in the capacity to provide the service expeditiously to all customers. Opponents state that additional competition does not at the moment seem to carry with it benefits to the public. On the other hand, Oak Broadcasting and National Subscription Television submit that relaxing the rule would have no adverse effect on conventional television. They believe that the number of subscribers would not increase, but rather it would remain the same to be divided between the STV stations in a particular community.

27. In resolving the issue of whether to relax the "one-to-a-community" rule, we have carefully reviewed the record, observed the marketplace and considered the legal guidelines pronounced by the Court of Appeals in the *Home Box Office* decision. A key question to be considered in making this determination is one the Commission has repeatedly addressed during STV's regulatory history, that being, what is the likely impact of pay television on conventional television. Using data from the Hartford experiment and some speculation, the Commission in the *Fourth Report* determined that conventional television might suffer in quality or quantity as a consequence of the siphoning of programs and the pre-empting of time. To prevent this situation from occurring, the Commission adopted, among other regulations, the "one-to-a-community" rule. Although the Commission believed it best at the outset of the STV service to adhere to this rule, even in the *Fourth Report*, the Commission recognized that once more experience was gained, consideration could be given to relaxing the regulation.

28. Now, more than a decade since the initiation of STV on a nationwide basis,

the time for reevaluation has come. Based on the evidence presented to date, permitting unrestricted entry of STV stations, after a conventional station threshold has been reached, would provide greater program choice for consumers without unduly affecting the supply of conventional programs.[15] Rather than precluding additional conventional programming, we feel the growth of STV will both stimulate the use of UHF channels not presently utilized and provide a sound economic underpinning for existing UHF facilities. Our present experience offers support for such developments. All five of the STV stations presently operating broadcast on UHF channels and all of those STV authorizations approved by the Commission are for use by presently operating or new UHF facilities. Also, the existing STV stations provide conventional programs during most broadcast hours, with approximately four or five hours of their broadcast day, usually during prime time, consisting of pay programming. This practice appears likely to continue to be the norm. Thus, a station's ability to spread the fixed cost of operation across conventional and pay programming will provide additional conventional programming rather than less and improve the welfare of both subscribers and non-subscribers.

29. We also believe that STV could provide a stimulus to free television which coud actually improve rather than impair the quality of conventional programming. If STV is allowed to develop, with the probable result being greater competition between it and conventional television, programming is likely to be further diversified. We also believe that STV can respond to competitive forces that woud not operate in the same way for conventional television. It is well recognized that conventional American television today is not a classical competitive market in which the program viewer is able to directly express not only a preference but the intensity of this preference as well. Conventional television has no mechanism for responding to this intensity of demand. Advertisers rather than viewers support television programming, and they are only interested in attracting the greatest number of viewers and receive little, if any, benefit from attracting a more enthusiastic viewer. STV, on the other hand, can obtain subscribers by responding to intense demands of a small viewing group. This could bring cultural, minority-oriented, or quality children's programming fare that advertisers might find less profitable to support on conventional television. Also to be noted is STV's service to minorities on its conventional programming, as well as its potential for meeting minority needs during pay programming hours. For instance, STV Station KWHY in Los Angeles, presently carries foreign language programming for its Japanese, Korean and Chinese communities during the station's conventional hours of operation.

30. If these and other benefits are to occur, if is important that we reduce administrative barriers to entry into the STV sphere. Then, the STV industry can respond to consumer preferences rather than to incentives created by the regulatory process. It is precisely in the realm of pay television, where consumers can express their preferences most effectively, that we should eliminate unnecessary government regulation. Certainly in markets where channels are available we should not create an artificial scarcity to serve the interest of the initial STV entrant. Nor is the present rule needed to minimize risk in the new industry. We believe it appropriate to place reliance on the ability of rational entrepreneurs to function in their own best interest. As we have noted, out of this competitive counterplay can come public benefits. Once STV has been securely established, a financial base will exist for a greater variety of programming within the pay television sphere.

31. In terms of the present issues, this means eliminating the "one-to-a-community" rule. We believe that this step does not endanger the continued availability of a substantial amount of free television, but rather it holds the promise of more diversity in the mode and substance of its television fare. The growth of STV also promises greater opportunities in broadcasting for minorities and women and for small, independent business people. This, too, will aid in creating more specialized programming, thus better serving the country's diverse population.

32. By eliminating the "one-to-a-community" rule, we will be allowing the marketplace to determine how many STV stations it can support. It appears likely that the economic forces of the marketplace, that is, the substantial financial investment required and limited amount of available programming, will naturally limit the growth of STV to a level which will not significantly harm the quality or quantity of conventional programming. Further, the fact of multiple applications for STV authorizations having been filed in numerous cities, such as Atlanta, Chicago, Detroit and Philadelphia, indicates the public's interest in and therefore need for STV. For all the reasons thus far discussed, we believe it inadvisable as well as unnecessary to limit STV to a specific number of television stations, such as two or three, in a community. Since we are not adopting any limit on the number of STV stations in a community once the conventional threshold is met, we need not decide whether to formulate a community or market standard in this regard.

33. We believe that our action today is in keeping with the dictates of the *Home Box Office* case where the Court of Appeals emphasized that the Commission must not only state clearly the harm which its regulations seek to remedy, but also its reasons for supposing that this harm exists. In the *Notice* released in this proceeding, we specifically asked that commenting parties consider what impact a relaxation of the "one-to-a-community" rule would have on conventional television service. Neither the comments submitted nor the experience gained in the area of STV, however, has provided any data indicating that the harm which once concerned us, *i.e.*, impairment of conventional programming, is occurring or is likely to occur. We have been cautious about allowing subscription television to mature. Now the time is ripe, however, for permitting greater STV development. Thus, we are changing our rules to allow an unlimited number of STV stations in any community which is located within the Grade A contours of four or more conventional stations.

Compatibility of STV Systems

34. In the *Fourth Report* the Commission decided that it was in the public interest to permit multiple STV systems. This conclusion was based on the belief that little or no problem of inconvenience or expense to the public would be caused by having to have more than one decoder for receiving multiple STV operations. Under the "one-to-a-community" limitation on STV operations there would rarely be a situation in which a home could have two decoders. Since the "one-to-a-community" rule is now being eliminated, however, this is a real possibility. Thus, the time is ripe for resolving the issue of whether the Commission should continue to allow technically differing STV systems or whether it should require their compatibility so that a subscriber

[15] We presently plan to address the issue of the continuing need for a minimum number of conventional services in a Further Notice of Proposed Rule Making to be released in this proceeding in the near future.

receiving multiple STV services will not have to attach a number of different decoders to his television set.

35. Almost all those commenting parties who addressed this question opposed requiring compatibility. They argued that STV technology is in its infancy and requiring compatibility would freeze further technological development that could offer the public better service and lower costs. They asserted that only actual operation could conclusively establish comparative technical merits, efficiency of collection methods, ease of operation in subscribers' homes, as well as other features of an STV technical system. Also, they contended that the matter of hardware clutter in a subscriber's home is not nearly as significant as the issue of business viability and security of the service. A number of commenting parties, however, have suggested that if more than one STV station to a community or market is allowed, an applicant for the second authorization should be required to propose the same or compatible technical system or make a compelling showing as to why the introduction of a second, non-compatible system into the market would serve the public interest.

36. We believe that the arguments made by the bulk of the commenting parties have merit and, therefore, will continue to allow the existence of non-compatible STV systems. STV technology has not yet reached the stage at which the Commission can decide which STV system or whether any single STV system should be approved. In fact, the present operating STV facilities do not even meet present TV technical standards. Thus, even if one system should eventually be approved, this is not the appropriate time to make that decision. We believe that the public interest will be served by allowing STV operators the option of deciding whether or not to standardize their systems or to offer decoders compatible with whatever other STV systems serve the market. Public demand rather than administrative regulation will thus be able to govern this subject. If the population of a particular locale desires compatible STV systems, it can be expected that the good businessman will be responsive to the public's judgment. If not, his pay television station will fail for lack of subscribers. Not only can there be diversity in programing, but there can also be diversity of technical systems in order to meet a particular market's needs.

Cut-Off Procedure for STV Applications

37. In the *Notice*, we raised the question of whether a cut-off procedure for STV applications should be adopted. For a clear understanding of this issue, it is important to keep in mind that, at this point, the Commission follows a two-step procedure in which an STV authorization may be issued only to an entity that already is either the licensee of a commercial television broadcast station or the holder of a construction permit for a new commercial television broadcast station. Although the Commission has established cut-off procedures to provide an orderly method for the consideration of mutually exclusive television applications, as well as AM and FM applications, such a mechanism had not been adopted for STV applications. Because of the volume of applications for subscription television authorization, however, we proposed that such a rule be promulgated in regard to STV. Although fewer than half of those parties submitting comments to the *Notice* addressed themselves to this issue, those doing so were in support of a cut-off procedure. Those commenting generally state that such a provision would serve the Commission's interest in the orderly processing of applications and the public's, as well as the applicant's, interest in avoiding unnecessary delay and uncertainty.

38. Since we have resolved to eliminate the "one-to-a-community" rule, we no longer believe that a cut-off procedure for applications for STV authorization is necessary or beneficial. As multiple STV stations will now be allowed, we expect situations involving mutually exclusive STV applications to be significantly fewer. Thus, at the present time, there does not appear to be a need for any cut-off procedure either to serve the public interest or to aid Commission staff in the efficient processing of STV applications. If the need for a cut-off procedure becomes apparent, however, the subject will be revisited.

39. Accordingly, it is ordered, that pursuant to the authority contained in Sections 4(i), 303(g), (j) and (r) of the Communications Act of 1934, as amended, § 73.642(a)(3) of the Commission's rules is amended, effective November 23, 1979, as set forth in the attached Appendix A below.

40. For further information concerning this proceeding, contact Freda Lippert Thyden, Broadcast Bureau, (202) 632-7792.

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

William J. Tricarico,
Secretary.

Appendix A

Section 73.642(a) of the Commission's rules is amended to read as follows:

§ 73.642 Licensing policies.

(a) * * *

(3) An applicant for a construction permit for a new commercial television broadcast station: *Provided, however,* That such authorization will not be issued prior to issuance of the construction permit for the new station. Moreover, such an authorization will be issued only for a station the principal community of which is located entirely within the Grade A contours of five or more commercial television broadcast stations (including the station of the applicant), whether the principal community each station is authorized to serve is the same as that of the applicant, or is a nearby community. No such authorization will be granted unless, not counting the station of the applicant, at least four of the stations which include the community of the applicant within their Grade A contours are operating nonsubscription stations.

* * * * *

Appendix B—Parties Filing Comments

American Broadcasting Companies, Inc.
American Civil Liberties Union
American Television and Communications Corp.
Blonder-Tongue Laboratories, Inc.
Buford Television, Inc.
Cleveland Associates Co.
Jesus Lives, Inc.
KCAU-TV, et al.
Ledbetter, Theodore S., Jr.
Motion Picture Association of America, Inc.
National Association of Broadcasters
*National Business Network, Inc.
National Subscription Network, Inc.
New Life Evangelistic Center, Inc.
Oak Broadcasting System, Inc.
Pay TV Corporation
Peter and John Radio Fellowship, Inc.
*Radio Broadcasting Company
Subscription Television of America
*Tarshis, Mark, B.
Teleglobe Pay-TV System, Inc.
The American Subscription Television Companies
The National Cable Television Association, Inc.
Universal Subscription Television, Inc.
Video 44
Wometco Blonder-Tongue Broadcasting Corporation
Wometco Enterprises, Inc.
Wometco Home Theatre, Inc.

* The comments marked with an asterisk were late-filed but since their consideration is not prejudicial to any party and their lateness did not exceed a few days, we shall consider them in this proceeding.

Parties Filing Reply Comments

American Subscription Television Companies, Inc.
Blonder-Tongue Laboratories, Inc.
National Business Network, Inc.
*Pay TV Corporation
Radio Broadcasting Company
*Subscription Television of America Inc.
Wometco Blonder-Tongue Broadcasting Corp.
Wometco Enterprises, Inc.
Wometco Home Theatre, Inc.

[FR Doc. 79-32082 Filed 10-17-79; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 79-132; RM-3340]

Radio Broadcast Services; FM Broadcast Station in Oakhurst, California; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Action taken herein assigns a Class A FM channel to Oakhurst, California, as its first FM assignment, in response to a petition filed by Randolph L. Johnston and James T. Dee. The assigned channel can be used to provide a first local broadcast service to Oakhurst.

EFFECTIVE DATE: November 23, 1979.

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

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Oakhurst, California) *Report and Order* (Proceeding Terminated).

Adopted: October 9, 1979.

Released: October 15, 1979.

By the Chief, Broadcast Bureau.

1. On May 24, 1979, at the request of Randolph L. Johnston and James T. Dee ("petitioners"), the Commission adopted a *Notice of Proposed Rule Making*, 44 FR 33124, proposing the assignment of FM Channel 296A to Oakhurst, California, as its first FM assignment. Supporting comments were filed by petitioners in which they reaffirmed their intent to apply for the channel, if assigned. No oppositions to the proposal were received.

2. Oakhurst [1] is an unincorporated community in Madera County (pop. 41,519),[2] located on California State Highway 41, approximately 80 kilometers (50 miles) northeast of Fresno, California. It has no local aural broadcast service.

3. According to petitioners, the Madera Chamber of Commerce estimated the 1974 population of Oakhurst to have been 5,500. They state that Oakhurst has grown rapidly since 1974 and attribute this growth to an influx of people from other areas due to its mountain environment and recreational attractions. They note that Oakhurst has a post office, library, churches, schools, fire department, shops, civic organizations and theatres. Petitioners state that the nearest incorporated city to Oakhurst is Mariposa (in Mariposa County) 40 kilometers (25 miles) to the northwest, with Madera being the nearest incorporated city within Madera County, approximately 80 kilometers (50 miles) to the southwest.

4. Petitioners claim that because Oakhurst is located in a valley surrounded by mountains, radio reception is intermittent and FM reception is hampered by multipath distortion. They note that there are no radio stations in eastern Madera County and that the nearest service comes from an FM station in adjacent Mariposa County 40 kilometers (25 miles) to the northwest. Petitioners point out that the only radio service in Madera County is 80 kilometers (50 miles) to the southwest.

5. In view of the information submitted in response to the *Notice*, we are persuaded that the Oakhurst area has shown a steady growth during the past several years. This area is in need of radio service and Oakhurst has been shown to be an appropriate location to use to bring such service. Petitioners have established that Oakhurst is a community with its own post office, library, schools, and civic and social organizations. The Commission thus believes it would be in the public interest to assign FM Channel 296A to Oakhurst, California. A demand has been shown for its use and it would provide the community with a first aural broadcast service. It can be made without affecting any existing assignments and would be consistent with the applicable distance separation requirements.

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

7. In view of the foregoing, IT IS ORDERED, that effective November 23, 1979, § 73.202(b) of the Commission's Rules, the FM Table of Assignments, IS AMENDED with respect to the community listed below, as follows:

City, Channel No.

Oakhurst, California, 296A.

8. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau (202) 632-7792.

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

Federal Communications Commission.

Richard J. Shiben,

Chief, Broadcast Bureau.

[FR Doc. 79-32084 Filed 10-17-79; 8:45 am]

BILLING CODE 6712-01-M

[1] Oakhurst is not listed in the 1970 U.S. Census.

[2] 1970 U.S. Census.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 173, 174, 177, 178

[Docket No. HM-139B; Amdt. Nos. 172-55, 173-133, 174-35, 177-46, 178-58]

Conversion of Individual Exemptions to Regulations of General Applicability

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, Department of Transportation (DOT).

ACTION: Final Rule.

SUMMARY: This action is being taken to incorporate into the Department's Hazardous Materials Regulations a number of changes based on the data and analyses supplied in selected exemption applications or from existing exemptions. The need for this action has been created by the public demand to make available new packaging and shipping alternatives that have proven themselves safe under the Department's exemption program. The intended effect of these amendments is to provide wider access to the benefits of transportation innovations recognized and shown to be effective and safe.

EFFECTIVE DATE: October 18, 1979, except that the effective date of § 173.3(c)(3) is February 15, 1980.

FOR FURTHER INFORMATION CONTACT: Darrell L. Raines, Office of Hazardous Materials Regulations, 400 7th Street, S.W., Washington, D.C. 20590. [202-426-2075].

SUPPLEMENTARY INFORMATION: On June 25, 1979, the Materials Transportation