Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 5B—Public Buildings Service, General Services Administration

PART 5B–16—PROCUREMENT FORMS

Illustrations of Forms

The table of contents of Part 5B–16 is amended to indicate the current edition date of the following forms:

Subpart 5B–16.9—Illustrations of Forms

Sec.

5B–16.950–1015	GSA Form 1015: Instructions to Contractors (Construction Contracts). Data Required to Substantiate Equitable Adjustments of Time and Time Extension (August 1969).
5B–16.950–1137	GSA Form 1137: Request, Proposal, and Acceptance Covering Construction Contract Modification (July 1969).
5B–16.950–2402	GSA Form 2402: Form letter for notifying contractor of action taken on shop drawing submittals (December 1968).

NOTE: Copies of the forms are filed with the original document and are available from the Business Service Center in any regional office of the General Services Administration.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 41 CFR 5–1.101(c))

Effective date. This amendment is effective upon publication in the FEDERAL REGISTER.

Dated: May 13, 1970.

A. F. SAMPSON,
Commissioner,
Public Buildings Service.

[F.R. Doc. 70–6338; Filed, May 21, 1970; 8:50 a.m.]

Title 45—PUBLIC WELFARE

Chapter I—Office of Education, Department of Health, Education, and Welfare

PART 107—FEDERAL FINANCIAL ASSISTANCE FOR PLANNING AND EVALUATION

The regulations set forth below are applicable to grants awarded pursuant to section 402 (20 U.S.C. 1222), title IV, of the Elementary and Secondary Education Amendments of 1967 (Public Law 90–247). Federal financial assistance given pursuant to these regulations is subject to the regulations in 45 CFR Part 80, issued by the Secretary of Health, Education, and Welfare, and approved by the President, to effectuate the provisions of section 601 (42 U.S.C. 2000d) of the Civil Rights Act of 1964 (Public Law 88–352).

Part 107 reads as follows:

Sec.

AUTHORITY: The provisions of this Part 107 issued under 20 U.S.C. 1222. Interpret or apply 20 U.S.C. 1221–1222.

§ 107.1 Definitions.

As used in this part:

(a) "Act" means the Elementary and Secondary Education Amendments of 1967 (Public Law 90–247).

(b) "Commissioner" means the U.S. Commissioner of Education.

(c) "Elementary and secondary education" means elementary and secondary education as determined under State law.

(d) "Evaluation" means determining the extent to which management and program objectives are being achieved, using measures of efficiency and effectiveness to compare results with predetermined standards.

(e) "Grant period" means that period of time for which grant funds are made available for expenditure by the grantee.

(f) "Planning" means a series of activities involving assessing needs, defining objectives, identifying problems, establishing priorities, examining alternative solutions, selecting possible approaches, and formulating action programs, including strategies for their evaluation, to achieve specified goals.

(g) "Project period" means the total amount of time for which a project is approved in principle for support under section 402 of the Act.

(h) "State" means, in addition to the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(i) "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(20 U.S.C. 1222)

§ 107.2 Purpose.

It is the purpose of the regulations in this part to cover grants authorized in section 402 of the Act to be made by the Commissioner to State educational agencies for expenses for planning for the succeeding year programs or projects for elementary and secondary education, including, where appropriate, preschool programs or projects, under programs for which the Commissioner has responsibility for administration, either by statute or by delegation pursuant to statute, and for evaluation of such programs or projects. Grants in equal amounts will be made, consistent with applications approved pursuant to § 107.3, for each State of the Union; in lesser equal amounts for the District of Columbia and the Commonwealth of Puerto Rico; and in yet lesser equal amounts for Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands. It is not the purpose of the regulations in this part to cover grants, contracts, or other payments to be made to other organizations or individuals.

(20 U.S.C. 1221, 1222)

§ 107.3 Applications.

An application for a grant shall be submitted to the Commissioner. The application shall be made in the form and detail and in accordance with such procedures as the Commissioner may prescribe. An application shall contain (a) a statement of the purpose of the project, (b) a description of the nature and scope of the activities to be undertaken and the methods and arrangements for working toward project objectives, (c) a proposed budget, (d) an assurance that the applicant will comply with the requirements of the regulations in this part, and with such other conditions and procedures as the Commissioner may prescribe in awarding the grant, and (e) any other documents and information which the Commissioner may require.

(20 U.S.C. 1222)

§ 107.4 Revisions.

An amendment to an approved application shall be submitted in writing to the Commissioner for approval whenever necessary to reflect any substantial change that may be proposed in the scope or nature of the project or in its conduct or administration.

(20 U.S.C. 1222)

§ 107.5 Project and grant periods.

The project period shall begin on the date, and shall remain in effect for the period, specified in the notice of award. A grant of Federal funds will normally be made for only 1 year but need not coincide with a fiscal year. The grantee must make separate application for continuation support beyond a grant period.

(31 U.S.C. 200)

§ 107.6 Expenditures by grantee.

For the purposes of determining whether funds are expended during the grant period, Federal funds will be considered to be expended by a grantee on the basis of documentary evidence of binding commitments by the grantee for the acquisition of goods or property or for the performance of work, except that the expenditure of funds for personal services, for services performed by public utilities, for travel, and for rental of equipment and facilities shall be determined on the basis of the time such services were rendered, such travel was performed, and such rented equipment and facilities were used, respectively.

(31 U.S.C. 200)

§ 107.7 Liquidation of obligations.

Obligations entered into by a grantee and payable from funds under section 402 of the Act shall be liquidated within 12 months following the end of the grant period unless prior to the end of that 12-month period the grantee reports to the Commissioner the reasons why such obligations cannot be timely liquidated and, on the basis thereof, the Commissioner extends the time for so liquidating obligations.

(31 U.S.C. 200)

§ 107.8 Records.

(a) The grantee shall maintain and keep intact and accessible to the Secretary of Health, Education, and Welfare and the Comptroller General of the United States all records supporting claims for Federal funds or relating to the accountability for expenditure of such funds for 3 years after the end of the period for which such funds were made available for expenditure unless, by that time an audit by or on behalf of the Department of Health, Education, and Welfare has not occurred, in which case the records must be retained until audit or until 5 years following the end of the budget period, whichever is earlier.

(b) The grantee shall maintain inventories of all equipment acquired under section 402 of the Act and costing $100 or more per unit for the expected useful life of the equipment or until its disposition, whichever is earlier. The records of such inventories shall be kept for 3 years following the period for which such inventories are required to be made, unless by that time an audit by or on behalf of the Department has not occurred, in which case the records must be retained until audit or until 5 years following the end of the budget period, whichever is earlier.

(20 U.S.C. 1222; 42 U.S.C. 4212)

§ 107.9 Reports.

The application shall provide that the grantee will consult periodically with the Commissioner and will make an annual report and such other reports to him, at such time, in such form, and containing such information as he may consider reasonably necessary to perform his duties under the Act and to comply with such provisions as he may find necessary to assure the correctness and verification of such reports.

(42 U.S.C. 4212)

Effective date. These regulations shall become effective 30 days after publication in the FEDERAL REGISTER.

Dated: March 25, 1970.

JAMES E. ALLEN, Jr.,
U.S. Commissioner of Education.

Approved: May 18, 1970.

ROBERT H. FINCH,
Secretary of Health, Education, and Welfare.

[F.R. Doc. 70-6364; Filed, May 21, 1970; 8:48 a.m.]

Chapter X—Office of Economic Opportunity

PART 1026—CONTRACTS AND ADMINISTRATION

Chapter X of Title 45 of the Code of Federal Regulations is amended by adding a new Part 1026 reading as set forth above, and a new subpart reading as follows:

Subpart—Reporting and Review Procedures for Preventing Conflicts of Interest in Contracts and Grants

Sec.
1026.1-1 Purpose.
1026.1-2 General.
1026.1-3 Definitions.
1026.1-4 Limitation on award of noncompetitive contracts.
1026.1-5 Approval of competitive procurements.
1026.1-6 Reporting information.

AUTHORITY: The provisions of this Part 1026 issued under sec. 602(n) of the Economic Opportunity Act of 1964, as amended; 78 Stat. 530; 42 U.S.C. 2942.

§ 1026.1-1 Purpose.

To establish reporting and review procedures for preventing conflicts of interest in contracts and grants executed in Headquarters, Office of Economic Opportunity.

§ 1026.1-2 General.

Because many Agency employees develop a unique expertise in the poverty field, they are in demand for employment by organizations that contract with or receive grants from the Office of Economic Opportunity. Even though a Federal law may not be violated by employment in such organizations, it creates the possibility of, or at least the appearance of, misuse by such employees of their influence with their former colleagues.

§ 1026.1-3 Definitions.

A special Government employee is an employee appointed to serve not more than 130 days during the 365 days following his appointment. Special Government employees are so designated by the Personnel Division at the time of their appointment. For the purposes of §§ 1026.1-4 and 1026.1-5, a former regular or special Government employee shall be considered to be in a senior management position if he reports directly to an officer or director of the organization in which he is employed or if he is paid a salary or receives other remuneration from the employing organization which, as annualized, exceeds $18,000 per year.

§ 1026.1-4 Limitation on award of noncompetitive contracts.

For a period of 1 year from the date of termination of employment with the Office of Economic Opportunity, no contract shall be awarded without competition to any organization which employs in the capacity of officer, director, or other senior management position a former Office of Economic Opportunity regular employee or a special Government employee who served the Office of Economic Opportunity for a total of more than 60 days during the 365 days prior to the termination of his Office of Economic Opportunity employment. An exception to this requirement may be granted only by the Director.

§ 1026.1-5 Approval of competitive procurements.

The Deputy Director shall approve in writing any proposed contract award resulting from a competitive procurement to an organization employing in any of the capacities listed in § 1026.1-4 a former regular or special Government employee of the Agency to whom the restriction set forth in that section applies. The fact that a contractor employs or contemplates employing a former Office of Economic Opportunity employee shall not prejudice that contractor's competitive standing provided that the employment or proposed employment is consistent with Federal law and the Office of Economic Opportunity conflicts of interest regulations.

§ 1026.1-6 Reporting information.

This provision is designed to insure that no contract is awarded to an organization that employs a former regular or special Government employee of the Agency in violation of the Federal law or the Office of Economic Opportunity conflicts of interest regulations. The reporting procedures set forth below will also give the Agency early notice of situations in which there is the appearance of conflict or the possibility of favoritism in the award of contracts. In such situations, the Agency will institute appropriate administrative steps in its proposal-review and selection process to insure that contracts are awarded entirely on the basis of the merits of the contractor's proposal, and not on any other basis.

(a) *Exit clearance reporting.* (1) In order to maintain current information on former employees employed by Agency contractors, the Personnel Division shall include in the Exit Clearance Form (OEO Form No. 73) a requirement that the departing employee reveal the name of his next employer, if known, and his position with that employer. The Personnel Division shall then submit this information to the Procurement Division, which will be responsible for establishing an index of firms employing former Agency employees. This index shall be expanded by periodic inputs from other staff offices, such as the Office of General Counsel, as to the current employment status of former employees.

(2) Contract negotiators shall check this index before entering into negotiations and shall secure the advice of the General Counsel as to whether a potential conflict of interest exists if a former employee is employed as officer, director, or other senior management position by a contractor being considered for a contract award.

(b) *Contract reporting.* The following shall be inserted in all Office of Economic Opportunity solicitations of $2,500 or more:

Offerors shall state as part of the proposal: (1) Whether or not it is now negotiating with a regular or special OEO employee for employment; and, if so, specify the name of

the individual(s) and the position(s) for which considered:

(2) Whether or not it now employs as a regular employee or consultant a former regular or special OEO employee whose employment with OEO terminated within the past 365 days; and if so, specify the name of the individual(s) and the position(s) held:

(3) Specify the names of any present OEO employees or their spouses or minor children known to have a substantial financial interest in the offeror's organization. A financial interest shall be considered insubstantial if it amounts to less than $5,000 in the market value and less than one (1) percent of the organization's outstanding stock or other securities, and the OEO employee or spouse or minor child is not active in the management of the organization.

(4) If either (1) or (2) is answered in the affirmative, specify whether any such individual(s) shall participate in the performance of any contract that may result from this solicitation and the extent of such participation.

Contractors are advised that the foregoing disclosure request is for informational purposes in order to protect former employees against potential conflict of interest situations.

The fact that a contractor employs or contemplates employing a former OEO employee shall not prejudice that contractor's competitive standing, provided that the employment or proposed employment is consistent with Federal law and OEO conflicts of interest regulations.

The Director of the Procurement Division shall instruct his negotiators and contracting officers to report to the General Counsel any affirmative responses to the above disclosure requests.

(c) *Grant reporting.* Because the conflicts of interest problem is not restricted to the procurement field, but also is found in the employment of former regular and special employees of the Agency by grantees, delegate agencies, and subcontractors to such organizations, each grant application form shall include a form containing the following clause:

The Grantee, as part of its application for a new grant or for a refunding, shall identify any former regular or special OEO employee whose employment with OEO terminated within 365 days prior to the date of grant application, who (1) is employed by the grantee, its delegate agency, or a subcontractor who performs work for the grantee or delegate agency under a subcontract of $25,000 or more; or (2) who owns or has a financial interest in the grantee or its delegate agency; or (3) who is in any other way involved with the grantee or its delegate agency in his private capacity. The grantee shall specify as an attachment to its application the names of such individuals and their position, degree of financial interest, or other relationship with the grantee or delegate agency. The grantee shall also identify any present or former employee of the Office of Economic Opportunity who is negotiating for employment with the grantee, any delegate agency or subcontractor to any such organization.

Agency personnel receiving grant applications shall forward any information received as a result of this paragraph to the General Counsel for consideration.

Effective date. The effective date of this subpart is April 7, 1970.

WESLEY L. HJORNEVIK,
Deputy Director.

[F.R. Doc. 70-6322; Filed, May 21, 1970; 8:45 a.m.]

Title 46—SHIPPING

Chapter II—Maritime Administration, Department of Commerce

SUBCHAPTER C—REGULATIONS AFFECTING SUBSIDIZED VESSELS AND OPERATORS

[General Order 24, 3d Rev., Amdt. 2]

PART 284—VALUATION OF VESSELS FOR DETERMINING CAPITAL EMPLOYED AND NET EARNINGS UNDER OPERATING-DIFFERENTIAL SUBSIDY AGREEMENTS

Residual Value of Vessels; Adjustments for Depreciation

In accordance with the Secretary of Commerce's Order and his instruction to the Maritime Subsidy Board, as of April 11, 1970, § 284.2(f)1(ii) is hereby amended, effective January 1, 1969, to read as follows:

§ 284.2 Basis of valuation.

* * * * *

(f) *Adjustments for depreciation.* (1) * * *

(ii) On and after January 1, 1969, in computing depreciation on a 25-year statutory economic life vessel, the residual value (meaning the salvage (resale) value of the vessel) shall be deemed to be 17 percent of the original construction cost (meaning the full domestic shipyard construction cost in so far as vessels constructed under title V or title VII of the Merchant Marine Act, 1936, are concerned): *Provided*, That the residual value policy be reviewed not less than each 5 years to determine that it is still appropriate in the light of interim events.

* * * * *

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114; sec. 607, 66 Stat. 764, as amended; 46 U.S.C. 1177)

Dated: May 19, 1970.

By order of the Maritime Administrator and the Maritime Subsidy Board.

JAMES S. DAWSON, Jr.,
Secretary.

[F.R. Doc. 70-6370; Filed, May 21, 1970; 8:49 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 18426; FCC 70-506]

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

Sale, Import, or Shipment for Sale of Devices Which Cause Harmful Interference to Radio Communications

Report and order. 1. On January 15, 1969, the Commission adopted a notice of proposed rule making in the above-entitled matter, FCC 69-53 (34 F.R. 1057), designed to implement section 302 of the Communications Act of 1934, as amended. Rules were proposed in this notice which would prohibit the sale, or lease, or offer for sale or lease, or import, shipment, or distribution for the purpose of sale or lease of devices capable of causing harmful interference to radio communications, unless such devices complied with the applicable type approval, type acceptance, or certification requirements specified by the Commission, or in the absence of such requirements, the device complied with the pertinent technical standards specified by the Commission's rules. The purpose of the proposed regulations was to enable the Commission to now direct its equipment standards to manufacturers, importers, and distributors of such devices, as well as users. The proposed regulations would apply to many persons and companies not now directly subject to Commission regulation.

2. Section 302, entitled "Devices Which Interfere with Radio Reception", was added to the Communications Act on July 5, 1968, by Public Law 90-379, 82 Stat. 290. This section authorizes the Commission to "make reasonable regulations governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation, conduction, or other means in sufficient degree to cause harmful interference to radio communications." The new law further provides that such regulations shall be applicable to the manufacture, import, sale, offer for sale, shipment, or use of such devices and prohibits any person from engaging in such activities with respect to devices which fail to comply with regulations promulgated by the Commission pursuant to section 302. The primary objective of § 302 and the rules promulgated thereunder is a reduction in the probable levels of harmful interference.

3. The aggregate of individual radiofrequency devices subject to the Commission's statutory authority is large, since all devices capable of emitting energy by radiation, conduction, or other means in sufficient degree to cause harmful interference are embraced. They range from the many kinds of radio transmitters used in the broadcasting, common carrier, marine, aviation, and land mobile services to restricted radiation devices,[1] such as radio receivers, CATV Systems, low power communication devices, including wireless microphones, phonograph oscillators, radio-controlled garage door openers, radio-controlled

[1] See Part 15 of the Commission's rules, 47 CFR 15.1, et seq. A restricted radiation device is defined as "a device in which the generation of radiofrequency energy is intentionally incorporated into the design and in which the radiofrequency energy is conducted along wires or is radiated, exclusive of transmitters which require licensing under other parts of this chapter and exclusive of devices in which the radiofrequency energy is used to produce physical, chemical, or biological effects in materials, and which are regulated under the provisions of Part 18 of this chapter." 47 CFR 15.4(d).

models and toys, etc., and to the various types of industrial, scientific and medical equipment such as ultrasonic, industrial heating, medical diathermy, radiofrequency-stabilized arc welders and miscellaneous equipment. Included also are the tremendous number of incidental radiation devices[3] such as electric motors, automobile ignition systems, neon signs, etc.

4. However, the law exempts from its operation, and hence the regulations herein adopted do not apply to, carriers transporting such devices without trading in them; devices manufactured solely for export; the manufacture, assembly or installation of devices for its own use by a public utility engaged in providing electric service; and devices for use by the Government of the United States or any agency thereof. In addition to these statutory exemptions, and although the Commission is authorized to restrict the manufacture of RF devices it has concluded that to impose restrictions against the manufacture of devices could hinder product development, basic research, etc. and could result in curtailment of technological progress. Accordingly, no prohibition against manufacture is imposed.[3] Similarly the prohibition against shipment should not prevent shipment to our own or any other laboratory for testing purposes, or for other purposes such as research, development, experimentation or testing; only shipment for purposes of selling or leasing or offering for sale or lease is proscribed.

5. Prior to the enactment of section 302 the Commission's role in this area has been to prohibit the use or operation of any apparatus for the transmission of energy or communications by radio except in accordance with a Commission authorization therefor. As a concomitant of this authority, the Commission has for many years prescribed allowable levels of emission of RF energy and related technical standards for various types of radiofrequency devices, the use of which by any person or company has been authorized by the Commission by individual license or general rule. Although the prescription of such allowable levels of emission and technical standards has been of material assistance in the Commission's efforts to restrict or eliminate harmful interference, the identifiable detection of specific unlawful uses and users has proven to be most difficult. Despite many manhours devoted to tracing and eliminating interference of all types, the amount of spectrum pollution and harmful interference appears to be on the increase. Another very practical impediment in the system heretofore in effect was that it was directed to persons who may have purchased a radiofrequency device in good faith in an open legal market and with no knowledge of its interference potential. In such a situation, it has been difficult to obtain the substantial voluntary cooperation of the user upon which the success of such a program must depend.

6. The rules herein adopted are designed to achieve a lessening of the harmful interference problem by control measures applied at the source of the offending devices. Reaching into the source of such devices—to the manufacturers and importers, and in turn to the sellers and shippers of radiofrequency devices—should permit corrective action, when necessary, before offending devices have reached prospective users in epidemic proportions. Technical standards have already been prescribed by the Commission for all radiofrequency devices used under Commission license or authorization except for those in the incidental radiation category. The rules herein adopted, in effect, require compliance with these standards prior to the sale of such devices, or their importation or shipment for purposes of sale. Technical standards for the many kinds of incidental radiation devices have not as yet been prescribed, and therefore the basic control over the interference potential of such devices will continue to be the present prohibition against their use if the radiation therefrom causes harmful interference.

7. Notwithstanding the establishment of technical standards for radiofrequency devices, it long ago became clear that many users were substantially unaware of the interference potential of such devices. One of the approaches taken by the Commission to meet this problem was the establishment of a review and analysis procedure under which many kinds of radiofrequency devices could be cleared by the Commission, after appropriate testing by either the manufacturer or the Commission, prior to use by the purchaser. Under this procedure, the Commission has developed three methods for verifying equipment performance. One method—type approval—is based upon appropriate testing by the Commission and attaches to all units subsequently manufactured by the same person which are identical to the one tested. Another kind of review and approval, known as "type acceptance", is based upon appropriate testing by the manufacturer and similarly attaches to all units subsequently manufactured by the same person which are substantially identical to the one tested. The Commission has also established a procedure known as "certification", for other types of radiation devices, such as TV receivers, under which the manufacturer tests his products in terms of applicable technical standards and is permitted to certificate the device as being in compliance with such technical standards after notification to and the acceptance by the Commission of the proposed certificate.

8. These procedures have enabled manufacturers and other interested persons, on a voluntary basis, to secure Commission determination that their radiofrequency devices are capable of meeting applicable technical standards prior to shipment and sale to prospective users. Also, they have been widely accepted by manufacturers of radiofrequency equipment because most manufacturers are keenly interested in the elimination of spectrum pollution as one step toward meeting the enhanced demand for usable radiofrequency devices.[4] Thus, most manufacturers are well acquainted with our existing technical standards as they apply to their products and have been voluntarily utilizing our equipment clearance procedure for some time. The rules adopted in this proceeding do not change our existing technical standards,[5] which apply to all radiofrequency devices operated under authorization by the Commission for the particular service or purpose involved. What is accomplished here is simply the institution of a requirement that manufacturers apply existing technical standards to such devices and obtain such type approval, type acceptance, or certification as may be required prior to shipment or distribution of such devices for sale.

9. Comments were filed by a variety of persons including industry associations, trade representatives, and individual manufacturers.[6] Generally, the comments supported the objectives of the proposed regulations: That any radiofrequency device having an interference potential be manufactured to comply with the Commission's technical standards and thus give the purchaser of the device reasonable assurance that such device can be operated without causing harmful interference. However, the comments do raise a number of questions concerning the effect of the proposed rules on existing industry practices.

10. A number of comments object to the inclusion of "offer for sale" within the prohibited activities. G.E. alleges that this term may be interpreted to prohibit the offering for sale of proposed production items which have not been fully developed and standardized for

[3] An incidental radiation device, as defined in § 15.4(c) of the rules, is a device that radiates radiofrequency energy during the course of operation although the device is not intentionally designed to generate radiofrequency energy.

[3] We construe the second sentence of section 302(a) as permissive rather than mandatory and thus key the proposed regulations to the most practical points of control. In light of the fact that prohibitions against use are already set forth in section 301 and in various parts of our rules, it would appear that the controls imposed would, for the present, be adequate to achieve the basic objective.

[4] As a result of this procedure, the Commission has been able to maintain and publish, for the benefit of both the manufacturer and prospective user, radio equipment lists describing the various devices which have been found capable of meeting applicable technical standards.

[5] Certain RF devices need not at present be type approved, type accepted or certificated notwithstanding that technical standards have been established for such devices. In those instances, e.g., crystal controlled Class D citizens band transmitters, amateur transmitters, industrial radio-location devices, carrier current systems, CATV, and campus radio systems, etc., the basic requirement will be compliance with the applicable technical standards.

[6] See Appendix A for list of persons that filed comments and the short names used in this report.

production. Collins argues that the prohibition against "offer for sale" does not allow for preproduction marketing of new products while still in the design and developmental stages. EIA-Land Mobile and others point out that manufacturers pursuing established marketing practices would violate the "offer for sale" proscription although the device in question when finally produced and sold would readily comply in all respects with the technical specifications in the Commission's rules as well as with the prescribed equipment approval procedure. Collins augments this argument by pointing out that within the manufacturing-through-distribution cycle, marketing efforts must commence as soon as the design concept is finalized, and that marketing efforts or "offers for sale" to potential customers cannot be deferred until the device in question is manufactured and tested. The "offer for sale" proscription is also questioned by EIA-Microwave and others who state that such a proscription precludes soliciting and bidding on procurement contracts. EIA-Microwave maintains that it is not feasible to obtain approval of all possible devices prior to offering them for sale, particularly when an unique communications problem is involved. EIA-Land Mobile argues that, in an established marketing and manufacturing cycle, "offers for sale or lease" are typically preliminary proposals offered in response to specific customer requirements. Mobile Electronics contends that, since advertisement of a capability to develop and produce custom devices may be construed as an "offer for sale," this term in the proposed rules would appear to prohibit soliciting orders to build custom devices before full scale production models have been manufactured and tested for compliance.

11. As a possible solution to the marketing difficulties which would confront manufacturers of radiofrequency devices under the proposed proscription against "offer for sale," EIA-Land Mobile advocates the adoption of a rule permitting compliance with equipment procedures at the time of distribution rather than at the time the offer is made. This recommendation is supported by EIA-Microwave which alleges that such a relaxation is necessary to permit continued orderly growth of the microwave industry.

12. It would appear that most of the comments stem from a misunderstanding of the term "offer for sale" as used in the proposed regulation and this misunderstanding has led to the fears expressed in the comments of adverse impact on preproduction marketing of products which are still in the design and development stages. The term "offer for sale" is included in our proposal because it is presently included in the language of section 302 of the Act. We wish to make it clear, however, that the prohibition against offering for sale would not preclude the proposal or execution of agreements to manufacture or produce in the future new products in the design or development stages or products which are to be manufactured in accordance with designated specifications. Thus, in terms of the comments of EIA-Land Mobile and Mobile Electronics, preliminary proposals offered in response to specific customers' requirements or the advertisement of a capability to develop and produce custom devices would not be encompassed by the proposed rule. The inclusion of this term would, however, prohibit the advertising for sale of existing radiofrequency devices prior to the date that it has been determined that such devices comply with the Commission's requirements. In this day of mass marketing where the overwhelming proportion of goods sold are introduced to the public by printed or broadcast advertising, it would be self-defeating to expect to regulate trade in noncomplying RF devices if dealers remained able to call attention to and create a market for products they could not ship or sell and which the public could not lawfully use.

13. Collins brings to our attention the fact that before type acceptance is granted a broadcast permittee is presently allowed to install and test a transmitter to be operated in any of the radio broadcast services. EIA-Broadcast comments that, for most transmitting equipment licensed under Parts 73 and 74, the tests necessary to show compliance with our requirements for type acceptance are more effective and representative when conducted at a typical broadcasting site under actual installation conditions, particularly in the case of custom combinations of equipment which may require special measurement techniques. Both argue that promulgation of rules to require type acceptance prior to the sale and shipment of a transmitter intended for licensing in one of the Radio Broadcast Services is inconsistent with Part 73 and recommend that the proposed rules be modified to exempt broadcast transmitters from such a requirement.[1] In addition, both believe such modification would not cause increased spectrum pollution problems, but, to the contrary, would encourage the development of better communications equipment, and that achievement of the overall goals of section 302 would be easier, since availability of equipment with reduced interference potential furthers those goals. Recognizing the merit of this argument and being satisfied that the established licensing procedure provides adequate control with respect to transmitters operated under Part 73, Radio Broadcast Services, the Commission is exempting such equipment from the constraints of § 2.511. For the same reasons, transmitters employed in the Instructional Television Fixed Service regulated under Part 74 are also exempted. Although we have exempted such equipment from the prohibition against sale and shipment prior to obtaining type acceptance, attention is directed to the requirement that type acceptance must be obtained before a station license will be issued.

14. Collins and EIA-Consumer Products urge that a proviso be added to the rules to allow shipment and distribution of equipment if it is designed to conform, and does in fact conform, to the Commission's requirements, as soon as an application has been filed for the appropriate equipment approval. EIA-Consumer Products argues in this connection, that the proposed rules impose an intolerable hardship on manufacturers fabricating high-production items because the completion of the certification process to show compliance with the Commission's technical standards prior to the shipment of products will introduce additional delays in the manufacturing-through-distribution cycle. However, this proposal to permit sale or shipment simply on the basis of the filing of an application for equipment approval flies in the face of the purpose of section 302 to keep noncomplying equipment out of the hands of the public by requiring completion of the approval process before such sale or shipment. Insofar as the comment expresses fears of delay in the manufacturing-through-distribution cycle, delays can be minimized by the filing of applications for equipment approval based on tests of the preproduction model or prototype before production actually starts, in order to provide additional time prior to shipment. The Commission is presently reexamining its procedures for equipment approval and will include this provision in its revised rules.

15. Mann-Russell, SPI, TOCCO, Ajax, and IEEE-Subcommittee all protest the requirement for certification of industrial heating equipment (one category of ISM equipment regulated under Part 18) prior to shipment from the factory. While none of these parties oppose the objectives of section 302, each urge that the Commission not adopt rules which, in effect, would prohibit on-site certification, and impose unnecessarily burdensome restrictions on both the manufacturer and the user. Mann-Russell argues that factory pre-certification of such equipment is, in many cases, neither workable nor meaningful because much of this equipment is designed for assembly at the customer's premises where all factors affecting the emission of interfering RF energy can be taken into account. Mann-Russell maintains that not only is such onsite testing more feasible, but in addition, measurements made at the customer's premises are more meaningful with respect to compliance with FCC requirements. SPI argues, that many of the industrial heaters used in the plastics industry are designed to be operated in a screened enclosure. To be significantly useful, SPI states further, measurements to demonstrate that such an equipment complies with FCC rules must be made with the enclosure in which the heater will be operated. Self-shielding of such machines, according to SPI, is not only impracticable but in

[1] Part 73 permits the issuance of a construction permit to install a transmitter that has not been type accepted provided adequate preliminary descriptive information concerning the transmitter has been filed. A station license, however, will not be granted until such transmitter has in fact been type accepted.

many cases seriously impedes operation, since the shielding interferes with feeding materials to the machine. TOCCO comments that under the present certification system both the manufacturer and the user of ISM equipment are fully aware of their responsibilities, adding that the present system provides a quick and easy reference for supplying information about the location and type of certificated ISM equipment when interference is reported in a particular area. Ajax and IEEE-Subcommittee argue individually that the present rules provide adequate control, since ISM equipment constructed in accordance with the Commission's standards causes a minimal amount of interference. In addition, Ajax maintains that in those few instances of harmful interference, caused by spurious radiation from industrial heating equipment, both user and manufacturer have been prompt in taking corrective action. Both of these proponents for the continuation of onsite certification for industrial heating equipment argue further that the proposed rules, if strictly interpreted, would have an adverse effect on existing industry practice without materially reducing the amount of spectrum pollution and harmful interference.

16. The Commission recognizes the problem described by these comments. The technical standards in our Part 18 rules which are intended to control the interference effects of an industrial heating installation may not, in all cases, be directly suitable to industrial heating equipment at the point of manufacture. Obviously, where compliance with the Part 18 technical standards is achieved by use of an accessory external to the equipment—such as a screened enclosure in which the equipment is installed—compliance with such standards could not reasonably be required at the point of manufacture. Further, the establishment of requirements on the manufacturer of the equipment to meet the applicable technical standards by shielding or suppression devices which are part of the unit should be done through separate rule making. For this reason the Commission is considering the initiation, in the near future, of rule making proceedings concerning appropriate changes in these existing technical standards, including a suppression requirement of harmonic emissions for all equipment operating on a frequency of 5 MHz or higher.

17. Therefore, pending the adoption of revised technical standards for industrial heating equipment, the Commission is exempting certain ISM equipment from compliance with provisions of §§ 2.803 and 2.805. It should be noted, that this exemption extends to the vendor of the equipment—and not to the user who still will be required to meet the certification or type approval requirement of Part 18 prior to use of such equipment. However, the basic problem of interference from such industrial heaters—and the alleged ignorance on the part of users of the applicable technical standards who have legally purchased such equipment from reputable manufacturers still remains. Therefore, while not now requiring manufacturers' compliance with such technical standards prior to distribution for sale, the Commission will require that the vendor or lessor of such industrial heating equipment:

(a) Notify the purchaser or lessee in writing either that the equipment as delivered does comply with the technical standards in Part 18, or that the equipment must be installed in an adequately screened enclosure before it may be operated in accordance with Part 18, as the case may be; and

(b) Furnish a copy of such notification to the Federal Communications Commission, Washington, D.C. 20554, Attention: Field Engineering Bureau, within 30 days of such sale or lease. This notification shall include information as to the—

Name and Address of purchaser/lessee.
Name of manufacturer and type or model of the equipment delivered.
Nominal operating frequency.
Nominal operating power.

This exemption applies only to equipment specifically listed in § 2.809. Other equipment regulated by Part 18, such as medical diathermy, low-power ultrasonic equipment, and microwave ovens, which are normally sold as self contained packages will be subject to the rules adopted herein, and it will be incumbent on the manufacturer to certificate or to obtain type approval for such equipment before they may be shipped or sold/leased.

18. We note the comments of Low Power Broadcast, SPI, and TOCCO concerning lack of provision in the proposed rules to relieve the manufacturer of responsibility for the acts of users who intentionally or unintentionally modify or misuse equipment in such a manner as to create a source of harmful interference. It is obvious, in our view, that a manufacturer cannot be held responsible for the act of a user who chooses to misuse or modify equipment. There is no condition or requirement in our rules that can reasonably be construed to hold the manufacturer responsible for unauthorized modification or misuse of equipment by the operator or user. The instant proceeding in no way relieves the ultimate user and operator of responsibility for harmful interference caused by unauthorized modification, misuse, or improper operation of equipment. Moreover, attention is invited to the fact that existing restrictions, which stem from authority contained in section 301 of the Communications Act and are directed to the use and operation of radiofrequency equipment, remain in effect over and above the new authority granted by section 302. In short, the new section 302 complements the strictures of section 301.

19. GE and others express concern about when the rules will be made effective, arguing that the effective date should be coordinated with industry so as to allow sufficient lead time for manufacturers and distributors to avoid losses due to equipment which can no longer be shipped or sold under the rules. The Commission recognizes of course that the immediate application of the prohibition against shipment or sale of equipment which has already been manufactured or is now in the manufacturing process, could produce hardship if only by reason of the delay occasioned by the necessity of securing type-approval, type-acceptance or certification prior to shipment. However, it should be noted that the technical standards, compliance with which will now have to be demonstrated prior to sale or shipment, are not new but have been in effect for some time and compliance therewith by the user has long been required. Thus, for the many manufacturers of RF devices who have viewed the interference potential characteristics of their products with concerned awareness and who are already voluntarily meeting the technical standards prescribed in our rules, the new responsibilities reflected by the rules adopted herein should present no substantial problem. On the other hand, the Commission is aware that some manufacturers in the past have chosen not to recognize the interference problems created by their inadequately designed and constructed equipment and it is with respect to such equipment that the present regulations must be made effective as soon as reasonably possible. Moreover, the adoption of section 302 in July 1968 put industry on notice that regulations to control the distribution of devices capable of causing harmful interference would be forthcoming, and our notice of proposed rule making issued on January 15, 1969, gave notice of the form these regulations were intended to take. We feel therefore that industry has had ample time to make the necessary changes and adjustments in manufacturing techniques that may be required. However, we recognize that changes are desirable in our procedural rules governing applications for equipment approval. To accomplish this, we are making the regulations adopted herein effective as of October 1, 1970. This should also allow sufficient time for manufacturers to acquire such equipment approvals as may be required prior to shipment. Accordingly industry is put on notice that, regardless of the date of manufacture, no device subject to these rules, may be legally shipped, sold, etc., after October 1, 1970, unless compliance with our requirements has been demonstrated prior to such shipment, sale, etc.

20. The rules herein adopted are the initial step in implementation of section 302, and simply make it mandatory that manufacturers, vendors and shippers of radio frequency devices comply with our regulations. No changes have been made in existing type acceptance, type approval and certification procedures, or compliance requirements. However, as indicated above, we are presently reviewing our regulations to determine what changes* are necessary and appropriate in light of this new authority and the rules herein adopted. A further

*In this connection, it should be noted that a proposed revision of our type acceptance procedures is presently outstanding in Docket 17869, and we contemplate a further proceeding to conform it as necessitated by the rules herein adopted.

rule making proceeding will be instituted to amplify the procedural rules for equipment approval.

21. In summary, the Commission finds that it is in the public interest to adopt the rules contained in the attached Appendix which require that before equipment or apparatus which emits electromagnetic energy capable of causing harmful interference to radio communications is put on the market, it must meet the technical standards enumerated in the rules and, where required, it must be type approved, type accepted, or certificated. These rules are intended to impose upon the manufacturer, vendor and shipper the initial responsibility for minimizing interference to radio communications. The equipment user will continue to be held responsible for interference that arises due to improper operation or unauthorized changes which he has made.

22. In view of the foregoing and pursuant to the authority contained in sections 4(i), 302, and 303(r) of the Communications Act of 1934, as amended: *It is ordered*, That, effective October 1, 1970, Part 2, is amended in the manner set forth in Appendix B, and this proceeding is terminated.

Adopted: May 13, 1970.

Released: May 18, 1970.

FEDERAL COMMUNICATIONS COMMISSION,*

[SEAL] BEN F. WAPLE, *Secretary.*

APPENDIX A

Comments in this proceeding were received from:

INDUSTRY ASSOCIATIONS

Aerospace and Flight Test Radio Coordinating Council (AFTRCC).
Automobile Manufacturers Association, Inc. (AMA).
Consumer Products Division of Electronic Industries Association (EIA-Consumer Products).
Industrial Electronics Division of Electronic Industries Association.
Filings were submitted individually by the following sections:
- Broadcast Equipment (EIA-Broadcast).
- Citizens Band Radio (EIA-Citizens Radio).
- Closed-Circuit TV.
- Land Mobile Communications (EIA-Land Mobile).
- Microwave Communications (EIA-Microwave).

Society of the Plastics Industry, Inc. (SPI).
Central Station Electrical Protection Association, jointly with the Controlled Companies of American District Telegraph Co. and Baker Industries, Inc.

INDIVIDUAL MANUFACTURERS

Ajax Magnethermic Corp. (Ajax).
Collins Radio Co. (Collins).
General Electric Co. (GE).
Low Power Broadcast Co.
Mann-Russell Electronics, Inc. (Mann-Russell).
Mobil Electronics, Inc.
National Electric Interference Control Co.
Racal Communications, Inc. (RACAL).
TOCCO Division, Park-Ohio, Industries, Inc. (TOCCO).
Varian Associates.
Xerox Corp.

Comments were also filed by:

Bureau of Home Appliances of San Diego County, Interference Committee.
Cincinnati Gas and Electric Co.
Induction and Dielectric Heating Sub-Committee of the Electric Process Heating Committee of the Industry and General Applications Group of the Institute of Electrical and Electronics Engineers (IEEE-Subcommittee).
Prince, Schoenberg & Fisher, Attorneys and Counselors.
Underwriter's Laboratories, Inc.
The American Manufacturers Association, Inc., filed a reply comment, and Aeronautical Radio, Inc., and Air Transportation Association joined in a reply comment.

APPENDIX B

In Part 2 of Chapter I of Title 47 CFR, Subpart I is added to read as follows:

Subpart I—Marketing of Radiofrequency Devices

AUTHORITY: The provisions of this Subpart I issued under secs. 4, 303, 48 Stat., as amended, 1066, 1082, sec. 302, 82 Stat. 290; 47 U.S.C. 154, 303, 302.

Subpart I—Marketing of Radiofrequency Devices

§ 2.801 Radiofrequency device defined.

As used in this part, a radiofrequency device is any device which in its operation is capable of emitting radiofrequency energy by radiation, conduction, or other means. Radiofrequency devices include, but are not limited to

(a) The various types of radio communication transmitting devices described throughout this chapter.

(b) The incidental and restricted radiation devices described in Part 15 of this chapter.

(c) The industrial, scientific, and medical equipment described in Part 18 of this chapter.

(d) Any part or component thereof which in use emits radiofrequency energy by radiation, conduction, or other means.

§ 2.803 Equipment requiring Commission approval.

In the case of a radiofrequency device, which, in accordance with the rules in this chapter must be type approved, type accepted, or certificated prior to use, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease) or import, ship or distribute for the purposes of selling or leasing or offering for sale or lease, any such radiofrequency device, unless, prior thereto, such device shall have been type approved, type accepted or certificated as the case may be.

§ 2.805 Equipment that does not require Commission approval.

In the case of a radiofrequency device which, in accordance with the rules in this chapter must comply with specified technical standards prior to use, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease) or import, ship or distribute for the purposes of selling or leasing or offering for sale or lease, any such radiofrequency device, unless prior thereto such device complies with the applicable technical standards specified in the Commission's rules.

§ 2.807 Statutory exceptions.

As provided by section 302(c) of the Communications Act of 1934, as amended §§ 2.803 and 2.805 shall not be applicable to:

(a) Carriers transporting radiofrequency devices without trading in them.

(b) Radiofrequency devices manufactured solely for export.

(c) The manufacture, assembly, or installation of radiofrequency devices for its own use by a public utility engaged in providing electric service: *Provided, however*, That no such device shall be operated if it causes harmful interference to radio communications.

(d) Radiofrequency devices for use by the Government of the United States or any agency thereof: *Provided, however*, That this exception shall not be applicable to any device after it has been disposed of by such Government or agency.

§ 2.809 Exception for ISM equipment.

(a) Sections 2.803 and 2.805 shall not apply to the following ISM equipments:

(1) Ultrasonic equipment as defined in § 18.3(e) of this chapter which generates 2 kW. or more of radiofrequency energy.

(2) Particle accelerators, e.g., cyclotrons, and other similar scientific equipment.

(3) Electro-erosion equipment.

(4) Sputtering equipment using RF energy.

(5) RF stabilized arc welders.

(6) Industrial heating equipment as defined in § 18.3(c), of this chapter which generates 10 kW. or more of RF energy.

(b) Sections 2.803 and 2.805 shall not apply to industrial heating equipment as defined in § 18.3(c) of this chapter which generates less than 10 kW. of RF energy: *Provided, however:*

(1) The vendor of such equipment has notified the purchaser/lessee in writing whether the equipment as delivered will meet the technical standards in Part 18 of this chapter, or whether the equipment must be installed in a screened enclosure before it may be operated.

(2) A copy of the notification shall be furnished to the Federal Communications Commission, Washington, D.C. 20554, Attention: Field Engineering Bureau.

(3) The copy of the notification furnished to the Commission shall include:

Name and address of purchaser/lessee.
Name of manufacturer,

* Commissioner Wells dissenting.

Type or model of the equipment delivered, and
Nominal operating frequency and power.

(c) The equipment listed in paragraphs (a) and (b) of this section must meet the applicable certification or type approval requirement of Part 18 of this chapter before such equipment is operated.

§ 2.811 Transmitters operated under Part 73.

Sections 2.803 and 2.805 shall not be applicable to a transmitter operated in any of the Radio Broadcast Services regulated under Part 73 of this chapter, provided the conditions set out in Part 73 of this chapter for the acceptability of such transmitter for use under licensing are met.

§ 2.813 Transmitters operated in the Instructional Television Fixed Service.

Sections 2.803 and 2.805 shall not be applicable to a transmitter operated in the Instructional Television Fixed Service regulated under Part 74 of this chapter provided the conditions in § 74.952 of this chapter for the acceptability of such transmitter for licensing are met.

[F.R. Doc. 70-6358; Filed, May 21, 1970; 8:48 a.m.]

[FCC 70-512]

PART 73—RADIO BROADCAST SERVICES

Fraudulent Billing Practices

Memorandum opinion and order. 1. The Commission has before it the petition for rule making (RM-1013) filed by the Star Stations of Indiana, Inc. (licensee of WIFE(AM) and WIFE-FM, Indianapolis, Ind.) on August 10, 1966. The petition proposes to amend §§ 73.124 (AM), 73.299 (FM) and 73.678 (TV) of our rules in order to prohibit the issuance of "bills" by licensees which misrepresent "(a) the time or the day on which spot announcements were broadcast or (b) the number of announcements which were broadcast."[1] No pleadings have been filed in respect to the petition.

2. At the present time, the provisions of § 73.124 (which are identical in pertinent part to §§ 73.299 and 73.678) of our rules read as follows:

Fraudulent billing practices. No licensee of a standard broadcast station shall knowingly issue to any local, regional, or national advertiser, advertising agency, station representative, manufacturer, distributor, jobber or any other party, any bill, invoice, affidavit or other document which contains false information concerning the amount actually charged by the licensee for the broadcast advertising for which such bill, invoice, affidavit or other document is issued, or which misrepresents the nature, content or quantity of such advertising. Licensees shall exercise reasonable diligence to see that their agents and employees do not issue any documents which would violate this section if issued by the licensee.

3. In sum, petitioner asserts that it is necessary to insert in the above rule a phrase which specifically bans the issuance of any "fraudulent bill" by licensees which misrepresents the time or the date or the number of times that advertising was broadcast. While emphasizing its view that the existing rules do not cover such situations and that it would be unfair for the Commission under its present rules to take action against any licensee for any such misrepresentations (see footnote 1, above), it also asserts the public interest in prohibiting such fraudulent acts by licensees.

4. We agree with petitioner in respect to the strong public interest factors supporting the prohibition of misrepresentations by licensees in any and all billing practices. Any such misrepresentation certainly reflects adversely on the qualifications of a licensee and, to a degree, on the industry as a whole. The public interest, convenience and necessity clearly require reasonale ethical business practices in the industry—specifically on the part of individual broadcasters. It is within the Commission's authority, and is its responsibility to take whatever action is appropriate to check these practices, which essentially amount to the use of broadcast facilities for fraudulent purposes. We took such action in this area in 1965, in adopting rules concerning double billing and other types of deceptive billing practices. See the Report and Order in Docket 15396, FCC 65-951, 1 FCC 2d 1068, 6 R.R. 2d 1540, paras. 5-7.

5. Therefore, it is clear that the practices mentioned in the petition—which are some of the practices in which the Hearing Examiner and the Commission found that the WIFE stations had engaged—are now and should be prohibited, and licensees found to have engaged in them subjected to substantial sanctions. The only question raised by the present petition is whether the practices are covered by the present rule (adopted in October 1965 later than the occurrences at WIFE involved in the hearing), or whether an amendment of the fraudulent billing rules is required.

6. We conclude, initially, that the present language of the rule does cover these practices. As noted above, the rule states that no licensee shall knowingly issue any bill, etc., which "misrepresents the nature, content or quality of such advertising * * *." Certainly the time of day or the day of the week are core matters of importance in respect to the nature of an advertisement. In contracting with a licensee for commercial announcements, advertisers are paying for the size of audience they hope to reach, which is dependent, in large part, on the time of day or the day of the week their commercial copy is broadcast. Therefore the nature of the advertisement is clearly misrepresented if it is represented to be broadcast at a different time of the day or a different day of the week than actually presented. Moreover, the rule bans misrepresentations in respect to quantity of announcements. Considering the crucial importance which time of broadcast often has, the fact that *X* commercials were broadcast between 6 and 9 a.m., and *Y* commercials between midnight and 5 a.m., is just as much a part of quantity as is the fact that *X* plus *Y* commercials were broadcast during a particular week.

7. However, it is also true, as petitioner urges, that the rule making which led to the 1965 rules, the report and order adopting them and to a large extent the rules and examples themselves, read in terms of the specific, rather widespread practice which they were designed to prevent, i.e., double billing, in which, essentially, the station acts in collusion with a local advertiser, billing him a larger amount than that actually due or paid so that he can claim greater reimbursement from a cooperating manufacturer who is paying part of the cost of the local store's advertising. Therefore we believe it appropriate to add language to the rule to make completely clear its prohibition against outright false billing, the knowing rendition of any bill or other document which misrepresents the number of announcements run, their character, their length, or the date and time of their broadcast. While less common than double billing was prior to the 1965 decision, such practices, where they occur, are certainly no less fraudulent and contrary to the public interest, and we agree with petitioner that licensees should be specifically enjoined against them.[2]

8. Accordingly, we are adding to the fraudulent billing rule the following language, which is much the same as that suggested by petitioner:

* * * or which misrepresents the quantity of advertising broadcast (number or length of advertising messages) or the time of day or date at which it was broadcast.

9. It is also appropriate to add examples to the 1965 public notice entitled "Applicability of Fraudulent Billing Rule" (FCC 65-952, 30 F.R. 13642, 1 FCC 2d 1075), since, as mentioned above, the examples now largely deal with the "double billing" practice or variations of

[1] The Commission adopted (Apr. 28, 1966, released May 4, 1966) an order in Docket 16612, designating for hearing petitioner's applications for renewal for the licenses of WIFE(AM) and WIFE-FM. The renewal hearing was based, inter alia, on alleged fraudulent billing practices similar to those that the petitioner in the instant petition asserts are not covered but should be covered in the existing rules. In view of the identity of the questions presented in the renewal hearing and the instant petition our action on the instant petition has been delayed until this date so as to avoid any action in the rule making process which would prejudge the renewal hearing. On Sept. 17, 1969, the Commission adopted (released Oct. 3, 1969, FCC 69-992) its final decision in Docket 16612, which considered the problem of fraudulent billing practices by petitioner and gave petitioner a short term renewal of its licenses for WIFE(AM) and FM.

[2] We so held in the Star Stations of Indiana, Inc., decision mentioned in footnote 1, above, 19 FCC 2d 991, 17 R.R. 2d 491 (1969), where the conduct involved occurred before adoption of the rule. See also WBZB Broadcasting Service, Inc., 10 FCC 2d 321, 11 R.R. 2d 254 (1967); Robert D. and Martha M. Rapp, 12 FCC 2d 703, 13 R.R. 2d 32 (1968); Lawrence Broadcasters, Inc., 14 FCC 2d 384, 14 R.R. 2d 1 (1968); Perry Radio, 18 FCC 2d 175, 16 R.R. 525 (1969).