

Chino, Calif.—Chino Arpt., VOR-A, Orig.  
Chino, Calif.—Chino Arpt., VOR-1, Amdt. 1,  
canceled.  
Fayetteville, Ark.—Drake Field, VOR-A,  
Amdt. 14.  
Flint, Mich.—Bishop Arpt., VOR Rwy 9,  
Amdt. 13.  
Flint, Mich.—Bishop Arpt., VOR Rwy  
18, Amdt. 7.  
Flint, Mich.—Bishop Arpt., VOR Rwy  
27, Amdt. 10.  
Flint, Mich.—Bishop Arpt., VOR Rwy  
36, Amdt. 3.  
Hobbs, N.M.—Lea County (Hobbs) Arpt.,  
VOR/DME Rwy 21, Orig.  
Muncie, Ind.—Delaware County-Johnson  
Field, VOR Rwy 14, Amdt. 7.  
Muncie, Ind.—Delaware County-Johnson  
Field, VOR Rwy 20, Amdt. 4.  
Muncie, Ind.—Delaware County-Johnson  
Field, VOR Rwy 32, Amdt. 4.  
Painesville, Ohio—Concord Airport, VOR-A,  
Amdt. 4.  
Tucson, Ariz.—Tucson Int'l. Arpt., VOR-A,  
Amdt. 4.  
Tucson, Ariz.—Tucson Int'l. Arpt., VOR/  
DME-A, Amdt. 2, canceled.  
Tucson, Ariz.—Tucson Int'l. Arpt., VOR/  
DME-B, Orig.

\* \* \* effective April 29, 1974:

Orlando, Fla.—Herndon Arpt., VOR Rwy  
13, Amdt. 8.  
Orlando, Fla.—Herndon Arpt., VOR Rwy  
31, Amdt. 8.  
Orlando, Fla.—McCoy AFB, VOR/DME Rwy  
36R, Amdt. 2.

2. Section 97.25 is amended by origi-  
nating, amending, or canceling the fol-  
lowing SDF-LOC-LDA SIAPs, effective  
June 20, 1974:

Fayetteville, Ark.—Drake Field, LOC Rwy 16,  
Amdt. 3.  
Flint, Mich.—Bishop Arpt., LOC (BC) Rwy  
27, Amdt. 7.  
Tucson, Ariz.—Tucson Int'l. Arpt., LOC  
Rwy 11L, Amdt. 4.  
Tucson, Ariz.—Tucson Int'l. Arpt., LOC  
(BC) Rwy 29R, Amdt. 4.

3. Section 97.27 is amended by origi-  
nating, amending, or canceling the fol-  
lowing NDB/ADF SIAPs, effective July  
18, 1974:

Statesville, N.C.—Statesville Municipal Arpt.,  
NDB Rwy 20, Amdt. 2.

\* \* \* effective June 20, 1974:

Amarillo, Tex.—Tradewind Arpt., NDB-A,  
Amdt. 9.  
Flint, Mich.—Bishop Arpt., NDB Rwy 9,  
Amdt. 15.  
San Angelo, Tex.—Mathis Field, NDB Rwy 3,  
Amdt. 9.  
Tucson, Ariz.—Tucson Int'l. Arpt., NDB-  
A, Amdt. 3, canceled.  
Tucson, Ariz.—Tucson Int'l. Arpt., NDB-  
C, Orig.

4. Section 97.29 is amended by origi-  
nating, amending, or canceling the fol-  
lowing ILS SIAPs, effective June 20,  
1974:

Flint, Mich.—Bishop Arpt., ILS Rwy 9, Amdt.  
8.  
San Angelo, Tex.—Mathis Field, ILS Rwy 3,  
Amdt. 12.  
Tucson, Ariz.—Tucson Int'l. Arpt., ILS Rwy  
11L, Amdt. 3.

5. Section 97.33 is amended by origi-  
nating, amending, or canceling the fol-  
lowing RNAV SIAPs, effective June 20,  
1974:

Amarillo, Tex.—Tradewind Arpt., RNAV  
Rwy 35, Amdt. 4.

**Correction.** In Docket No. 13669,  
Amendment 914, to Part 97 of the Fed-  
eral Aviation Regulations, published in  
the FEDERAL REGISTER dated May 12, 1974,  
under § 97.23 effective June 13, 1974—  
Change effective date of Eugene, Ore.—  
Mahlon-Sweet Field, VORTAC Rwy 3,  
Original to June 20, 1974.

(Secs. 307, 313, 601, 1110, Federal Aviation Act  
of 1948; (49 U.S.C. 1438, 1354, 1421, 1510);  
sec. 6(c) Department of Transportation Act  
(49 U.S.C. 1655(c) 5 U.S.C. 552(a)(1)))

Issued in Washington, D.C., on May 2,  
1974.

NOTE.—Incorporation by reference provi-  
sions in §§ 97.10 and 97.20 approved by the  
Director of the FEDERAL REGISTER on May 12,  
1969, (35 FR 5610).

JAMES M. VINES,  
Chief,  
Aircraft Programs Division.

[FR Doc.74-10552 Filed 5-7-74; 8:45 am]

## CHAPTER II—CIVIL AERONAUTICS BOARD

### SUBCHAPTER A—ECONOMIC REGULATIONS

[Regulation ER-846; Amdt. 22]

#### PART 298—CLASSIFICATION AND EXEMPTION OF AIR TAXI OPERATORS

##### Definition of Large Aircraft

Adopted by the Civil Aeronautics  
Board at its office in Washington, D.C.

By notice of proposed rulemaking  
EDR-255,<sup>1</sup> the Board proposed to amend  
Part 298 of the Economic Regulations  
to include within the definition of "large  
aircraft" all models of the Convair 240,  
340 and 440; Martin 202 and 404; F-27  
and FH-227; and Hawker Siddeley 748,  
as well as any other aircraft with a  
maximum zero fuel weight greater than  
35,000 pounds. The amendment was de-  
signed to clarify the Board's intention  
in adopting the 30-seat/7500-pound pay-  
load limitation on air taxi aircraft in the  
Part 298 Weight Limitation Investiga-  
tion, Orders 72-7-61 and 72-9-62.

Comments in response to the notice  
were filed by AAT Airlines, the Alaska  
Transportation Commission, American  
Cyanamid Company, Atlantic Aviation  
Corporation, Christler Flying Service,  
Executive Air Fleet, Executive Air Lines,  
Executive Air Services, Fokker-VFW,  
General Aviation Manufacturers Asso-  
ciation, Golden West Airlines, Hawker  
Siddeley Aviation, National Air Trans-  
portation Conferences (NATC), Pacific  
Coast Airlines, Priority Air Dispatch,  
Royal Airlines, Southern Airways, Swift  
Air Lines, and Viking International Air  
Freight.

Christler Flying Service and Southern  
Airways support the proposed amend-  
ment, while all other respondents object  
to the new rule in whole or in part.

Upon consideration of the matters  
presented, we have decided to adopt the  
rule as proposed. Accordingly, the tenta-

<sup>1</sup> In Docket No. 26021, 38 FR 29480 (1973).

tive findings made in EDR-255 are in-  
corporated herein and made final.<sup>2</sup>

At the outset, certain general observa-  
tions are in order. Some of the respon-  
dents seek, in essence, a reconsideration of  
the Board's determinations in the Part  
298 Investigation. Others disregard those  
determinations and simply argue that, as  
a matter of policy, the Board should per-  
mit air taxis to operate large aircraft  
whose operating weights are artificially  
altered to meet the 7,500-pound payload  
standard. According to this view, the ex-  
clusion of these airplanes would severely  
limit the current aircraft types (with a  
takeoff weight over 12,500 pounds) that  
could qualify under the new 30-seat/  
7500-pound payload test and, as a result,  
would largely negate the liberalizing ef-  
fects of the Part 298 Investigation.

At the heart of this contention is a  
mistaken notion of our purpose in EDR-  
255. Our action was not designed to re-  
examine the substantive bases of the Part  
298 decision which, after all, had been  
reached only a year earlier after exten-  
sive hearings. Instead, the proposed  
amendment was offered to clarify the  
Board's intention in the Part 298 case by  
embodying within the rule itself limita-  
tions which were expressed or clearly im-  
plicit in the Opinions which accom-  
panied the new regulation. The issue be-  
fore us is therefore not whether the use  
of Convair 440 or similar aircraft should  
now be permitted under the general air  
taxi exemption, but whether the Part 298  
decision contemplated their approval.

Proceeding on that basis, it is neces-  
sary to recall that our underlying aim in  
the Part 298 proceeding was to draw the  
line between certificated and exempted  
air services in a manner that would serve  
the needs of air taxis and small com-  
munity traffic, without impinging on the  
basic certificated structure of air trans-  
portation. To that end, we decided not to  
permit exempted carriers—as a class—  
to use large piston or turboprop air-

<sup>2</sup> Fokker-VFW, designer of the F-27, claims  
the right to a hearing on the general ground  
that the Board, by excluding specific aircraft  
from the Part 298 exemption, is taking  
"highly particularistic" action involving spe-  
cific parties and that, as a result, standard  
rulemaking procedures are not sufficient to  
satisfy due process. In the first place, we dis-  
agree with Fokker's characterization of our  
action. The proposed rule is aimed not mere-  
ly at a specific aircraft but at an entire  
category of aircraft: large piston and turbo-  
prop airplanes normally capable of carrying  
payloads greater than 7500 pounds but whose  
payloads can be reduced through artificial  
increases in their operating weights. While  
the "border line" aircraft of this type are  
actually named in the rule for purposes of  
clarity, the regulation's focus remains gen-  
eral and its basic purpose is to interpret  
the 7500 pound payload standard for air taxi  
aircraft adopted in the Part 298 Investiga-  
tion. In any event, the Board's decision to ex-  
clude the F-27 was expressly made, after ex-  
tensive hearings, in the Part 298 case in  
which Fokker participated as a party. (See  
Order 72-9-62, p. 3.) Fokker has therefore  
already been afforded the hearing it now  
seeks.

planes, which still form a significant proportion of local service carriers' fleets. In excluding such aircraft, we were concerned not only with the enforcement problems that might arise if we left it to the individual air taxi operator to limit its actual payloads on these large airplanes to 7500 pounds. Rather, we expected the new air taxi weight standard to leave local service airlines with the advantage of "more spacious cabin facilities, even on their smaller turboprop aircraft,"<sup>3</sup> and relied, in part, on this advantage in concluding that the new rule would not impinge on the certificated system.

Our Opinion and Order on Reconsideration, Order 72-9-62, amplified these views and noted expressly that the new standard "did not mean to qualify \* \* \* such aircraft as the Convair 440, Martin 202 or 404, or F-27, all of which are capable of carrying payloads in excess of 7500 pounds, but whose payloads \* \* \* can be reduced artificially—through the use of unnecessary ballast, for example."

The comments in opposition to our proposal to disqualify these aircraft, plus the Convair 240 and 340, FH-227 and Hawker Siddeley 748, do not relate their arguments to these Board determinations in the Part 298 Investigation. They either disregard those determinations or seek to evade them by a narrow interpretation of the Board's earlier position that squares neither with the literal language of the Board's Opinions nor with their spirit. For example, several respondents stress that their aircraft have no unnecessary ballast, as if that was the only artificial change in an airplane's operating weight we were concerned about in foreclosing the use of large turboprops such as the Convair 440. In the first place, Order 72-9-62 specified that extra ballast was being cited only as an example. Moreover, from the point of view of the Board's larger purpose of restricting the competitive impact of air taxis by maintaining the certificated airlines, advantage in operating aircraft with more cabin space, it obviously matters little whether air taxis are allowed to use large aircraft with empty weights increased (and payloads thereby reduced) by unnecessary ballast, on the one hand, or by the installation of unusually heavy seats, or a bar or lounge, on the other.

Similarly, the objections of some respondents to the exclusion of the Convair 240 and 340 or the Hawker Siddeley 748 rest implicitly on the fact that these were not expressly listed in Order 72-9-62 as aircraft types on this score. Under the air taxi exemption. Our list was obviously not intended to be all-inclusive; and, none of the objectors has disputed our statement (in EDR-255) that these unlisted airplanes belong in the same category as the disqualified aircraft that were named by way of example. It is quite clear, for instance, that air taxi services with the Convair 240 or Hawker Siddeley 748 would be as much of a competitive threat to the certificated network as

would operations with the Convair 440 or Martin 202—and, indeed, no one has attempted to distinguish between these aircraft types on this score. Under the circumstances, there is no basis for applying a different standard to the Convair 240 and 340, FH-227 and Hawker Siddeley 748 than to the Convair 440 and similar aircraft whose exclusion from the general air taxi exemption was made explicit in our Opinion and Order on Reconsideration.

We are aware that this conclusion limits the current aircraft newly available to air taxi operators under the more liberal 7500-pound payload weight rule. However, the suggestion that this result is at odds with the Board's intention in the Part 298 proceeding is inaccurate. At that time, the Board recognized that there were only a few existing aircraft types in the 20-30-seat/7500-pound payload category that could be used by air taxis.<sup>4</sup> However, instead of encouraging air taxis to operate large aircraft artificially modified to meet the 7500-pound test, the Board emphasized that its primary goal in relaxing the prior weight standard was to stimulate the manufacture of new airplanes designed for third-level service.

In this connection, additional remarks are in order in response to certain claims made on behalf of one series of the Hawker Siddeley 748—the 2C or "Commuter" model. While Hawker Siddeley apparently acknowledges that the standard versions of its 748 do not qualify under the new Part 298 weight limits, it claims that the 2C series was developed especially for the U.S. commuter market and responds to the challenge issued by the Board for the manufacture of a modern commuter aircraft with 30 or fewer passenger seats and a maximum payload of 7500 pounds. We cannot agree. The Hawker Siddeley 748 2C is virtually identical to the 2A model, a 40-58-passenger aircraft with a payload of nearly 12,000 pounds. The two models have similar avionics systems, interior and exterior dimensions, empty weights, and maximum takeoff and landing weights. The most significant difference between them (aside from the number of passenger seats) is a relatively minor structural modification in the 2C which has resulted in its lower maximum zero fuel weight of 34,500 pounds. However, Hawker Siddeley's exhibit A indicates that a simple low-cost program is available to bring the zero fuel weight up to 38,500 pounds—the same as the 748 2A's weight. On the whole, the 748 2C hardly represents the sort of new commuter airplane the Board was attempting to encourage.<sup>5</sup> Moreover, evaluated by the same standards we have applied to other large aircraft, the 748 2C would be capable of car-

rying payloads in excess of 7500 pounds if not for certain artificial alterations in its cabin design—including the installation of a bar and lounge—which clearly do not detract from its competitiveness vis-a-vis turboprop aircraft used by certificated airlines.<sup>6</sup> Therefore, the same grounds we cited earlier for precluding the use of the Convair 440 and similar airplanes under the broad air taxi exemption apply equally to the Hawker Siddeley 748 2C.

Next, we turn to comments opposing another feature of our proposed rule: the upper limit of 35,000 pounds zero fuel weight applicable to all Part 298 aircraft. NATC claims that in imposing this weight limit the Board would be moving away from its original concept of replacing the previous rigid gross takeoff weight standard with a more flexible seating/payload capacity rule. In fact, the additional 35,000-pound zero fuel weight test is consistent with—indeed, is meant to help effectuate—our original purposes in the Part 298 proceeding. To begin with, the 30-seat/7500-pound payload limitation will continue to be the basic standard for air taxi aircraft. The further limit on the overall size of these aircraft embodied in the 35,000-pound zero fuel weight is merely intended to minimize misuse of the payload test in the manner discussed earlier (i.e., by the operation of large aircraft with empty weights artificially increased to "qualify" within the payload limitation). At the same time, as we found EDR-255, the 35,000-pound upper limit leaves aircraft manufacturers with ample flexibility to develop a modern air taxi/commuter airplane with all the comfort features we intended to make available to small community traffic through adoption of the 30-seat/7500-pound payload standard.<sup>7</sup>

While we find no merit in the broad attack on the 35,000-pound upper limit, a more serious objection to this aspect of the proposed rule is that it will disqualify the Grumman Gulfstream II. The Gulfstream II is essentially an executive jet transport which, despite its heavy zero fuel weight of 38,000-42,000 pounds, has always had a capacity of about 19 passengers and a maximum payload well below 7,500 pounds. However, while we agree that because of the Gulfstream II's special characteristics, its use by exempted carriers would not normally pose a serious diversionary threat to the certificated system, it does not follow that an exception should be carved out of the proposed regulation for the sole purpose of authorizing the operation of the air-

<sup>3</sup> In fact, it is possible that at least some 748 2C aircraft could operate at payloads over 7500 pounds even as now configured. While Hawker Siddeley lists the airplane's "typical" maximum payload as 7500 pounds, a greater payload might be carried on flights where no food is served or some other operating weight element is reduced.

<sup>7</sup> While several respondents suggest, without evidentiary support, that the 35,000-pound maximum may be too restrictive, it should be recalled that it will permit the operation of aircraft at least three times as heavy as those operated under the old 12,500-pound takeoff weight test.

<sup>4</sup> Order 72-7-61, pp. 12, 13.

<sup>5</sup> We do not mean to suggest that modern commuter aircraft must be wholly new—as opposed to developed or modified versions of older aircraft. However, when the modification is as minor as that involved here, the claim that the 748 2C is a new airplane expressly designed to meet the needs of commuter markets is unrealistic.

<sup>6</sup> Order 72-7-61, p. 30.

plane under the class exemption of Part 298. Only a handful of Gulfstream II aircraft are now being used by air taxis—none by commuter carriers.<sup>8</sup> Also, the record of the Part 298 case and the responses to EDR-255 indicate no widespread interest in the airplane among air taxis, in general, or commuters, in particular. We conclude, therefore, that individual exemption procedures are a more appropriate method for dealing with the modest demand for the Gulfstream II within the air taxi industry. The Board has in the past recognized the special characteristics of the Gulfstream II in approving its use by individual exemption<sup>9</sup> there is, thus, no reason to assume that an individual exemption requirement will (under normal circumstances) prove a burdensome obstacle in the future.

Finally, several respondents complain that the proposed rule is unfair because it would penalize them for having acquired aircraft, or contracted to do so, on the basis of a good-faith (even if erroneous) interpretation of the Part 298 payload standard. They therefore urge that the proposed rule should have only prospective effect and should not bar operations with certain large turboprops acquired before its effective date. As noted earlier, the proposed regulation is primarily interpretive in nature rather than a substantive change in a prior rule. The extent to which its adoption may nevertheless have an unfair and burdensome impact on any air taxi operator can only be determined by an examination of the facts on a case-by-case basis. The Board will be receptive to applications for individual exemptions which include an actual showing that the applicant acted reasonably and in good faith in acquiring aircraft now expressly disqualified, and that it would be unduly burdened by enforcement of the regulation.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 298 of the Economic Regulations (14 CFR Part 298) effective May 8, 1974, as follows:

Amend the definition of "large aircraft" in § 298.2 to read as follows:

**§ 298.2 Definitions.**

"Large aircraft" means any aircraft having a maximum passenger capacity of more than 30 seats or a maximum payload capacity of more than 7,500 pounds; except that in connection with operations conducted within the State of Alaska or Hawaii, large aircraft shall mean an aircraft whose maximum certificated takeoff weight is more than 12,500 pounds: *Provided, however,* That, for the purposes of this part, large aircraft shall include all models of the Convair 240, 340 and 440; Martin 202 and 404; F-27 and FH-227; and Hawker Sid-

<sup>8</sup> Based on commuter carriers' reports to the Board for fiscal 1973. In its comments, Executive Air Fleet states that only two Gulfstream II's are now being used by air taxis under the Board's jurisdiction.

<sup>9</sup> Order 71-8-75, August 17, 1971.

deley 748; and shall also include any other aircraft with a maximum zero fuel weight in excess of 35,000 pounds.

(Secs. 204(a), 401, 416(b), Federal Aviation Act of 1958, as amended, 72 Stat. 743, 754, 771, as amended; (49 U.S.C. 1324, 1371, 1386))

Effective: May 8, 1974.

Adopted: May 2, 1974.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,  
Secretary.

[FR Doc.74-10584 Filed 5-7-74;8:45 am]

**Title 19—Customs Duties**

**CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY**

[T.D. 74-143]

**PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS**

**Organization of African Unity**

By Executive Order No. 11767 signed February 19, 1974 (39 FR 6603), the President designated the Organization of African Unity (OAU) as a public international organization entitled to enjoy all the privileges, exemptions, and immunities provided for by the International Organizations Immunities Act of December 29, 1945 (59 Stat. 669).

The names of public international organizations currently designated as entitled to free entry privileges under the International Organizations Immunities Act are set forth in § 148.87(b) of the Customs Regulations, together with the number and date of the Executive order by which they were designated.

Accordingly, § 148.87(b) is amended by the following addition (in proper alphabetical order):

**§ 148.87 Officers and employees of, and representatives to public international organization.**

(b) \* \* \*

| Organization                         | Executive order | Date          |
|--------------------------------------|-----------------|---------------|
| Organization of African Unity (OAU). | 11767           | Feb. 19, 1974 |

(R.S. 251, as amended, secs. 498, 624, 46 Stat. 728, as amended, 759, sec. 1, 59 Stat. 669; 19 U.S.C. 66, 1498, 1624, 22 U.S.C. 288)

Inasmuch as this amendment merely corrects the listing of organizations entitled by law to claim free entry privileges as public international organizations, notice and public procedure thereon are found to be unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

[SEAL] LEONARD LEHMAN,  
Acting Commissioner of Customs.

Approved: April 25, 1974.

MATTHEW J. MARKS,  
Acting Assistant Secretary of the Treasury.

[FR Doc.74-10535 Filed 5-7-74;8:45 am]

**Title 40—Protection of Environment**

**CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY**

**SUBCHAPTER C—AIR PROGRAMS**

**PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS**

**Maintenance of National Ambient Air Quality Standards**

On June 18, 1973 (38 FR 15834), the Administrator of the Environmental Protection Agency promulgated, among other provisions, revisions to 40 CFR Part 51, § 51.12. In part, these revisions require that State implementation plans identify by March 18, 1974 (9 months after the effective date of publication), areas which may have the potential for exceeding any national standard within the next 10-year period due to current air quality and/or projected growth rate. Under the same revisions, the Administrator was to publish by June 18, 1974, based upon this information submitted by the States, a list of potential problem areas which will be analyzed in more detail by the States. Then by June 18, 1975 (24 months after the effective date of promulgation), the States are required to submit an analysis of the impact on air quality of projected growth in each potential problem area designated by the Administrator. Where necessary, the States must also submit plans containing measures to ensure maintenance of the national standards during the ensuing 10-year period.

On January 15, 1974, the Office of Air Quality Planning and Standards issued to the States the EPA-OAQPS document, "Guidelines for Designation of Air Quality Maintenance Areas," which describes techniques which the States could use in identifying potential problem areas. This document was made available for public inspection in the FEDERAL REGISTER of February 25, 1974 (38 FR 7196). These guidelines specified that the States should analyze, as a minimum, all Standard Metropolitan Statistical Areas (SMSAs) within their jurisdiction. The Administrator has subsequently monitored the process of problem area identification, as undertaken by the States, through contact with EPA's ten regional offices. He has been favorably impressed by the efforts that most States have been making in analyzing areas, identifying problem areas and scheduling public hearings. It has become apparent, however, that States have been unable to submit the material required by the scheduled March 18, 1974, deadline. The Administrator had two basic choices as a result:

(a) to maintain the scheduled deadline, disapprove all State plans specifically for failure to comply with the provisions of § 51.12(e) (with the exception of States which do not contain Standard Metropolitan Statistical Areas), propose a list of problem areas, hold hearings and publish a final list on June 18, 1974; or

(b) to extend the deadline for a short period.

If the Administrator were to follow the former course of action, he would have to propose his own list of areas, knowing

full well that most States were in the process of developing their lists and scheduling public hearings. As the Administrator's own rulemaking process carried forward, substantial confusion and duplication of effort would ensue. Such confusion could hinder full public participation in the formulation of the list of potential problem areas. Also, several States had requested that the Administrator extend the date for submittal of problem area identification so that the States could prepare the material more thoroughly and provide for more extensive public involvement.

Consequently, the Administrator decided to extend:

(a) the date for State submission of the identification of potential problem areas from March 18, 1974, to May 10, 1974; and

(b) the date for EPA publication of the list of potential problem areas, as based upon material submitted by the States from June 18, 1974, to August 16, 1974.

This action is anticipated to result in approximately 30 to 40 States being able to hold hearings on and submit area identification material by the revised deadline. The action below effects these extensions.

These amendments are being promulgated in final form without having first been proposed and subjected to public comment. The Administrator has found that the procedure of proposal and entertainment of public comment would be impracticable in this situation since States must be able to rely upon the new time schedule immediately. It should be stressed that the date required for submittal of the analysis of the impact on air quality of projected growth and 10-year maintenance plan in these areas remains the same—June 18, 1975. In order to avoid confusion, § 51.12(g) is also being amended to specify this June 18, 1975, date for submission, rather than implying it by requiring submission 24 months from the date of promulgation of the above-cited revisions to 40 CFR 51.12 on June 18, 1973.

(Secs. 110, 301(a), Clean Air Act, as amended 42 U.S.C. 1857c-5, 1857g(a))

Dated: May 2, 1974.

JOHN QUARLES,  
Acting Administrator.

In § 51.12 of 40 CFR, Part 51, paragraphs (e) (2), (f) and (g) are revised to read as follows:

§ 51.12 Control strategy: General.

(e) \* \* \*

(2) The area identification and description of method and timing required by this paragraph shall be submitted no later than May 10, 1974.

\* \* \*

(f) Based on the information submitted by the State pursuant to paragraph (e) of this section, the Administrator will publish by August 16, 1974, a list of the areas which shall be subject to the requirements of paragraph (g) of this section.

(g) For each area identified by the Administrator pursuant to paragraph (f) of this section, the State shall submit, no later than June 18, 1975, the following:

(1) An analysis of the impact on air quality of projected growth and development over the 10-year period from the date of submittal.

(2) A plan to prevent any national standards from being exceeded over the 10-year period from the date of plan submittal. Such plan shall include, as necessary, control strategy revisions and/or other measures to insure that projected growth and development will be compatible with maintenance of the national standards throughout such 10-year period. Such plan shall be subject to the provisions of § 51.6.

[FR Doc. 74-10589 Filed 5-7-74; 8:45 am]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Final Reclassification of Air Quality Control Regions

On June 8, 1973 (38 FR 15180), the Administrator of the Environmental Protection Agency (EPA) proposed that 43 of the 47 air quality control regions that were originally classified priority I for nitrogen dioxide be reclassified priority III and retain the priority I classification in Los Angeles, Chicago, New Jersey-New York-Connecticut and Wasatch Front. Because there are conflicting data on nitrogen dioxide levels in New Jersey-New York-Connecticut and Wasatch Front, implementation of nitrogen dioxide control measures would not be required at this time.

In addition, based on the proposed reclassification, the Administrator also proposed the following actions with respect to State implementation plans:

1. Revoke his previous disapproval of nitrogen oxides control strategy with respect to the State implementation plans for the air quality control regions listed in Table 4 (June 8, 1973, 38 FR 15180) and withdraw regulations proposed by EPA dealing with control of stationary source emissions of nitrogen dioxide in these AQCR's.

2. Eliminate the requirement that the State of California's transportation control strategy for the San Francisco AQCR provide for attainment of the national standard for nitrogen dioxide; this AQCR is among those to be reclassified priority III. The transportation control strategy for this AQCR still will have to provide for attainment and maintenance of the national standards for carbon monoxide and photochemical oxidants.

3. As appropriate, alter the attainment date tables in notices of EPA action on State plans at 40 CFR Part 52 to indicate that nitrogen dioxide levels are already within the national standard.

Where States have adopted, and EPA has approved, regulations calling for control of nitrogen oxides emissions from stationary sources in AQCR's which would be reclassified from priority I to

priority III, EPA will entertain State requests for implementation plan revisions that would rescind such regulations. Such revisions would have to be made in accordance with 40 CFR 51.6.

The Administrator also discussed the re-evaluation of the reference method for measuring nitrogen dioxide which was presented elsewhere in the FEDERAL REGISTER in more detail (38 FR 15174) and the question of validity of the current national air quality standard for nitrogen dioxide.

Sixteen separate comments were received on the proposed reclassification of regions for nitrogen dioxide. Six were from conservation groups or concerned citizens, 4 from state and local agencies, 3 from utility companies, 2 from industry and one from a Federal agency. In consideration of these and other comments, the proposed reclassification has been modified.

Seven comments concurred with EPA proposed actions; however, all but one provided additional comments on the ambient air quality standard or other related matters. 2 comments believed that the reclassification was premature, 2 comments proposed that Baltimore remain priority I, one comment proposed that Metropolitan Providence also remain priority I, 2 comments discussed the role of NO<sub>x</sub> in the formation of oxidants, 1 comment suggested that the air quality standard is inconsistent with the concentration used by the Army Corps of Engineers and one comment suggested that an error has been made in publication of the proposal.

The suggested error in the proposal was concerning the classification of the Southeastern Wisconsin Intrastate Region. The region was originally classified priority I for NO<sub>x</sub> and should be reclassified priority III. The proposal reflected this action.

The comment suggesting that the national standard is inconsistent with the one used by the Army Corps of Engineers has confused the units for the two concentrations in question. The Corps of Engineers' concentrations are in milligrams per cubic meter while those of EPA are in micrograms per cubic meter.

Comments concerning the role that NO<sub>x</sub> plays in the formation of oxidants were addressed in the June 5, 1973, proposal (38 FR 14762) concerned with EPA's proposed action on nitrogen dioxide control strategy. The Agency is currently pursuing further studies to determine the relationship between hydrocarbons and nitrogen dioxide and to better define the role of NO<sub>x</sub> in the formation of oxidants.

Three comments from utility companies agreed with EPA's proposed reclassification and requested EPA to encourage states to withdraw regulations dealing with the control of NO<sub>x</sub> from stationary sources. However, there was concern over the growth and emission factors that were utilized in the analysis which formed the basis of the interim motor vehicle emission standard. Four

other comments agreed with EPA's proposed action and submitted additional information concerning the national ambient air quality standard.

The information concerning the growth and emission factors utilized in the analysis of the motor vehicle emission standards will be further reviewed and considered as EPA formulates its position on the current motor vehicle emission standard for nitrogen oxides.

Among the comments received concerning the validity of the ambient air quality standard for nitrogen dioxide, opinion varied widely, from those who stated that the nitrogen dioxide standard should be rescinded pending accumulation of additional health effects data to those who judged that the present national standard provided a minimum margin of safety to public health and that extreme caution should be exercised in recommending a less stringent motor vehicle emission standard for nitrogen oxides. These comments will be considered in the continuing work of the Agency to evaluate its current ambient air quality standards and assist in the development of future standards. Further health studies designed to obtain additional data have been instituted and an orderly review of the health effects of nitrogen oxides exposures has been scheduled with the National Academy of Sciences.

Two comments believed EPA's proposed reclassification was premature and that the final action on reclassification should be postponed until more data and health studies are available. EPA is continuing to collect air quality data for nitrogen dioxide along with many State and local agencies. In addition, as mentioned previously, the Agency has initiated additional studies of the health effects of nitrogen dioxide. This data will continue to be analyzed and if for any reason the data would indicate that a change should be made, the Agency will see that the appropriate action is taken.

Three comments indicated that the Agency's proposed reclassification for NO<sub>x</sub> for two AQCR's is incorrect. Two commentators believe that the Metropolitan Baltimore Region should remain priority I based upon recent data, using the Saltzman method, which indicates that the annual arithmetic mean for NO<sub>x</sub> from June 1972-July 1973 was 130  $\mu\text{g}/\text{m}^3$ . The Saltzman data for 1972 was 109  $\mu\text{g}/\text{m}^3$ . Also, one commentator believes that Metropolitan Providence should also remain priority I based on the Federal reference method data of 203  $\mu\text{g}/\text{m}^3$ . However, EPA has declared the former reference method to be invalid. Additionally, all data obtained for Providence using the candidate methods show that levels are below the national standard and that Providence should be reclassified priority III.

Therefore, based upon the above comments, the air quality data presented in Tables 1 and 2 (38 FR 15180) and additional air quality data for the Baltimore AQCR, the proposed reclassification has been modified.

In light of the error in the reference measurement methodology used to determine nitrogen dioxide levels in the ambient air, the Agency has performed an analysis of the nitrogen dioxide standard for light duty vehicles. In formulating the Agency's position on the motor vehicle standards, growth in nitrogen oxides emissions under a variety of automotive control assumptions were projected and a preliminary review indicates that the motor vehicle standard for nitrogen oxides can be revised.

Wherever all the available data indicate that nitrogen dioxide concentrations were below the priority I cutoff point of 110 micrograms per cubic meter (annual arithmetic mean), EPA is reclassifying those regions to priority III. Thus, 42 AQCR's would be reclassified. The Los Angeles and Chicago AQCR's are the only ones where data from all three candidate methods show nitrogen dioxide concentrations exceeding 110 micrograms. They would remain priority I. In the New Jersey-New York-Connecticut, Wasatch Front (Salt Lake City), Metropolitan Baltimore AQCR's (originally priority I) and Denver AQCR (originally priority III), arsenite data show concentrations below the cutoff point, but chemiluminescence and/or Saltzman data show concentrations above 110  $\mu\text{g}/\text{m}^3$ . Priority classifications for these four AQCR's would not be changed until more conclusive data are available; however, because the need for implementation of nitrogen oxides control measures in these AQCR's is uncertain, States would not be required to take action at this time to reduce NO<sub>x</sub> emissions.

Based on the final reclassification, the Administrator is also finalizing the following actions with respect to State implementation plans:

TABLE 1.—Air quality control regions affected by proposed revocation of NO<sub>x</sub> control strategy disapproval and proposed termination of EPA rulemaking

| AQCR No. | AQCR name                                    | Affected States              |
|----------|----------------------------------------------|------------------------------|
| 015      | Phoenix-Tucson                               | Arizona.                     |
| 042      | Hartford-New Haven-Springfield.              | Massachusetts.               |
| 045      | Philadelphia                                 | Pennsylvania and New Jersey. |
| 070      | St. Louis                                    | Missouri.                    |
| 085      | Omaha-Council Bluffs                         | Nebraska.                    |
| 123      | Detroit-Port Huron                           | Michigan.                    |
| 151      | Northeast Pennsylvania-Upper Delaware Valley | Pennsylvania-New Jersey.     |
| 160      | Genesee-Finger Lakes                         | New York.                    |
| 162      | Niagara Frontier                             | Do.                          |
| 195      | Central Pennsylvania                         | Pennsylvania.                |
| 196      | South Central Pennsylvania                   | Do.                          |
| 197      | Southwest Pennsylvania                       | Do.                          |
| 214      | Corpus Christi-Victoria                      | Texas.                       |
| 215      | Dallas-Fort Worth                            | Do.                          |
| 216      | Houston-Galveston                            | Do.                          |
| 223      | Hampton Roads                                | Virginia.                    |
| 225      | State Capital                                | Do.                          |

1. Revoke his previous disapproval of nitrogen oxides control strategy with respect to the State implementation plans for the 17 air quality control regions listed in Table 1 and withdraw proposed regulations dealing with control of stationary source emissions of nitrogen oxides in these AQCR's.

2. Eliminate the requirement that the State of California's transportation control strategy for the San Francisco AQCR provide for attainment of the national standard for nitrogen dioxide; this AQCR is among those to be reclassified priority III. The transportation control strategy for this AQCR still will have to provide for attainment of the national standards for carbon monoxide and photochemical oxidants.

3. Retain his disapprovals of nitrogen oxides control strategies for New Jersey-New York-Connecticut, Wasatch Front, and the Metropolitan Baltimore Regions and hold in abeyance his proposed regulations until the final decision can be made on the classification of these regions.

4. As appropriate, alter the attainment date tables in notices of EPA action on State plans at 40 CFR Part 52 to indicate that nitrogen dioxide levels are already within the national standard.

5. Within four months from the date of publication of the revised requirements of 40 CFR 51.14 (published elsewhere in this issue of the FEDERAL REGISTER), the State of Illinois must submit a demonstration to the Administrator that the present approved control strategy for the Metropolitan Chicago AQCR is adequate to attain and maintain the national standard for nitrogen oxides. With respect to the Los Angeles AQCR, EPA previously disapproved California's control strategy for nitrogen oxides, carbon monoxide and photochemical oxidants, and promulgated a transportation control plan. On February 6, 1974, the State of California submitted a plan revision for Los Angeles which provides for a transportation control plan and a control strategy for nitrogen oxides. EPA is presently reviewing the plan to determine its adequacy in fulfilling the requirements of the revised § 51.14 to demonstrate the attainment and maintenance of the nitrogen oxide standard for Los Angeles.

Where States have adopted, and EPA has approved, regulations calling for control of nitrogen oxides emissions from stationary sources in AQCR's which would be reclassified priority III, EPA will entertain State requests for implementation plan revisions that would rescind such regulations. Such revisions would have to be made in accordance with 40 CFR 51.6. However, before such a request is submitted, States should review the necessity of stationary sources control to maintain the national standards for nitrogen oxides.

The regulations promulgated below shall take effect on June 7, 1973.

(42 U.S.C. 1857c-5)

Dated: April 30, 1974.

RUSSELL E. TRAIN,  
Administrator.

#### Subpart B—Alabama

1. In § 52.54, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen

dioxide in the Metropolitan Birmingham Intrastate Region, with the letter "d".

#### Subpart D—Arizona

2. In § 52.121, the table is revised by changing the classifications for nitrogen dioxide in the Clark-Mohave Interstate and Phoenix-Tucson Intrastate Regions from "I" to "III", and in the Four Corners Interstate Region from "IA" to "III".

3. Section 52.127 is revoked.

4. In § 52.131, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Phoenix-Tucson Intrastate Region, with the letter "c".

#### Subpart E—Arkansas

5. In § 52.171, the table is revised by changing the classification for nitrogen dioxide in the Metropolitan Memphis Interstate Region from "I" to "III".

6. In § 52.176, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Metropolitan Memphis Interstate Region, with the letter "c".

#### Subpart F—California

7. In § 52.221, the table is revised by changing the classifications for nitrogen dioxide in the San Francisco Bay Area and the San Diego Intrastate Regions from "I" to "III".

#### Subpart G—Colorado

8. In § 52.321, the table is revised by changing the classification for nitrogen dioxide in the Four Corners Interstate Region from "IA" to "III".

9. In § 52.325, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Four Corners Interstate Region, with the letter "d".

#### Subpart H—Connecticut

10. In § 52.371, the table is revised by changing the classification for nitrogen dioxide in the Hartford-New Haven-Springfield Interstate Region from "I" to "III".

11. In § 52.374, the attainment date table is revised by replacing the date "June 1975" for attainment of the national standard for nitrogen dioxide in the Hartford-New Haven-Springfield Interstate Region with the letter "c".

#### Subpart I—Delaware

12. In § 52.421, the table is revised by changing the classification for nitrogen dioxide in the Metropolitan Philadelphia Interstate Region from "I" to "III".

13. In § 52.428, the attainment date table is revised by replacing the date "January 1974" for attainment of the national standard for nitrogen dioxide in the Metropolitan Philadelphia Interstate Region with the letter "a".

#### Subpart J—District of Columbia

14. In § 52.471, the table is revised by changing the classification for nitrogen

dioxide in the National Capital Interstate Region from "I" to "III".

15. In § 52.481, the attainment date table is revised by replacing the date "July 1975" for attainment of the national standard for nitrogen dioxide in the National Capital Interstate Region with the letter "c" and by adding footnote "c" to read as follows:

c. Air quality levels presently below secondary standard.

#### Subpart K—Florida

16. In § 52.521, the table is revised by changing the classifications for nitrogen dioxide in the West Central Florida and Southeast Florida Intrastate Regions from "I" to "III".

17. In § 52.523, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the West Central Florida and the Southeast Florida Intrastate Regions, with the letter "c".

#### Subpart L—Georgia

18. In § 52.571, the table is revised by changing the classifications for nitrogen dioxide in the Metropolitan Atlanta Intrastate and Chattanooga Interstate Regions from "I" to "III".

19. In § 52.575, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Metropolitan Atlanta Intrastate and the Chattanooga Interstate Regions, with the letter "c".

#### Subpart O—Illinois

20. In § 52.721, the table is revised by changing the classifications for nitrogen dioxide in the Metropolitan St. Louis (Missouri-Illinois) Interstate Region from "I" to "III", and the Metropolitan Dubuque Interstate Region from "IA" to "III".

21. In § 52.727, the attainment date table is revised by replacing the date "July 1975" for attainment of the national standard for nitrogen dioxide in the Metropolitan Dubuque and the Metropolitan St. Louis (Missouri-Illinois) Interstate Regions with the letter "c".

#### Subpart P—Indiana

22. In § 52.771, the table is revised by changing the classifications for nitrogen dioxide in the Louisville and the Metropolitan Cincinnati Interstate Regions and the Metropolitan Indianapolis Intrastate Region from "I" to "III".

23. In § 52.783, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Louisville and the Metropolitan Cincinnati Interstate Regions and in the Metropolitan Indianapolis Intrastate Region, with the letter "e".

#### Subpart Q—Iowa

24. In § 52.821, the table is revised by changing the classifications for nitrogen dioxide in the Metropolitan Omaha-Council Bluffs and from "I" to "III" and in the Metropolitan Dubuque Interstate Regions from "IA" to "III".

25. In § 52.827, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Metropolitan Omaha-Council Bluffs and the Metropolitan Dubuque Interstate Regions, with the letter "c".

#### Subpart S—Kentucky

26. In § 52.921, the table is revised by changing the classifications for nitrogen dioxide in the Louisville and Metropolitan Cincinnati Interstate Regions from "I" to "III".

27. In § 52.926, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Louisville and the Metropolitan Cincinnati Interstate Regions, with the letter "c".

#### Subpart V—Maryland

28. In § 52.1071, the table is revised by changing the classifications for nitrogen dioxide in the Metropolitan Baltimore Intrastate and National Capital Interstate Regions from "I" to "III".

29. Section 52.1075 is revoked.

30. In § 52.1078, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Metropolitan Baltimore Intrastate and the National Capital Interstate Regions, with the letter "d".

#### Subpart W—Massachusetts

31. In § 52.1121, the table is revised by changing the classifications for nitrogen dioxide in the Metropolitan Boston and Central Massachusetts Intrastate Regions and the Metropolitan Providence and Hartford-New Haven-Springfield Interstate Regions from "I" to "III".

32. Section 52.1124 is revoked.

33. In § 52.1127, the attainment date table is revised by replacing "a" for attainment of the national standard for nitrogen dioxide in the Metropolitan Boston and the Central Massachusetts Intrastate Regions and the Hartford-New Haven-Springfield Interstate Region with the letter "e".

#### Subpart X—Michigan

34. In § 52.1171, the table is revised by changing the classifications for nitrogen dioxide in the Metropolitan Detroit-Port Huron and Central Michigan Intrastate Regions and the Metropolitan Toledo Interstate Region from "I" to "III".

35. Section 52.1174 is revoked.

36. In § 52.1177, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Metropolitan Detroit-Port Huron and the Central Michigan Intrastate Regions and in the Metropolitan Toledo Interstate Region, with the letter "c".

#### Subpart Y—Minnesota

37. In § 52.1221, the table is revised by changing the classification for nitrogen dioxide in the Minneapolis-St. Paul Intrastate Region from "I" to "III".

38. In § 52.1226, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Minneapolis-St. Paul Intrastate Region, with the letter "d".

**Subpart Z—Mississippi**

39. In § 52.1271, the table is revised by changing the classification for nitrogen dioxide in the Metropolitan Memphis Interstate Region from "I" to "III".

40. In § 52.1273, the attainment date table is revised by replacing the date "June 1975" for attainment of the national standard for nitrogen dioxide in the Metropolitan Memphis Interstate Region with the letter "b".

**Subpart AA—Missouri**

41. In § 52.1321, the table is revised by changing the classification for nitrogen dioxide in the Metropolitan St. Louis Interstate Region from "I" to "III".

42. Section 52.1326 is revoked.

43. In § 52.1332, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Metropolitan St. Louis Interstate Region, with the letter "c".

**Subpart CC—Nebraska**

44. In § 52.1421, the table is revised by changing the classification for nitrogen dioxide in the Metropolitan Omaha-Council Bluffs Interstate Region from "I" to "III".

45. In § 52.1431, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Metropolitan Omaha-Council Bluffs Interstate Region, with the letter "c".

46. Section 52.1433 is revoked.

**Subpart DD—Nevada**

47. In § 52.1471, the table is revised by changing the classification for nitrogen dioxide in the Clark-Mohave Interstate Region from "I" to "III".

**Subpart FF—New Jersey**

48. In § 52.1571, the table is revised by changing the classifications for nitrogen dioxide in the Metropolitan Philadelphia and Northeast Pennsylvania-Upper Delaware Valley Interstate Regions from "I" to "III".

49. Section 52.1576 is revised to delete the references to the Metropolitan Philadelphia and Northeast Pennsylvania-Upper Delaware Valley Interstate Regions.

50. In § 52.1580, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the New Jersey-New York-Connecticut region with the letter "a".

**Subpart GG—New Mexico**

51. In § 52.1621, the table is revised by changing the classification for nitrogen

dioxide in the Four Corners Interstate Region from "IA" to "III".

**Subpart HH—New York**

52. In § 52.1671, the table is revised by changing the classifications for nitrogen dioxide in the Niagara Frontier and Genesee-Finger Lakes Intrastate Regions from "I" to "III".

53. Section 52.1676 is revised to delete any reference to the Niagara Frontier and Genesee-Finger Lakes Intrastate Regions.

54. In § 52.1682, the attainment date table is revised by replacing the letter "a" for attainment of the national standard for nitrogen dioxide in the Niagara Frontier and the Genesee-Finger Lakes Intrastate Regions with the letter "e".

**Subpart KK—Ohio**

55. In § 52.1871, the table is revised by changing the classifications for nitrogen dioxide in the Greater Metropolitan Cleveland, Metropolitan Columbus and the Metropolitan Dayton Intrastate Regions and the Metropolitan Cincinnati and Metropolitan Toledo Interstate Regions from "I" to "III".

56. In § 52.1875, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the greater Metropolitan Cleveland, Metropolitan Columbus, and the Metropolitan Dayton Intrastate Regions and in the Metropolitan Cincinnati and the Metropolitan Toledo Interstate Regions, with the letter "e".

**Subpart MM—Oregon**

57. In § 52.1973, the attainment date table is revised by replacing the date "May, 1975" for attainment of the national standard for nitrogen dioxide in the Portland Interstate Region with the letter "b".

**Subpart NN—Pennsylvania**

58. In § 52.2021, the table is revised by changing the classifications for nitrogen dioxide in the Metropolitan Philadelphia and Northeast Pennsylvania-Upper Delaware Valley Interstate Regions and in the South Central Pennsylvania, Central Pennsylvania and the Southwest Pennsylvania Intrastate Regions from "I" to "III".

59. Section 52.2027 is revoked.

60. In § 52.2034, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Metropolitan Philadelphia and the Northeast Pennsylvania Upper Delaware Valley Interstate Regions and in the South Central Pennsylvania, Central Pennsylvania and the Southwest Pennsylvania Intrastate Regions, with the letter "e".

**Subpart OO—Rhode Island**

61. In § 52.2071, the table is revised by changing the classification for nitrogen dioxide in the Metropolitan Providence Interstate Region from "I" to "III".

62. In § 52.2076, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Metropolitan Providence Interstate Region, with the letter "b".

**Subpart RR—Tennessee**

63. In § 52.2221, the table is revised by changing the classifications for nitrogen dioxide in the Chattanooga and Metropolitan Memphis Interstate Regions from "I" to "III".

64. In § 52.2230, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Chattanooga and the Metropolitan Memphis Interstate Regions, with the letter "c".

**Subpart SS—Texas**

65. In § 52.2271, the table is revised by changing the classifications for nitrogen dioxide in the Corpus Christi-Victoria, Metropolitan Houston-Galveston and the Metropolitan Dallas-Fort Worth Intrastate Regions from "I" to "III".

66. Section 52.2276 is revoked.

67. In § 52.2279, the attainment date table is revised by replacing the date July, 1975, which designates the date for attainment of the national standard for nitrogen dioxide in the Corpus Christi-Victoria, Metropolitan Houston-Galveston, and the Metropolitan Dallas-Fort Worth Intrastate Regions, with the letter "a".

**Subpart TT—Utah**

68. In § 52.2321, the table is revised by changing the classification for nitrogen dioxide in the Four Corners Interstate Region from "IA" to "III".

69. In § 52.2331, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Four Corners Interstate Region, with the letter "c".

**Subpart VV—Virginia**

70. In § 52.2421, the table is revised by changing the classification for nitrogen dioxide in the State Capital and Hampton Roads Intrastate Regions and the National Capital Interstate Region from "I" to "III".

71. Section 52.2426 is revoked.

72. In § 52.2429, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the State Capital and the Hampton Roads Intrastate Regions, and by replacing the date "June, 1975" for attainment of the national standard for nitrogen dioxide in the National Capital Interstate Region with the letter "d".

**Subpart WW—Washington**

73. In § 52.2471, the table is revised by changing the classification for nitrogen dioxide in the Puget Sound Intrastate Region from "I" to "III".

74. In § 52.2478, the attainment date table is revised by replacing the date

"July 1975" for attainment of the national standard for nitrogen dioxide in the Puget Sound Intrastate Region with the letter "b".

#### Subpart YY—Wisconsin

75. In § 52.2571, the table is revised by changing the classifications for nitrogen dioxide in the Southeastern Wisconsin Intrastate Region from "I" to "III", and in the Metropolitan Dubuque Interstate Region from "IA" to "III".

76. In § 52.2577, the attainment date table is revised by replacing the letter "a", which designates the date for attainment of the national standard for nitrogen dioxide in the Southeastern Wisconsin Intrastate Region and in the Metropolitan Dubuque Interstate Region, with the letter "c".

[FR Doc. 74-10440 Filed 5-7-74; 8:45 am]

### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

#### Hawaii; Approval and Disapproval of Compliance Schedules

On May 31, 1972 (37 FR 10842), July 27, 1972 (37 FR 15080), and May 14, 1973 (38 FR 12711), pursuant to section 110 of the Clean Air Act and 40 CFR Part 51, the Administrator approved portions of the Hawaii plan for the implementation of the national ambient air quality standards. On July 27, 1973, after notice and public hearings, the Governor of Hawaii submitted to the Environmental Protection Agency (EPA) revisions to the compliance schedule portion of the approved plan.

Thirty-five state compliance orders and three state variances were submitted. On February 22, 1974 (39 FR 6726) EPA proposed that the thirty-five orders be approved as compliance schedule revisions to the Hawaii implementation plan, and that the three variances be disapproved. On February 27, 1974, the State of Hawaii Department of Health notified EPA that four of the sources subject to approvable compliance schedules (Honiron Division of Ward Foods, Inc., Pacific Concrete and Rock, Ltd., Ka'u Sugar Co., Pahala Mill and Ka'u Sugar Co., Honuapo Mill) and one source subject to an unapprovable variance (Hawaiian Fruit Packers, Ltd.) had achieved compliance prior to December 31, 1973. Three additional sources (Hawaiian Western Steel, Ltd., Construction Materials Hawaii, Inc., and Hawaiian Bitumuls and Paving Co., Ltd., Puunene Plant) are subject to compliance schedules with final compliance dates which have already passed. The approval and disapproval actions related to these sources have been deleted from this final notice of rulemaking.

The remaining twenty-eight compliance orders have been found to satisfy the requirements of 40 CFR 51.15 and to be consistent with the approved control

strategy. The remaining two variances, issued to the Nanakuli Paving and Rock Co., Ltd., Molokai asphalt plant and the Kohala Corp. sugar mill, do not explicitly require compliance with particulate matter emission regulations, and allow non-compliance to extend beyond the ambient air quality standards attainment date for particulate matter. They do not, therefore, meet the requirements of 40 CFR 51.15, and must be disapproved.

Each compliance schedule revision establishes a new date by which an individual source must comply with an emission limitation specified by the implementation plan. This date is indicated in the table below, under the heading "Final Compliance Date." In each case, the schedule includes incremental steps towards compliance which are not listed in the table. Some schedules require compliance by specifying the installation of specific control devices or by the construction of new equipment and the shutdown of existing equipment. Approval of these schedules is solely on the basis that compliance is required by the specified "Final Compliance Date," regardless of the method of control specified by the schedule.

EPA has received no comments in response to the publication of the proposed approvals and disapprovals (39 FR 6726 Feb. 22, 1974). An evaluation of each schedule, as well as the schedule itself, is available for public inspection at the Hawaii Department of Health and the Region IX office of EPA at the addresses noted below. In each case, the record of the appropriate public hearing has been reviewed and considered.

| Source                               | Location  | Regulation sections involved | Date of adoption | Effective date | Final compliance date |
|--------------------------------------|-----------|------------------------------|------------------|----------------|-----------------------|
| Grove Farm Co., Inc.                 | Koloa     | 12                           | July 27, 1973    | Immediately    | June 30, 1975         |
| City and county of Honolulu          | Kewalo    | 8, 11                        | do               | do             | July 31, 1975         |
| County of Kauai                      | Lihue     | 7, 8                         | do               | do             | Do.                   |
| Do.                                  | Hanalei   | 7, 8                         | do               | do             | Do.                   |
| Do.                                  | Kekaha    | 7, 8                         | do               | do             | Do.                   |
| Do.                                  | Elele     | 7, 8                         | do               | do             | Do.                   |
| Do.                                  | Koloa     | 7, 8                         | do               | do             | Do.                   |
| Do.                                  | Kapaa     | 7, 8                         | do               | do             | Do.                   |
| The Lihue Plantation Co., Ltd.       | Lihue     | 8, 12                        | do               | do             | Jan. 31, 1975         |
| Oahu Sugar Co., Ltd.                 | Waipahu   | 8, 12                        | do               | do             | Dec. 31, 1974         |
| Pioneer Mill Co., Ltd.               | Lahaina   | 8, 12                        | do               | do             | June 30, 1974         |
| Hawaiian Bitumuls & Paving Co., Ltd. | Puhi      | 8, 13                        | do               | do             | Do.                   |
| Do.                                  | Kaena     | 8, 13                        | do               | do             | Dec. 31, 1974         |
| Hilo Coast Processing Co.            | Hakaha    | 8, 12                        | do               | do             | June 30, 1974         |
| Do.                                  | Wainaku   | 8, 12                        | do               | do             | Do.                   |
| McBryde Sugar Co., Ltd.              | Elele     | 8, 12                        | do               | do             | July 31, 1975         |
| Laupahoehoe Sugar Co.                | Oakala    | 8, 12                        | do               | do             | July 1, 1974          |
| Honokaa Sugar Co.                    | Haina     | 8, 12                        | do               | do             | May 31, 1975          |
| Hawaiian Commercial & Sugar Co.      | Puunene   | 8, 12                        | do               | do             | July 1, 1975          |
| Boilers 11 and 12                    | do        | 8, 12                        | do               | do             | Do.                   |
| Boilers 7, 8, 9, 10                  | Paia      | 8, 12                        | do               | do             | Do.                   |
| Boilers                              | do        | 8, 13                        | do               | do             | June 15, 1974         |
| Kiln                                 | do        | do                           | do               | do             | Mar. 31, 1975         |
| Kaiser Cement & Gypsum Corp.         | Nanakuli  | 13                           | do               | do             | Mar. 1, 1975          |
| Nanakuli Paving & Rock Co., Ltd.     | Halawa    | 8, 13                        | do               | do             | Apr. 1, 1975          |
| Jas. W. Glover, Ltd.                 | Hilo      | 13                           | do               | do             | July 31, 1975         |
| City and County of Honolulu          | Waipahu   | 8, 11                        | do               | do             | Do.                   |
| Do.                                  | Kapalama  | 8, 11                        | do               | do             | Do.                   |
| Hawaiian Cement Corp.                | Ewa Beach | 8, 13                        | do               | do             | Feb. 28, 1975         |

(b) The compliance schedules for the sources identified below are disapproved as not meeting the requirements of

Environmental Protection Agency, Region IX  
Enforcement Division, Room 302  
100 California Street  
San Francisco CA 94111

Environmental Protection Agency, Region IX  
Pacific Islands Basin Office  
1000 Bishop Street  
Honolulu HI 96813  
Hawaii State Department of Health  
Air Sanitation Branch  
Kapulawa Building  
Honolulu HI 96801  
(42 U.S.C. 1857c-5)

Dated: May 1, 1974.

JOHN QUARLES,  
Acting Administrator.

Part 52 of 40 CFR Chapter I is amended as follows:

#### Subpart M—Hawaii

1. A new § 52.626 is added as follows:

#### § 52.626 Compliance schedules.

(a) The compliance schedules for the sources identified below are approved as meeting the requirements of § 51.15 of this chapter. All regulations cited are air pollution control regulations of the State. Some schedules require compliance by specifying the installation of specific control devices or by the construction of new equipment and the shutdown of existing equipment. Approval of these schedules is solely on the basis that compliance is required by the specified "Final Compliance Date", regardless of the method of control specified by the schedule.

§ 51.15 of this chapter. The regulations cited are air pollution control regulations of the State.

| Source                           | Location  | Regulation sections involved | Date of adoption |
|----------------------------------|-----------|------------------------------|------------------|
| Nanakuli Paving & Rock Co., Ltd. | Molokai   | §, 13                        | July 27, 1973    |
| Kohala Corp.                     | Haleakala | §, 12                        | Do.              |

[FR Doc. 74-10441 Filed 5-7-74; 8:45 am]

# Title 47—Telecommunication

## CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 18179; FCC 74-382]

### PART 73—RADIO BROADCAST SERVICES

#### Non-Network Programs

In the matter of amendment of Part 73 of the Commission's rules with respect to the availability of television programs produced by non-network suppliers (38 FR 34325) to commercial television stations and CATV systems.

1. On August 3, 1973, the Commission released the First Report and Order in this docket (FCC 73-806, 42 F.C.C. 2d 175) in which a rule was adopted limiting geographical exclusivity in non-network program contracts between television stations and program suppliers. The rule as adopted reads as follows:

*Section 73.658 Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements.*

(m) *Territorial exclusivity in non-network arrangements.* No television station shall enter into any contract, arrangement or understanding, express or implied, with a non-network program producer, distributor, or supplier, or other person which prevents or hinders another television station located in a community over 25 miles away, as determined by the reference points contained in § 76.53 of this chapter, from broadcasting any program purchased by the former station from such non-network program producer, distributor, supplier, or other person. As used in this subsection, the term "community" is defined as the community specified in the instrument of authorization as the location of the station.

NOTE 1: Contracts, arrangements, or understandings that are complete under the practices of the industry prior to August 7, 1973, will not be disturbed. Extensions or renewals of such agreements are not permitted because they would in effect be new agreements without competitive bidding. However, such agreements that were based on the broadcaster's advancing "seed money" for the production of a specific program or series that specify two time periods—a tryout period and a period thereafter for general exhibition—may be extended or renewed as contemplated in the basic agreement.

2. The rule was to have been effective September 7, 1973. However, on August 31, 1973 (FCC 73-890, 38 FR 24367), the Commission stayed the effective date of the rule until November 12, 1973. The stay was issued in response to requests of the Association of Maximum Service Telecasters and others stating that they intended to file petitions for reconsideration of the Commission's action adopt-

ing the rule as set forth above. The parties filing timely petitions for reconsideration are listed below.<sup>1</sup> Because of unavoidable delays in the publication of public notices of the filing of several of the petitions for reconsideration, the last date for filing opposition pleadings to the petitions for reconsideration was October 1, 1973. (Order Extending Time for Filing Responses to Petitions for Reconsideration, Mimeo No. 08017, 38 FR 27218, issued September 24, 1973.) Opposition pleadings filed on or before October 1, 1973, were submitted by the parties listed below.<sup>2</sup>

3. The rule, as adopted, provides that program contracts negotiated on or after August 7, 1973, for non-network program material cannot provide for geographical exclusivity in excess of 25 miles from the community of license as determined by reference points contained in § 76.53 of the Commission's rules. The requests for stay set forth two primary grounds for reconsideration: (a) the 25-

<sup>1</sup> Petitions for reconsideration: Association of Maximum Service Telecasters (AMST); Belo Broadcasting Corporation (Belo); Broadcast-Plaza, Inc. (Broadcast-Plaza); Cedar Rapids Television Company (Cedar Rapids); The Corinthian Stations and The Orion Stations (Corinthian and Orion); Daily Telegraph Printing Company (Daily Telegraph); Gateway Communications, Inc. (Gateway); Kaiser Broadcasting Company (Kaiser); Kansas State Network, Inc. (Kansas); Kelly Broadcasting Company (Kelly); King Broadcasting Co., et al. (King); McGraw-Hill Broadcasting Company, Inc. (McGraw-Hill); Metromedia, Inc. (Metromedia); Midwest Television, Inc. (Midwest); Multimedia, Inc. (Multimedia); National Association of Broadcasters (NAB); National Cable Television Association, Inc. (NCTA); Newhouse Broadcasting Corporation (Newhouse); Roy H. Park Broadcasting of Roanoke, Inc. (Park); Ponce Television Corporation (Ponce); RKO General, Inc., et al. (RKO); Rust Craft Broadcasting Company (Rust Craft); The Spartan Broadcasting Company (Spartan); Storer Broadcasting Company (Storer); Telemundo, Inc. (Telemundo); WAPA-TV Broadcasting Corporation (WAPA); Wichita-Hutchinson Company, Inc. (Wichita-Hutchinson); WGAL Television, Inc. (WGAL); WGN Continental Broadcasting Company (WGN); WJAC, Incorporated (WJAC); and Wometco Skyway Broadcasting Company (Wometco).

<sup>2</sup> Oppositions to petitions for reconsideration: American Broadcasting Companies, Inc. (ABC); Association of Maximum Service Telecasters (AMST); Columbia Pictures Industries, Inc. et al. (Program Suppliers); Corvallis TV Cable Co. (Corvallis); MCA, Inc. (MCA); Metromedia, Inc. (Metromedia); Midwest Television, Inc. (Midwest); RKO General, Inc., et al. (RKO); Scripps-Howard Broadcasting Company (Scripps-Howard); The Spartan Broadcasting Company (Spartan); Suburban Broadcasting Corporation (Suburban); Summit Radio Corporation (Summit); and WKRG-TV, Inc. (WKRG). Reply pleadings were timely filed by RKO; AMST; and WGN. The Association of Independent Television Stations, Inc. and Paducah Newspapers, Inc., Paducah, Kentucky, filed pleadings in the nature of petitions for reconsideration past the due date for filing such pleadings; they presented no material not contained in the pleadings that were timely filed, and they will be dismissed.

mile rule would prohibit exclusivity in recognized multi-city markets, and (b) the 25-mile standard amounted to an inadvertent modification of the exclusivity provided to television stations by the Commission's action in adopting the cable television rules in 1972. The Commission issued the aforementioned November 12 stay to enable it to act on the petitions for reconsideration. A major consideration in staying the effective date of the rule was to enable parties to comment on the question of exclusivity given to television stations by the 1972 cable rules which were adopted long after the filing date (February 10, 1969) for comments in the geographical exclusivity portion of this proceeding. Because of the complexity of the issues, the Commission, in response to several requests, by Order of November 9, 1973 (FCC 73-1152, 38 FR 31680), stayed the effective date of the rule indefinitely pending action on the petitions for reconsideration. On December 6, 1973, the Commission issued a public notice (FCC 73-1278, 38 FR 34325) stating that it contemplated having the petitions for reconsideration acted on by mid-January, 1974.

4. The views expressed in the petitions for reconsideration and subsequent pleadings will be generally treated on a topical basis, except in cases where specific views should be identified.

5. NCTA supports the 25-mile standard and urges that the Commission should reduce the exclusivity that a television station may secure against cable systems to 25 miles, the standard adopted by the First Report and Order herein. The oppositions of MCA, Program Suppliers, and Metromedia were specifically directed against the NCTA petition. The main premise in these three oppositions is that the exclusivity given to television stations (35 miles) by the 1972 cable rules cannot be modified without notice to and opportunity to comment by the stations. As to the NCTA petition, AMST, RKO, Midwest, and Spartan also challenge the Commission's authority to revise exclusivity permitted by the cable proceeding without notice to the parties. The comments of the parties opposing the NCTA suggestion were lengthy and vigorous. Because of the notice requirements of the Administrative Procedure Act, 5 U.S.C. 553(b), regarding notice and opportunity to comment, we are unable to consider the NCTA proposal.

6. All other parties oppose the 25-mile standard. Most urge that the Commission revoke it and handle any abuses of excess exclusivity on a complaint basis in an ad hoc manner. Some, while advocating repeal of the 25-mile standard, also propose specific alternative standards. Those alternative proposals will be analyzed in detail.

7. AMST filed a lengthy petition for reconsideration which claims that the 25-mile rule is far too broad and pervasive because it prohibits exclusivity in over 50 recognized multi-city television markets in which exclusivity is proper. It contends that the rule does not recog-

nize the economic facts of the television market places, i.e., stations in actual competitive situations, and, instead, bases the exclusivity standard on the historical accident that stations were allocated to cities that are over 25 miles apart. It claims that because of the vast differences in the geographical areas of television markets, a single mileage figure based on reference points will not work. (AMST also contends that the 25-mile rule sharply restricts permissible exclusivity, insofar as cable television is concerned, in hyphenated markets.) As examples of such difference in area, AMST sets forth the Dallas-Fort Worth situation (where the separation is over 100 miles). It contends that Bismarck and Minot, because of satellite operations, are full competitors. In contrast, AMST points out, because there are two distinct recognized markets involved, there may well be a question of the propriety of any exclusivity in the case of the Hartford, Connecticut-Springfield, Massachusetts situation even though, by reference points, the cities are only 22 miles apart.

8. AMST states that the Commission's intention was to "free up" programming in situations wherein there is a small overlap of service area, but that in the First Report and Order, the rule adopted is rather to protect stations in "overshadowed" cities (cities in or near a larger television market) which serve "fringe area" audiences and which are in actual direct competition with the larger city station. AMST then sets forth eight specific situations of cities with reference points over 25 miles apart whose television stations are direct competitors. AMST concludes that there should be no rule, but rather a general policy statement should be adopted that outlines the Commission's concern with the problem of geographical exclusivity.

9. Nevertheless, AMST does set forth alternative solutions to the 25-mile rule, should the Commission not adopt its suggestion to rescind the rule and use the case-by-case method. The alternatives are: (1) a television station should at least be permitted to contract for exclusivity up to 35 miles (the specified zone of a television station defined in § 76.5 of the rules); (2) a television station should be permitted to contract for exclusivity against other stations in "designated" or "name" communities that are traditionally part of the same hyphenated market; and (3) case-by-case exceptions to the foregoing rules, but without evidentiary hearings.

10. Specific multi-city market problems are set forth in the pleadings of AMST, Belo, Broadcast-Plaza, Cedar Rapids, Corinthian and Orion, Daily Telegraph, Gateway, King, Kansas, Kelly, McGraw-Hill, Midwest, Multimedia, Newhouse, Park, Rust Craft, Spartan, Wichita-Hutchinson, WGAL, WKRG, and Wometco. All of the foregoing petitioners urge rescission or revision of the rule. The petitions of Storer, Metromedia, NAB, Kaiser, RKO, WJAC, and WGN, oppose this aspect of the rule

as adopted, but were topical rather than covering a specific multi-city market problem. MCA, in its opposition to the NCTA petition, also urges the Commission to reconsider the multi-city market question. Kaiser, who filed comments on the territorial exclusivity question, urges, should the 25-mile standard not be modified, that the Commission adopt a definite waiver policy to ameliorate the harshness that could occur in multi-city situations. RKO disagrees with the waiver position urged by Kaiser, because it would "work unreasonably and unequally in all markets in which it would have an impact."

11. RKO and WGN, like AMST, urge that the Commission adopt the ad hoc approach to resolve any multi-city situations where abuses are turned up in exclusivity involving syndicated programming. Should the Commission not permit exclusivity against stations in other communities of hyphenated markets, Kaiser also asks that the Commission clarify the methods permitted to a licensee, consonant with the rule, to protect itself should the program be sold to a station in another community in the multi-city market. Ponce, Telemundo and WAPA-TV are licensees of Puerto Rican stations and contend that all communities of Puerto Rico should be considered to be one market with any TV station on the island being able to secure exclusivity against other stations on the island.

12. Suburban, the permittee of a UHF television station in Patchogue, New York, which is somewhat overshadowed by the New York City television stations, in its opposition pleading, states that it is in general support of the 25-mile rule. The opposition pleadings by Corvallis and Summit respectively the licensees of "overshadowed" stations KVDO and WAKR-TV in Salem, Oregon, and Akron, Ohio, submit alternative solutions for resolving the overshadowed situations. VHF Station KVDO at Salem is located 45 miles from Portland, Oregon. Heretofore, most non-network program contracts between the Portland stations and the suppliers provided for exclusivity against the Salem station. The solution proposed by Corvallis is to revise the rule by deleting the 25-mile standard and prohibiting the securing of exclusivity against an "overshadowed" station. Corvallis proposes a revised rule that lists "overshadowed communities" to be Akron, Ohio; Fond du Lac, Wisconsin; Manchester, New Hampshire; Modesto, California; Salem, Oregon; San Jose, California; Tulare, California; and Worcester, Massachusetts. Stations in the foregoing eight communities, either in the comments in response to the Notice or other data filed with the Commission, urged that the Commission take some action to allow them to compete for non-network programming that was denied to them because of the exclusivity provisions in contracts of television stations located some distance from them. UHF Station WAKR-TV at Akron is situated approximately 29 miles from

Cleveland, Ohio. Summit submits two possible solutions that would revise the 25-mile standard, and still retain a general rule. The first alternative is to prohibit exclusivity against a station in another television market as set forth in the 1972 ARB Television Market Analysis. The second alternative is a rule that would retain a 25-mile standard, but only in the top 50 markets. These two solutions of Summit are vigorously opposed in the reply pleadings of AMST, RKO and WGN. The basis of the three oppositions is that the proposals are unrealistic and really amount to special legislation for a few "overshadowed" communities. On the other hand, ABC, in its opposition, is of the view that the 25-mile standard is probably too harsh, and submits that the alternatives proposed by Summit would assist in alleviating the "overshadowed" problem.

13. Other parties specifically commenting on the "overshadowed" market question include NAB, which states that it has no solution to the problem, but that the 35-mile standard of the specified zone adopted in the cable report, which was part of the NAB-NCTA consensus agreement, should be utilized. King and WJAC urge that the Commission adopt a case-by-case approach to resolve this "overshadowed" problem, with WJAC suggesting reference to transmitter locations of the competing stations. Storer, in general, reiterates its contention set forth in its comments in response to the notice that price is the main problem in the "overshadowed" market situation, i.e., "overshadowed" stations are simply not willing to pay the price at which a program is offered to stations serving all or a portion of the same market area. Similarly, Scripps-Howard intimates that the Akron station does not wish to pay the prevailing price for non-network programs, even though it does actively solicit advertising in competition with WEWS in the same market.

14. RKO, in its reply pleading points out that the Summit and Corvallis proposals are not feasible alternatives because they have not shown that those markets should be insulated from competition and reiterates the positions urged in its petition and opposition. AMST, also in its reply pleading, challenges a position taken by the Patchogue station that even a 35-mile standard could work to deny programming to many television stations near New York City; and, it also contends that the Summit and Corvallis proposals are not feasible as a general standard. WGN, in reply, contends the different alternatives of Suburban, Corvallis and Summit support its position that a general rule is unnecessary and unworkable.

15. Metromedia and RKO contend that the Commission is without authority to adopt rules limiting territorial exclusivity because it amounts to an unreasonable restriction on the business practices of broadcasters. RKO also contends that the rule is contrary to copyright and antitrust laws. Finally, King

contends that because of the vote on the First Report and Order (2 Commissioners voting for the document, with four Commissioners concurring in the result), the rule is procedurally defective.

16. Most of the parties contend that they never had an opportunity to comment on the modification of the exclusivity provided to television stations by the cable rules. As set forth above, the Commission, in part because of this contention, stayed the effective date of the rule.

17. As we stated in the notice of proposed rulemaking (FCC 68-511, 33 FR 7158) initiating this proceeding, the Commission had little specific information on the non-network program situation. The parties filing comments in opposition to the proposed rule supplied little factual data and their comments were very general in nature. The petitions for reconsideration are much more specific as to the multi-city market problem, and they recognize the "overshadowed" market situation as a very real one. Moreover, in these petitions, the parties had their first chance to comment on the revision of the exclusivity made available to television stations by the cable television rules. The petitions and responsive pleadings fully explore the foregoing issues and submit possible solutions to assist us in solving them.

18. We have considered all the pleadings filed concerning the First Report and Order and have concluded that the 25-mile standard should be modified. In the cable Report and Order (36 F.C.C. 2d 143 (1972)) which reflected the so-called consensus agreement, the rule permitted television stations to secure exclusivity against cable systems in other communities in hyphenated markets, as well as setting the 35-mile standard to be the specified zone of a television station. At the time that the 25-mile standard was adopted in this proceeding, we felt that the 25-mile distance would have little effect on syndicated distribution patterns, but that it might possibly open up the negotiations for programming for all stations including the so-called overshadowed stations. Moreover, there were no data on file with the Commission relating to exclusivity matters that were provided for in the cable rules as adopted in 1972. Because the date of the cable Report and Order was so much later than the closing date for filing comments in the geographical exclusivity portion of this proceeding, we, in effect, can consider the First Report and Order in this proceeding as having provided the first opportunity for the parties to comment on the possible reduction of the exclusivity for television stations provided by the cable rules in hyphenated markets.

19. We recognize that the Commission could adopt the case-by-case approach to resolve any problem situations involving abuses as to exclusivity in the syndicated programming area. However, because the process of resolution is so time consuming and because so many people will be engaged in the sales of such program fare, we believe a specific rule

with limited exceptions is the most definite and prudent course of action. In addition, because the rules here adopted are intended to have a broad general applicability, it should not be assumed that any particular contract or exclusivity practice is necessarily reasonable and insulated from antitrust or other scrutiny simply because it does not violate the rules here adopted. These rules are intended only to establish some outer limits to the exclusivity practices in question. We think it likely, in fact, that even within the market lists (§ 76.51 and ARB) here relied on, that there are stations which, if purchasing exclusivity against each other, will be approaching the edge of what a full review of the circumstances might reveal to be "undue" exclusivity. *U.S. v. Paramount Pictures, Inc.*, 66 F. Supp. 323, 70 F. Supp. 53 (S.D.N.Y., 1947), noted with approval by the Supreme Court, 334 U.S. 131 (1948). The same would, of course, hold with respect to the purchase of programming exclusivity against cable television system use. As noted in the Cable Television Report and Order, *supra*, footnote 54, "In some markets the designated communities are located so far apart that a sale in one does not and should not preclude a sale in the other." Although we had hoped in this proceeding to be in a position to further clarify which situations are involved, it appears that the variables are sufficiently numerous, including the geography, demography, terrain of the area as well as the characteristics of the particular stations involved, that we are now taking that step. That is, however, a matter which clearly warrants our continuing concern.

20. Even though there is still little, if any accumulated information on the operation of the cable rules, other than that contained in the comments, it may well have been premature to lower territorial exclusivity to the 25-mile standard as well as not to provide for exclusivity in the hyphenated market situations. Therefore, we shall modify the territorial exclusivity rule adopted in the First Report and Order of the present docket. We shall (a) raise the mileage standard in § 73.658(m) of the Commission's rules to 35 miles as determined by the reference points contained in § 76.53<sup>4</sup> of the rules, except that for a two-year period, beginning with the effective date of this modification, television stations licensed to Cleveland, Ohio, may not secure exclusivity against a television station licensed to Akron, Ohio, and television stations licensed to Stockton, California, may not secure exclusivity against a television station licensed to Modesto, California, and (b) permit television stations in hyphenated markets to secure exclusivity against other television stations in the same hyphenated markets as contained in the listing of major television markets contained in § 76.51 of the Commission's rules (for the top 100

<sup>4</sup> As provided in § 76.53, if a community does not have a listed reference point, the coordinates of the location of the main post office will be used.

markets), and for markets below the top 100, the listing of markets contained in the ARB Television Market Analysis for the latest year at the time the contract, arrangement or understanding is complete under practices of the industry. In addition, Puerto Rico will be considered to be a single television market so that any TV station on the island may secure exclusivity against any other station there.

21. The reference points between Cleveland and Akron are approximately 29 miles apart, and the Modesto-Stockton reference points are approximately 27 miles apart. In their respective comments in this proceeding, they have submitted data concerning the impossibility of negotiating with the program suppliers, and they have also submitted data that some negotiations had tentatively resulted in the future delivery of programs, but that the contracts were later cancelled by the suppliers prior to actual delivery of the programs. As many parties have recognized in their petitions for reconsideration, there is a genuine concern by the Commission to "free up" program availability for "overshadowed" stations. A general rule would be preferable, if feasible. However, because of the exclusivity provided to television stations by the cable rules, a revised 35-mile general rule, with a limited exception, is here being adopted. The licensee of Akron UHF station WAKR-TV has always claimed that it operates its station for Akron and does not attempt to operate as another Cleveland television station, even though it has the technical facilities to provide service to Cleveland. The Modesto UHF station's programming appears to include substantial Spanish-language programming. Because of these unique situations in Akron and Modesto and their claimed frustrations at not being able to negotiate with program suppliers because of territorial exclusivity held by Cleveland and Stockton stations, respectively, we shall, for a two-year period, not permit the Cleveland, Ohio television stations to secure territorial exclusivity against WAKR-TV, Akron, Ohio, or permit the Stockton, California television station to secure exclusivity against KLOC-TV, Modesto, California.<sup>4</sup>

22. With this two-year exception, WAKR-TV and KLOC-TV will have the opportunity to negotiate for syndicated program fare. Each year on September 1, these two stations will be required to submit factual data concerning their negotiations and the results of such negotiations. Hopefully, with the data obtained we can take any needed appropriate action with respect to these two specific "overshadowed" situations and the general "overshadowed" market problem.

23. It is reiterated that the Commission still has little knowledge or data concerning program distribution patterns as

<sup>4</sup> The difficulties encountered by KLOC-TV in their program negotiations were contained in the comments filed September 26, 1968, prior to commencing Spanish language programming.

regard non-network syndicated programming. Still, at this time, we do not envision a requirement that such contracts should be filed with the Commission. To gain additional experience under the cable rules as they relate to syndicated program exclusivity, with the exception of the Akron and Modesto situations outlined above, we are adopting the modifications noted above. The special problems of Puerto Rico are discussed hereafter, whereby we are also creating a limited exception for that island.

24. Puerto Rico is contended to be unique, because of the fact that the language in general use is Spanish and for other reasons. It is contended by the Puerto Rican parties filing comments herein (WAPA, Ponce and Telemundo) that Puerto Rico, irrespective of distances, should be considered a single market. This is urged because the programming of the San Juan stations and the Ponce station are broadcast throughout the entire island by rebroadcast agreements, satellites, and translators. It is contended by all three parties that anything less than island-wide exclusivity would disrupt past patterns as well as inhibit the development of four diversified program "networks" (the "flagship" stations being the two San Juan stations, the San Juan-Caguas station, and the Ponce station). Because of the uniqueness of the television broadcast program situation in Puerto Rico, and because of the unanimity of the comments filed by competing stations, the island of Puerto Rico will be considered to be one market for the purposes of territorial exclusivity. (This action, however, is without prejudice to any decision to be made in Docket No. 19974, the proceeding concerning television assignments in the San Juan and Ponce, Puerto Rico area.)

25. The position of King concerning the alleged procedural defect resulting from the fact that only two Commissioners voted for the Report and Order, with a concurrence by 4 Commissioners, is not well taken. King cites no specific authority other than that the APA requires that "the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose." 5 U.S.C. § 553(c), and § 1.425 of the Commission's rules require that the "Commission will \* \* \* issue a decision incorporating its findings and a brief statement of the reasons therefor."

26. The First Report and Order did set forth a concise general statement of the basis and purpose for adoption of the 25-mile standard, i.e., to possibly open up negotiations for non-network programming for "overshadowed" television stations, especially the UHF stations. Two Commissioners voted for the Report and Order, which is the decision of the Commission. Four Commissioners concurred in the result which means that they voted for the rule, as adopted. However, for reasons of their own, they did not issue any concurring statements. The Commission's decision, we believe, met the requirements of section 553(c) of the Administrative Procedure Act and § 1.425 of Commission's rules.

27. Metromedia contends that the Commission is without authority to adopt a mileage exclusivity standard in non-network programs on the theory that, historically, under the Sanders case, the Commission does not have authority to regulate the business of the licensee, i.e., supervisory control of programs and business management or policy. RKO claims that the Commission has not reconciled the purpose of the mileage rule with the policies of the copyright and antitrust laws. In the First Report and Order, the Commission set forth its basis for the adoption of the rule. The rule was the Commission's opinion of a reasonable one that would enable certain television stations to bid for programming. The development of broadcast stations is in the public interest and all that the Commission is attempting to do is assist in this development. Upon the showing made in the petitions for reconsideration, for the reasons set forth above, the Commission believes that the rule should be less restrictive and is so modifying it. Since the rule is less restrictive than that originally adopted, it will apply to all contracts finalized on or after August 7, 1973 (the date of publication of the First Report and Order in the FEDERAL REGISTER), a requirement that is consistent with the orders of stay previously entered in this proceeding.

28. In view of the foregoing, it is ordered, That the petitions for reconsideration are granted to the extent indicated above and are denied in all other respects; and it is further ordered That pursuant to the authority contained in Sections 4(i), 303(g) and 307(b) of the Communications Act of 1934, as amended, and because the prior notice and effective date provisions of the Administrative Procedure Act (5 U.S.C. 553) are unnecessary, § 73.658(m) of the Commission's rules is modified, effective May 10, 1974, as set forth in the Appendix below.

29. It is further ordered, That the pleadings filed by Association of Independent Television Stations, Inc. and Paduch Newspapers, Inc. are dismissed. (Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083 (47 U.S.C. 154, 303, 307))

Adopted: April 25, 1974.

Released: May 2, 1974.

FEDERAL COMMUNICATIONS  
COMMISSION,  
[SEAL] VINCENT J. MULLINS,  
Secretary.

Part 73 of the Commission's Rules is amended as follows:

1. Section 73.658(m) is amended to read as follows:

§ 73.658 Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements.

(m) Territorial exclusivity in non-network arrangements. No television station shall enter into any contract, arrangement or understanding, express or

implied, with a non-network program producer, distributor, or supplier, or other person which prevents or hinders another television station located in a community over 35 miles away, as determined by the reference points contained in § 76.53 of this chapter (if reference points for a community are not listed in § 76.53, the location of the main post office will be used) from broadcasting any program purchased by the former station from such non-network program producer, distributor, supplier, or other person, except that a television station may secure exclusivity against a television station licensed to another designated community in a hyphenated market specified in the market listing as contained in § 76.51 of this chapter for those 100 markets listed, and for markets not listed in § 76.51 of this chapter, the listing as contained in the ARB Television Market Analysis for the most recent year at the time that the exclusivity contract, arrangement or understanding is complete under practices of the industry. As used in this subsection, the term "community" is defined as the community specified in the instrument of authorization as the location of the station.

NOTE 1: Contracts, arrangements, or understanding that are complete under the practices of the industry prior to August 7, 1973, will not be disturbed. Extensions or renewals of such agreements are not permitted because they would in effect be new agreements without competitive bidding. However, such agreements that were based on the broadcaster's advancing "seed money" for the production of a specific program or series that specify two time periods—a tryout period and period thereafter for general exhibition—may be extended or renewed as contemplated in the basic agreement.

NOTE 2: For a two-year period beginning May 10, 1974, television stations licensed to Cleveland, Ohio, and Stockton, California, may not enter into any contract, arrangement or understanding, express or implied, with a non-network program producer, distributor, or supplier, or other person which prevents Station WAKR-TV, Akron, Ohio, and Station KLOC-TV, Modesto, California, respectively, from broadcasting programs purchased by those Cleveland, Ohio, and Stockton, California stations.

NOTE 3: It is intended that the top 100 major television markets listed in § 76.51 of this chapter shall be used for the purposes of this rule and that the listing of the top 100 television markets appearing in the ARB Television Market Analysis shall not be used. The reference in this rule to the listing of markets in the ARB Television Market Analysis refers to hyphenated markets below the top-100 markets contained in the ARB Television Market Analysis. If a community is listed in a hyphenated market in § 76.51 and is also listed in one of the markets in the ARB listing, the listing in § 76.51 shall govern.

NOTE 4: The provisions of this paragraph apply only to U.S. commercial television broadcast stations in the 50 states, and not to stations in Puerto Rico or the Virgin Islands, foreign stations or noncommercial educational television or "public" television stations (either by way of restrictions on their exclusivity or on exclusivity against them).

NOTE 5: New stations authorized in any community of a hyphenated market listed

in § 76.51 of this chapter or in any community of a hyphenated market listed in the ARB Television Market Analysis (for markets below the top-100 markets) are subject to the same rules as previously existing stations therein. New stations authorized in other communities are considered stations in separate markets unless and until § 76.51 is amended by Commission action, or the ARB listing is changed.

[FR Doc. 74-10599 Filed 5-7-74; 8:45 am]

[Docket No. 19622; FCC 74-458]

# PART 73—RADIO BROADCAST SERVICES

## Prime Time; Termination of Proceeding

In the matter of consideration of the operation of, and possible changes in, the prime time access rule (39 FR 12748) (§ 73.658(k) of the Commission's rules).

1. The Commission has before it the three timely-filed petitions seeking reconsideration of the Report and Order in the above-captioned proceeding, released February 6, 1974<sup>1</sup> which amended § 73.658(k) of the Commission's rules, the prime time access rule. In its previous form (in effect until September 1974) this rule limited the amount of network and off-network programming during prime time to three hours each evening, with certain specific exceptions for fast-breaking or on-the-spot news coverage and for political broadcasts by legally qualified candidates for public office. "Prime time" is defined as the 4-hour period between 7-11 p.m. e.t. and P.t., 6-10 p.m. c.t. and m.t.<sup>2</sup> The Commission amended the prime time access rule in the February 1974 action in essentially the following ways:

(a) There are no more restrictions on the programs which stations subject to the rule (network outlets in the top 50 markets) may carry during what has been the first half-hour of prime time (7-7:30 p.m. e.t. and P.t., 6-6:30 p.m. c.t. and m.t.).

(b) There is no restriction on the use of prime time on Sundays. It appears that CBS and NBC, at least, will use the full four hours of prime time on Sundays for network programs.

(c) The only remaining restrictions are tied to a definite time period Monday-Saturday, the period from 7:30 to 8 p.m. e.t. and P.t. (6:30-7 p.m. c.t. and m.t.). These six half-hours may not be used for network or off-network material, or feature film, except that one of them each week may be used for network or off-network programs of certain types—children's "special" programs, documentaries, or public affairs programs. CBS has announced plans for a series of children's "specials" Saturdays from 7:30 to 8 p.m. e.t., and NBC has plans to use the whole hour on most Saturdays, 7-8 p.m. e.t., for a news documentary program

series. The ban on feature film from these periods is the subject of two of the three petitions for reconsideration.

(d) Certain other provisions were adopted concerning sports "runovers", time-zone difference problems, etc., which probably overall amount to some liberalization of the rule, although not very much in relation to the practice which developed under it with respect to waivers in such cases. These are discussed below in connection with the petition of Sandy Frank Program Sales, Inc.<sup>3</sup>

2. Petitions for reconsideration of this decision were timely filed on behalf of three parties—film producers and distributors MCA, Inc. (MCA) and United Artists Corporation (UA) which also filed a petition for stay, and Sandy Frank Program Sales, Inc. (Frank) a syndicator of first-run access-period programming. Frank also filed a petition to accept a petition of more than 25 pages (see § 1.106 (f) of the rules); this is granted and the petition is accepted.<sup>4</sup> In substance, UA and MCA seek reversal of the decision to bar feature films completely from the 7:30-8 p.m. access periods (MCA proposes that the ban should be at least lifted for one night a week). Frank strongly supports the rule in its previous form (plus the ban on feature film) and opposes the relaxations adopted; it also urges tightening up the application of the rule by denial of most waiver requests, and the adoption of an "anti-stripping" rule which would bar "multiple showings" of the same series material during the access periods of a given week.

3. In the interest of brevity, we do not repeat here the entire background and history of the rule, nor the reasons for the modifications recently adopted except as they directly pertain to the contentions of the petitioners and the opposing parties mentioned below.<sup>5</sup> In the

<sup>1</sup> Although not embodied in the new rule, the decision (FCC 74-80, par. 88) set forth also the Commission's expectation that stations will devote an appropriate portion of the "cleared" time periods, or at least of total prime time, to material of particularly local significance—programs designed for children, material relating particularly to minority needs and problems, and other material particularly designed to meet the needs and problems of the station's community and service area as determined in its ascertainment efforts.

<sup>2</sup> Two other petitions for reconsideration were filed. One, by Screen Gems Division of Columbia Pictures Industries, Inc., has been withdrawn; the other, by Motion Picture Association of America, Inc., arrived at the Commission on March 20, two days after the closing date for petitions, and thus is late. Since the period for seeking reconsideration of a Commission action is statutory, it cannot be waived. However, this petition was later re-tendered as a statement in support of the MCA and UA petitions (its position is basically the same as theirs) and is considered and discussed below as such.

<sup>3</sup> For the history and background of the rule, see the Report and Order herein, FCC 74-80, pars. 4-25 (29 R.R. 645-656); see pars. 79-112, 44 FCC 2d 1132-1145, 29 R.R. 2d 695-709, as to the reasons for the changes made in the rule.

following paragraphs there are set forth in summary the arguments of the petitioners, first UA and MCA and then Frank.

## THE MCA AND UNITED ARTISTS PETITIONS CONCERNING FEATURE FILMS

4. These two parties, film producers and distributors, vigorously oppose the change in the rule which would bar completely "feature film" from the Monday-Saturday 7:30-8 PM (e.t.) half hours. Their arguments, which are much the same and are discussed together herein, are generally that this is an unwarranted restriction, which really in effect amounts to a "blackout" of non-network feature film entirely in prime time, as to stations subject to the rule, causing great harm to the independent motion picture production and distribution industry and the public, and meaning that the networks (not subject to such restrictions) will tend to be the only sources of prime time movies, so that their power and dominance will be increased rather than lessened. These parties also claim that the restriction is over-broad and violates important First Amendment and anti-censorship prohibitions.

5. The asserted effect of the restriction. It is claimed that, whereas the Commission regarded the recent changes as a relaxation of the rule, in this respect the change is an increased and unwarranted restriction, affecting not only the particular half-hour specified but also the whole of prime time and late afternoon "fringe" time. In our recent decision (par. 86) it was stated that while licensees would lose some flexibility as a result, with respect to the 7:30-8 PM period, they were gaining it as to the 7-7:30 half hour, and thus could still present movies in the early evening. These parties assert that this is meaningless; affiliated stations in substantial numbers simply cannot be expected to run movies during hours such as 5:30 or 6 to 7:30, at the expense of early local and network news, nor, probably, would the Commission be happy if they did. Weekend evenings do not present this exact problem to the same degree, but MCA asserts that these hours on weekends are and will be taken to an increasing extent by network programming—on Sundays regularly beginning at 7 PM e.t., on Saturdays beginning at the same time for NBC affiliates at least, and, for all networks, increasing time for sports and other "specials" in the late afternoon. As to the later portion of prime time, 8 PM e.t. and after, it is asserted that preemption of network programs to present local movies will not be significant, since, with all of the movie having to fall during network hours, this will mean 90 minutes or two hours out of three hours of network material on a given evening, more than most stations will consider preempting. MCA asserts that there has been a sharp drop in prime-time preemptions by top-50-market affiliated stations for local movies from 117 per month in March 1969 (7:30-11 p.m.) to 33 in November 1973

<sup>1</sup> FCC 74-80, 44 FCC 2d 1081, 29 R.R. 2d 643, 39 FR 5585.

<sup>2</sup> The original rule was promulgated in May 1970 (23 FCC 2d 382), amended upon reconsideration in August 1970 (25 FCC 2d 318) and is in its currently effective form in § 73.658(k) of the Commission's rules.