

stating the reasons for the decision, and advising the requester of the right to judicial review of such decision.

(c) Failure to comply with time limits set forth in § 5.51 or in this subsection constitutes an exhaustion of the requester's administrative remedies.

[FR Doc. 75-16323 Filed 6-23-75; 8:45 am]

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 123—BILINGUAL EDUCATION

Interim Regulations

Notice of proposed rulemaking was published in the FEDERAL REGISTER on March 12, 1975 (40 FR 11590), setting forth amendments to the Bilingual Education Regulations published in the FEDERAL REGISTER on May 22, 1974 (39 FR 17963). As provided by section 431(b) of the General Education Provisions Act, as amended by section 509 of the Education Amendments of 1974, interested parties were invited to make comment upon the proposed regulation changes.

Pursuant to section 703(c) and section 732(c) of the Bilingual Education Act, the National Advisory Council on Bilingual Education, State and local educational agencies, appropriate organizations representing parents and children of limited English-speaking ability, and appropriate groups and organizations representing teachers and educators involved in bilingual education were consulted in the development of the regulations.

A. Summary of Comments—Changes in the regulations. The following written comments were submitted to the Office of Education regarding the content of the proposed amendments. After the summary of each comment, a response is set forth stating changes which have been made in the regulations, or the reasons why no change is deemed necessary. The comments are arranged in order of the sections of the final regulations.

1. Section 123.02 Definitions—Comment. One commenter suggested a change in the definition of the term "limited English-speaking ability" to include individuals who come from environments where a language other than English has a dominant influence. The commenter is concerned about Indian children who converse in the English language but are not fully competent in its written and oral usage.

Response. The term "limited English-speaking ability" as defined in § 123.02 of the proposed rule is taken from section 703(a)(1) of the amended Bilingual Education Act. It includes individuals who come from environments where a language other than English is dominant and, by reason thereof, have difficulty speaking and understanding instruction in the English language. Indian children who come from an environment where a language other than English is dominant would fall within the meaning of "limited English-speaking ability," if diffi-

culty in speaking and understanding instruction in English results. Both the Act and regulations contain specific references to participation of Indian children (section 706 of the Act, 20 U.S.C. 880b-3a, and § 123.13(c) of the proposed regulation). Since the needs of such Indian children are already contemplated in the definition of "limited English-speaking ability" and, since the substitution of a phrase different from that in the statute would be unwarranted, no change is deemed necessary.

Comment. Two commenters objected to the requirement in the definition of the term "program of bilingual education" that, "In no event shall the program be designed for the purpose of teaching a foreign language to English-speaking children." One commenter suggested that the requirement be removed, because " * * * bilingual education should become part of the mainstream of American education * * * The child from limited English-speaking background and his classmate, who may be fluent in English, both benefit if each child's second language is given a place in the school curriculum." The other commenter suggested a liberal interpretation of the requirement so that participating English-speaking children be taught the native language of the limited English-speaking children. The commenter is concerned that the present requirement would "be used by reluctant school administrators as an excuse to further segregate students in a bilingual program, or it might be interpreted by those wanting bilingual education as a two-way street as prohibiting it."

Response. The requirement is taken from section 703(a)(4)(B) of the Bilingual Education Act, as amended by Pub. L. 93-380, and its inclusion is mandated by that section of the Act. It is explicitly mentioned in the Conference report on the amended Bilingual Education Act (Sen. Rept. No. 93-1026, at 149 (1974)). It is clearly appropriate that this provision be reflected in the program regulation.

The purpose of Title VII is not to provide general support for teaching a foreign language to children who speak English, but rather to provide assistance to local educational agencies in attempting to provide equal educational opportunity for children of limited English-speaking ability (section 702(a) of the Act). The statute and the regulations provide for the voluntary enrollment, in a program of bilingual education, of children whose language is English and who may already be receiving foreign language instruction in their regular curricula; such children may thereby acquire an understanding of the cultural heritage of children of limited English-speaking ability for whom the particular program of bilingual education is designed (Id. section 703(a)(4)(B) of the Act). However, such voluntary enrollment cannot alter the basic thrust of the program to aid those of limited English speaking ability.

The requirement that the program

not be designed for the purpose of teaching a foreign language to English-speaking children is not intended to foster isolation of children of limited English-speaking ability nor preclude making bilingual education a "two-way street," but rather to prevent the diversion of program funds and energies to non-statutory purposes. The question of isolation or separation of children by language or ethnic background is addressed in § 123.12(d)(1) of the regulations. Since the regulation follows the statutory requirements, no change is deemed necessary.

Comment. One commenter recommended that various changes be made with respect to the definition of "teacher" with regard to State teacher certification requirements and suggested other requirements for consultation with teacher organizations or representatives concerning such matters as approval of bilingual education programs and consultation with teachers.

Response. The comment appears to relate to matters in the nature of local administration and is not appropriately within the purview of a program regulation in view of section 432 of the General Education Provisions Act.

2. Section 123.12 Authorized activities—Comment. Several commenters objected to the absence of any reference to inservice training in § 123.12.

Response. Section 123.12(a)(2) of the regulation (45 CFR 123.12(a)(2)), which provides for inservice training is not changed by the proposed regulation and remains in effect.

Comment. One commenter objected that there is no specific mention in § 123.12(h) that teachers employed in non-profit private schools working with children of limited English-speaking ability are eligible for teacher training activities and for fellowships under § 123.12-1.

Response. Section 123.15(a)(3) of the regulation requires that the local educational agency address the special educational needs of children of limited English-speaking ability enrolled in non-profit private schools to which the program is directed to the same extent as the special educational needs of children of limited English-speaking ability enrolled in the schools of the applicant local educational agency.

To the extent that such special educational needs (of non-public school children) include inservice or other training for teachers of children in non-public schools, nothing in the regulation precludes the local educational agency from addressing this type of need. Teachers in non-public schools would thus appear to be eligible to participate in LEA-administered teacher training activities, in accordance with the applicable provisions of the regulation.

With regard to the fellowship program, fellowships are awarded for a period of study in institutions of higher education for persons preparing to become trainers of teachers in bilingual education (viz. teachers of bilingual education in an institution of higher education). Fel-

lows are to pursue a program leading to an advanced degree in that field. Whether or not an applicant for a fellowship has (or has not) been affiliated with a non-public school (or for that matter, a public school) does not appear to be a relevant consideration with respect to the fellowship program. Presumably, the results of that program in terms of enhanced capacity for teacher training will inure to the benefit of children of limited English-speaking ability in public and non-public schools alike.

3. Section 123.13 Applications. Comment. Section 123.13(b)(5) of the current regulation provides for the submission of annual and other reports to the Commissioner. One commenter observed that more meaningful reports from project grantees are needed in order to assist the Office of Education in measuring overall program success, identifying projects which may warrant replication, and making meaningful funding decisions. The comment also recommended that OE establish specific minimum evaluation requirements, including the evaluation report format.

Response. The existing regulatory language provides a sufficient basis for requiring reports adequate to assist the Commissioner in the administration of the program. Current reporting forms and requirements (including evaluation reports) will be the subject of further review in light of the comment. In the event that amplifying or clarifying language is deemed necessary in the regulation, this will be considered in connection with the preparation of the regulation for fiscal year 1976.

Comment. One commenter noted the absence of reference to the requirement for State educational agency review of applications.

Response. Section 123.13(b)(8) of the current regulation, which is not altered by the March 12 proposed rule, provides that an application for assistance under the program must indicate that the appropriate State educational agency has been given a reasonable opportunity to review the proposed program.

4. Section 123.14 Criteria. Comment. One commenter questioned the advisability of criteria in § 123.14(a)(1)(i) and (ii) of the proposed regulation which set forth, as subcriteria for evaluating the relative need for assistance, the geographic distribution of children of limited English-speaking ability within the State and the relative need of persons in different geographic areas within the State for program services and activities. Alternatively, the commenter proposed that such criteria be based upon data furnished by State educational agencies, and that points awarded for such data should be applied to all applications submitted by school districts within the respective States.

Response. The geographic distribution of target children within the State and differences in relative need of children in various areas would appear to be appropriate and reasonable factors to assess in weighing relative need for assistance.

Section 721(c) of the Bilingual Education Act, as amended by Pub. L. 93-380, provides that, in determining the distribution of funds under the Act, the Commissioner shall give priority to "areas having the greatest need for programs assisted under this title." The emphasis given this factor in the new legislation suggests the importance with which it is viewed by the Congress. The Office of Education is seeking to improve the data base upon which these criteria are applied by application reviewers to take into account data submitted by State educational agencies. Efforts at greater clarification with regard to these criteria will be pursued with respect to the fiscal year 1976 grant award cycle.

5. Section 123.15 Participation of children enrolled in private schools—Comment. One commenter suggested that the eligibility of children in a private school whose dominant language is not the dominant language of the children to be served in the public school by the proposed program be changed to include children in a private school "whose dominant language is effected (sic) by influences of another language which is not the dominant language of the children to be served in the public school by the proposed program."

Response. The thrust of the commenter's suggestion is to ensure that Indian children who converse in the dominant English language but are unable to comprehend and use the English language effectively be included in a program of bilingual education. Since Indian children are already included by the provisions of section 706(a) of the pre-Pub. L. 38-380 Act and such provision is implemented throughout the regulations, no change is deemed necessary.

Comment. A commenter objected to the provision in § 123.15(a) that gives an option to a local educational agency to provide bilingual education services to private school children whose dominant language is not the dominant language of the children served in the public school. The commenter feels that the Congressional intent does not permit any discretion on the part of the local educational agency and urges that the language "may at the option of the applicant" be deleted and be replaced by "shall."

Response. It is clear the Congressional intent is that eligible children enrolled in non-public schools share equitably in the benefits of the Bilingual Education Act (Sen. Rept. No. 93-1026, at 150). The statute states, "Applications for grants under this title may be approved by the Commissioner only if . . . the Commissioner determines . . . that, to the extent consistent with the number of children enrolled in non-profit private schools in the area to be served whose educational needs are of the type which this program is intended to meet, provision has been made for participation of such children." (§ 105(b)(3)(B) of the Act.)

This provision is susceptible to the construction that it applies only where the language served by the public school

program is the same as the language to be served in the non-public school. Where the language served by the program in the public school and that served in the case of children attending non-public school are different, difficult problems of administration and consistency with statutory and other legal limitations are presented. This is particularly so where the differences in languages served preclude the applicant local educational agency from providing genuine and effective public supervision and direction with respect to services being provided to children in the non-public schools. In order to accommodate these competing considerations, the position worked out in the proposed rule is to authorize services, where the languages in question are different, at the option of the (relevant) local educational agency. The local educational agency electing this option must be in a position to provide the needed public supervision and direction necessary to ensure a quality program. This accommodation comports with the practice which has been followed to date under the program; its extension (or retrenchment) has been considered injurious to the purposes of the Act in meeting the needs of children in public and non-public schools alike.

The commenter also suggested various means of strengthening the regulation to carry out Congressional intent that equitable services be provided to children in non-public schools. However, the governing regulations for fiscal year 1975 already contain the provisions suggested by the commenter. (45 CFR § 123.15(c) and (d)).

6. Section 123.16 Parent and community participation—Comment. Numerous commenters objected to the requirement that the community advisory group be composed of, and selected by, parents of children of limited English-speaking ability. Strong objection was voiced to the absence of any provision for the participation of parents of children who are not of limited English-speaking ability, if these children participated in the program. In many cases, the commenters feel that the new statute would dismantle the advisory committees that have been established for bilingual education projects. The view was also expressed that English dominant parents should not be asked to enroll their children voluntarily in a bilingual education program, and at the same time be excluded from participating as advisory committee members.

Response. The composition of the community advisory group is governed by section 703(a)(4)(E) of the Act. The regulation reflects this provision, which clearly appears to reflect the intent of Congress on the point. However, the statute does not preclude the active participation of parents of participating English-speaking children, other than in terms of membership on the project committee, in advising, consulting, and working with the community advisory group in implementing a bilingual education program. In addition, § 123.16(a)(2)

of the regulations requires that, prior to submission of an application for assistance, an open meeting be held by the local educational agency to afford members of the public the opportunity to testify or otherwise comment regarding the subject matter of the application. Although parents of English-speaking children are not eligible to be formal members of the community advisory group, their active participation in the program is thus encouraged both before and after application. The Office of Education will continue to study closely whether other steps should be taken to accommodate the point of view of commenters with regard to this matter.

7. Other comments. Several commenters suggested requirements for which no authority can be found in the provision of the Bilingual Education Act effective in fiscal year 1975 and which, therefore could not be incorporated into the regulations, particularly with respect to implementation of or reference to various provisions of Part A of the Act, as amended by Pub. L. 93-380. In particular, comments calling for the implementation of provisions of section 721 of the Act relating to assistance to State educational agencies for programs of coordination of State technical assistance fall into this category. As stated in the notice of proposed rulemaking published in the FEDERAL REGISTER on March 12, 1975 (40 FR 11590), section 105(a)(2) of Pub. L. 93-380 directs that the provisions of the Bilingual Education Act in effect immediately prior to August 21, 1974 must form the basis for the grant-making authority in regulations except to the extent inconsistent with the amendments made by Pub. L. 93-380. New authority in Part A of the Act, as amended, is not implemented unless specifically authorized by law for fiscal year 1975 implementation.

The present regulation is an interim regulation applicable for fiscal year 1975. A regulation under the Bilingual Education Act is being prepared to implement the program for fiscal year 1976, the first fiscal year for which the act will be fully effective.

All comments received, including those suggesting further amplification and elaboration of requirements already set forth in the regulation, will be the subject of further consideration in connection with the development of the proposed rule relating to the program for fiscal years following fiscal year 1975.

It is expected that the new proposed regulation will be published early in fiscal year 1976 thus permitting a more ample opportunity for public comment and response thereto than has been possible with respect to the amendments published herein, given the time and legislative constraints applicable to rulemaking under the Bilingual Education Act for the current fiscal year. See e.g., section 431(d) of the General Education Provisions Act.

B. Other changes. A number of minor changes have been made to correct clerical errors or to affect technical matters.

After consideration of the above com-

ments, Part 123 of Title 45 of the Code of Federal Regulations is amended to read as set forth below.

Effective date. Pursuant to section 431(d) of the General Education Provisions Act, as amended (20 U.S.C. 1232(d)), these amendments to part 123 of Title 45 CFR were submitted to the Congress concurrently with the publication of the notice of proposed rulemaking in the FEDERAL REGISTER on March 12, 1975. The time period set forth therein for congressional action has expired without such action having been taken. Therefore, these amendments are effective June 24, 1975.

(Catalog of Federal Domestic Assistance Program No. 13.403, Bilingual Education.)

Dated: June 5, 1975.

T. H. BELL,
U.S. Commissioner of Education.

Approved: June 19, 1975.

CASPAR W. WEINBERGER,
Secretary of Health, Education,
and Welfare.

Part 123 of Chapter I of Title 45 of the Code of Federal Regulations is amended as follows:

1. Section 123.01(b) is revised to read as follows:

§ 123.01 Purpose and scope

(b) This part applies only to the provision of assistance to eligible recipients under the Bilingual Education Act.

(20 U.S.C. 880b)

2. Section 123.02 is revised to read as follows:

§ 123.02 Definitions.

As used in this part (except as otherwise defined by an applicable statute or regulation):

"Act" means the Bilingual Education Act as amended.

(20 U.S.C. 880b-880b-12)

"Dependent" means any of the following persons over half of whose support, for the calendar year in which the school year begins, was received from the fellow or participant:

- (a) A spouse,
- (b) A child, or descendant of such child, or stepchild,
- (c) A brother or sister,
- (d) A brother or sister by the half blood,
- (e) A stepbrother or stepsister,
- (f) A parent, or ancestor of such parent,
- (g) A stepfather or stepmother,
- (h) A son or daughter of fellow's or participant's brother or sister,
- (i) A brother or sister of fellow's or participant's father or mother,
- (j) A son-in-law, or daughter-in-law, or father-in-law, or mother-in-law, or brother-in-law, or sister-in-law,
- (k) A person (other than the fellow's or participant's spouse) who, during the fellow's or participant's entire calendar year, lives in the fellow's or participant's home and is a member of the fellow's or

participant's household (but not if the relationship between the person and the fellow or participant is in violation of local law), or

(l) A cousin (descendant of a brother or sister of the fellow's or participant's father or mother) who, during the fellow's or participant's calendar year, is receiving institutional care on account of a physical or mental disability, and before receiving such care was a member of the same household as the fellow or participant,

(m) A legally adopted child or a child placed in the fellow's or participant's home for adoption by an authorized agency is considered to be a child by blood,

(n) A citizen of a foreign country may not be claimed as a dependent, unless he is a resident of the United States, Canada, Mexico, Panama or the Canal Zone, at some time during the calendar year in which the school year of the fellow or participant begins, or is a resident of the Philippines, born to or adopted by, a fellow or participant while he was a member of the Armed Forces, before January 1, 1956, or is an alien child legally adopted by and living with a fellow or participant as a member of his household for the entire calendar year.

(20 U.S.C. 880b-9(a)(2),(3))*

"Dominant language" means the language most relied upon for communication in the home.

(20 U.S.C. 880b-880b-5)

"Fellowship" means an award under this part to an individual to enable him to participate in a program of study in the field of training teachers for bilingual education.

(20 U.S.C. 880b-9(2))*

"Fellow" means an individual who has been awarded a fellowship under this Part.

(20 U.S.C. 880b-9(2))*

"Institution of higher education" means an educational institution in any State which meets the requirements set forth in section 881(e) of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 880b-3(a), 881(e))

"Limited English-speaking ability," when used with reference to an individual, means—(a) Individuals who were not born in the United States or whose native language is a language other than English, and (b) Individuals who come from environments where a language other than English is dominant, and by reason thereof, have difficulty speaking, and understanding instruction in, the English language.

(20 U.S.C. 880b-1(a)(1))*

"Local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service

function for, public elementary or secondary schools in a city, county, township, school district, or other political sub-division of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school. In addition, such term includes a non-profit institution or organization of an Indian tribe which operates on or near a reservation an elementary or secondary school for Indian children and which is approved by the Commissioner of Education for purposes of this part, and an elementary or secondary school for Indian children on a reservation which is operated or funded by the Department of the Interior.

(20 U.S.C. 880b-3a, 881(f))

"Low-income", when used with respect to a family, means an annual income (for such a family) which does not exceed the low annual income determined pursuant to section 103 of Title I of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 93-380 (on the basis of the criteria of poverty used by the Bureau of the Census in compiling the 1970 decennial census).

(20 U.S.C. 880b-1 (a) (3) *)

"Program of bilingual education" or "bilingual education program" means a program of instruction, designed for children of limited English-speaking ability in elementary and secondary schools, in which with respect to the years of study to which such program is applicable (a) there is instruction given in, and study of, (1) English and, (2) (to the extent necessary to allow a child to progress effectively through the educational system) the native language of the children of limited English-speaking ability; (b) such instruction is given with appreciation for the cultural heritage of such children, and, (c) with respect to elementary school instruction, such instruction is given, to the extent necessary, in all courses or subjects of study which will allow a child to progress effectively through the educational system. A program of bilingual education shall also meet the requirements of section 703(a) (4) (B)-(E) of the Act, which are as follows:

(1) A program of bilingual education may make provision for the voluntary enrollment to a limited degree therein, on a regular basis, of children whose language is English, in order that they may acquire an understanding of the cultural heritage of the children of limited English-speaking ability for whom the particular program of bilingual education is designed. In determining eligibility to participate in such programs, priority shall be given to the children whose language is other than English. In no event shall the program be designed for the purpose of teaching a foreign language

to English-speaking children. (See § 123.12(d) (1))

(2) In such courses or subjects of study as art, music, and physical education, a program of bilingual education shall make provision for the participation of children of limited English-speaking ability in regular classes.

(3) Children enrolled in a program of bilingual education shall, if graded classes are used, be placed, to the extent practicable, in classes with children of approximately the same age and level of educational attainment, as determined after considering such attainment through the use of all necessary languages. If children of significantly varying ages or levels of educational attainment are placed in the same class, the program of bilingual education shall seek to insure that each child is provided with instruction which is appropriate for his or her level of educational attainment.

(4) An application for a program of bilingual education shall be developed in consultation with parents of children of limited English-speaking ability, teachers, and, where applicable, secondary school students, in the areas to be served, and assurances shall be given in the application that, after the application has been approved under this part, the applicant will provide for participation by a committee composed of, and selected by, such parents, and, in the case of secondary schools, representatives of secondary school students to be served.

(20 U.S.C. 880b-1(a) (4) *; Sen. Rep. No. 93-1026, at 148-49 (1974))

"Special educational needs" means the particular educational requirements of children of limited English-speaking ability, the fulfillment of which will provide them with equal educational opportunity.

(20 U.S.C. 880b)

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

(20 U.S.C. 881(j))

"Stipend" means the allowance paid to a participant in a training program or fellow for subsistence and other expenses for such participants and their dependents under this part.

(20 U.S.C. 880b-9 (2), (3) *, 880b-2(b))

"Teacher" means an individual providing instruction in a program of bilingual education and, for the purposes of this part, also includes other pupil-service personnel, such as librarians, counselors, school social workers, child psychologists, and educational media specialists participating in such programs.

(20 U.S.C. 880b-2(b))

"Teacher aide" means a person who assists a teacher in the performance of his professional teaching duties in a pro-

gram of bilingual education. Such term does not include persons in positions such as clerk to a principal, food-handlers in a cafeteria or in other jobs not related to the teaching-learning process.

(20 U.S.C. 880b-2(b))

"Traineeships" means awards to individuals from grants to local educational agencies applying jointly with institutions of higher education to provide financial assistance in pursuing a degree and/or credentials in bilingual education.

(20 U.S.C. 880b-2(b))

3. Section 123.12 is amended as follows: Subparagraph (1) of paragraph (a) is revised, paragraph (d) is revised, and a new paragraph (h) is added. Such revisions read as follows:

§ 123.12 Authorized activities.

(a) * * *

(1) Planning for and taking other steps leading to the development of bilingual education programs (as defined in § 123.02) designed to meet the special educational needs of children of limited English-speaking ability in schools having a high concentration of such children from low-income families (as defined in § 123.02) including research projects, pilot projects, resource centers, materials development centers, and dissemination/assessment centers designed to test the effectiveness of plans so developed and to develop and disseminate special instructional materials (including tests) for use in bilingual education programs. For the purpose of this part: a resource center means a set of activities under a project designed to provide direct services such as personnel training in the use of materials and resources and field testing of materials for bilingual education programs for use by local educational agencies and institutions of higher education. A materials development center means a set of activities under a project designed to develop instructional materials for bilingual education programs and education personnel training materials for utilization in resource centers and other bilingual education projects. A dissemination/assessment center means a set of activities under a project designed to publish and distribute materials developed for bilingual education programs and to evaluate the appropriateness and effectiveness of materials for such programs.

(20 U.S.C. 880b-2(a); H.R. Rep. No. 93-1378, at 12 (1974); Sen. Rep. No. 93-763, at 43 (1974))

(d) (1) (i) A program assisted under this Part shall include such provisions as are necessary to prevent the separation of children by language or ethnic background in any activity included in such programs, unless the applicant demonstrates that such separation for a portion of the school day for specific language learning activities is essential to the achievement of the purpose of this part.

(1) Nothing in this part shall be interpreted or applied to authorize isolation of children of limited English-speaking ability by language or ethnic background for a substantial portion of the school day.

(2) No child of limited English-speaking ability attending a school having a high concentration of the children described in paragraph (a)(1) of this section shall be prohibited from participating in a program assisted under this part on the ground that such child is not a member of a low-income family as defined in § 123.02.

(20 U.S.C. 880b, 880b-2, 880b-3 (a)(3), 880b-3 (b)(3)(A); Sen. Rep. No. 91-634, at 56 (1970); 42 U.S.C. 2000d-2000d-4)

(h) *Training.* (1) Preservice training grants under paragraph (a)(2)(i) of this section may be awarded to an institution of higher education applying jointly with one or more local educational agencies to provide traineeships leading to a degree and/or credential, as appropriate, to persons preparing to participate in the conduct of programs of bilingual education. Selection of candidates for traineeships under this part shall be made jointly by the applicant local educational agency or agencies and the institution of higher education. They shall give priority to applicants who are participating in bilingual education programs and have demonstrated a high interest and competency in a bilingual education program. The traineeship under this section may not exceed \$3,500. Allowable costs shall include stipends, tuition, books, travel, tutoring, counseling and other training costs related to the traineeship as required by the institution of higher education.

(2) For the purpose of obtaining an appropriate distribution of high quality programs for training bilingual education personnel, grants for training programs under this part may include assistance to institutions of higher education, which apply jointly with one or more local educational agencies, to pay part of the cost (not otherwise covered under this part) of developing or strengthening higher education or graduate programs in bilingual education which meet, or, as a result of the assistance received under this subsection, which will enable the institution to meet (i) individual needs and (ii) encourage reform, innovation, and improvement in applicable education curricula in graduate education, in the structure of the academic profession, and in recruitment and retention of higher education and graduate school faculties, as related to bilingual education.

(20 U.S.C. 880b-2(b), Sen. Rep. No. 93-763, at 43, 370 (1974))

4. A new § 123.12-1 is added after § 123.12. It reads as follows:

§ 123.12-1 Fellowships for teacher training.

(a) *General.* The Commissioner may arrange for awarding fellowships for per-

sons preparing to become trainers of teachers in bilingual education pursuant to this section. For the fiscal year ending June 30, 1975, the Commissioner will undertake to award not less than 100 such fellowships.

(b) *Requests for participation by institutions.* (1) In order to effectuate the purposes of this section, the Commissioner will entertain requests for participation under this section from institutions of higher education proposing to carry out graduate or other programs leading to an advanced degree in the field of training teachers for bilingual education.

(2) Such requests for participation shall indicate the number of fellowships which the institution is prepared to sponsor and shall contain information as to the nature of the program to be carried out by such institution, including information with respect to the faculty, facilities and equipment pertaining to such program and such other information as the Commissioner deems necessary to enable him to assess the capacity of the institution and of such program to fulfill the purposes of the Act or to make the determinations under this part.

(3) Notwithstanding the provisions of § 123.11(a), an institution of higher education submitting a request for participation under this paragraph may (but need not) submit such request jointly with one or more local educational agencies but must consult with one or more such agencies (having a substantial number of children of limited English-speaking ability) with respect to the program to be carried out by such institution. Such request shall describe such consultation.

(c) *Approval of requests.* (1) In approving requests under paragraph (b) of this section, and in making any allotment of fellowships which may be necessary, the Commissioner will consider the information specified in paragraph (b) of this section and the relative need for teachers, for programs of bilingual education, of various groups of individuals with limited English-speaking ability.

(2) The Commissioner will notify each institution of higher education which has submitted a request pursuant to paragraph (b) of this section whether such request has been approved.

(d) *Award of fellowships to individuals.* (1) An individual seeking a fellowship under this section shall submit an application for such fellowship (in such form and detail as prescribed by the Commissioner) through an institution of higher education with a request approved under paragraph (c).

(2) From among those individual applicants which it accepts for study, such institution shall make nominations to the Commissioner. Wherever possible the institution should nominate alternates in addition to the regular nominations.

(3) To be eligible for a fellowship, an individual must (i) be willing to pursue a full-time graduate or other program leading to an advanced degree in bilingual education teacher training and (ii) be either a citizen or national of the

United States or be in the United States for other than a temporary purpose and have the intention of becoming a permanent resident thereof, or be a permanent resident of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands.

(4) The commissioner will award fellowships to individuals selected by him from among those nominated as described in this paragraph. In making such selections, the Commissioner will be guided by the relative need for teachers, for programs of bilingual education, of various groups of individuals with limited English-speaking ability and by available indicia as to the likelihood that individual nominees will, after the fellowship period, pursue a permanent career in bilingual education teacher training. Each individual nominated will be advised as soon as practicable of the action taken by the Commissioner on his nomination.

(e) *Stipends.* (1) A fellowship under this section will include a stipend, and, where applicable, an allowance for dependents as defined in § 123.02. Such allowance shall be consistent with that provided under comparable Federally supported programs, as determined by the Commissioner. Tuition and fees will be paid out of the fellowship award. A fellowship under this section shall not exceed \$6,000 per annum.

(2) A stipend shall be paid only to a fellow who is enrolled and in good standing in a graduate or other program leading to an advanced degree in bilingual education teacher training.

(3) In order to remain eligible for payment of stipends, a fellow must maintain satisfactory progress in the program of study for which the fellowship was awarded and must continue to pursue a full-time course of study without gainful employment except as provided in paragraph (e)(4) of this section.

(4) A fellow may not engage in gainful employment during the period of a fellowship award under this part which will delay satisfactory progress toward completion of the course of study.

(20 U.S.C. 880b-9(a)(2), (3); Sen. Rep. No. 93-1255, at 18 (1974); Sen. Rep. No. 93-1026, at 151-52 (1974))

5. Section 123.13 is revised by adding a new paragraph (b)(11) and a new paragraph (c). Such revisions read as follows:

§ 123.13 Applications.

(b)
(11) *Identification of target children and needs.* The manner and methods by which the applicant has identified the children with limited English-speaking ability who are to be reached, has measured the degree of such limited English-speaking ability for such children, and has assessed the need of such children.

(c) *Information pertaining to Indian institutions and organizations.* In addition to the assurances and information required in paragraph (b), applications

submitted by non-profit institutions or organizations of Indian tribes operating elementary and secondary schools for Indian children shall include (1) evidence that the schools operated prior to the request for funds under this part and description of such schools, and (2) evidence of their non-profit status in order for the Commissioner to approve such organizations as eligible applicants for the purposes of section 706 (a) of the Act, as added by Pub. L. 91-230. Any of the following shall be acceptable evidence of non-profit status:

(i) A reference to the organization's listing in the Internal Revenue Service's most recent cumulative list of organizations described in section 501(c)(3) of the Internal Revenue Code as tax exempt.

(ii) A copy of currently valid Internal Revenue Service tax exemption certificate.

(iii) A statement from a State taxing body or the State attorney general certifying that the organization is a non-profit organization operating within the State and that no part of its net earnings may lawfully inure to the benefit of any private shareholder or individual.

(iv) A certified copy of the organization's certificate of incorporation or similar document if it clearly establishes the non-profit status of the organization.

(v) Any of the evidence described in paragraph (c)(2)(i) through (iv) of this section which applies to a State or national parent organization, and a statement by the parent organization that the applicant organization is a local non-profit affiliate.

(20 U.S.C. 880b-3a(a))

6. Section 123.14 is amended as follows: Paragraph (a) is revised, paragraph (b) is revised, and new paragraphs (c), (d) and (e) are added. Such revisions read as follows:

§ 123.14 Criteria for competition for assistance.

(a) *General criteria.* In approving applications for assistance under this part (except as provided in paragraph (b)), the Commissioner will apply 225 points distributed according to the following criteria:

(1) *Relative need for assistance.* (50 points) The extent to which the educational needs identified and addressed in the application are for programs reaching areas having the greatest need for assistance under this part determined on the basis of the following:

(i) (10 points) The geographic distribution of children of limited English-speaking ability within the State;

(ii) (10 points) The relative need of persons in different geographic areas within the State for the kinds of services and activities described in § 123.12;

(iii) (10 points) The extent to which the educational approach, method, or technique to be demonstrated by the program has not previously been the object of assistance under the Act in the project area;

(iv) (10 points) The extent to which there is a need for additional demonstration of the educational approach, method, or technique involved in the program with respect to the target population for which the program is designed and with respect to bilingual education programs for children with the particular dominant language concerned;

(v) (10 points) The relative intensity of the educational needs of the children for whom the project is designed.

(Sen. Rep. No. 93-763, at 43-45 (1974); Sen. Rep. No. 93-1255, at 18 (1974); Sen. Rep. No. 93-1026, at 161 (1974))

(2) Target population and program objectives. (25 points)

(i) (5 points) The extent to which the educational needs identified and addressed in the application are clear and specific and relate the purpose of § 123.01.

(ii) (15 points) The extent to which evidence presented by documented objective data demonstrates the existence of students with needs described in § 123.12(a)(1) by indicating:

(A) (5 points) The number and percentage of children of limited English-speaking ability between the ages of 3 and 18 inclusive, residing in the school district served by the applicant agency; and

(B) (5 points) The numbers of such children enrolled in the school or schools which the proposed project is intended to serve, both public and non-public; and

(C) (5 points) The percentage of such children for which funds are being requested within the project school or schools, both public and non-public.

(iii) *Statement of objectives.* (5 points) The extent to which the application sets forth unattained objectives and plans for attaining them in relation to the needs assessed and to specific identified paragraphs in § 123.12, which are interrelated, specific, measurable, and realistically attainable within the specified periods.

(3) *Results or benefits expected.* (25 points) (i) *Evaluation.* (20 points) The extent to which the application sets forth quantifiable measurement of the success of the proposed program in attaining the stated objectives including: (A) a statement of the criteria by which attainment of objectives is to be measured; (B) a description of the instruments to be used to collect data for evaluation of the proposed program (and the method to be used to validate such instruments where necessary), or a description of the procedure to be employed in selecting such instruments; (C) an assessment of the validity of such instruments when used to evaluate the language skills, academic achievement, academic aptitude, or general intelligence of children whose dominant language is other than English; (D) a time table for the collection of data for evaluation, and a description of the method to be used to review the program in light of such data; and (E) provisions for comparison of evaluation results with norms, control group performance, results of other programs, or other external standards.

(ii) *Dissemination.* (5 points) The extent to which the application sets forth provisions for (A) disseminating the results of the program and (B) making materials, techniques, and other outputs resulting therefrom available to persons residing in the school district served by the applicant local educational agency, the general public, and those concerned with the educational opportunities of children of limited English-speaking ability.

(4) *Approach.* (65 points) (i) *Activities.* (20 points) (A) The extent to which the activities included in the proposed program (I) are defined in reference to authorized activities specified in § 123.12 and (II) assure positive results in the attainment of the applicant's stated objectives, and (B) in the case of an applicant which received assistance under this part during the fiscal year prior to the fiscal year for which assistance is sought, the extent to which the applicant demonstrates, by evaluation reports and other objective evidence, that any program proposed to be continued has made substantial progress in meeting the special educational needs of children of limited English-speaking ability;

(ii) *Use of educational resources.* (5 points) The extent to which the applicant proposes to utilize the expertise and cultural and educational resources described in § 123.13(b)(7).

(iii) *Parent and community involvement.* (10 points) The extent to which the application (A) delineates specific opportunities for the participation of the community advisory group described in § 123.16 in the planning, implementation, operation, and evaluation of the proposed program and (B) includes evidence that such participation has been encouraged and has in fact occurred;

(iv) *Concentration.* (5 points) The degree to which the program is sufficiently restricted in size and scope in relation to the nature of the program to avoid jeopardizing its effectiveness in meeting its objectives.

(v) *Program administration.* (5 points) The extent to which the application sets forth (A) a plan for meeting the logistical requirements of the proposed activities including a description of adequate and conveniently available facilities and equipment; (B) a statement of methods of administration that will ensure the proper and efficient operation of the proposed program; and (C) a statement of fiscal control and fund accounting for funds made available under this part;

(vi) *Resource management.* (10 points) The extent to which the application contains evidence that (A) the costs of program components are reasonable in relation to the expected benefits; (B) the proposed program will be coordinated with existing efforts; and (C) all possible efforts have been made to minimize the amount of funds requested for purchase of equipment necessary for implementation of the proposed program;

(vii) *Continuation of program.* (10 points) The extent to which the proposed

program is designed in such a manner as to facilitate the continuation of such program as part of the regular school program of the applicant local educational agency upon the unavailability of assistance under this part.

(5) *Staffing.* (60 points) The extent to which the application:

(i) (10 points) Sets forth an adequate staffing plan which includes provisions for making maximum use of the best available staff capabilities, including the director,

(ii) (10 points) Provides for the continuing training of professional and paraprofessional staff which will assist the applicant in increasing the effectiveness of the proposed program,

(iii) (40 points) Indicates that the personnel to be employed in the program possess qualifications relevant to the objectives of the program.

(20 U.S.C. 880b-1(b), 880b-3(a) (2), (3), (5), (6), and (8), 880b-3(b) (1) and (2), 880b-3(b) (3) (A), 1231d; Sen. Rep. No. 90-726, 49 (1967); Sen. Rep. No. 91-634, 57 (1970))

(b) *Funding categories.* (1) The Commissioner may make awards for bilingual education programs under this part on a project period basis. (See § 100.1) The duration of the project will reflect only the minimum period needed to carry out the demonstration or other approved objective involved in the program. Award decisions for fiscal years during the project period but subsequent to the initial fiscal year of award will be based upon an evaluation of the progress of the program in meeting its objectives.

(2) Applications for such "continuation awards" in subsequent fiscal years during the project period will not be competitive with applications for new programs and will be rated under the criteria in this section only if funds are insufficient to support all satisfactory continuation programs.

(3) Following the expiration of the project period for a particular program, an application for further assistance with respect to such program shall be evaluated and rated in accordance with the criteria in this section in competition with other applications evaluated thereunder.

(4) In approving applications for assistance under this part, the Commissioner shall take into consideration any recommendations offered by the appropriate State educational agency to the extent such recommendations are consistent with the criteria set out in this section.

(20 U.S.C. 880b-1(b), 880b-3(a) (3), 880b-3(b) (1), (b) (2), Sen. Rept. No. 93-763, at 43-45, (1974); Sen. Rep. No. 93-1255, at 18 (1974))

(c) *Criteria for training activities.* The Commissioner will apply the following criteria to projects involving training activities under § 123.12 in cases where institutions of higher education apply jointly with a local educational agency, (90 points distributed as follows):

(1) (10 points) The extent to which the applicant (or applicants) possesses dem-

onstrated competence and experience in the field of bilingual educational training as evidenced by such factors as (i) the number of bilingual students enrolled (ii) the number of bilingual personnel employed (iii) the nature and type of involvement within bilingual education local educational agency(s);

(2) (10 points) The extent to which a program or project leads toward a degree or credential in bilingual education;

(3) (10 points) The extent to which a program or project is an integral part of the institution;

(4) (10 points) The extent to which the program or project will increase the capability of an institution to train educational personnel in bilingual education;

(5) (10 points) The extent to which the proposed program or project is coordinated with, or supportive of, local educational agency projects or other projects funded under the Act;

(6) (10 points) The extent to which the proposed program or project is directed toward the educational personnel needs of a particular school district(s) serving children of limited English-speaking ability;

(7) (10 points) The extent to which the proposed program includes effective procedures for evaluating the impact of the program or project;

(8) (10 points) The extent to which the trainees will be trained and be able to teach in academic subjects in the non-English language involved;

(9) (10 points) The extent to which the proposed program or project is directed toward training education personnel to identify and deal with individual learning problems related to limited English speaking ability.

(20 U.S.C. 880b-3(a) (3), 880b-3(b) (2))

(d) *Criteria for curriculum activities.* In addition to the criteria in paragraph (a), the Commissioner shall apply the following criteria to those applications which propose centers as described in § 123.12(a) (1):

(1) The extent to which the center will result in the development of educational services, materials and curricula for bilingual education in the areas of greatest need and with respect to language groups for which the need for curriculum materials development is particularly acute;

(2) The extent to which the center will have an effective and efficient delivery system of services for bilingual education programs;

(3) The extent to which the center will have the administrative capability to respond to the need for bilingual education programs; and

(4) The extent to which the center has the resources to carry out the proposed activities.

(20 U.S.C. 880b-3(a) (3), 880b-3(b) (2))

(e) *Application of criteria.* (1) In the case of a program involving training to be carried out in whole or in part by an institution of higher education, the

training component of the application shall be evaluated in accordance with the criteria in paragraph (c) of this section. Applications for training assistance will be rated and ranked in accordance with such evaluation, except that consideration will be given only to applications involving instructional components in the fundable range as determined in accordance with the criteria in paragraph (a) of this section through the establishment of a minimum point score. Approval of the instructional component of a program will not, however, necessarily lead to approval of the training component.

(2) The Commissioner will reserve \$16,000,000 of that part of the appropriations to carry out the provisions of this part which does not exceed \$70,000,000 for all training activities and will reserve for such activities 33 1/3 per centum of that part which is in excess of \$70,000,000.

(3) In the case of a project involving a center as described in § 123.12(a) (1), the application involving the project will first be evaluated, in its entirety, in accordance with the criteria in paragraph (a) except that all applications proposing such a center applying jointly as a consortia composed of two or more local educational agencies applying jointly with one or more institutions of higher education shall receive up to 20 additional points for the proposed center component only. Such project will also be evaluated in accordance with the criteria in paragraph (d) of this section. Applications will be ranked on the basis of such rating in paragraph (a) of this section and the evaluation under paragraph (d) of this section. Consideration will be given only to applications which receive a point score in excess of a minimum point score established on the basis of available funds.

(20 U.S.C. 880b-3(b) (2), 880b(b) (3)*, Sen. Rep. No. 93-763 at 43-45 (1974))

7. Paragraph (a) of § 123.15 is revised to read as follows:

§ 123.15 Participation of children enrolled in private schools.

(a) *Assurances.* (1) Applications submitted under this part shall contain an assurance that, to the extent consistent with the number of children of limited English-speaking ability enrolled in non-profit private schools in the area to be served, provision has been made for the participation of such children in the proposed program. Such participation may, at the option of the applicant, involve children in a private school whose dominant language is not the dominant language of the children to be served in the public school by the proposed program.

(2) An applicant shall provide satisfactory assurance that it is in a position to maintain administrative direction and control over the components of the proposed program in which such private school children participate and is in a position to provide such public school or other publicly provided personnel (hav-

ing competence in the dominant language of such private school children) as are necessary for the implementation of a quality bilingual education program for such children.

(3) Applications shall contain a description of the provisions which have been made for such participation. Such provisions shall assure that the special educational needs of such children enrolled in private schools to which the program is directed are addressed to the same extent as the special educational needs of children of limited English-speaking ability enrolled in the schools of the applicant local educational agency. (20 U.S.C. 880b-3(b)(3)(B), Sen. Rep. 93-1026, at 150 (1974))

8. § 123.16 is amended as follows: Paragraph (a) is revised and paragraph (c) is revised. Such revisions read as follows:

§ 123.16 Parent and community participation.

(a) *Assurances.* (1) Applications submitted under this part shall contain an assurance (i) that parents of children of limited English-speaking ability, teachers, and where applicable, secondary school students, in the areas to be served, were consulted in the development of an application for a program of bilingual education; (ii) that the applicant local educational agency will consult with a community advisory group established in accordance with paragraph (c) of this section at reasonable intervals (in formal meetings open to the public) with respect to the administration and operation of any program assisted under this part; (iii) that such agency will provide such group with a reasonable opportunity periodically to observe (upon prior and adequate notice to such agency and at such time or times as such groups and such agency may agree) and comment upon all activities included in any program assisted under this part; and (iv) that such agency will make such provisions as are necessary to insure the participation of such group in the evaluation of any program assisted under this part.

(2) No application for assistance under this Act may be considered unless the local educational agency making such application certifies to the Commissioner that members of the public have been afforded the opportunity upon reasonable notice to testify or otherwise comment regarding the subject matter of the application.

(c) *Composition of community groups.* The community advisory group required by this section shall be composed of, and selected by, parents of children of limited English-speaking ability in the areas to be served, and in the case of secondary schools, representatives of secondary school students to be served.

(20 U.S.C. 1231(d); 20 U.S.C. 880b-1(a)(4) (E)*; 20 U.S.C. 887e; Sen. Rep. No. 91-634, 67 (1970))

[FR Doc.75-16324 Filed 6-23-75;8:45 am]

Title 47—Telecommunication
CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION
[ECC 75-688]

PART 0—COMMISSION ORGANIZATION
Chief, Cable Television Bureau; Delegation of Authority

1. In February 1975, the Commission revised and expanded its delegations of authority to the Chief, Cable Television Bureau. Delegations of Authority, FCC 75-199, 51 FCC 2d 297 (1975). Since that time we have noted an increase in the number of petitions for special relief, filed pursuant to § 76.7 of the Commission's Rules, that seek rule waivers akin to those more frequently raised in the context of an application for a certificate of compliance. In many of these instances, new § 0.288(t) of the Rules would permit the Chief, Cable Television Bureau to act on such matters if they had been raised in a certifying context. Since the substance of these waiver requests is the same, we see no need to differentiate the manner in which they are handled. Accordingly, we are amending § 0.288 to delegate authority to the Chief, Cable Television Bureau to act on petitions for special relief seeking waiver of a rule concerning which delegated authority to act already exists in the context of an application for a certificate of compliance.

2. Since this amendment relates to Commission organization and procedures, the prior notice and effective date provisions of Section 4 of the Administrative Procedure Act, 5 USC 553, do not apply.

Authority for the rule amendment adopted herein is contained in Sections 2, 3, 4 (i) and (j), 5 (b) and (d), 301, 303, 307, 308, and 309 of the Communications Act of 1934, as amended.

Accordingly, it is ordered, That effective June 26, 1975, Part 0 of the Commission's rules and regulations is amended as set forth below.

(Secs. 2, 3, 4, 5, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1088, 1081, 1082, 1083, 1084, 1085 (47 U.S.C. 152, 153, 154, 155, 301, 303, 307, 308, 309))

Adopted: June 10, 1975.

Released: June 18, 1975.

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

APPENDIX

Part 0 of Chapter I, Title 47 of the Code of Federal Regulations, is amended as follows:

A new paragraph (u) is added to § 0.288, to read:

§ 0.288 Authority delegated.

(u) To act on petitions for special relief seeking waiver of a rule concerning which delegated authority to act already exists in the context of an application for a certificate of compliance.

[FR Doc.75-16311 Filed 6-28-75;8:45 am]

[Docket No. 19753; 2055; 35615]

SPECIAL INDUSTRIAL RADIO SERVICE
Allocation of Frequencies; Correction

In the Matter of amendment of Parts 2, 89 and 91 of the Commission's rules and regulations to allocate to the Special Industrial Radio Service the frequencies 151.490 and 157.725 MHz.

1. This Order is to correct a crossover of documents which resulted in the adoption of limitation (17) in paragraph (e) of § 89.459 with two different definitions. Both definitions apply and, by this Order, we are designating one as (e) (18). The documents in which this crossover took place are:

a. Report and Order in Docket 19753, FCC 73-1100, released October 30, 1973, and published in the FEDERAL REGISTER on November 7, 1973 (38 FR 30741).

b. Report and Order in Docket 20042, FCC 74-768, released July 25, 1974, and published in the FEDERAL REGISTER on July 31, 1974 (39 FR 27667).

2. It is intended to permit the report and order in Docket 20042 to stand as adopted. However, with this Order, we are modifying the action in the Report and Order in Docket 19753 by redesignating the limitation adopted therein as (e) (18).

3. Inasmuch as this Order is to clarify formal action previously taken, the prior notice and effective date provisions of the Administrative Procedure Act (5 U.S.C. 553) do not apply. Authority for this amendment is contained in sections 4 (d) and 303 (r) of the Communications Act of 1934, as amended, and in section 0.231 (d) of the Commission's rules and regulations.

4. Accordingly, it is ordered, effective June 20, 1975, that § 89.459 is amended as follows:

§ 89.459 Frequencies available to the Forestry-Conservation Radio Service.

(d) * * *

Frequency or band	Class of station(s)	Limitations
MHz:		
151.475	Base and mobile	10
151.490	do	10, 18
159.225	do	

(e) * * *

(18) The frequency is shared with the Special Industrial Radio Service and interservice coordination is required.

Adopted: June 9, 1975.

Released: June 10, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] RICHARD D. LICHTWARDT,
Executive Director.

[FR Doc.75-16310 Filed 6-23-75;8:45 am]

[Docket Nos. 19828, 19823; RM-1910, 2282, 2233; FCC 75-701]

PART 73—RADIO BROADCAST SERVICES
FM Broadcast Stations, Missouri; Table of Assignments

1. The Commission here considers (1) the notice of proposed rulemaking in Docket No. 19828, adopted September 19, 1973 (FCC 73-981, 38 FR 27303) and (2) the Petition for Reconsideration of the Report and Order in Docket No. 19823 (44 F.C.C. 2d 782 (1974)), requesting reconsideration of the assignment of Channel 288A to Butler, Missouri, filed by S & M Investments, Inc.

2. The notice invited comments on a proposal by KLEX, Inc. (KLEX), to substitute Class C Channel 293 for Channel 292A at Lexington, Missouri. Lexington (pop. 5,388), the seat of Lafayette County (pop. 26,626), is located approximately 35 miles east of Kansas City, Missouri. KLEX, licensed to operate on Channel 292A (Station KBK(FM), formerly KLEX-FM), and the licensee of full-time AM Station KLEX, Lexington, avers that gaps exist in the FM coverage that it provides to the area and that automobile reception is spotty. It contends that these problems are caused by the rolling and undulating terrain of Lafayette County and adjacent Ray County (pop. 17,599). KLEX asserts that these coverage problems would be eliminated if it could change to a Class C channel and that such an operation would enable Station KBK to better meet the anticipated future needs of these two counties, neither of which has any other full-time local aural service.

3. As set out in the notice, the Commission requires petitioners requesting Class C assignments for communities which ordinarily would receive Class A assignments to submit a coverage showing with respect to unserved and underserved areas within the 1 mV/m contour of the proposed assignment. (See Policy to Govern Requests for Additional FM Assignments, 8 F.C.C. 2d 79 (1967).) The KLEX showing indicates that a maximum Class A facility at Lexington would serve 26,419 persons in 661 square miles, while a Class C facility would serve 211,140 persons in 3,421 square miles within the respective 1 mV/m contours. Currently, KBK serves 22,529 people in 453 square miles within its 1 mV/m contour. The KLEX showing also indicates that the proposed KBK operation would provide a first FM service to 1,010 persons in a 19-square-mile area, a second FM service to 9,280 persons in a 271-square-mile area and a third FM service to 28,417 persons in a 1,076-square-mile area based upon reasonable or existing facilities (Roanoke Rapids, N.C., 9 F.C.C. 2d 672 (1967)).

4. The notice listed six communities that would be within preclusion areas caused by this proposal that would merit an assignment of their own and asked KLEX to indicate whether other chan-

nels were available for assignment to those communities. During the pendency of this proceeding an assignment of Channel 292A to Clarinda, Iowa, reduced the preclusion area leaving only three of the six cities, Butler and Macon, Missouri, and Osceola, Iowa, within this area. Butler was assigned Channel 288A and a license for this channel has been granted to Bates County Broadcasting Co. KLEX has demonstrated that Channel 261A could be assigned to Macon and that both Channels 292A and 296A could be assigned to Osceola.

5. The only opposition to assignment of a Class C channel to Lexington was filed by Charles Norman, licensee of Station WGNU-FM, Granite City, Illinois.² The Norman objection, filed on November 1, 1973, asserted that he was then working on an application to move his transmitter site to a higher location and increase his transmitter power. He averred that adoption of the KLEX proposal would preclude him from carrying out this modification because shortspacing with the new Lexington assignment would occur. However, to date no such application for modification of his present license has been received by the Commission.

6. KLEX's showing regarding new FM service to unserved and underserved areas and the removal of local reception difficulties provide a good basis for assignment of a Class C channel to Lexington. However, for reasons stated below, we are assigning Channel 297 rather than 293 to that community.

7. A counterproposal to the KLEX proposal was filed by S & M Investments, Inc. (S & M), licensee of daytime-only station KBIL, Liberty, Missouri. The counterproposal raises no objections to the assignment of a Class C channel to Lexington. However, it proposes that Class C Channel 297 be assigned to Lexington and that Channel 293 be assigned to Liberty. If it is so assigned, S & M avers that it will apply for licensing on that

²An opposition to the KLEX proposal was submitted by Ray County Radio Co. indicating that this proposal was in conflict with a proposal advanced by it in a separate rule making. However, Ray County Radio Co. requested and obtained a dismissal of its petition for rule making upon entering into a contract for the purchase of an existing station. Also, an opposition was filed by Daryl Fredine, licensee of Station KESM-FM, Eldorado Springs, Missouri. The opposition was, in the most part, directed to the S & M Investments, Inc., counterproposal and not to the KLEX proposal. In response to an Order to Show Cause, Daryl Fredine withdrew his opposition to the S & M counterproposal on the condition that he be reimbursed for the reasonable and necessary costs incurred by the change in his channel of operation resulting from the S & M counterproposal. S & M has agreed to reimburse Daryl Fredine for these costs and will be required to do so if it is granted a construction permit for Channel 293 (its counterproposal) at Liberty. If it is not, the successful applicant at Liberty will be required to reimburse Daryl Fredine for his costs. (See also paragraph 16, infra.)

channel.³ Liberty (pop. 13,679), an incorporated municipality and the seat of Clay County (pop. 123,322), is part of the Kansas City Urbanized Area (pop. 1,101,789). Approximately 11 percent of the Kansas City population (55,238) resides in Clay County. S & M describes Liberty and Clay County as being part of what is locally known as the "Northland" which is that portion of Clay and adjacent Platte County that at one time was fully outside of the City of Kansas City, lying to the north of the Missouri River where it makes its bend around Kansas City. Its description points out that until 1947 the city limits of Kansas City stopped at the Missouri River. Commencing then the city began annexations which included part of the present Northland area and extended the city limits of Kansas City to Liberty's western border.

8. S & M contends that Liberty and Clay County cannot be considered as mere bedroom facilities for Kansas City. Both had a high growth rate of 53.5 percent and 41 percent, respectively, between 1960 and 1970. In addition, local studies of the area submitted by S & M indicate that there is substantial local activity in Liberty and Clay County. Excelsior Springs, which has prominence throughout the nation because of mineral springs with presumably therapeutic ingredients, and the Elms Hotel, a resort hotel, are located in Clay County. S & M has submitted information indicating that the local governing bodies are studying and proposing significant plans for provision of additional services.

9. Assignment of Channel 293 to Liberty would foreclose future assignments on Channels 292A and 294 and assignment of Channel 297 to Lexington would foreclose future assignments on Channels 296A, 297 and 298. S & M shows that there are a number of Class A channels available for assignment to communities which have no FM assignments or full-time AM stations within these preclusion areas.

³In order to effectuate the S & M counterproposal it is necessary to make changes elsewhere in the FM Table of Assignments. S & M proposes substitution of Channel 221A for 288A at Butler, Missouri, and Channel 288A for 296A at Eldorado Springs, Missouri. Daryl Fredine, licensee of Station KESM-FM, operating on Channel 296A at Eldorado Springs has consented to this substitution. See note 2. A grant of a license to Bates County Broadcasting Corp. (Bates) for Channel 288A at Butler (BLH-6558) was conditioned upon acceptance by Bates of any modification requiring use of a channel other than Channel 288A as a result of whatever action the Commission may take in the instant proceeding. S & M objected to an outright assignment of Channel 288A to Butler and therefore filed a Petition for Reconsideration of that assignment and simultaneously filed a Request for Postponement [of further action on applications for the Butler assignment] or Imposition of Condition [on the Butler construction permit]. Because the condition has already been imposed on the construction permit and carried over to the license, all of the above mentioned filings are moot.

¹All population figures are from the 1970 U.S. Census.

10. There are no FM channels assigned anywhere in Clay County. S & M's daytime-only AM station is the only local aural service in the county. Platte County, which would be served by the proposed assignment, has no local radio service of any kind. S & M avers that a Liberty station, operating with 75 kilowatts power and an antenna height of 400 feet above average terrain would provide a first FM service to 2,659 persons in an area of 58.7 square miles and a second FM service to 340 persons in an area of 23 square miles. It avers that a local full-time Class C station is needed for emergency service to the area which it contends is made essential by the area's location near the middle of the tornado belt.

11. Although Clay County receives a 1 mV/m signal from many Kansas City FM stations, S & M argues that the Kansas City stations cannot adequately serve the Northland's local needs. It points out that there are 20 separate municipalities in Clay County, and more than 15 in neighboring Platte County, each of which have local government elections. It contends that the Kansas City stations do not have the time or space to give local candidates pre-election exposure nor do they have the time for break-down results of the local contests in these many municipalities. Aside from what it deems to be insufficient Northland coverage, S & M asserts that the annexation moves that brought much of the Northlands within Kansas City city limits have left a residue of divisiveness between Kansas City south-of-the-river and the Northlands enhancing what it considers to be a natural disparity of views, problems, and identity created by the Missouri River lying between the two regions. As an example, S & M cites a local referendum involving bonds and financing measures totaling 129 million dollars that it contends the south-of-the-river media view from a Kansas City south-of-the-river vantage point, irrespective of the views that Northland residents may have of the effects and import of the proposal on their area. S & M states that the only voice attentive to these local views is its daytime-only station and that, while its station attempts to give good coverage there would be significant advantage to having a full-time FM station in the county.

12. KLEX opposes the S & M counterproposal.⁴ It argues that Liberty and Clay Counties are adequately served by twelve full-time commercial aural services assigned to cities within the Kansas City

⁴ Some of the reasons for the KLEX opposition have become moot. In addition KLEX avers that the transmitter for a Liberty assignment would have to be located near the Excelsior Springs airport and that S & M has failed to show that a suitable site will be available for its proposed facilities. It is the Commission's view that § 73.208(a) (4) of the FCC Rules and Regulations does not require such a showing in this case at this stage in the proceeding. Such matters are appropriate for discussion at the application stage.

Urbanized Area and ten full-time aural facilities presently providing service to Liberty. Moreover, KLEX contends that a Channel 297 assignment at Lexington fails to meet the minimum separation requirements of the Commission's Rules and Regulations because Station KXTR at Kansas City, operating on Channel 243, is located less than 28 miles from Lexington. However, it stated that Station KXTR is located 30.2 miles west of the present KBK transmitter site and that Station KBUR, operating on Channel 297 in Burlington, Iowa, is located 182 miles northeast of the KBK transmitter site. The proposed Channel 297 assignment would require at least 30 miles separation from KXTR and 180 miles from KBUR (FCC Rules and Regulations § 73.207(a)). KLEX asserts that there is no assurance that the substantially taller tower required for the contemplated improved facilities can be accommodated at the existing KBK transmitter site, nor is there any assurance that any site is available within what it considers to be a limited permissible zone. KLEX has not shown that it cannot accommodate the new facilities at the present KBK transmitter site and the Commission does not believe that mere speculation should stand in the way of an assignment deemed to be in the public interest. In addition, there is substantially more area available southeast of the present Station KBK transmitter site that would meet the minimum spacing requirements.

13. As indicated above, assignment of Channel 293 to Liberty would provide a first and second FM service to 2,659 persons and 340 persons respectively; would bring a first local full-time aural service to Liberty; and would have no adverse preclusionary effect. In addition, if Channel 297 is assigned to Lexington and Channel 293 is not used at Liberty it cannot be otherwise used in the region.⁵ In view of the aforementioned facts regarding the proposed Liberty and Lexington assignments, the Commission finds it in the public interest to assign Channel 293 to Liberty and Channel 297 to Lexington. In response to an Order to Show Cause, KLEX has consented to modification of its license to specify operation on Channel 297 if the Commission finds it in the public interest to substitute that channel for Channel 292A at Lexington. A transmitter for the Liberty Channel 293 assignment must be located at least fifteen miles northeast of Liberty and a transmitter for the Lexington Channel 297 assignment must be located at least two miles east of Lexington.

§ 73.202 [Amended]

14. Accordingly, pursuant to the authority contained in sections 4(i), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, it is ordered, That effective July 28, 1975, the

⁵ Also, the S & M counterproposal would not foreclose relocation of the WGNU-FM, Granite City, Illinois, transmitter as would the KLEX proposal. See paragraph 5 *supra*.

FM Table of Assignments, § 73.202(b) of the Rules, is amended to read as follows for the cities listed below:

City:	Channel No.
Liberty, Mo.....	293
Lexington, Mo.....	297
Eldorado Springs, Mo.....	288A
Butler, Mo.....	221A

15. It is ordered, That pursuant to section 316(a) of the Communications Act of 1934, as amended, the outstanding license held by Daryl Fredine for Station KESM-FM, Eldorado Springs, Missouri, is modified, effective July 28, 1975, to specify operation on Channel 288A instead of Channel 296A. The licensee shall inform the Commission in writing no later than July 28, 1975, of its acceptance of this modification. Station KESM-FM may continue to operate on Channel 296A until 45 days after grant of an application for a construction permit for the use of Channel 293 at Liberty, Missouri, or until it is ready to operate on Channel 288A at an earlier date, or until the Commission sooner directs, subject to the following conditions:

(a) At least 30 days before commencing operation on Channel 288A, the licensee of Station KESM-FM shall submit to the Commission the technical information normally required of an applicant for Channel 288A;

(b) At least 10 days prior to commencing operation on Channel 288A the licensee of Station KESM-FM shall submit the measurement data required of an applicant for a broadcast station license;

(c) The licensee of Station KESM-FM shall not commence operation on Channel 288A without prior Commission authorization; and

(d) An application for renewal of license of Station KESM-FM shall specify operation on Channel 288A instead of Channel 296.

16. It is further ordered, That pursuant to section 316(a) of the Communications Act of 1934, as amended, the outstanding license held by KLEX, Inc., for Station KBK(FM), Lexington, Missouri, IS MODIFIED, effective July 28, 1975, to specify operation on Channel 297 instead of Channel 292A. The licensee shall inform the Commission in writing no later than July 28, 1975, of its acceptance of this modification. Station KBK(FM) shall continue to operate on Channel 292A until such time as Station KESM-FM, Eldorado Springs, Missouri, commences operation on Channel 288A. Thereafter it may continue to channel 292A for a period of not more than 45 days by which time it shall change its operation to Channel 297, unless the Commission otherwise directs, subject to the following conditions:

(a) At least 30 days before commencing operation on Channel 297, the licensee of Station KBK(FM) shall submit to the Commission the technical information normally requested of an applicant for Channel 297;⁶

⁶ With this submission the licensee shall also file the environmental information required by Section 1.1311 of the Rules.

(b) At least 10 days prior to commencing operation on Channel 297, the licensee of Station KBEK(FM) shall submit the measurement data required of an application for a broadcast station license;

(c) The licensee of Station KBEK(FM) shall not commence operation on Channel 297 without prior Commission authorization; and

(d) An application for renewal of license of Station KBEK(FM) shall specify operation on Channel 297 instead of Channel 292A. If action on an application for the Liberty assignment is not imminent (e.g., if a comparative hearing situation develops) and if the licensee of Station KBEK(FM) should wish to hasten the date on which it commences operation on Channel 297, it may inform the Commission in writing that it is willing to reimburse the licensee of Station KESM-FM, Eldorado Springs, Missouri, for the reasonable costs of changing the operation of Station KESM-FM from Channel 296A to Channel 288A, subject to the KBEK(FM) licensee's being reimbursed by the party that is the successful applicant for construction permit of the Liberty, Missouri, Channel 293 assignment, and the Commission will give consideration to the issuance of appropriate orders.

17. *It is further ordered*, That the outstanding license held by Bates County Broadcasting Co. for Station KMOE(FM), Butler, Missouri, IS MODIFIED to specify operation on Channel 221A instead of Channel 288A. The licensee shall inform the Commission in writing no later than July 28, 1975, of its acceptance of this modification. Station KMOE(FM) may continue to operate on Channel 288A until February 1, 1977, or until it is sooner ready to operate on Channel 221A, or until the Commission sooner directs, subject to the following conditions:

(a) At least 30 days before commencing operation on Channel 221A, the licensee of Station KMOE(FM) shall submit to the Commission the technical information normally requested of an applicant for Channel 221A.

(b) At least 10 days prior to commencing operation on Channel 221A, the licensee of Station KMOE(FM) shall submit the measurement data required of an applicant for a broadcast station license; and

(c) The licensee of Station KMOE(FM) shall not commence operation on Channel 221A without prior Commission authorization.

18. *It is further ordered*, That the Petition for Reconsideration (Docket No. 19823) and the Request for Postponement or Imposition of Condition (BPH-8817) submitted by S & M Investments, Inc., are dismissed as moot.

19. The Secretary is directed to send a copy of this Report and Order to KLEX, Inc., licensee of Station KBEK(FM), Lexington, Missouri; Daryl Fredine, licensee of Station KESM-FM, Eldorado Springs, Missouri; and Bates County Broadcasting Co., licensee of

Station KMOE(FM), Butler, Missouri.

20. *It is further ordered*, That this proceeding is terminated.

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

Adopted: June 10, 1975.

Released: June 19, 1975.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] VINCENT J. MULLINS,
Secretary.
[FR Doc. 75-16313 Filed 6-23-75; 8:45 am]

[Docket No. 20112; FCC 75-706]

PART 97—AMATEUR RADIO SERVICE

Automatic Control of Repeater Stations

1. On July 17, 1974, the Commission adopted a notice of proposed rulemaking in the above-entitled matter which was published in the FEDERAL REGISTER on July 31, 1974 (39 FR 27705). Proposals in this proceeding contemplated amendment of Part 97 of the Commission's rules to authorize the automatic control of repeater stations and auxiliary link stations used in repeated systems in the Amateur Radio Service, i.e., the operation of such stations whether or not a control operator is on duty at a control point. Comments as to these proposals were submitted by the parties listed below. Each of these comments has been carefully considered as indicated in the following discussion.

2. By way of background, in 1972, the Commission formalized specific rule provisions for the operation and technical development of amateur radio stations which can receive and automatically retransmit the signals of other amateur stations. (See the Report and Order in Docket No. 18803, 37 FCC 2d 225, 1972.) Prior to these rule changes, repeater stations had been authorized in the Amateur Radio Service under limited general rules that related primarily to any remotely controlled station. The new repeater provisions took cognizance of many of the special requirements for these stations and led to tremendous increase in the interest, use, and sophistication of repeater facilities for amateur radiocommunications. In many areas, this demand for repeater capability necessitated a 24-hour per day operational schedule. However, the number of persons available to serve as duty control operators for repeater systems on an around-the-clock basis is limited, and where these people could not be found, repeater stations had to shut down, sometimes for extended periods. To relieve this situation, amateur licensees are developing techniques for use of repeater stations that are automatically controlled and do not require a control operator to be on duty. The Commission has examined these recent advancements in technological capabilities and improvements in methods of remotely controlling amateur stations and we have found that these developments justify rule provisions to permit automatic control of re-

peater stations and auxiliary link stations used in repeater systems on a regular basis, provided that certain conditions are met. Essentially, the conditions proposed in the Notice of Proposed Rule Making would require: (a) control operators to employ devices and procedures that would reasonably assure compliance with the technical and operational standards for amateur radio stations; (b) all transmissions of an automatically controlled repeater station to be monitored in real-time, or be recorded and reviewed within a reasonable period by the station control operator for improper operation; and (c) procedures to be implemented for discontinuing operations in the event of malfunction or improprieties.

3. The comments substantially supported proposals to allow automatic control methods as being timely and in general conformance with today's practical requirements for amateur repeater operations. There was concern, however, with certain of the requirements related to the responsibility of the station licensee and the control operator for monitoring transmissions by licensees who utilize the repeater facility. Here, a number of parties argued that recording and reviewing transmissions over an automatically controlled repeater station when they were not monitored by a control operator would involve expense and time which were not warranted since "user" violations could be controlled by the long-standing self-policing mechanism which prevails in the amateur bands. It was recommended, therefore, that this requirement be modified by eliminating or relaxing the recording and review procedure we had proposed, and by relying, instead, upon other amateurs to monitor the repeater operation and report violations to the control operator. The delayed review procedure is not mandatory since other options are available. Accordingly, it is retained to permit use of this method for late hour emergency repeater access.¹

4. The Commission recognizes that it is often not feasible to follow-up effectively on transmissions that will have occurred hours earlier and that in these instances the amateur self-policing effort could be beneficial. In the Notice, we acknowledged that the success of an automatic repeater control program would depend to a great extent upon the Amateurs' demonstrated ability to monitor and effectively control their group. In light of these factors, it is felt that an exception is warranted to apply to the operation of "closed repeaters," i.e., repeaters used only by persons specifically authorized by the control operator with means provided to limit use of the repeaters. This will afford amateurs considerable flexibility in the operation of automatically controlled repeaters. A

¹ Inter-linked multiple repeater systems designed primarily for emergency communications will be considered for exception on a case-by-case basis.

control operator can monitor the repeater in real-time; or the transmissions can be recorded and review by the control operator; or a closed repeater can be employed without any monitoring requirement; or a combination of these.

5. We will delete the requirement that, as a condition for automatic control, the names of designated control operators, duty control operators and station licensee be filed with the Engineer-in-Charge of the radio district in which the station is located. We believe that the safeguards incorporated in our Rules and the desire by amateurs to be self-regulating are sufficient to insure compliance with our Rules. Should problems develop, we will, of course, reopen this matter and consider revision of § 97.38 of our rules to require posting additional information at the transmitter location.

6. Implementation of automatic control will require no special license applications, modifications or showings. In order to operate a repeater station or an auxiliary link station as part of a repeater system by automatic control, the station(s) must first be licensed in the conventional manner, for either local control or for remote control. Licensees may then use any or all of the various options permitted under the Rules.

7. A number of parties recommended additional limitations or requirements for automatic control of amateur repeater stations. For example, there were suggestions for special logging requirements and, also, for restrictions on the number of continuous hours that a repeater station could be operated under automatic control. However, the Commission does not envision any present purpose to be served by provisions of this nature.

Environmental considerations. 8. In accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321-4327, we are required to prepare an environmental impact statement when the adoption of a rule appears to carry with it significant environmental consequences. As regards existing amateur radio station facilities and operations, we find that the rule changes proposed in this proceeding will not have any significant impact on the environment. It is possible, however, that these rule amendments could result in requests to license additional stations. In this respect, applicants under Part 97 may be required to provide environmental information as specified in §§ 1.1305 and 1.1311 of the Commission's rules so that for the proposed facilities, the potential environmental consequences may be carefully examined on a case-by-case basis.

9. In consideration of the foregoing, the Commission finds that adoption of rules to permit the automatic control of amateur repeater stations under specified conditions and limitations is in the public interest, convenience, and necessity. The specific rule amendments are set forth below.

10. Accordingly, pursuant to authority contained in sections 4(i) and 303(r)

of the Communications Act of 1934, as amended, it is ordered That, effective July 28, 1975, Part 97 of the Commission's Rules is amended as shown below. It is further ordered, That this proceeding is terminated.

(Secs. 4, 303, 48 Stat., as amended, 1086, 1082 (47 U.S.C. 154, 303))

Adopted: June 11, 1975.

Released: June 19, 1975.

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

RESPONDERS TO NPRM, DOCKET 20112

1. Southern California Repeater Association
2. Vineland FM Association, Inc.
3. Charles F. Bino
4. Howard W. Kelly
5. Pioneer Amateur Radio Club and the Pioneer Repeater
6. T. M. Kulas
7. Lyle B. Juroff
8. Arthur B. Reis
9. Pittsburg Repeater Organization, Inc.
10. MO-KAN Amateur Repeater Club, Inc.
11. James E. Arconati
12. Missouri Repeater Council
13. Joseph M. Hood
14. Ronald K. Long
15. Colorado Council of Amateur Radio Clubs, Inc.
16. Peter E. Olson
17. Richard D. Wilson
18. Upper New York Repeater Council
19. Douglas J. White
20. Robert A. Buass
21. West Park
22. John C. Dyckman
23. Richard L. Neish
24. The Florida Repeater Council
25. Allan B. Crites
26. Texas VHP-FM Society
27. Iowa Repeater Council
28. The St. Charles ABC
29. Olin K. McDaniel, Jr.—Pee Dee FM Repeater Association
30. Ralph E. Andrea
31. Monument Peak Radio Club
32. Mid America FM, Incorporated
33. Fallsades Amateur Radio Club, Inc. of Culver City
34. The Carolinas-Virginia Repeater Association, Inc.
35. Society Radio Operators
36. Nevada UHF Experimental Society, Inc.
37. Gordon Schlesinger
38. Illinois Repeater Council
39. James P. Taylor
40. Paul R. Emeott
41. Frank M. Boyd & Charles E. DePoe
42. The Sulfur Mountain Repeater Association
43. Northern Virginia FM Association, Inc.
44. Carson Haines, Jr.
45. Herbert Drake, Jr.
46. Roy E. Lilley
47. Jon J. O'Brien & The Mt. Vaca Radio Club, Inc.
48. Alan Bingenheimer
49. Chandler S. Eaton, Jr.
50. Grizzly Peak VHP Amateur Radio Club
51. Long Island Mobile Amateur Radio Club, Inc.
52. Northern Illinois Amateur Repeater Club, Inc.
53. Robert H. Strid
54. Huntington VHP FM Association
55. Denver Radio League
56. Public Service Communications Association
57. St. Louis Repeater Inc.

58. Clyde E. Glass
59. Pacific Communications Society
60. Kenton E. Marshall and Michael T. Patton
61. A. E. Ogburn
62. Rochester Amateur Radio Association
63. The American Radio Relay League, Inc.
64. Ronald P. Pitts
65. Edgewood Amateur Radio Society
66. Central Missouri Amateur Repeater Assn.
67. Belton Emergency Communications and Civil Defense Repeater
68. Harry F. Matthews
69. W. N. McKenzie, Jr.
70. Tulsa Repeater Organization
71. Southern Marine Radio Council

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 97.3(n) is revised to read as follows:

§ 97.3 Definitions.

(n) *Control.* Techniques for accomplishing the prerequisite responsibilities for the immediate operation of an amateur radio station. Must be one or more of the following:

(1) *Local control.* Manual control, with the control operator monitoring the operation on duty at the control point located at a station transmitter with the associated operating adjustments directly accessible. (Direct mechanical control, or direct wire control of a transmitter from a control point located on board any aircraft, vessel, or on the same premises on which the transmitter is located, is also considered local control.)

(2) *Remote control.* Manual control, with the control operator monitoring the operation on duty at a control point located elsewhere than at the station transmitter, such that the associated operating adjustments are accessible through a control link.

(3) *Automatic control.* The use of devices and procedures for control so that a control operator does not have to be present at the control point at all times. (Only rules for automatic control of repeater systems have been adopted. Automatic control of all other types of amateur radio stations must be approved by the Commission on a case-by-case basis.)

2. § 97.79(b) is revised to read as follows:

§ 97.79 Control operator requirements.

(b) Every amateur radio station, when in operation, shall have a control operator at an authorized control point. The control operator shall be on duty, except where the station is operated under automatic control. The control operator may be the station licensee, if a licensed amateur radio operator, or may be another amateur radio operator with the required class of license and designated by the station licensee. The control operator shall also be responsible, together with the station licensee, for the proper operation of the station.

3. § 97.88(e) is revised to read as follows:

§ 97.88 Operation of a remotely controlled station.

(c) Except for operation under automatic control, as provided by §§ 97.110 (c) and 97.111(g), a control operator designated by the licensee must be present at an authorized control point while the station is being remotely controlled. Immediately prior to, and during the periods the remotely controlled station is in operation, the frequencies used for emission by the remotely controlled transmitter must be continuously monitored by the control operator. The control operator must terminate transmission upon any deviation from the rules.

4. In § 97.110, paragraph (a) is revised, and new paragraph (c) is added to read as follows:

§ 97.110 Operation of an auxiliary link station.

(a) An auxiliary link station may use amateur frequency bands above 220 MHz, excepting 435 to 438 MHz, for emissions. Except as provided in § 97.110(c), frequencies below 225 MHz used by an auxiliary link station shall be monitored by the control operator immediately prior to, and during, periods of operation.

(c) An auxiliary link station licensed either for operation by local control or remote control may also be operated by automatic control when it is licensed as a part of a repeater station system which is being operated under automatic control. Both the auxiliary link station and the repeater station must appear on the system network diagram on file with the Commission.

5. In § 97.111, paragraphs (a) and (b) are revised, and new paragraph (g) is added to read as follows:

§ 97.111 Operation of a repeater station.

(a) Emissions from a repeater station shall be discontinued within 5 seconds after cessation of radiocommunications by the user station. Provisions to automatically limit the access to a repeater station may be incorporated, but are not mandatory.

(b) Except for automatic control operations as provided in paragraph (g) of this section, the transmitting and receiving frequencies utilized by the repeater station shall be continuously monitored by the control operator immediately prior to, and during, periods of operation.

(g) A repeater station licensed either for local control or for remote control may also be operated under automatic control where:

(1) Devices and procedures have been implemented to assure that compliance with the rules can be accomplished without the duty control operator present at the control point at all times the station is in operation.

(2) All radiocommunications transmitted by the station are monitored by the duty control operator in real-time, or

are recorded so that they can be reproduced and reviewed within 72 hours. The recordings shall be preserved for a period of at least 30 days, in the possession of the station licensee, and must be made available to the Commission upon request. However, real-time monitoring, or recording and review of repeater operation is not required when the facility is operated as a closed repeater, i.e., the repeater station employs means to restrict usage to persons specifically authorized by the control operator or station licensee.

(3) Upon notification by the Commission of improper operation of a station under automatic control, said operation must be immediately discontinued until all deficiencies have been corrected.

[FR Doc. 75-16312 Filed 6-23-75; 8:45 am]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

PART 100—REACTOR SITE CRITERIA

Population Center Distances

Since their promulgation by the Atomic Energy Commission (AEC) in April, 1962, the site criteria set forth in 10 CFR Part 100 have served as the framework for evaluations of proposed sites for stationary power and test reactors from the standpoint of protection of the health and safety of the public. Part 100 includes three quantitative site criteria centered around the concepts of: an "exclusion area" surrounding the reactor in which, subject to certain exceptions, the licensee has the authority to determine all activities including exclusion or removal of personnel and property, 10 CFR 100.3(a); a "low population zone" immediately surrounding the "exclusion area" which contains residents the total number and density of whom are such that there is a reasonable probability that appropriate protection measures could be taken in their behalf in the event of a serious accident, 10 CFR 100.3(b); and a "population center distance" which is defined as "the distance from the reactor to the nearest boundary of a densely populated center containing more than about 25,000 residents" 10 CFR 100.3(c). Under Part 100, site suitability is strongly dependent upon whether certain calculated doses from postulated hypothetical accidents at the boundaries of the "exclusion area" and "low population zone" are within specified dose guideline values, 10 CFR 100.11(a) (1) and (2), and whether the "population center distance" is at least one and one-third times the distance from the reactor to the outer boundary of the low population zone, 10 CFR 100.11(a) (3).

As the Statement of Considerations which accompanied publication of the effective Part 100 in the FEDERAL REGISTER indicated, the effective Part was intended to reflect current AEC siting practices. The Statement of Considerations indicated a concern on the part of the AEC with cumulative exposure dose to large numbers of people as a consequence

of nuclear reactor accidents. The population center distance criterion in 10 CFR 100.11(a) (3), in particular, was added to the effective Part in order to provide additional protection to people in large centers (27 FR 3509, April 12, 1962).

In light of this underlying concern for cumulative exposure dose to large numbers of people in population centers, the AEC has applied the population center distance criterion with a view to consideration of population distribution. Indeed 10 CFR 100.11(a) (3) specifically provides that "in applying this [population center distance] guide, due consideration should be given to the population distribution within the population center." The "boundary" of a densely populated center has been determined on a case-by-case basis. Generally, where it has not appeared that the population center distance criterion would be crucial to site suitability because the site was located far from any densely populated area, the "boundary" of the population center was, for convenience, taken as the corporate or political boundary. However, it is clear that a wide variety of political, economic, and social factors are applied by State and local jurisdictions in selecting corporate or political boundaries. Thus, there is no necessary correlation between corporate or political boundaries and population distribution. Indeed, even if a particular corporate or political boundary had been chosen on the basis of population distribution, there would be no assurance that the boundary would continue to reflect actual population distribution. Consequently, in cases where the population center distance criterion might weigh heavily in the overall site suitability evaluation, a more refined definition of the population center boundary has been utilized. In defining the boundary, consideration has not been confined to the location of the political or corporate boundary of the population center, but distribution of people within and even beyond the political or corporate boundary has been given even greater significance.

A general examination of power reactor siting regulations and policies is underway as a separate matter. In the interim, the Commission is firmly of the opinion that continued implementation of its population center distance criterion is required. However, the recent decision of the United States Court of Appeals for the Seventh Circuit in *Izaak Walton League v. AEC*, — F. 2d —, No. 74-1751 (April 1, 1975), expresses the view that such implementation is inconsistent with the present language of the regulation. In that decision the Court held that while a population center boundary under the meaning of Part 100 may extend beyond the political or corporate limits because of population distribution considerations, "there is neither reason nor sound safety policy to cut down the boundaries of that unit and make some hopeless attempt to construct imaginary boundaries." Slip Opinion at 13-14. The AEC held in that licensing proceeding, and the NRC maintained before the Court on review, that

the boundary of the population center within the meaning of Part 100 must be determined in light of considerations of population distribution, rather than determined on the basis of acceptance of the political or corporate boundary.

In light of the above, the Commission wishes to amend Part 100 to restore and make clear the intended meaning of the rule. The amendment which follows provides that in applying the population center distance criterion in 10 CFR 100.11(a)(3), the "boundary" of the population center, as that term appears in 10 CFR 100.3(c), shall be determined upon consideration of population distribution (rather than determined solely upon consideration of location of the political or corporate boundaries). The proposed amendment is interpretative in nature and reflects the current and consistent siting practice of the Commission.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and section 553 of

Title 5 of the United States Code, notice is hereby given of adoption of the following amendment to 10 CFR Part 100.

Because the amendment is interpretative in nature, and merely reflects the current siting practice of the Commission, and because of the immediate adverse effect of the Bailly reading, the amendment is made immediately effective. However, the Commission is providing an opportunity for public comment upon the amendment. All interested persons who desire to submit written comments should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Attention: Docketing and Service Section, Washington, D.C. 20555, by July 24, 1975. Copies of comments received will be available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

1. Section 100.11(a)(3) of 10 CFR Part 100 is revised to read as follows:

§ 100.11 Determination of exclusion area, low population zone, and population center distance.

(a) * * *

(3) A population center distance of at least one and one-third times the distance from the reactor to the outer boundary of the low population zone. In applying this guide, the boundary of the population center shall be determined upon consideration of population distribution. Political boundaries are not controlling in the application of this guide. Where very large cities are involved, a greater distance may be necessary because of total integrated population dose consideration.

(Sec. 161, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201);

Sec. 201, Pub. L. 93-438, 88 Stat. 1242 (42 U.S.C. 5841)).

Dated at Washington, D.C., this 20th day of June, 1975.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 75-16589 Filed 6-23-75; 9:09 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rulemaking prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

National Park Service

[36 CFR Part 7]

MOUNT RAINIER NATIONAL PARK, WASHINGTON

Backcountry Camping Regulations

The National Park Service proposes to amend the Code of Federal Regulations to regulate backcountry camping at Mount Rainier National Park, State of Washington.

A National Park Service study of backcountry use at Mount Rainier National Park has determined that unrestricted backcountry campers tend to camp in the more accessible and more scenic portions of the park, especially in the high meadows. Since these scenic meadows are the most fragile ecological units of the park, a great deal of damage has been done. Trampling and unauthorized fires have caused a severe loss of meadow vegetation. Crowding has not only put a strain on the resources, but virtually destroyed the possibility of a quality wilderness experience. The above findings are included in the "Backcountry Use and Operations Plan for Mount Rainier National Park" dated January 15, 1973.

The purpose of the proposed backcountry camping regulations is to protect and preserve the lands and resources of Mount Rainier National Park from damage and potential damage by effectively managing and controlling the use of the backcountry for camping. A determination has been made pursuant to NEPA and pertinent regulations based on the study of January 15, 1973, and related files, that the proposed regulations will have no significant impact but will be beneficial on the quality of the human environment and, therefore, no environmental impact statement is required. A copy of this determination is on file and may be examined in the Superintendent's office for Mount Rainier National Park.

It is the policy of the Department of the Interior, when ever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed addition to: Superintendent, Mount Rainier National Park, Longmire, Washington 98397, on or before July 24, 1975.

This amendment is proposed under the authority contained in section 3 of the Act of August 25, 1916, 36 Stat. 535, as amended (16 U.S.C. 3); section 2 of the Act of March 2, 1899, 30 Stat. 993, as

amended (16 U.S.C. 92); 245 DM 1 (34 FR 138879, as amended); National Park Service Order No. 77 (38 FR 7378, as amended); and Pacific Northwest Region Order No. 3 (37 FR 6325, as amended).

Specifically, in consideration of the foregoing, it is proposed to amend Part 7 of 36 CFR Chapter 1, by adding paragraph (d) to § 7.5 *Mount Rainier National Park*, as follows:

(d) Backcountry Camping.

(1) *Definitions.* "Backcountry camping" at Mount Rainier National Park is defined as any use of portable shelter or sleeping equipment in the backcountry. "Backcountry" is defined as those areas of the park which have been designated as "wilderness area" under the provisions of the Wilderness Act (Sec. 4, Pub. L. 88-577, 78 Stat. 890, 16 U.S.C. 1133) and all areas of the park which are more than 250 yards from a paved road and more than one-half mile from any park facility other than trails, unpaved roads, trail shelters, backcountry toilets, campsite facilities, Camp Muir or Camp Shurman.

(2) *Backcountry camping permits required.* No person or group of persons traveling together may camp in the backcountry without a valid backcountry camping permit. Permits may be issued to each permittee or to the leader of the group for a group of persons. The permit must be attached to the pack or camping equipment of each permittee in a clearly visible location. No person may camp in any location other than that designated in the permit for a given date.

(3) *Campsite limitations.* Within the backcountry, the Superintendent may designate sites at which camping is permitted and define camping zones within which limited camping is permitted at other than designated sites. The location of such backcountry campsites and camping zones shall be designated on maps made available to the public at the Superintendent's office, visitor centers, and ranger stations. The Superintendent may establish limits for the number of persons, groups and horses which may enter the backcountry, or any portion of the backcountry when deemed necessary to protect the park resources from potential damage or to prevent disruption or degradation of other park uses, and operate a permit reservation system to meet these objectives.

(4) *Group size limitations.* Groups exceeding five persons must camp at a group site, but groups may not exceed twelve persons. The Superintendent may, however,

(i) Waive group size limitations on routes in the climbing zone when he determines that it will not result in environmental degradation; and

(ii) Establish special zones and group size limitations during the winter season to balance the impact of cross-country skiers, snowshoers, and snowmobilers on the resource.

Dated: April 22, 1975.

DANIEL J. TOBIN, Jr.,
Superintendent,
Mount Rainier National Park.

[FR Doc. 75-16349 Filed 6-23-75; 8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 29]

TOBACCO; NONQUOTA MARYLAND BROADLEAF, U.S. TYPE 32

Identification and Certification

Notice is hereby given that the United States Department of Agriculture has under consideration the amendment of regulations governing the identification and certification of nonquota Maryland Broadleaf Tobacco, U.S. Type 32, produced and marketed in quota areas, pursuant to the authority contained in the Tobacco Inspection Act (49 Stat. 731; 7 U.S.C. 511 et seq.).

Statement of consideration. Subpart F—Policy Statement and Regulations Governing the Identification and Certification of Nonquota Maryland Broadleaf Tobacco, U.S. Type 32, Produced and Marketed in a Quota Area was issued in the Federal Register for October 9, 1973 (38 FR 27817). Past certifications of nonquota Maryland tobacco produced in quota areas had shown the need for establishing procedures to follow in certifying such tobacco as to type and for use in distinguishing Type 32 tobacco from quota tobacco. The regulations issued in Subpart F established procedures to accomplish proper type classification and certification through the use of the applicable U.S. official standards after examination of a crop-lot arrangement of the tobacco. They applied to mandatory and permissive inspection as authorized or required under sections 5 and 6 of the Tobacco Inspection Act. The procedures established in those regulations provided that determinations with respect to certification on nonquota Type 32 tobacco shall be based on the Official Standard Grades for Maryland Broadleaf Tobacco, U.S. Type 32.

Pub. L. 93-411 was passed by Congress and enacted into law on September 3,