It would turn the intended purpose of section 15 on its head if agreements originally approved with a specific expiration date could be extended indefinitely merely by filing an extension application and electing to participate in an administrative hearing. *See Canadian-American Working Arrangement*, 16 S.R.R. 733 (1976), review petition dismissed *sub nom.*, 15 S.R.R. 76 (D.D.C. 1976).

The Far East Conference (FEC) opposes the rule changes and believes that the Commission's policy of granting approvals for limited time periods is a major factor contributing to delay in section 15 procedures. It also believes that an extra 60 days could result in certain trade data submitted in support of a filing being at least six months old at the time of its review by the Commission.

It suggests that those who fail to supply adequate justification with sufficient promptness should suffer the consequences of their delinquency. In conclusion, the FEC opines that environmental considerations should rarely, if ever, be involved in agreement approvals.

Delta Steamship Lines, Inc. joins FEC in its general opposition to the rules changes citing the difficulty and hardship in preparing justification four months prior to the effective date of the action to be taken. Delta is concerned primarily with the hardship placed on pooling agreement members and suggests a compromise expansion of time to 90 days with waivers for minor modifications and for major modifications for good cause shown. Relative to the filing of modifications to existing pooling agreements, Delta submits that:

"Often the need arises for minor modifications to a pooling agreement. For instance, a party may join or withdraw from a trade, without affecting the overall structure of the agreement. In the event that a party wishes to join a pool, that party in the absence of protest should not have to wait four months to participate in the trade. On the other hand the need for a prompt and substantial modification can arise unexpectedly. For instance, the parties may be notified that an approved agreement does not comport with an inter-governmental understanding. In such circumstances the parties must act quickly to avoid disruption of international trade. A four month delay can exacerbate international tension."

There seems to be some confusion here. The rule changes do not mean that a modification *must* be filed with the Commission 120 days prior to the date it is intended that action will begin, else it cannot be processed timely. The Commission's affirmation *infra* and the previous substitution of the phrase "should be filed" as contained in § 521.2(a) and (b) in lieu of "must be filed" should serve to alleviate Delta's concern.

While the Commission is aware of the potential difficulty faced by certain commentators in meeting the 120 day advance filing requirements, it must also consider the mandated and administrative constraints that the processing of agreement matters places on its staff. The Commission has, therefore, determined it appropriate to adopt the rule as proposed and enlarge the existing 60 days advance notice filing period set forth in General Order 17, to 120 days.

Therefore, it is ordered, that pursuant to 5 U.S.C. 533 and sections 15 and 43 of the Shipping Act, 1916 (46 U.S.C. 814 and 841a), 46 CFR Part 521 is amended as follows:

§§ 521.2, 521.3 [Amended]

Remove the words "sixty (60) days" from §§ 521.2(a), (b) and 521.3 of 46 CFR Part 521 and substitute the words "one hundred twenty (120) days" therefor.

By the Commission.[3]

Joseph C. Polking,

Acting Secretary.

[FR Doc. 81-10200 Filed 4-2-81; 8:45 am]

BILLING CODE 6730-01-M

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46 FR CFR Part 549

[Docket 81-9; General Order 29; Amendment 4]

Military Rates; Temporary Suspension of Requirements

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This Rule suspends regulations governing rates quoted for the transportation of U.S. Department of Defense cargoes pursuant to Military Sealift Command requests for proposals RFP-1600, First Cycle commencing on October 1, 1981, and RFP-1600, Second Cycle commencing on April 1, 1982. This action is taken in light of the determination that military rates are no longer so low as to be detrimental to the commerce of the United States, and with a view toward lessening the regulatory burden on U.S. flag operators.

EFFECTIVE DATE: This Rule shall be in effect during the period October 1, 1981 through September 30, 1982.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Acting Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Federal Maritime Commission is suspending its regulations governing the level of military rates established in Part 549 of Title 46 of the Code of Federal Regulations, Federal Maritime Commission General Order 29.

The Commission's General Order 29 (46 CFR 549) governing the level of military rates was published in the **Federal Register** on December 2, 1972 (37 FR 25720). The Commission's proposed temporary suspension of General Order 29, and the reasons therefor, were published in the **Federal Register** on February 4, 1981 (46 FR 10767). Comments on the proposed rules were due on March 6, 1981. The only comments received were submitted by the Commander, Military Sealift Command (MSC) on behalf of the Department of Defense. MSC stated that it strongly supported the proposed temporary suspension and, furthermore, urged that the suspension be made permanent.

Therefore, pursuant to sections 18(b)(5) and 43 of the Shipping Act, 1916 (46 U.S.C. 817 and 841(a)), the Commission amends Part 549 of Title 46 CFR by the addition of a new section as follows:

§ 549.9 Temporary Suspension.

The provisions of this Part are suspended during the period October 1, 1981 through September 30, 1982.

By the Commission.

Joseph C. Polking,

Acting Secretary.

[FR Doc. 81-10199 Filed 4-2-81; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[PR Docket No. 80-9; RM-2314; RM-2357; RM-3094]

Low Power Radio Transmitters by Police Radio Service Licensees on Public Safety Radio Service Frequencies Above 30 MHz, Authorization of Use; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects editorial errors which were made in Appendix C of the Report and Order regarding the use of low power radio transmitters, PR Docket 80-9. The erroneous document was published in

[3] Commissioner Teige not participating.

the Federal Register on February 12, 1981 (46 FR 11974).

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

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Office of Science and Technology, Washington, D.C. 20554, (202) 653-8164—Room 7310.

SUPPLEMENTARY INFORMATION:

In the matter of an amendment of Parts 2 and 90 of the Commission's Rules to authorize the use of low power radio transmitters by Police Radio Service licensees on Public Safety Radio Service frequencies above 30 MHz; PR DOCKET NO. 80-9, RM-2314, 2357, 3094; *erratum;* Released: March 26, 1981.

Appendix C to the Commission's Report and Order in Docket 80-9, FCC 81-1 (46 FR 11974) released January 30, 1981, is corrected as follows:

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

1. On 46 FR 11977-11982, § 2.106 is corrected by removing the footnote designator "NG * * *" wherever it occurs and inserting in its place the designator "NG124" (except as provided in paragraph 2 below).

2. Section 2.106 is further corrected by removing altogether the footnote designator "NG * * *" from the bands 35-36 MHz (column 6), 157.1875-162.0125 MHz (column 5), and 173.2-173.4 MHz (column 8) (Pages 11978 and 11981 respectively of the **Federal Register**).

3. Section 2.106 is further corrected by adding "NG124" in column 6 to the band 157.1875-162.0125 (page 11981 of the **Federal Register**).

PART 90—PRIVATE LAND MOBILE RADIO SERVICE

4. Section 90.19(f)(5)(ii) is corrected by changing the frequency band 47.00-47.71 MHz to read 47.00-47.41 MHz (Page 11976 of the **Federal Register**).

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

Federal Communications Commission,

William J. Tricarico,

Secretary.

[FR Doc. 81-10203 Filed 4-2-81; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-240; RM 3432]

Radio Broadcast Services; FM Broadcast Station in Grover City, Calif.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein amends the Commission's rules, the FM Table of Assignments, by assigning Channel 296A to Grover City, California, as that community's first FM assignment. This action is taken in response to a petition.

EFFECTIVE DATE: May 15, 1981.

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

FOR FURTHER INFORMATION CONTACT: Kathy A. Grant, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations, (Grover City, California).

Report and Order

Proceeding Terminated

Adopted: March 16, 1981.

Released: March 24, 1981.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a *Notice of Proposed Rule Making*, 45 FR 37868, published June 5, 1980, which invited comments on alternative proposals to assign either Class B Channel 289 or Channel 232A to Grover City, California. The proceeding was instituted on the basis of a petition filed by Four Dimension Radio Company ("petitioner"). Petitioner has filed comments stating its intent to apply for either channel, if assigned. Comments were also filed by KPGA, Inc. ("KPGA"), licensee of radio Station KPFA(FM), Pismo Beach, California, to which petitioner replied.[1]

2. Grover City (pop. 5,939),[2] in San Luis Obispo County (pop. 105,690), is located approximately 240 kilometers (150 miles) northwest of Los Angeles, California, and approximately 21 kilometers (13 miles) south of San Luis Obispo. Grover City presently has no local aural broadcast service.

3. In comments, KPGA takes no position on the need for a Class B channel, but points out that the assignment of Channel 232A would conflict with its pending proposal to substitute Channel 234 for Channel 237A in Arroyo Grande, California (RM-3743). The distance between the two communities is approximately 4 kilometers (2.5 miles), whereas 64 kilometers (40 miles) is required. KPGA suggests that Channel 296A be assigned instead if it is determined that assignment of a Class A channel to Grover City is preferable to a Class B channel. A staff study has confirmed that Channel 296A could be assigned to Grover City. Petitioner opposes KPGA's suggestion, but only if consideration of the alternative would extend the processing time involved in assigning a channel to Grover City. To avoid conflict with the pending proposal in RM-3743, and since no processing delay will result, Channel 296A has been substituted for Channel 232A for consideration herein.

4. In the *Notice* we stated that nine communiites with populations greater than 1,000 would be precluded on one or more of Channels 288, 289, 291 and 292A if Channel 289 were assigned to Grover City. While petitioner indicated that Class B Channel 293 is available to the two communities with no AM or FM assignments (Guadalupe and Cambria), it was requested in the *Notice* to state whether a Class A channel is available for the communities. Thus petitioner has failed to provide this information.

5. In the *Notice* we explained that wide area Class B channels are not usually assigned to communities the size of Grover City (see § 73.206(b)(2) of the Commission's Rules), but we nevertheless proposed the assignment of Channel 289 to give the petitioner the opportunity to demonstrate the need for a high-powered facility. Petitioner, in its comments, emphasized that the population of Grover City is now estimated to be 8,350, a 29 percent increase over the 1970 Census figure. At this rate of growth, petitioner claims, Grover City will have a population of 10,771 in ten years. Petitioner also argues that Grover City should not be considered alone, but as part of a homogeneous area called "Five Cities."

[1] Numerous letters in support of a Class B assignment were received from citizens residing in the Grover City area. Virtually all the letters, however, focused specifically on the desriability of a wide-area station bradcasting Christian programming (a format petitioner has apparently indicated he will follow if granted a license) rather than the need for the Class B channel itself.

[2] Population figures are taken from the 1970 U.S. Census.

comprised of Grover City, Arroyo Grande, Pismo Beach, Shell Beach, and Oceano. According to petitioner the five communities have a combined population of 27,776 and could be considered as one community, since they have much in common. For these reasons petitioner argues that Grover City should be assigned a Class B channel.

6. Due to the number of AM and FM assignments in close proximity to Grover City, assignment of a Class B facility to that community will not provide any first or second FM or aural service. While Grover City's rapid growth certainly indicates that it is deserving of a first FM assignment, we do not believe that petitioner's projection of 10,771 population in ten years is sufficient basis on which to assign a Class B facility to a community the size of Grover City. See *Cabool, Missouri*, 52 FCC 2d 246 (1975); *Solvang, California*, 43 FR 49002, published October 20, 1978. There has been no showing that the "Five Cities" area is lacking in service, and due to its proximity to San Luis Obispo, a Class B channel may tend to seek advertising from and direct its programming to the larger community of San Luis Obispo.

7. In view of the foregoing, the Commission finds it to be in the public interest to assign Channel 296A to Grover City.

8. Accordingly, it is ordered, that effective May 15, 1981, the FM Table of Assignments (§ 73.202(b) of the Commission's Rules) is amended with regard to the following community:

City	Channel No.
Grover City, Calif	296A

9. The action taken herein is pursuant to authority contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

10. It is further ordered, that this proceeding is terminated.

11. For further information concerning this proceeding, contact Kathy A. Grant, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-10066 Filed 4-3-81; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Corrected Seventeenth Revised Service Order No. 1473]

Various Railroads Authorized To Use Tracks and/or Facilities of the Chicago, Rock Island and Pacific Railroad Co., Debtor, (William M. Gibbons, Trustee)

AGENY: Interstate Commerce Commission.

ACTION: Corrected Seventeenth Revised Service Order No. 1473.

SUMMARY: Pursuant to Section 122 of the Rock Island Transition and Employee Assistance Act, Public Law 96-254, this order authorizes various railroads to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), and to use such tracks and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation. This order is corrected to provide Chicago, Milwaukee, St. Paul and Pacific Railroad Company with authority to serve Davenport, IA, which was inadvertently left with the Davenport, Rock Island and North Western Railway Company upon last revision of this order.

EFFECTIVE DATE: 11:59 p.m., March 31, 1981, and continuing in effect until 11:59 p.m., June 30, 1981, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275-7840.

SUPPLEMENTARY INFORMATION:

Decided: March 31, 1981.

Pursuant to Section 122 of the Rock Island Transition and Employee Assistance Act, Public Law 96-254 (RITEA), the Commission is authorizing various railroads to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor, (William M. Gibbons, Trustee), (RI) and to use such tracks and facilities as are necessary for that operation.

In view of the urgent need for implementation of long range solutions for continued rail service over RI lines, and in consideration of a recent complaint by the Trustee regarding the absence of compensation for the use of his property by certain rail carriers, the Railroad Service Board (RSB) hereby admonishes any carriers which haven't negotiated such compensation to do so in the interest of continued operations. Compensation to the Trustee is an integral part of the interim authority and an obligation of all interim operators as specified by paragraph (c) of the order.

The Trustee will be requested to furnish the RSB with a status report, prior to expiration of this order, which will be given due consideration with respect to any extension of this order.

Appendix A, to the previous order, is revised by adding at Item 8., D., the authority for Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW) to operate at Davenport, Iowa, and from Davenport to Iowa City, Iowa, previously operated by the Davenport, Rock Island and North Western Railway Company (DIR). Appendix A is revised further by deleting the authority for Burlington Northern Inc. (BN), Item 5, which will be placed under separate order, and for the DRI, Item 9, F., at the carriers request.

Finally, Service Order No. 1473 is extended, in this revision, until June 30, 1981.

All items are renumbered accordingly.

Appendix B of Thirteenth Revised Service Order No. 1473 is unchanged, and becomes Appendix B of this order.

It is the opinion of the Commission that an emergency exists requiring that the railroads listed in the attached appendices be authorized to conduct operations using RI tracks and/or facilities; that notice and public procedure are impracticable and contrary to the public interest; and good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1473 Service Order No. 1473.

(a) *Various Railroads Authorized To Use Tracks and/or Facilities of the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee).* Various railroads are authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company (RI), as listed in Appendix A to this order, in order to provide interim service over the RI; and as listed in Appendix B to this order, to provide for continuation of joint or common use facility agreements essential to the operations of these carriers as previously authorized in Service Order No. 1435.

(b) The Trustee shall permit the affected carriers to enter upon the property of the RI to conduct service as authorized in paragraph (a).

(c) The Trustee will be compensated on terms established between the Trustee and the affected carrier(s); or

upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by Section 122(a) Public Law 96-254.

(1) The authority contained in Item 5(E) of Appendix A of this order, previously operated by the Union Pacific Railroad Company (UP) between Colby and Caruso, Kansas (milepost 387.8 to 429.3), is conditioned upon the assumption by Burlington Northern, Inc. (BN) of the negotiated agreement between UP and the Rock Island Trustee with regard to the compensation to be paid the Trustee for that line segment until a new agreement is reached between the Trustee and the BN.

(d) Interim operators, authorized in Appendix A to this order, shall, within fifteen (15) days of its effective date, notify the Railroad Service Board of the date on which interim operations were commenced or the expected commencement date of those operations.

(e) Interim operators, authorized in Appendix A to this order, shall, within thirty days of commencing operations under authority of this order, notify the RI Trustee of those facilities they believe are necessary or reasonably related to the authorized operations.

(f) During the period of the operations over the RI lines authorized in paragraph (a), operators shall be responsible for preserving the value of the lines, associated with each operation, to the RI estate, and for performing necessary maintenance to avoid undue deterioration of lines and associated facilities.

(1) In those instances where more than one railroad is involved in the joint use of RI tracks and/or facilities described in Appendix B, one of the affected carriers will perform the maintenance and have supervision over the operations in behalf of all the carriers, as may be agreed to among themselves, or in the absence of such agreement, as may be decided by the Commission.

(g) Any operational or other difficulty associated with the authorized operations shall be resolved through agreement between the affected parties or, failing agreement, by the Commission's Railroad Service Board.

(h) Any rehabilitation, operational, or other costs related to the authorized operations shall be the sole responsibility of the interim operator incurring the costs, and shall not in any way be deemed a liability of the United States Government.

(i) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(j) *Rate applicable.* Inasmuch as the operations described in Appendix A by interim operators over tracks previously operated by the RI are deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via RI, until tariffs naming rates and routes specifically applicable become effective.

(1) The operator under this temporary authority will not be required to protect transit rate obligations incurred by the RI or the directed carrier, Kansas City Terminal Railway Company, on transit balances currently held in storage.

(k) In transporting traffic over these lines, all interim operators described in Appendix A shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(l) To the maximum extent practicable, carriers providing service under this order shall use the employees who normally would have performed the work in connection with traffic moving over the lines subject to this Order.

(m) *Effective date.* This order shall become effective at 11:59 p.m., March 31, 1981.

(n) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., June 30, 1981, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304, 10305, and Section 122, Pub. L. 96-254.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John H. O'Brien.

Agatha L. Mergenovich,

Secretary.

Appendix A.—RI Lines Authorized To Be Operated by Interim Operators

1. *Louisiana and Arkansas Railway Company (L&A):*
   - A. Tracks one through six of the Chicago, Rock Island and Pacific Railroad Company's (RI) Cadiz yard in Dallas, Texas, commencing at the point of connection of track six with the tracks of The Atchison, Topeka and Santa Fe Railway Company (ATSF) in the southwest quadrant of the crossing of the ATSF and the Missouri-Kansas-Texas Railroad Company (MKT) at interlocking station No. 19.

2. *Peoria and Pekin Union Railway Company (P&PU):* All Peoria Terminal Railway property on the east side of the Illinois River, located within the city limits of Pekin, Illinois.

3. *Union Pacific Railroad Company (UP):*
   - A. Beatrice, Nebraska.
   - B. Approximately 36.5 miles of trackage extending from Fairbury, Nebraska, to RI Milepost 581.5 north of Hallam, Nebraska.
   - C. Limon, Colorado.

4. *Toledo, Peoria, and Western Railroad Company (TP&W):*
   - A. Keokuk, Iowa.
   - B. Peoria Terminal Company trackage from Hollis to Iowa Junction, Illinois.

5. *Fort Worth and Denver Railway Company (FW&D):*
   - A. From Amarillo to Bushland, Texas, including terminal trackage at Amarillo, and approximately (3) three miles northerly along the old Liberal Line.
   - B. North Fort Worth, Texas (milepost 603.0 to milepost 611.4).

6. *Chicago and North Western Transportation Company (C&NW):*
   - A. From Minneapolis-St. Paul, Minnesota, to Kansas City, Missouri.
   - B. From Rock Junction (milepost 5.2) to Inver Grove, Minnesota (milepost 0).
   - C. From Inver Grove (milepost 344.7) to Northwood, Minnesota.
   - D. From Clear Lake Junction (milepost 191.1) to Short Line Junction, Iowa (milepost 73.6).
   - E. From Short Line Junction Yard (milepost 354) to West Des Moines, Iowa (milepost 364).
   - F. From Short Line Junction (milepost 73.6) to Carlisle, Iowa (milepost 64.7).
   - G. From Carlisle (milepost 64.7) to Allerton, Iowa (milepost 0).
   - H. From Allerton, Iowa (milepost 363) to Trenton, Missouri (milepost 415.9).
   - I. From Trenton (milepost 415.9) to Air Line Junction, Missouri (milepost 502.2).
   - J. From Iowa Falls (milepost 97.4) to Esterville, Iowa (milepost 206.9).
   - K. From Bricelyn, Minnesota (milepost 57.7) to Ocheyedan, Iowa (milepost 246.7).
   - L. From Palmer (milepost 454.5) to Royal, Iowa (milepost 502)

M. From Dows (milepost 113.4) to Forest City, Iowa (milepost 158.2).
N. From Cedar Rapids (milepost 100.5) to Cedar River Bridge, Iowa (milepost 96.2) and to serve all industry formerly served by the RI at Cedar Rapids.
O. From Newton (milepost 320.5) to Earlham, Iowa (milepost 388.6)
P. Sibley, Iowa.
Q. Worthington, Minnesota.
R. Altoona to Pella, Iowa.
S. Carlisle, Indianola, Iowa.
T. Omaha, Nebraska, (between milepost 502 to milepost 504).
U. Earlham, (milepost 388.6) to Dexter, Iowa (milepost 393.5).

7. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee):*
A. From West Davenport, through and including Muscatine, to Fruitland, Iowa, including the Iowa-Illinois Gas and Electric Company near Fruitland.
B. Washington, Iowa.
C. From Newport, to a point near the east bank of the Mississippi River, sufficient to serve Northwest Oil Refinery, at St. Paul Park, Minnesota.
†D. From Davenport to Iowa City, Iowa.
*†E. At Davenport, Iowa.

8. *Davenport, Rock Island and North Western Railway Company (DRI):*
A. Moline, Illinois.
B. Rock Island, Illinois, including 26th Street yard.
C. From Rock Island through Milan, Illinois, to point west of Milan sufficient to include service to the Rock Island Industrial complex.
D. From East Moline to Silvis, Illinois.
F. From Rock Island, Illinois, to Davenport, Iowa, sufficient to include service to Rock Island arsenal.

9. *Illinois Central Gulf Railroad Company (ICG):* Ruston, Louisiana

10. *St. Louis Southwestern Railroad Company (SSW):*
A. From Brinkley to Briark, Arkansas, and at Stuttgart, Arkansas.
B. At North Topeka and Topeka, Kansas.

11. *Little Rock & Western Railway Company:* From Little Rock, Arkansas (milepost 135.2) to Perry, Arkansas (milepost 184.2); and from Little Rock (milepost 136.4) to the Missouri Pacific/RI Interchange (milepost 130.6).

12. *Missouri Pacific Railroad Company:* From Little Rock, Arkansas (milepost 135.2) to Hazen, Arkansas (milepost 91.5); Little Rock, Arkansas (milepost 135.2) to Pulaski, Arkansas (milepost 141.0); Hot Springs Junction (milepost 0.0) to and including Rock Island milepost 4.7.

13. *Missouri-Kansas-Texas Railroad Company/Oklahoma, Kansas and Texas Railroad Company:*
A. Herington-Ft. Worth Line of Rock Island: beginning at milepost 171.7 within the City of Herington, Kansas, and extending for a distance of 439.5 miles to milepost 613.5 within the City of Ft. Worth, Texas, and use of Fort Worth and Denver trackage between Purina Junction and Tower 55 in Ft. Worth.
B. Ft. Worth-Dallas Line of Rock Island: beginning at milepost 611.9 within the City of Ft. Worth, Texas, and extending for a distance of 34 miles to milepost 646, within the City of Dallas, Texas.
C. El Reno-Oklahoma City Line of Rock Island: beginning at milepost 513.3 within the City of El Reno, Oklahoma, and extending for a distance of 16.9 miles to milepost 496.4 within the City of Oklahoma City, Oklahoma.
D. Salina Branch Line of Rock Island: beginning at milepost 171.4 within the City of Herington, Kansas, and extending for a distance of 27.4 miles to milepost 198.8 in the City of Abilene, Kansas, including RI trackage rights over the line of the Union Pacific Railroad Company to Salina (including yard tracks) Kansas.
E. Right to use joint with other authorized carriers the Herington-Topeka Line of Rock Island: beginning at milepost 171.7 within the City of Herington, Kansas, and extending for a distance of 81.6 miles to milepost 89.9 within the City of Topeka, Kansas, as bridge rights only.
F. Rock Island rights of use on the Wichita Union Terminal Railway Company and the Wichita Terminal Association, all located in Wichita, Kansas.
G. Rock Island right to use interchange tracks to interchange with the Great Southwest Railroad Company located in Grand Prairie, Texas.
H. The Atchison Branch from Topeka, at milepost 90.5, to Atchison, Kansas, at milepost 519.4 via St. Joseph, Missouri, at mileposts 0.0 and 498.3, including the use of interchange and yard facilities at Topeka, St. Joseph and Atchison, and the trackage rights used by the Rock Island to form a continuous service route, a distance of 111.6 miles.
I. That part of the Mangum Branch Line from Chickasha, milepost 0.0 to Anadarko at milepost 18, thence south on the Anadarko Line at milepost 460.5 to milepost 485.3 at Richards Spur, a distance of 42.8 miles.
J. Oklahoma City-McAlester Line of Rock Island: Beginning at milepost 496.4 within the City of Oklahoma City, Oklahoma, and extending for a distance of 131.4 miles to milepost 365.0 within the City of McAlester, Oklahoma.

14. *The Denver and Rio Grande Western Railroad Company:*
A. From Colorado Springs (milepost 609.1) to and inlcuding all rail facilities at Colorado Springs and Roswell, Colorado, (milepost 602.8), all in the vicinity of Colorado Springs, Colorado.

15. *Norfolk and Western Railway Company:* Is authorized to operate over tracks of the Chicago, Rock Island and Pacific Railroad Company running southerly from Pullman Junction, Chicago, Illinois, along the western shore of Lake Calumet approximately four plus miles to the point, approximately 2,500 feet beyond the railroad bridge over the Calumet Expressway, at which point the RI track connects to Chicago Regional Port District track; and running easterly from Pullman Junction approximately 1,000 feet into the lead to Clear-View Plastics, Inc., for the purpose of serving industries located adjacent to such tracks and connecting to the Chicago Regional Port District. Any trackage rights arrangements which existed between the Chicago, Rock Island and Pacific Railroad Company and other carriers, and which extend to the Chicago Regional Port District Lake Calumet Harbor, West Side, will be continued so that shippers at the port can have NW rates and routes regardless of which carrier performs switching services.

16. *Southern Railway Company:*
A. At Memphis, Tennessee.

17. *Cadillac and Lake City Railroad:*
A. From Sandown Junction (milepost 0.1) to and including junction with DRGW Belt Line (milepost 3.9) all in the vicinity of Denver, Colorado.

18. *Baltimore and Ohio Railroad Company:*
A. From Blue Island, Illinois (milepost 15.7) to Bureau, Illinois (milepost 114.2), a distance of 98.5 miles.

19. *Cedar Rapids and Iowa City Railway Company (CIC):*
A. From the west intersection of Lafayette Street and South Capitol Street, Iowa City, Iowa, southward for approximately 2.2 miles, terminating at the intersection of the RI tracks and the southern line of Section 21, Township 79 North, Range 6 West, Johnson County, Iowa, including spurs of the main trackage to serve various industry; and to effect interchange with the Davenport, Rock Island and North Western Railway Company.

20. *Keota Washington Transportation Company:*
A. From Keota to Washington, Iowa; to effect interchange with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company at Washington, Iowa, and to serve any industries on the former RI which are not being served presently.

21. *The La Salle and Bureau County Railroad Company:*
A. From Chicago (milepost 0.60) and Blue Island, Illinois (milepost 16.61), and yard tracks 6, 9 and 10; and crossover 115 to effect interchange at Blue Island, Illinois.
B. From Western Avenue (Subdivision 1A, milepost 16.6) to 119th Street (Subdivision 1A, milepost 14.8), at Blue Island, Illinois.

22. *Fordyce and Princeton Railroad Company (FP):*
A. From Fordyce to Crossett, Arkansas, which includes assumption of RI's trackage rights over the Ashley, Drew and Northern Railway Company between Whitlow Junction and Crossett, Arkansas.

23. *The Atchison, Topeka and Santa Fe Railway Company:*
A. At Alva, Oklahoma.

† Added.
*Corrected.

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BILLING CODE 7035-01-M

49 CFR Part 1100

[Ex Parte 55 (Sub-45)]

Appellate Procedures for Rail and Non-Rail Matters

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting new appellate procedures applicable to both rail and non-rail matters. Generally, the procedures provide for one level of mandatory review and a discretionary appeal, except where the Commission or a division of the Commission has entered an administratively final initial disposition which voided the requirement for an initial decision. The rules are expected to expedite the appellate process.

EFFECTIVE DATE: These rules become effective April 3, 1981.

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SUPPLEMENTARY INFORMATION:

Decided: March 25, 1981.

By notice of interim rules and request for comments served July 9, 1980 [1] and published at 45 FR 48792, (July 21, 1980), we instituted this proceeding to bring our appellate rules of procedure into conformity with section 25 of the Motor Carrier Act of 1980 (the Act) (49 U.S.C. 10322). In promulgating this section of the Act, Congress was concerned with the Commission's enormous motor carrier caseload and growing backlog of unfinished cases. As a result of its liberalization of entry requirements, Congress anticipates that the number of applications for motor carrier operating authority may grow. Although it acknowledged the Commission's efforts to reduce its backlog, Congress recognized that this effort was often frustrated by the statute under which it functioned.

Congress identified two particular aspects of the administrative appeals process which it saw as contributing significantly to the present backlog, and if not changed, as aggravating the problem in the future. The first was the perception that the existing statute permitted too many levels of appeal as a matter of right. All initial actions were subject to an appeal. If the decision was modified on appeal, the matter would be subject to another appeal as to the change or changes made. As long as petitions were filed, a proceeding would not become administratively final until the Commission had rendered two substantially similar opinions in the given proceeding. A discretionary appeal was also allowed, limited to issues of general transportation importance. If testimony were taken at a public hearing, an initial decision would become an action of the Commission only if exceptions to the initial decision were not filed. If exceptions were filed, two levels of appeal were statutorily permitted. The second factor which Congress viewed as contributing to unnecessary delays was the statutory requirement that a Commission decision could not take effect for 30 days. H. R. Rep. No. 96–1069, 96th Cong., 2d Sess., 37 (1980).

To expedite the handling of motor carrier proceedings, Congress modified the existing statute by (1) eliminating the multiple mandatory levels of appeal, (2) making decisions effective the date served, and (3) establishing statutory deadlines for Commission decisions in entry cases. H. R. Rep. No. 96–1069, *supra*, at 38.

In our notice instituting this proceeding, we proposed to streamline and simplify our appellate rules of procedure by merging the present rail rules (49 CFR 1100.98) and the non-rail rules (49 CFR 1100.97) into a single Rule 98 covering both types of proceedings. The notice also announced interim rules pending adoption of the final rules. The new statutory provisions for non-rail matters (49 U.S.C. 10322) address Congressional concerns similar to those previously considered in the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), and in large part the non-rail language closely follows the rail statutory language. Accordingly, we believed that we could best accomplish our objectives by patterning the new rules after the rail rules adopted in *Rail Appellate Procedures—Revision of Rule 98*, 361 I.C.C. 591 (1979). We have considered the comments we have received on our proposal and have decided to adopt the interim rules under which we are now operating, with several minor modifications.

The present Rule 98 is explained fully for rail practitioners in *Rail Appellate Procedures, supra*. Much of the following material will cover areas already discussed there, and may be somewhat redundant; nevertheless, we feel that a full section-by-section treatment of the new Rule 98 will be instructive to rail and non-rail practitioners alike and will answer various questions concerning its application and impact.

1. Section (a)—Scope of the Rule

Rule 98 applies only to proceedings in which a hearing (oral or under modified procedure) is required by law or Commission action. As noted in the interim rules, they do not apply to informal matters such as car service, suspension, or special permission actions. They also do not apply to purely procedural matters which are covered by 49 CFR 1011.7 or interlocutory matters. Only decisions on the substantive merits of the case or decisions which in some other fashion end the proceeding (e.g., actions on motions to dismiss) come within the ambit of the rules.

The recently enacted Staggers Rail Act of 1980 amended 49 U.S.C. 10903–10905 relating to abandonment and freight discontinuance of railroad lines. The amendments necessitated changes in the procedures for handling abandonment applications. Accordingly, the Commission is currently preparing interim and proposed final rules revising the current abandonment regulations set forth at 49 CFR 1121 et seq. Appellate procedures in abandonment and freight discontinuance proceedings will be embraced in those rules, and Rule 98 will not apply.

49 U.S.C. 10322(a) specifically provides that, "The deadlines set forth in this section do not apply to the following sections of this subtitle: 10525(c) [exempt motor transportation entirely within one State], 10708(b) [investigation and suspension of non-rail carrier rates], 10922(h)(2) [restriction removals], 10928 [temporary authorities for motor and water carriers], 11345(a) [consolidation, merger, acquisition of control: expedited rail carrier procedure], and 11701(c) [formal investigation proceedings begun by the Commission on its own initiative or on complaint]. On the other hand, the legislative history indicates that the statutory deadlines promulgated in 49 U.S.C. 10322 are intended to apply primarily to entry cases. H.R. Rep. No. 96–1069, *supra*, at 38 and 39. For example, Congress realized that it would be impractical to expect the Commission to issue a final decision on appeal in a complex rates proceeding within 50 days from the filing of the appeal. Even though § 10322 is usually inapplicable to motor proceedings other

[1] A subsequent corrected notice was served July 18, 1980. The purpose of this notice was to indicate, (1) page limitations on petitions and replies, and (2) the fact that Ex Parte No. 55 (Sub-No. 41), *Administrative Stays in Non-Rail and Rail Proceedings*, is embraced within the instant proceeding.

than entry applications, we will endeavor, to the extent consistent with other statutory deadline proceedings, to issue decisions at all stages as quickly as possible.

2. Section (b)—Initial decisions

Pursuant to 49 U.S.C. 10322(e), an initial decision becomes a final decision of the Commission on the 20th day after it is served unless (1) an appeal is filed during the 20-day period, or (2) the Commission, on its own, stays or postpones the initial decision. The Commission may extend the 20-day period for up to, but not exceeding another 20 days. Parties have one appeal of right from an initial decision, and a timely appeal stays the effect of the decision pending action on the appeal. The proceeding becomes a final action of the Commission when this appeal of right is decided, regardless of whether the previous decision is modified in any manner.

Initial decisions include those of administrative law judges, individual commissioners, employee boards, divisions of the Commission or panels of the Commission. A significant change under the Act (and from Rule 97) is the effect of initial decisions of administrative law judges, joint boards, or individual commissioners after public hearing. These decisions are no longer in the nature of recommendations; instead, they are actions of the Commission and subject to the same 20-day appeal period as employee board decisions under the modified procedure. In short, the exceptions level of administrative appeal has been eliminated. Parties disagreeing with one of these initial decisions have one appeal of right. The appellate decision is administratively final.

Section (b)(2) of Rule 98 describes the grounds upon which the appeal of right to an initial decision can be based. They should be familiar to practitioners of non-rail matters, as they are the same as previously required for exceptions under existing Rule 97. Although Rule 97 does not specify these criteria as applicable to petitions for administrative review, as a practical matter, they have been the criteria employed by the Commission and practitioners as well. Accordingly, these grounds for appeal should pose no problems of interpretation.

Section 98(b)(4) requires that the appeals and replies must not be longer than 30 pages, including indices, argument, and attachments. One party filing comments believes that attachments should not be included in this 30-page limitation. It is urged that copies of transcript pages, copies of certificates, and similar items are often necessary to complement a legal argument, and that their inclusion would not overburden the Commission.

The 30-page limitation as worded in Rule 98 has been a part of the exceptions procedure under Rule 97. It has also been a requirement for petitions for administrative review under Rule 97, with the limited exception that the required preface to the petition was not counted as part of the 30 pages. In practice we have found these page limitations to be fair, reasonable, and of considerable assistance in sharpening the practice and helping us to consider appeals in an expeditious manner. A practitioner wishing to bring a matter of record to the Commission's attention may do so by complying with section (b)(3) of the rule and citing to the specific portion of the record. If a strong showing of unusual circumstances is made, the Commission will entertain a request to waive the page limitation.

3. Filing Dates

Rule 98 provides for a 20-day filing period for both appeals of right and discretionary appeals. As noted above, this period may be extended for up to but not more than an additional 20-day period. This time frame paraphrases statutory rail and non-rail provisions for initial decisions. The interim rule provides for a 20-day reply period in rail proceedings and a 15-day period in non-rail proceedings. There is no mention of reply dates in the statute.

Several parties assert that the 20-day period is too short because of the slowness of the mails, and because it puts practitioners outside the Washington, D.C. area at a disadvantage. They suggest that the Commission use part of the additional 20 days allowed under the statute, and provide for a 30-day filing period. We also received a number of comments regarding the shortness of the 15-day reply period, and the disparate treatment of rail and non-rail replies.

We recognize the burdens placed upon Commission practitioners by our shortening of the more familiar 30- and 20-day filing periods. Nevertheless, Congress has clearly indicated an intention to reduce the time consumed in the administrative process by establishing a 20-day filing period which may be extended. We believe that it would undermine that Congressional intent to extend the period to 30 days in the usual case. The 20-day period has been a part of the rail procedure for some time now and has not proven to be unduly burdensome. Therefore, it will stand and become a part of the permanent rules. A practitioner who feels a need for a short extension of time in a particular proceeding may request one indicating the reasons for the requested extension.

As to the shorter 15-day reply period, we have only a maximum of 50 calendar days from the filing day of the appeal (not the reply) in which to reach a final decision in a matter involving an application for motor common carrier operating authority. For the Commission to make a fair and reasoned decision within the statutory time constraints, we need some time of our own to consider the merits of the issues raised and physically to process the appeal. We believe that the 15-day reply period constitutes a reasonable compromise between the legitimate needs of the replying parties and those of the Commission. In fact, since the reply period runs from the date the appeal is *due*, rather than the date the appeal is filed, the reply period may in some cases be longer than 15 days. Although the statutory time period for handling discretionary appeals under the Act is considerably longer than the 50-day period allowed for mandatory appeals, the Congressional desire to expedite handling convinces us that the time frames should be the same for both types of appeals. Again, in genuinely unusual circumstances, the Commission may entertain a request for extension. We have decided to retain the 20-day reply period in all other cases. This constitutes a minor change from the interim rule which made the 15-day reply period applicable to all non-rail cases.

4. Section (c) Discretionary Appeals

Rule 98(c) involves actions from which there is no automatic right of appeal. The types of actions covered are: decisions of an employee board or a division in their appellate capacities, under section (b) of the rule; a decision of a division in the first instance where the requirement for an initial decision was "voided" [for rail proceedings pursuant to 49 U.S.C. 10327(c)] or "waived" [for non-rail proceedings pursuant to 49 U.S.C. 10322(c)]; or an action of the entire Commission in the first instance. At this juncture we note that we are modifying the interim rule to reflect the difference in statutory language cited above. The modified rule will refer to situations where the requirement for an initial decision has been "voided or waived".

49 U.S.C. 10322(g)(2) confers discretion upon the Commission to consider appeals to actions taken by a division of the Commission or an employee review board under limited

circumstances. For the Commission to accept such an appeal, the appealing party must make a threshold showing either that the action involves a matter of general transportation importance, or that clear and convincing new evidence or changed circumstances would materially affect the situation. Section 10322(g)(1) confers the same discretion where action was taken by the entire Commission. The threshold showing is new evidence, changed circumstances, or material error. If, upon occasion, initial decisions are reviewed by the full Commission rather than a division, section 10322(g)(1) would apply to any further appeals. That provision applies once the full Commission has rendered a decision.

In summary, an appellant may use a showing of new evidence or changed circumstances to meet its threshold burden in all instances where a discretionary appeal lies. If it cannot meet that burden, the appellant may nevertheless make an alternative showing. If it demonstrates that the proceeding involves an issue of general transportation importance, the alternative threshold will have been satisfied where the prior action either (1) was taken by a division or employee board in an appellate capacity under Rule 98(b), or (2) was taken by a division in the first instance where an initial decision was voided or waived. If appellant demonstrates that a material error was made, the alternative threshold will have been satisfied where the prior action was taken by the entire Commission in the first instance.

Several parties have questioned why section (c)(2) of Rule 98 does not provide for discretionary review of decisions by divisions under circumstances in which the requirement for an initial decision has been waived under 49 U.S.C. 10322(c). They assert that there is equal potential for the division to make material error in issuing a decision in the first instance, as there is for the entire Commission under the same circumstances. The answer to this point resides in the statutory language of sections (g)(1) and (g)(2). The former speaks in terms of "the Commission" when it refers to appeals based on material error, while the latter specifically refers to "division" and "employee board". We interpret the Act to provide for appeals based on material error only when an action of the entire Commission is involved. However, we note that the issue of GTI may properly raise issues similar to material error. In addition, petitions to reopen (see (7), *infra*) may be filed at any time in other than operating authority proceedings. Because reduction in the number of administrative appeals is an underlying theme of the appellate procedures section of the Act, we believe that this interpretation is in accord with Congressional intent.

Except for matters of general transportation importance, the concept of discretionary appeals is a new one in the area of motor carrier procedure. Formerly, if an employee board or a division on petition modified a prior decision, the party or parties adversely affected by the modification were afforded an automatic right of appeal with respect to the modification. This automatic right of appeal under those circumstances no longer exists. Under the new Rule 98(b), a party has one right of appeal from an initial decision. The consideration of all other appeals is a matter of discretion for the Commission, and no appeal will be entertained unless the conditions of Rule 98(c) are met.

Subsection (c)(3) describes the necessary content of pleadings filed under section (c) and continues the language now present in Rule 98 for rail matters. Although the language is somewhat different from that employed in Rule 97 under section (d) for petitions for administrative review of non-rail matters, for practical purposes the requirements are virtually the same and should cause no potential problems for practitioners accustomed to handling motor carrier matters.

We direct the attention of motor carrier practitioners, however, to the page limitations set forth in subsection (c)(4). Although the language is carried forward directly from present Rule 98, the requirements are a significant change from those found in Rule 97 and motor carrier practitioners should take note.

5. Stays

As discussed above, the filing of an appeal of right under Rule 98(b) automatically stays the terms of a substantive decision under appeal. This in not true for discretionary appeals filed under Rule 98(c). 49 U.S.C. 10322(g) specifically provides that the Commission may stay an action filed under the discretionary appeals provisions. Subsection (c)(6) of the new Rule 98 provides that the Commission may stay an action either on its own motion, or in response to a petition for stay. The petition for stay must be filed within 10 days of the service date of the prior decision. Any reply must be filed within 16 days of the service date of the prior decision. We emphasize that the reply date relates back to the service date of the decision, not the filing date of the stay petition.

The language of subsection (c)(6) has been carried forward intact from the present Rule 98, with one minor exception. Stay petitions and replies may not without our approval be longer than 10 pages. No page limitations previously existed.

6. Effectiveness

By statute, the effective date of Commission decisions differs between rail and non-rail matters. Pursuant to 49 U.S.C. 10327(h) an action with respect to a rail matter becomes effective on the 30th day following service on the parties, unless the Commission provides specifically for an earlier effective date. On the other hand, the Motor Carrier Act of 1980 at 49 U.S.C. 10322(h) provides that in a non-rail matter, the effective date of the action is the date of service. Rule 98(c)(7) reflects this statutory dichotomy.

We believe, however, that the wording of subsection (c)(7)(ii) in the interim rules involving the effective date of non-rail actions is somewhat awkward and unclear. The interim rules provide as follows:

> (ii) In a non-rail proceeding, the action, if not stayed, shall be effective on the date it is served, unless otherwise provided.

The Act does not give the Commission discretion to modify the effective date of its decisions. Some parties have expressed concern that a decision which is effective immediately upon service can cause their clients to be in technical violation of the decision's order, either before they actually receive notice of the decision by mail, or before they have an opportunity to request a stay of the decision pending appeal.

Confusion has arisen because of misunderstanding and lack of precision regarding the use of the word "effective". The effective date of a decision now is, as the Act provides for non-rail matters, the date that the decision is served. That is the date on which the decision becomes a final action of the Commission, and therefore, binding on the parties. It is also the date after which an adversely affected party may exercise the right to seek judicial review.[2]

Contrasted to this is the date on which the terms or conditions of the decision "take effect." While the "effective"date of the Commission is now the date the decision is served, 49 U.S.C. 10324(a) still provides as follows:

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[2] In a rail proceeding, however, by virtue of 49 U.S.C. 10327(i), a court action may be instituted after the date the final decision is served, although it is not "effective" under subsection 10327(h) until 30 days after service.

Unless otherwise provided in this subtitle, the Interstate Commerce Commission may determine, within a reasonable time, when its actions * * * take effect.

Congress recognized the distinction between the two concepts, and has continued the Commission's authorization to postpone for a reasonable period the date on which the provisions of its decisions shall become operative.

Parties need have no apprehension that they may violate the law before they receive notice of a decision or have to comply with terms or conditions of a Commission order before they have the opportunity to request delay of the compliance time. Our decisions will provide, when necessary, appropriate delays between the effective dates and the dates provisions take effect. In all other circumstances, the "effective" date and the "take effect" date will be the same.

To avoid any confusion, we will amend interim Rule 98(c)(7)(ii) by removing the words "unless otherwise provided," and adding a new subsection (iii). The final Rule 98(c)(7) (ii) and (iii) will read as follows:

(ii) In a non-rail proceeding, the action, if not stayed, shall be effective on the date it is served * * *

(iii) In all final actions, the provisions of the action shall take effect on the date of service, unless otherwise provided * * *

7. Section (d)—Petitions to Reopen Administratively Final Action

The present permanent Rule 98(h), applicable only to rail matters, permits any person at any time to petition for leave to file a petition to reopen any administratively final action of the Commission pursuant to certain procedural requirements. From comments we have received, there seems to be some confusion regarding the scope of the relief provided by our proposed modification of this section [which will be redesignated as Rule 98(d)]. The coverage of this section is more limited than several commenting parties believe.

In our notice of interim rules we proposed to modify the existing provision in two respects. First, we indicated that for procedural simplicity the language "petition for leave to file" should be eliminated. This obviates the necessity of obtaining permission just to file a second petition on the merits to reopen. Second, we proposed that the new Rule 98(d) governing reopening of proceedings would not be applicable to operating rights application proceedings. The notice explained our belief that the remedy is not suitable for operating rights application proceedings because of the large volume of cases, the limited nature of the issues involved, and the ease in filing new applications.

Opposition to the exclusion of operating rights applications from the scope of the rule was received from a number of commenting parties. They content that there is no rational basis for exclusion, and that 49 U.S.C. 10322(g) expressly permits such a petition. Although we affirm our original intention to modify the rule in the manner proposed, some additional explanation may be helpful and answer opposing arguments.

All appeals under the provisions of 49 U.S.C. 10322(g) are covered completely in part (c) of Rule 98. Under new Rule 98(b), parties may appeal once of right. Under Rule 98(c), parties may also request further review at the Commission's discretion. Both requests must be made under time limits established in the rules. As we have already noted an intent of Congress in enacting section 25 of the Motor Carrier Act (49 U.S.C. 10322) was to reduce the lengths of time consumed for appeals, particularly in operating rights cases. In accordance with that policy, it established several deadlines for handling such cases. Section 10322(g), however, gives the Commission discretion "at any time on its own initiative" to reopen proceedings or change its actions. It also provides that interested parties may file petitions under that section under regulations established by the Commission.

We believe that the regulation in question is a proper exercise of that delegation of authority and is reasonable in light of Congressional intent and practical considerations relating to the issuance of certificates. Congress' use of the language "at any time" means only that the Commission, itself, is not precluded from acting should one of the conditions specified in section (g) come to its attention. Section (g) should not be read as giving parties the unfettered right to petition at any time they desire. To do so would encourage dilatory appeals and ultimately frustrate efforts for timely issuance of certificates. Rule 98(c) paraphrases much of the statutory language; and, for an appeal to lie under section (g) of the Act, the requirements of Rule 98(c) must be met.

The nature of operating rights applications does not lend them to reopening at late dates. The object of these applications is the issuance of a certificate or permit authorizing motor carrier operations. Once a certificate or permit is issued, the normal way to rescind the authority conferred (except in the case of ministerial error) is through a revocation proceeding conducted in accordance with 49 U.S.C. 10925 and section 558 of the Administrative Procedure Act (5 U.S.C. 558). As a stated purpose of the 1980 Act is to reduce regulatory lag, we anticipate that certificates and permits will be issued soon after a grant of authority becomes administratively final. We do not believe that another layer of administrative review and the attendant delay would be in keeping with that objective. Because of the limited nature of the issues involved in a typical case, we believe that the interests of the parties and administrative due process are adequately served in operating rights application proceedings under parts (b) and (c) of the new rule.

We are persuaded, however, that one limited exception to this general exclusion of operating rights applications has merit. Subsequent to the expiration of the 20-day filing period, fraud or ministerial error could come to the attention of one of the parties. We believe that matters of this nature should always be a proper subject of our consideration, whenever they might arise. Accordingly, we will modify the interim Rule 98(d) to permit a petition to reopen an operating rights application after the normal 20-day discretionary appeal period upon a showing by the petitioning party establishing either fraud or ministerial mistake in the earlier decision.

8. Section (e)—Petitions for Other Relief

This section of the rule involves postponements of the "take effect" date of Commission actions. Because problems similar to those discussed above with respect to effective dates exist in this section as well, we are modifying this section also. As pertinent, part (e) will read:

(1) A party may petition * * * for modification of the date the terms of the decision take effect. The reasons for the desired relief shall be stated in the petition, and the petition shall be filed not less than 10 days prior to the date the terms of the action take effect * * *

(2) When the terms of a Commission action take effect * * *

9. Judicial Review

Decisions appealable of right must be appealed prior to seeking judicial review. This applies to all initial decisions. It does not apply to proceedings in which the division or Commission has voided the requirement for an initial decision. The 4R Act and the Motor Carrier Act of 1980 provide for only one mandatory right of appeal from an initial decision. Following a

decision on appeal, a party has exhausted its administrative remedies, and the proceeding is ripe for judicial review pursuant to 28 U.S.C. 2344. However, 49 U.S.C. 10327(g) and 49 U.S.C. 10322(g) also provide a discretionary appeal in certain circumstances which may be available for those parties preferring one final opportunity to convince the Commission of the merits of their positions.

As we explained in *Rail Appellate Procedures, supra*, the filing of a discretionary appeal must toll the 60-day limitation period prescribed in 25 U.S.C. 2344. Otherwise a party would have to institute a *pro forma* court action to protect its court appeal in the event its administrative appeal is denied after expiration of the 60-day period.

After a case is administratively final, if one party goes to court and the other chooses to seek discretionary Commission review, the Commission will advise the court of the pendency of the administrative appeal, and then act on the appeal subject to direction from the court.

Where a division voids or waives the requirement of an initial decision, its decision is administratively final. A decision of the entire Commission in the first instance which is not designated as interim or tentative may only be reopened pursuant to Rule 98(c)(2) (i) or (iii) when an operating rights application proceeding is involved. In other types of proceedings, a party may petition to reopen an administratively final action of the Commission at any time under Rule 98(d). However, is such a petition is filed outside the 20-day filing period of rule 98(c), that is, pursuant to Rule 98(d), the 60-day period for seeking judicial review is not tolled while the petition is pending. We determined in *Rail Appellate Procedures, supra*, that a petition filed under Rule 98(d) is an entirely new phase of an already administratively final proceeding, and thus will not toll the period for instituting court action.

10. Conclusion

We find that the final rules, as modified in the appendix to this decision, are in accord with 49 U.S.C. 10327 and 49 U.S.C. 10322 and are in the public interest. They provide for a fair and expeditious procedure for the review of Commission rail and non-rail decisions. We find further that this decision affects neither the quality of the human environment nor conservation of energy resources.

It is ordered

Part 1100.98 of Title 49 of the Code of Federal Regulations (Rule 98 of the Commission's General Rules of Practice) is amended by adopting the rules set forth in the appendix to this decision.

Part 1100.97 of Title 49 of the Code of Federal Regulations (Rule 97 of the Commission's General Rules of Practice) is rescinded and reserved. However, former Rule 97 shall apply to decisions served before July 1, 1980.

The rules shall become effective April 3, 1981.

This action is taken under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

By the Commission, Acting Chairman Alexis, Commissioners Gresham, Clapp, Trantum, and Gilliam.

Agatha L. Mergenovich,

Secretary.

Appendix

§ 1100.97 Administrative appeals—non-rail proceedings. [Removed]

Section 1100.97 is removed and reserved.

Title 49 CFR 1100 is amended by revising § 1100.98 to read as follows:

§ 1100.98 Appellate procedures.

(a) *Scope of rule.* These appellate procedures apply in cases where a hearing is required by law or Commission action. They do not apply to informal matters such as car service, temporary authority suspension, special permission actions, or purely procedural matters covered by 49 CFR 1011.7, or to other matters of an interlocutory nature except as specifically provided below. Abandonment and discontinuance proceedings instituted under 49 U.S.C. 10903 are governed by separate appellate procedures exclusive to those proceedings. Requests for appellate relief may relate either to initial decisions or to Commission actions other than initial decisions. For each category, this rule describes the types of appeal permitted, the requirements to be observed in filing an appeal, provisions for stay of the action, and the status of the action in the absence of a stay.

(b) *Initial decisions.* This category includes the initial decision of an administrative law judge, individual Commissioner, employee board, joint board, division, or panel of the Commission.

(1) An appeal of right is permitted.

(2) Appeals shall be based on one or more of the following grounds:

(i) That a necessary finding of fact is omitted, erroneous, or unsupported by substantial evidence of record;

(ii) That a necessary legal conclusion, or finding is contrary to law, Commission precedent, or policy;

(iii) That an important question of law, policy, or discretion is involved which is without governing precedent;

(iv) That prejudicial procedural error has occurred.

(3) Appeals shall detail the assailed findings with supporting citations to the record and authorities.

(4) Appeals and replies shall not exceed 30 pages in length, including the index of subject matter, argument, and appendices or other attachments.

(5) Appeals must be filed within 20 days after the service date of the decision or within any further period (not to exceed 20 days) as a division or the Commission may authorize. In proceedings seeking motor carrier operating authority replies must be filed within 15 days of the date the appeal is due. In all other proceedings covered by these rules, replies must be filed within 20 days of the date the appeal is due.

(6) The timely filing of an appeal to an initial decision shall stay the effect of the action pending determination of the appeal.

(7) If an appeal of an initial decision is not timely filed or the Commission does not stay the effectiveness on its own motion, the order set forth in the initial decision shall become the action of the Commission and shall be effective at the expiration of the time for filing, unless otherwise provided.

(c) *Commission actions other than initial decisions.* This category includes: a decision of a division in the first instance, where the requirement for an initial decision was voided [for rail proceedings pursuant to 49 U.S.C. 10327(c)] or waived [for non-rail proceedings pursuant to 49 U.S.C. 10322(c)]; an action of the entire Commission in the first instance; and an action taken by a review board or division on an appeal filed under paragraph (b) of this rule.

(1) A discretionary appeal is permitted. It shall be designated a "petition for administrative review," except that, when it is related to an action of the entire Commission in the first instance, it shall be designated a "petition to reopen."

(2) The petition will be granted only upon a showing of one or more of the following points:

(i) The prior action (all categories) will be affected materially because of new evidence or changed circumstances.

(ii) The prior action was taken by a division in the first instance or by a review board or division in an appellate capacity, and involves a matter of general transportation importance.

(iii) The prior action was taken by the entire Commission in the first instance, and involves material error.

(3) To the extent the petition requests further hearing, rehearing, reargument, or reconsideration, the petition shall state in detail the nature of and reasons for the relief requested. When in a petition filed under this section, a party seeks an opportunity to introduce evidence, the evidence must be stated briefly, must not appear to be cumulative, and explanation must be given why it was not previously adduced.

(4) The petition and any reply shall not exceed 20 pages in length. A separate preface and summary of argument, not exceeding 3 pages, may accompany petitions and replies and shall accompany those that exceed 10 pages in length.

(5) Petitions must be filed within 20 days after the service of the action or within any further period (not to exceed 20 days) as a division or the Commission may authorize. In proceedings seeking motor carrier authority replies must be filed within 15 days of the date the appeal is due. In all other proceedings covered by these rules, replies must be filed within 20 days of the date the appeal is due.

(6) The filing of a petition shall not automatically stay the effect of a prior action, but the Commission may stay the effect of the action on its own motion or on petition. A petition to stay may be filed in advance of the petition for administrative review or petition to reopen and shall be filed within 10 days of service of the action. No reply need be filed. However, if a party elects to file a reply, it must reach the Commission no later than 16 days after service of the action.

(7)(i) In a rail proceeding, the action, if not stayed, shall become effective 30 days after its is served, unless the acting body provides for the action to become effective at an earlier date. On the day after the date the action is served parties may initiate judicial review.

(ii) In a non-rail proceeding, the action, if not stayed, shall be effective on the date it is served, and parties may initiate judicial review.

(iii) In all final actions, the provisions of the action shall take effect on the date of service, unless otherwise provided. On this date parties must comply with the terms, conditions, or orders of the effective decision.

(d) *Petitions to reopen administratively final actions.* A person at any time may file a petition to reopen any administratively final action of the Commission pursuant to the requirements of paragraphs (c)(3) and (c)(4) of this rule. A petition to reopen an operating rights application proceeding must state in detail information sufficient to establish either fraud or ministerial mistake in the earlier decision. A petition to reopen all other proceedings shall state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances and shall include a request that the Commission make such a determination.

(e) *Petitions for other relief.* (1) A party may petition for a stay of an action pending a request for judicial review, for extension of the compliance date, or for modification of the date the terms of the decision take effect. The reasons for the desired relief shall be stated in the petition, and the petition shall be filed not less than 10 days prior to the date the terms of the action take effect. No reply need be filed. If a party elects to file a reply, the reply must reach the Commission no later than 5 days after the petition is filed.

(2) When the terms of a Commission action take effect on less than 15 days' notice, a petition for stay pending a request for judicial review shall be filed prior to the institution of court action and as close to the service date as practicable. No reply need be filed. Where time permits, a party may elect to file a reply.

(3) A petition or reply shall not exceed 10 pages in length.

(f) *Exhaustion of remedies and judicial review.* These rules do not relieve the requirement that a party exhaust its administrative remedies before going to court. Any action appealable as of right must be timely appealed. If an appeal, discretionary appeal, or petition seeking reopening is filed under paragraph (b) or (c) of this rule, before or after a petition seeking judicial review is filed with the courts, the Commission will act upon the appeal or petition after advising the court of its pendency unless action might interfere with the court's jurisdiction.

(49 U.S.C. 10321 and 5 U.S.C. 553)

[FR Doc. 81-10110 Filed 4-2-81; 8:45 am]
BILLING CODE 7035-01-M

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49 CFR Part 1201

[No. 37281]

Railroads Performing Depreciation Studies

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: This rule revises the regulation pertaining to developing depreciation rates for railroad road and equipment property. In the past the Commission has prepared depreciation studies and provided railroads with composite depreciation rates. The new rule requires that individual railroads perform depreciation studies and develop depreciation rates for Commission review and approval every three years for equipment property and every six years for road property. The objective of this proceeding is to allow railroads more autonomy in determining annual composite depreciation rates.

EFFECTIVE DATE: This rule is effective for January 1, 1981.

ADDRESSES: An original and 15 copies of any comments should be sent to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr. (202) 275-7448.

SUPPLEMENTARY INFORMATION: On March 24, 1980, we issued a Notice of Proposed Rulemaking (45 FR 19588, March 26, 1980) which proposed that railroads begin to perform depreciation studies. In the past, the Commission has prepared the depreciation studies and issued the composite depreciation rates to each railroad. Now it is apparent that many railroads can calculate their own depreciation rates because they have more computer capability and software packages. Moreover, each railroad can factor internal policies such as rebuilding, car maintenance, and operational plans that impact on property uses and replacements into its studies to produce more accurate depreciation rates. For these reasons we believe it is now appropriate for individual railroads to perform their own depreciation studies and develop depreciation rates for Commission review and approval.

Depreciation is a systematic method of allocating the economic use of capital investment.

Generally, a depreciation study should consist of the following components:

(1) Actuarial or semiactuarial methods for determining service lives for road and equipment properties;

(2) Salvage value calculations for road and equipment properties;

(3) Reserve calculations for each account or subaccount as appropriate; and

(4) A commentary on adjustments and judgmental factors used in the study.

Railroads shall periodically submit study results to the Commission for review and approval. Depreciation studies shall be submitted to the Commission on a three-year cycle for

equipment property and a six-year cycle for road property. For example, for equipment property, a railroad which had rates prescribed in calendar year 1978 will be scheduled to submit depreciation studies for the Commission's review in 1981. For those which had rates prescribed in 1979, the submission year would be 1982, and so on. The cycle can be interrupted if a railroad submits a study prior to its scheduled year, in which case a new cycle will begin.

Representations and Discussion

Seven parties responded to the Notice of Proposed Rulemaking (FR 19588). Although the proposed policy was generally favorably received, several major concerns expressed by the respondents warrant discussion.

Lack of technical expertise. Several of the smaller Class I railroads responded that limited technical resources will prevent them from conducting acceptable depreciation studies. We recommend that these carriers with limited in-house resources seek the aid of professional consultants in developing acceptable depreciation studies.

Study cycle too short. Some respondents contended that the three-year cycle for road and equipment property could possibly be too short for significant variances to develop in the rates then in use. We have reconsidered this provision and found that a three-year cycle for equipment property and a six-year cycle for road property would be the optimal review periods. We believe that the longer review period for road property is in line with the relatively constant state of this asset group.

Alternative depreciation methodologies should be permitted. Some respondents recommended that individual roads be allowed the flexibility of selecting the appropriate depreciation methodology, and not be restricted to calculating composite depreciation rates for car types. Alternative depreciation methods mentioned were the unit method, units of production method, "vintage year" composite depreciation method, and other acceptable methods. Also, these respondents believe railroads should determine how scrap residual should be calculated. With the railroads' increased computer capabilities, we believe implementation of other depreciation methodologies and assessment of residual values are valid issues. However, research in these areas is targeted for subsequent consideration under separate proceedings.

Concerning the railroads' cost of performing depreciation studies, the Association of American Railroads stated that not all of its respondents replied to this question. Those that did estimated that the cost would vary from $15,000 to $100,000, and one estimated a start-up cost of $55,000. The one railroad responding to the Commission on this issue estimated the cost of performing the study at about $15,000, which we consider to be average and not material.

It is important to note that railroad managements will individually determine the degree of research needed to derive justifiable and accurate depreciation rates. Our approval generally will be based on the impact that changes in the depreciation expenses and accumulated depreciation accounts have on the financial statements, rather than on research methods employed by railroads. It is possible that in some cases only limited research would be necessary. The increase in autonomy in determining depreciation rates could therefore reduce cost in some instances. In addition, the Commission will provide technical assistance and software packages when requested to aid in implementing the depreciation study process. This also will significantly reduce start-up costs.

For unique problems railroads will encounter during the transition period, we recommend that the Commission be consulted for assistance. Examples of special transactions are: (1) the acquisition of assets within a "fully depreciated" group when the composite depreciation rate is zero, and (2) the assignment of accumulated depreciation by car types from the aggregate pool. The Commission is developing a total system concept package to handle these and other special occurrences. This program will provide insight into the depreciation process and how these special problems can be alleviated. Information on this program, which is soon to be finalized, and other software packages can be obtained by contacting the Commission's Bureau of Accounts, Depreciation Branch, Mr. E. C. Hostettler, on (202) 275-7367.

The Commission will assist railroads in implementing the policy. The Bureau of Accounts will issue Accounting Series Circulars (ASC) to provide guidelines for depreciation studies when necessary. These guidelines will be general and not so rigid as to restrict the decision making processes of individual railroads. The Bureau will also make available to railroads computer software packages containing detailed documentation of data requirements and programs used by the Commission in depreciation analyses. Requesting railroads can obtain the packages on either magnetic tapes or hard copy publications. The Commission, however, will not be responsible for the conversion of the programs to specific computer systems.

Class II railroads are exempt from the three-year and six-year cyclical reviews, but depreciation studies must be submitted when requested by the Commission.

The computer software packages are available to Class III railroads; however, they are not required to submit depreciation studies.

Class I and Class II railroads are still required to submit annual data by June 30 of each year on Form ACV-159, "Service Life Data."

The effective date for this policy is January 1, 1981.

Instructions 4-2 and 4-3 of Part 1201 are therefore adopted as set forth in the Appendix to this rule.

This rule does not appear to significantly affect the quality of the human environment or the consumption of energy.

In this proceeding, only Class I railroads are subject to the cyclical depreciation studies. Therefore, we anticipate no adverse economic impact on small businesses or organizations. We do, however, invite comments on this issue.

This rule is under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: March 24, 1981.

By the Commission, Acting Chairman Alexis, Commissioners Gresham, Clapp, Trantum, and Gilliam.

Agatha L. Mergenovich,

Secretary.

Appendix

Title 49 CFR, Chapter X, Part 1201, Railroad Companies, is amended by the following revisions:

Revise Instruction 4-2, "Rates of depreciation," and Instruction 4-3, "Depreciation records to be kept," paragraph (a), to read as follows:

4-2 *Rates of depreciation.* (a) A separate composite annual percentage rate for each depreciable property account, or a subgroup in that account, shall be used in computing annual depreciation expenses and accumulated depreciation. The composite rates shall be based on the results of a depreciation study performed by each railroad. A depreciation study shall, in general, contain the following components:

(i) Actuarial or semiactuarial methods for determining service lives for road and equipment properties;

(ii) Salvage value calculations for road and equipment properties;

(iii) Accumulated depreciation for each account or subaccount as appropriate;

(iv) Other factors and related calculations involving the depreciation process; and

(v) A commentary on any adjustments and judgmental factors used in the study.

(b) Railroads shall submit to the Commission for review and approval a report on depreciation studies and proposed depreciation rates every three years for equipment property, and ever six years for road property. Railroads can, however, submit depreciation studies prior to its scheduled year, in which case a new cycle will begin.

(c) In computing monthly depreciation charges, the annual percentage rates shall be applied to the depreciation base as of the first of each month and the results shall be divided by twelve.

(d) Class II railroads are exempt from the three-year and six-year cyclical reviews, but shall submit depreciation studies when requested by the Commission. Class III railroads are not required to submit depreciation studies.

4–3 *Depreciation records to be kept.* (a) The carrier shall maintain for each class of property in convenient and accessible form engineering and other data bearing on prospective service lives.

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(49 U.S.C. 10321 and 5 U.S.C. 553)

[FR Doc. 81-10109 Filed 4-2-81; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 716 and 785

Surface Coal Mining and Reclamation Operations; Initial and Permanent Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM); Interior.

ACTION: Cancellation of Prior Notice and Deferral of Effective Dates for Final Rules.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is further postponing the effective dates of three final rules which were previously postponed until March 30, 1981 in accordance with the President's memorandum of January 29, 1981. These rules were the subject of a notice published on March 23, 1981 (46 FR 18023), which is cancelled and superseded by this notice. Public comment is solicited as to whether the rules should be suspended indefinitely pending the outcome of rulemaking to consider modifications of those rules. This action is being taken as a result of preliminary review of the rules under Executive Order 12291. The specific regulations affected by this action are listed below.

DATES: This document is effective on March 30, 1981. The effective date of § 716.7 (a) and (b) as published on January 22, 1981, and the effective dates of § 785.17(a) and § 700.11(b) as published on January 23, 1981 is May 4, 1981. The effective date of § 716.7(a)(2) as published on January 23, 1981 is May 5, 1981. Comments must be received on or before 5 p.m., April 20, 1981, at the address listed below.

ADDRESS: Comments may be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 153, 1951 Constitution Avenue, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Andrew V. Bailey, Principal Deputy Director, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. 20240, (202) 343–4006.

SUPPLEMENTARY INFORMATION: On February 4, 1981, the Department of the Interior, in accordance with the President's memorandum of January 29, 1981, extended until March 30, 1981, the effective dates of three rules which had not yet become effective.

The Office of Surface Mining (OSM) published amendments to § 716.7 (a) and (b), prime farmland exemptions, in the **Federal Register** on January 22, 1981, which were effective on February 23, 1981. In the January 23, 1981, **Federal Register**, § 716.7(a)(2) was revised, effective February 23, 1981. The effective date of the January 23, 1981, amendments was incorrect and should have been February 24, 1981. Therefore, in this document, the effective date of § 716.7(a)(2) (as published on January 23, 1981) has been postponed one day after § 716.7 (a) and (b), (as published January 22, 1981).

The three rules deal with exemptions and definitions for the prime farmland rules of OSM's initial and permanent regulatory programs and an exemption for operations which affect two acres or less. Thts notice supersedes the notice published on March 23, 1981 (46 FR 18023) concerning these three rules. As a result of a preliminary review of these rules undertaken pursuant to Executive Order No. 12291, 46 FR 13193, OSM has determined that it is in the public interest to consider modifications of these rules. The effective dates of the rules are therefore postponed pending the receipt of comments on the issue of whether these rules should be suspended pending the outcome of further rulemaking which OSM will initiate in the near future. All appropriate procedures under Executive Order 12291, the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the Administrative Procedure Act (APA), and other applicable laws and regulations will be followed.

As a result of this notice, these rules will not become effective on March 30, 1981, as was stated in the notice published in the **Federal Register** on February 4, 1981, 46 FR 10707. Because none of the rules has ever been in effect, this postponement and possible later suspension would allow the prior versions of each rule to remain in effect until the completion of new rulemaking proceedings.

Justification for Postponement Followed by Suspension

Many states have recently received outright or conditional approval of their regulatory programs and are beginning the difficult task of implementing those programs. If these rules were allowed to become effective on March 30, 1981, those states would be required to begin the process of amending their state programs to meet the new federal rules. State resources would be needlessly expended in this effort, however, if the result of OSM's planned future rulemaking differs from the postponed rules. Imposition of such an unnecessary burden on States which are currently facing the difficult task of implementing their regulatory programs is not justifiable. Postponement of the effective dates of these rules, followed by suspension of these rules, will prevent such a wasteful exercise and allow a careful reevaluation and revision of the prime farmland and two acre exemption rules. Because the prior rules will remain in effect, postponement of these versions of the rules will have no adverse effect upon achieving the purposes of SMCRA pending completion of the rulemaking process.

Notice of suspended regulations: The effective dates of the following regulations are suspended as follows:

A. 30 CFR 716.7 (a) and (b). Prime Farmland Exemption

The effective date of this regulation as published on January 22, 1981 (46 FR 7212) is postponed until May 4, 1981. The regulation which was in effect prior to January 22, 1981, remains in effect.

B. 30 CFR 716.7(a)(2). Prime Farmlands Exemption

The effective date of this regulation as published on January 23, 1981 (46 FR 7900) and corrected in this document, is postponed until May 5, 1982. The regulation which was in effect prior to January 22, 1981 remains in effect.

C. 30 CFR 785.17(a). Prime Farmland Exemption

The effective date of this regulation as published on January 23, 1981 (46 FR 7900) is postponed until May 4, 1981. The regulation which was revised by that notice remains in effect.

D. 30 CFR 700.11(b). Extraction of Coal: Two acres or less

The effective date of this regulation as published on January 23, 1981 (46 FR 7904) is postponed until May 4, 1981. The regulation which was revised by that notice remains in effect.

Dated: March 30, 1981.

William P. Pendley,

Deputy Assistant Secretary of the Interior.

[FR Doc. 81-10153 Filed 4-2-81; 9:42 am]

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