

ATTACHMENT A

CONTRACT AIRLINE CITY-PAIRS REPORT

AGENCY/DEPARTMENT: _____ PERIOD COVERED: _____ thru _____

CITY-PAIRS	TRIPS TAKEN		CONTRACT FARES		TOTAL \$	REASONS FOR NONCONTRACT USE				
	OW	RT	OW	RT		TOTAL SAVINGS	1/	2/	3/	4/
1.										
2.										
3.										

TOTALS

OW - one-way
RT - round trip

1/ - Airline seating capacity on any scheduled flight of the contract carrier was not available in sufficient time to accomplish the purpose of the travel.

2/ - The use of the carrier's flight would have required additional overnight lodgings.

3/ - The scheduled flight of the contract carrier was not compatible with the agency policies and practices regarding travel during regularly scheduled workhours.

4/ - On the basis of a comparison of total costs for each individual trip, the use of a "Y" or "S" Class fare is less than the contract fare at the time the reservation is made considering such cost factors as actual transportation costs, subsistence, allowable overtime, or lost productive time (promotional or restrictive fares shall not be used in the cost comparison).

5/ - Exigency or other requirements of the mission necessitated the use of another airline carrier or mode of transportation.

REMARKS

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 82-500]

Commission Organization; Revision of the Commission's Rules Pertaining to National Security Information

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action revises and retitles Subpart D, Part 0 of the Commission's Rules pertaining to the Mandatory Declassification of National Security Information.

The revision informs members of the public of the procedures to be followed in submitting requests for declassification and establishes internal processing and disposition procedures for such requests.

This action is taken by the Commission in order to comply with the procedural requirements of Executive Order 12356, National Security Information.

DATE: Effective: November 12, 1982.

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

FOR FURTHER INFORMATION CONTACT: Fred J. Goldsmith, Office of the Managing Director, (202) 632-7143.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 0

Classified information.

Adopted: November 9, 1982.

Released: November 12, 1982.

1. Executive Order 12356, National Security Information, requires that agencies which handle classified information promulgate regulations identifying the information to be protected, prescribe classification, downgrading, declassification and safeguarding procedures, and establish a monitoring system to ensure compliance. The Executive Order further requires that those portions of the regulations which affect members of the public be published in the **Federal Register**.

2. To comply with the latter requirement of the Executive Order, we are hereby revising and retitling Subpart D, Part 0, of the rules. The revision is set out in the attached Appendix. Because the Order concerns only Commission policies and procedures and implements Executive Order 12356, the prior notice and effective date

provisions of 5 U.S.C. 553 are inapplicable. Authority for adoption of this revision is contained in Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and Executive Order No. 12356.

3. Accordingly, it is ordered, effective November 12, 1982, that Part 0 of the Rules and Regulations is revised as set out in the Appendix attached hereto.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Subpart D, Part 0 of Chapter 1 of Title 47 of the Code of Federal Regulations is revised to read as follows:

Subpart D—Mandatory Declassification of National Security Information

Sec.

0.501 General.

0.502 Purpose.

0.503 Submission of requests for mandatory declassification review.

0.504 Processing requests for declassification.

0.505 Fees and charges.

0.506 FOIA and Privacy Act requests.

Authority: Secs. 4(i), 303(r), Communications Act of 1934, as amended (47 U.S.C. 154(i) and 303(r)).

§ 0.501 General.

Executive Order 12356 requires that information relating to national security be protected against unauthorized disclosure as long as required by national security considerations. The Order also provides that all information classified under Executive Order 12356 or predecessor orders be subject to a review for declassification upon receipt of a request made by a United States citizen or permanent resident alien, a federal agency, or a state or local government.

§ 0.502 Purpose.

This subpart prescribes the procedures to be followed in submitting requests, processing such requests, appeals taken from denials of declassification requests and fees and charges.

§ 0.503 Submission of Requests for Mandatory Declassification Review.

(a) Requests for mandatory review of national security information shall be in writing, addressed to the Managing Director, and reasonably describe the information sought with sufficient particularity to enable Commission personnel to identify the documents

containing that information and be reasonable in scope.

(b) When the request is for information originally classified by the Commission, the Managing Director shall assign the request to the appropriate bureau or office for action.

(c) Requests related to information, either derivatively classified by the Commission or originally classified by another agency, shall be forwarded, together with a copy of the record, to the originating agency. The transmittal may contain a recommendation for action.

§ 0.504 Processing Requests for Declassification.

(a) Responses to mandatory declassification review requests shall be governed by the amount of search and review time required to process the request. A final determination shall be made within one year from the date of receipt of the request, except in unusual circumstances.

(b) Upon a determination by the bureau or office that the requested material originally classified by the Commission no longer warrants protection, it shall be declassified and made available to the requester, unless withholding is otherwise authorized under law.

(c) If the information may not be declassified or released in whole or in part, the requester shall be notified as to the reasons for the denial, given notice of the right to appeal the denial to the Classification Review Committee, and given notice that such an appeal must be filed within 60 days of the date of denial in order to be considered.

(d) The Commission's Classification Review Committee, consisting of the Managing Director (Chairman), the General Counsel or his designee, and the Chief, Internal Review and Security Division, shall have authority to act, within 30 days, upon all appeals regarding denials of requests for mandatory declassification of Commission-originated classifications. The Committee shall be authorized to overrule previous determinations in whole or in part when, in its judgment, continued classification is no longer required. If the Committee determines that continued classification is required under the criteria of the Order, the requester shall be promptly notified and advised that an application for review may be filed with the Commission pursuant to 47 CFR 1.115.

§ 0.505 Fee and Charges.

(a) The Commission has designated a contractor to make copies of

Commission records and offer them for sale (See § 0.465).

(b) An hourly fee is charged for recovery of the direct costs of searching for requested documents (See § 0.466).

§ 0.506 FOIA and Privacy Act Requests.

Requests for declassification that are submitted under the provisions of the Freedom of Information Act, as amended, (See § 0.461), of the Privacy Act of 1974, (See § 0.554) shall be processed in accordance with the provisions of those Acts.

[FR Doc. 82-32177 Filed 11-24-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 0, 1, 13

[FCC 82-501]

U.S. Citizenship Eligibility Requirements for Commercial Radio Operators

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its rules, 47 CFR Part 0, 47 CFR Part 1, and 47 CFR Part 13, to remove U.S. citizenship as an eligibility requirement for commercial radio operator licenses. This action was necessary to conform the Commission's Rules to the provisions of Pub. L. 97-259, enacted September 13, 1982.

EFFECTIVE DATE: November 26, 1982.

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

FOR FURTHER INFORMATION CONTACT: Barnett C. Jackson, Jr., (202) 632-7240, or

Lawrence Clance, (202) 632-7591.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 0

Organization and functions.

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 13

Commercial radio operator's licenses.

Adopted: November 9, 1982.

Released: November 12, 1982.

By the Commission.

1. On September 13, 1982, Pub. L. 97-259 amended Section 303(1) of the Communications Act of 1934 authorizing the Commission to issue commercial radio operator licenses to "persons who are found to be qualified by the Commission and who otherwise are

legally eligible for employment in the United States." Previously, that section authorized the Commission to issue commercial radio operator licenses only to U.S. citizens, U.S. nationals, and citizens of the Trust Territory of the Pacific Islands, with certain exceptions in the case of alien aircraft pilots and alien radio station licensees.

2. We are revising our rules to conform to the amended provisions of Section 303 of the Communications Act. We are also making certain editorial revisions to Part 13 of our Rules to improve readability.

3. Because these rule amendments are made to conform with the Communications Act of 1934, as amended, we find that prior notice and public procedure are unnecessary. (5 U.S.C. 553(b)(3)(B)) Furthermore, as the rule amendments adopted herein relieve a restriction, we are designating that these rule amendments shall become effective upon publication in the *Federal Register*. (47 U.S.C. 408) (5 U.S.C. 553(d))

4. Accordingly, it is ordered, That Parts 0, 1, and 13 of Title 47 of the Code of Federal Regulations are amended as set forth in the Appendix attached hereto. This action is taken pursuant to Sections 4(i) and 303(r) of the Communications Act, as amended. (47 U.S.C. 154(i) and 303(r)).

5. For information on this matter contact B. C. "Jay" Jackson, Jr., Regional Services Division, FCC, Washington, D.C. 20554, (202) 632-7240.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 0—[AMENDED]

A. Part 0 of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 0.483 is revised to read as follows:

§ 0.483 Applications for amateur or commercial radio operator licenses.

(a) Application filing procedures for amateur radio operator licenses are set forth in Part 97 of this chapter.

(b) Application filing procedures for commercial radio operator licenses are set forth in Part 13 of this chapter. Detailed information about application forms, filing procedures, and places to file applications for commercial radio operator licenses is contained in the bulletin "Commercial Radio Operator Licenses and Permits." This bulletin is available from any Commission field

office or the FCC, Washington, D.C. 20554.

2. Section 0.485 is revised to read as follows:

§ 0.485 Amateur and commercial radio operator examinations.

Written examinations and Morse telegraphy examinations are conducted at prescribed intervals or by appointment at locations specified in the Commission's current examination schedule, copies of which are available from any Commission field office or from the FCC, Washington, D.C. 20554.

PART 1—[AMENDED]

B. Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 1.77 is amended by revising paragraph (h) as follows:

§ 1.77 Detailed application procedures; cross references.

* * * * *

(h) Rules governing applications for commercial radio operator licenses are set forth in Part 13 of this chapter.

2. Section 1.83 is revised to read as follows:

§ 1.83 Applications for radio operator licenses.

(a) Application filing procedures for amateur radio operator licenses are set forth in Part 97 of this chapter.

(b) Application filing procedures for commercial radio operator licenses are set forth in Part 13 of this chapter. Detailed information about application forms, filing procedures, and places to file applications for commercial radio operator licenses is contained in the bulletin "Commercial Radio Operator Licenses and Permits." This bulletin is available from any Commission field office or from the FCC, Washington, D.C. 20554.

3. Section 1.84 is amended by revising paragraph (a), and removing paragraphs (b) and (c), as follows:

§ 1.84 Procedure with respect to commercial radio operator applications.

(a) Upon acceptance of an application for a commercial radio operator license, filed in accordance with Part 13 of this chapter, an examination, if required, is conducted. If the applicant is found qualified and eligible in all respects, the license will be issued. If additional information is necessary to determine an applicant's qualifications or eligibility, or if it appears that a grant of an application would not serve the public interest, the applicant will be notified in writing and given an opportunity to provide additional

pertinent information in writing. If, from the information available, it appears that the applicant is not qualified or is ineligible, or that a grant of the application would not serve the public interest, the applicant will be advised thereof in writing and given an opportunity to request, within a specified period of time, that the application be set for hearing. If the applicant does not request, within the specified period, that the application be set for hearing, the application will be denied.

(b) [Deleted]

(c) [Deleted]

PART 13—[AMENDED]

C. Part 13 of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 13.3 is revised to read as follows:

§ 13.3 Holding of more than one commercial radio operator license.

(a) No person may hold two or more commercial radiotelegraph operator licenses at the same time.

(b) No person may hold two or more commercial radiotelephone operator licenses at the same time, except as provided in paragraphs (c) and (d) of this section.

(c) Each person who is legally eligible for employment in the United States may hold one Marine Radio Operator Permit and one Restricted Radiotelephone Operator Permit at the same time, if necessary.

(d) Each person who is not legally eligible for employment in the United States, and certain other persons who were issued permits prior to September 13, 1982, may hold two Restricted Radiotelephone Operator Permits at the same time, as each permit may authorize the operation of a particular station or class of stations.

2. Section 13.4 is amended by revising paragraphs (a) and (b), and by removing paragraph (c), as follows:

§ 13.4 Term of licenses.

(a) Except as provided in paragraph (b) of this section, commercial radio operator licenses will normally be issued for a five-year term.

(b) Restricted Radiotelephone Operator Permits issued to persons legally eligible for employment in the United States will normally be issued for a term concurrent with the lifetime of the holder. The terms of all such Restricted Radiotelephone Operator Permits issued prior to November 15, 1953, which were outstanding on that

date, were extended to encompass the lifetimes of such operators.

3. Section 13.5 is amended by revising paragraph (a) as follows:

§ 13.5 Eligibility for new license.

(a) The following, if found qualified by the Commission, may be issued commercial radio operator licenses:

(1) Any person legally eligible for employment in the United States, including all U.S. citizens, U.S. nationals, and citizens of the Trust Territory of the Pacific Islands.

(2) Any person, for the sole purpose of operating aircraft radio stations, who holds:

(i) A valid United States pilot certificate; or,

(ii) A foreign aircraft pilot certificate valid in the United States, provided that the foreign government involved has entered into a reciprocal agreement under which such foreign government does not impose any similar requirement relating to eligibility for employment upon citizens of the United States.

(3) Any person who holds a Federal Communications Commission radio station license, for the sole purpose of operating that station.

* * * * *

4. Section 13.11 is revised to read as follows:

§ 13.11 Application filing procedures.

(a) Detailed information about application forms, filing procedures and places to file applications for commercial radio operator licenses is contained in the bulletin "Commercial Radio Operator Licenses and Permits." This bulletin is available from any Commission field office or from the FCC, Washington, D.C. 20554.

(b) Applications for commercial radio operator licenses will be processed in accordance with the rules and regulations in effect on the date filed.

5. Section 13.22 is amended by revising paragraph (g) as follows:

§ 13.22 Examination requirements.

* * * * *

(g) Restricted Radiotelephone Operator Permit. No examination is required for this permit. In lieu thereof, each applicant will certify that he or she:

(1) Is legally eligible for employment in the United States; or, if not so eligible, holds an aircraft pilot certificate valid in the United States or an FCC radio station license in his or her name;

(2) Can speak and hear;

(3) Can keep, at least, a rough written log; and,

(4) Is familiar with provisions of applicable treaties, laws, rules, and

regulations which govern the radio station he or she will operate.

6. Section 13.23 is revised to read as follows:

§ 13.23 Examination procedures.

(a) Applicants, when taking examinations for commercial radio operator licenses, shall comply with the examination instructions printed on the examination booklet.

(b) Written examinations shall be in English, except when waived under authority delegated in § 0.314.

(c) In the case of a blind applicant, the examination questions may be read orally by a person chosen by the Commission, and the blind applicant may answer orally. A blind applicant wishing to use this procedure must make arrangements with the appropriate field office at least two weeks prior to the date on which the examination is desired.

7. Section 13.28 is amended by revising paragraphs (a) and (b) as follows:

§ 13.28 License renewals.

(a) Commercial radio operator licenses issued for five year terms may be renewed, by proper application, at any time during the last year of the license term or during a one-year grace period following expiration. Expired licenses are not valid during the grace period.

(b) There are no service or examination requirements for renewals.

* * * * *

8. Section 13.71 is revised to read as follows:

§ 13.71 Duplicate or replacement licenses.

(a) The holder of a commercial radio operator license which has been lost, mutilated, or destroyed may obtain a duplicate license document by filing an application, with a written explanation as to the circumstances involved in the loss, mutilation, or destruction of the original license.

(b) The holder of a commercial radio operator license whose name is legally changed, or whose physical description is significantly altered, may obtain a replacement license by filing an application with a written explanation as to the change requested.

9. Section 13.76 is revised to read as follows:

§ 13.76 Limitation on certain Restricted Radiotelephone Operator Permits.

(a) A Restricted Radiotelephone Operator Permit issued to an aircraft pilot who is not legally eligible for employment in the United States is valid

only for operation of radio stations on aircraft.

(b) A Restricted Radiotelephone Operator Permit issued to a person under the waiver provision of Section 303(1)(2) of the Communications Act of 1934, as amended, is valid only for the operation of radio stations for which that person is the station licensee.

[FR Doc. 82-32467 Filed 11-24-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 22

[Gen. Docket No. 80-183; RM-2365; RM-2750; RM-3047; RM-3068; FCC 82-503]

Public Mobile Radio Services; Allocate Spectrum in a Certain MHz Band and To Establish Other Rules, Policies, and Procedures for One-Way Paging Stations in the Domestic Public Land Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final Rule (Memorandum Opinion and Order on Reconsideration—Part 1).

SUMMARY: The Commission has issued its *Memorandum Opinion and Order on Reconsideration* (Part 1) of its *Report and Order*, in General Docket 80-183, 89 FCC 2d 1337, 47 FR 24557 (June 7, 1982), which allocated 3 MHz of spectrum from 929-932 MHz for private and common carrier one-way paging systems. The petitions raise issues dealing with both local, non-network (regional or nationwide) paging. The *Order* pertains exclusively to the common carrier local, non-network frequencies. It defers resolution of the inter-city, network paging issues to a subsequent *Order* because those issues are more complex and require further consideration. Need showing requirements have been retained for incumbent common carriers requesting an initial 900 MHz frequency, and a forty-mile separation criterion has been adopted for purposes of determining whether an applicant must demonstrate need for an initial or subsequent 900 MHz frequency because we believe it will promote competition and result in spectrum efficiency. In addition, the submissions of § 22.115(j)(8) topographic maps and § 22.115 profile graphs were waived for 900 MHz common carrier paging applications.

EFFECTIVE DATE: December 27, 1982.

FOR FURTHER INFORMATION CONTACT: Lisa Wershaw, Common Carrier Bureau, (202) 632-6450.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 22

Communications common carriers, Mobile radio service.

Memorandum Opinion and Order on Reconsideration (Part 1)

Adopted November 16, 1982.

Released November 16, 1982.

I. Preliminary Statement

1. We have before us informal comments and four petitions for reconsideration¹ of our *First Report and Order* (the *Order*) in General Docket 80-183² allocating 3 MHz of spectrum³ for private and common carrier one-way paging systems.⁴ The petitions identify four substantive issues: the necessity for need showings by existing carriers for initial 900 MHz frequencies; definition of a market; network paging policies and procedures; and Federal preemption of state entrance, exit and rate regulations for the network paging frequencies.⁵

2. The first two issues pertain to non-network paging, while the second two relate exclusively to network paging.⁶ Our review of the petitions reveals that the non-network issues can be handled fairly easily, but the network issues will take more time to resolve. Rather than delay action on the non-network issues, we have decided to treat them separately. Therefore, this *Order* will resolve only the non-network issues and applications for those frequencies will be accepted on December 1, 1982, as established in our August 5, 1982, *Memorandum Opinion and Order*, 47 FR 35203 (August 13, 1982). While we anticipate expeditious resolution of the network paging issues, it is unlikely that

¹ Petitions were filed by Telocator Network of America (Telocator); Mobile Communications Corporation of America (MCCA); Page America Communications, Inc. (Page America); and Beep-Beep Page, Inc. (Beep-Beep Page). Informal comments were filed by American Telephone and Telegraph Company (AT&T) and United Telephone System, Inc. (UTS).

² 89 FCC 2d 1337, 47 FR 24557 (1982).

³ One MHz (forty 25 KHz frequencies) was allocated for private radio systems, one MHz was put in reserve for advanced technology paging systems and one MHz was allocated for common carrier paging systems.

⁴ This order pertains exclusively to the common carrier frequencies, 931.0125-931.9875 MHz. The Commission dealt with the private radio frequencies in its *Second Report and Order*, 47 FR 39502 (September 8, 1982).

⁵ Telocator also requested deferral of the initial filing date for 900 MHz applications. On August 5, 1982, the filing date was extended from September 7 to December 1, 1982, *Memorandum Opinion and Order*, 47 FR 35203 (August 3, 1982), therefore this issue is moot.

⁶ Three of the forty 900 MHz paging channels allocated to the Common Carrier Bureau were designated exclusively for inter-city, "network" (regional and nationwide) paging. The remaining thirty seven channels will be utilized for local or "non-network" paging.

Commission approval and public release can be accomplished before the December 1, filing date. Therefore, we will defer the date for accepting network applications until 30 days after the *Order* addressing those issues is published in the *Federal Register*.

3. As discussed below, we have decided to retain the need showing requirements for existing carriers, but we will adopt a forty mile separation criterion for purposes of determining whether an applicant is entitled to an initial or subsequent one-way paging frequency in a market without demonstrating need. On our own motion, we will eliminate the submission of certain engineering data with respect to 900 MHz applications.

II. Discussion

A. Need for Service

4. We had traditionally required common carrier applicants for one-way paging frequencies to demonstrate a public need for service.⁷ In our *First Report and Order*, we eliminated the submission of need showings by applicants for initial paging frequencies in a market. This policy applies to all paging frequencies, not only frequencies in the 900 MHz band. However, to safeguard against inefficient use of the spectrum, we proposed to authorize no more than a single paging frequency at a time. We took this action in light of the clear public need for additional one-way paging services and the determination that the preparation and submission of initial public need showings were time consuming, administratively burdensome and unnecessary to further the public interest.⁸ We concluded that a general policy in favor of new entry in the one-way paging industry would best serve the public interest, convenience and necessity.

5. However, we decided to retain need demonstrations for incumbent paging licensees who apply for a new or additional frequency in a market. Therefore, pursuant to § 22.516 of our Rules, after authorization for one paging

⁷ The need standards which have been applied to applications for an initial frequency evolved primarily out of two cases, Long Island Paging, 30 FCC 2d 405 (1971), and New York Telephone Co., 47 FCC 2d 488, *recon. denied*, 49 FCC 2d 264 (1974) *aff'd sub nom.* Pocket Phone Broadcast Service, Inc. v. FCC, 538 F. 2d 447 (D.C. Cir. 1976). Past Commission practice had been to require applicants for an initial frequency to submit a public need survey, with demographic and commercial information being accepted to supplement the need survey.

⁸ It was determined that public need showings for one initial frequency often provoked petitions to deny that delayed service while amendments to the applications invariably cured any deficiencies raised in the petitions.

frequency in a market is obtained, a licensee may apply for an additional frequency in that market only if it supplies a traffic load study which demonstrates that the existing paging facility is insufficient to meet increased demand.

6. We rejected commenters' arguments that existing carriers should have the same opportunity to enter the 900 MHz market as new carriers. We concluded that allowing an existing carrier a 900 MHz frequency without demonstrating need would result in inefficient use of the new frequencies and would frustrate our policy encouraging new carriers in the market and creating a wide range of user choices.

7. In its petition, Telocator argues and AT&T agrees that all applicants, both new and existing carriers in a market, should be permitted to apply for an initial 900 MHz paging channel without demonstrating need. Telocator contends that our discussion of warehousing in the *First Report and Order*, which justifies elimination of need showings for new entrants in a market, is an equally compelling argument to support eliminating need for all applicants. It refers to the following statements in the *First Report and Order* to support its claim that allowing existing carriers in a market an initial 900 MHz channel without demonstrating need will not encourage warehousing or inefficient use of the frequencies: "warehousing is linked to availability of frequencies; we do not believe that entrepreneurs would undertake application and construction costs absent need; and we are unaware of any warehousing to date," 89 FCC 2d 1337, 1351 and 1352 (1982).

8. Telocator further contends that the allocation at 900 MHz was originally sought to enable the RCC industry, for the first time, to provide high quality tone-voice service on a significant scale. It argues that to preclude existing carriers from providing tone-voice service, or to force them to demonstrate loading on a channel which provides different services, is both illogical and inconsistent with Commission policy encouraging competition and diversification of service offerings.

9. Moreover, Telocator argues that to the extent our decision regarding need rests on the assumption that the 900 MHz band is fungible with other paging frequencies or that all types of service offerings can be readily intermixed on a single paging network, these assumptions are false. Telocator states that it is more difficult to achieve adequate stability for simulcasting at 900 MHz than at 35 or 43 MHz (the low

band),⁹ that noise at 900 MHz is less, and the cost of a 900 MHz base station transmitter is three times the cost of its counterpart at lowband. Moreover, Telocator claims that networks employing simulcasting often use a digital equalization technology which does not pass audio signals. Therefore, to require licensees to intermix services on the same network would be forcing carriers "into a competitive mold, whereby no carrier has the option of differentiating its offerings on the basis of cost, quality of service or technical innovation."

10. Finally, Telocator argues that the *First Report and Order's* theory of competition—encouraging additional carriers in the paging market to create a wide range of user choices—is both narrow and in error. It asserts that since the paging market is already characterized by intensive competition, our focus on encouraging new entrants in the paging market is misplaced. It claims that our focus should be on whether the licensing policies are unnecessary or irrational obstacles to existing carriers in a market.

11. After carefully considering these arguments, we affirm our finding that it is in the public interest to require existing carriers in a market to demonstrate need for an additional paging frequency. There are simply not enough frequencies available for all carriers interested in providing one-way paging service to allow existing carriers another frequency without demonstrating need. Moreover, implicit in our decision to retain need showings for additional channels is the finding that there is more incentive to warehouse additional frequencies than initial frequencies. Therefore, our reasons for eliminating need showings for initial channels are not equally applicable here. We emphasize that existing carriers are not being denied entry into the 900 MHz market, they are merely being required to demonstrate need for an additional frequency.

12. We reject Telocator's argument that the technical and commercial characteristics of the 900 MHz band render it incompatible with other paging frequency service offerings. As a practical matter, it is technically feasible for a carrier to intermix tone-voice and tone-alert service or to employ simulcasting for voice paging.¹⁰ It might

⁹ Simulcasting is the transmission of information from two or more base stations simultaneously.

¹⁰ Paging equipment is currently available which permits tone-alert and tone-voice services on the same frequency using simulcast. There are presently wide area paging systems which provide this dual service. Although some networks use digital equalization technology which does not pass audio

be more expensive to intermix services on a single frequency; however, it is not technically impossible to do so, as Telocator suggests. Further, although Telocator argues that only the 900 MHz band is suitable for high quality tone-voice service, incumbent carriers have for years had access to UHF and VHF channels which can support high quality tone-voice service.

13. We also reject Telocator's arguments regarding its theory of competition. In light of the historic scarcity of paging frequencies, we believe that competition would not be fostered by allowing existing carriers to obtain another frequency in a market without demonstrating need. Although our recent allocations in this proceeding and in CC Docket 80-189 (lowband channels) have alleviated the historic shortage to some extent, the availability of paging frequencies remains a valid concern. Requiring need demonstrations is a rational and practical method of encouraging competition, spectrum efficiency and technological and service innovation.

B. Definition of a Market

14. In conjunction with its need argument, Telocator urges us to redefine a market for purposes of determining whether an applicant is requesting a new or additional frequency in an area. As explained above, an existing carrier must demonstrate need, i.e., that its existing facility is insufficient to meet increased demand, in order to obtain an additional frequency in a market.

15. Traditionally, we have used the "fifty percent overlap" rule to determine whether an applicant is requesting a new or additional frequency in an area. If the reliable service contours or 43 dBu contours of two transmitters licensed to or applied for by the same carrier overlap by fifty percent or more, both transmitters are deemed to be serving the same market. Therefore, the channel requested is treated as an additional rather than a new channel and it must be supported by a need demonstration. Conversely, if the reliable service areas do not overlap or overlap by less than fifty percent, they are deemed to be serving different markets and a need demonstration for the new frequency would not be required.

16. As stated above, the reliable service area for one-way paging stations is generally considered to be its 43 dBu contour. However, in our *First Report and Order*, we adopted a fixed twenty

signals, these base stations can be retrofitted to include audio signals or replaced by a base station which passes both audio and digital signals.

mile radius to define the reliable service area of a 900 MHz paging station. We concluded that twenty miles was a realistic, reliable standard because it is the approximate distance that a paging signal travels from a transmitter site. Consequently, for purposes of determining need, the fifty percent overlap rule would apply to a fixed twenty mile service contour as opposed to the traditional 43 dBu contour.

17. However, in its petition, Telocator requests that for purposes of determining an applicant's initial channel assignment, we define market in terms of a Standard Metropolitan Statistical Area (SMSA). Telocator states further, that after the initial channel is loaded in accordance with § 22.516, our analysis should revert to the fifty percent overlap rule. Telocator's concern is that under the present 900 MHz rules, by judicious spacing of transmitter sites at approximately 20-mile intervals, the same applicant can obtain a minimum of three different channels to serve the same market without having a fifty percent overlap among the respective service areas. It claims that the adoption of an SMSA market concept would essentially eliminate abuse of the fifty percent overlap rule.

18. We recognize the potential for an applicant to lock up several 900 MHz frequencies in a market, notwithstanding the fifty percent overlap rule. We agree with Telocator that an alternative to the fifty percent overlap rule should be adopted. However, instead of defining a market as Telocator suggests, we will eliminate the fifty percent overlap rule with respect to 900 MHz paging systems and adopt a fixed forty mile separation criterion for purposes of determining whether a traffic load study must be submitted to obtain an initial or subsequent 900 MHz paging frequency in an area.¹¹ We have adopted a forty mile separation criterion because the reliable service area contour of a base station is twenty miles. Consequently, if we require base stations to be distanced by forty miles there will not be any overlap between the twenty mile reliable service area contours of these stations. Therefore, if an applicant for a paging frequency attempts to distance its proposed base station less than forty miles from a previously licensed base

station, the applicant must demonstrate need for the additional channel pursuant to § 22.516 of the Rules. In addition, this fixed mileage requirement will also apply if a 900 MHz licensee wishes to obtain a new or additional paging system on another paging frequency at 35, 43, or 150 MHz.

19. We find that adoption of a forty mile separation criterion for purposes of determining whether an applicant is requesting a new or additional frequency in an area, will best serve the public interest. This appears to be a more effective way to eliminate the possibility of an applicant acquiring several 900 MHz frequencies in an area than Telocator's proposal. Further, it is more easily administered than an SMSA standard. We believe that a fixed separation criterion is consistent with the Commission's desire to promote competition among carriers and ensure spectrum efficiency. Moreover, it will eliminate the economic burden to the applicant and the administrative workload to the Commission associated with preparing and analyzing engineering contour studies. Finally, the public will benefit by the Commission's expeditious authorization of service.

C. Technical Matters

20. We have decided to waive the requirements that certain engineering data be submitted with 900 MHz applications. Our *First Report and Order* adopted a 20 mile reliable service area definition and a fixed 70 mile separation criterion to determine frequency reuse instead of relying on interference studies. Therefore, the topographic maps presently required by § 22.115(j)(8) and the profile graphs required by § 22.115 of the Rules need not be submitted with 900 MHz paging applications. However, should the Commission need these maps and graphs in the future, the applicant will be responsible for providing them at that time. Moreover, the maps required to be submitted with the application should be U.S. Geological Survey maps with a scale of 1:250,000 (full scale reductions are not permitted) depicting each base station site and its respective service area contour. The map must also indicate latitude and longitude. These maps are necessary to provide us with a perspective of the applicant's system design and will enable us visually to determine if there is overlap between service area contours. Notice and comment are not required prior to waiver of this rule because it relates to Commission procedure and practice. 5 U.S.C. 553(b). Because this rule is procedural, not substantive, the

effective date provisions of the Administrative Procedures Act, 5 U.S.C. 553(d), do not apply here.

D. Other Matters

21. Finally, we will reemphasize several policies which were adopted in the *First Report and Order*. First, the decision to authorize one frequency at a time applies to all paging bands, not only 900 MHz frequencies. 89 FCC 2d 1349, 1350. Therefore, this limit is applicable to all paging applications that have been filed and to all paging frequencies which will be filed after the adoption of this Order. Further, if an applicant files for a one-way paging frequency when it has another paging application pending in that market, *irrespective of the frequency band*, the Commission will treat the previously filed paging application as being amended by the subsequent application. *Id.* at 1363-1364. The amended application will then be considered newly filed and subject to applicable cut-off procedures. 47 CFR 22.23(c)(i); 22.31. Finally, § 22.13, pertaining to disclosure of the real party or parties in interest, was revised in the *First Report and Order*. We emphasize that this rule applies to all common carriers engaging in Domestic Public Land Mobile Radio Services. Thus, it is applicable to applicants for two-way mobile services as well as one-way paging services. *Id.* at 1353, n.29, and 1366.

III. Conclusion

22. After careful consideration of the issues pertaining to non-network paging, we have decided to retain need showing requirements for incumbent carriers in a market, and to adopt a fixed forty mile separation criterion to determine whether an applicant is requesting a new or additional channel in an area.

23. We have attempted to streamline and simplify the regulatory procedures for 900 MHz applications. This is evidenced by the elimination of engineering contour studies for the definition of a market, reliable service area and frequency re-use calculations and the elimination of public need showings for all initial paging channels. We believe that the procedures adopted herein, represent the most efficient and expeditious way to render 900 MHz non-network paging services to the public.

IV. Ordering Clauses

24. Accordingly, it is ordered, That the petitions for reconsideration are granted to the extent set forth herein, and are otherwise denied.

25. It is further ordered, That pursuant to the authority found in section 154(i),

¹¹ This policy should not be confused with the fixed 70 mile separation criterion adopted for frequency reuse purposes. To prevent interference, we will not license different applicants on the same frequency unless base stations are separated by 70 miles. The separation criterion discussed above, pertains to the same applicant who wants a new frequency in a market.

301 and 303(r) of the Communications Act of 1934, as amended, Parts 2 and 22 of the Commission's Rules and Regulations are amended as specified in Appendix A. These amendments shall become effective 30 days after publication of this *Memorandum Opinion and Order* in the *Federal Register*.

26. It is further ordered, That the requirements of 47 CFR 22.115(j)(8) and 22.115 are hereby waived for a one-way paging application requesting a 900 MHz paging frequency.

27. It is further ordered, That applications for 900 MHz network paging frequencies will be accepted thirty days after the Order resolving those issues is published in the *Federal Register*.

28. It is further ordered, That applications for 900 MHz non-network paging frequencies will be accepted on December 1, 1982, for an initial period of 60 days only.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 22—[AMENDED]

47 CFR Part 22 is amended as follows:

1. 47 CFR 22.516 is amended by revising the heading and the introductory language as follows:

§ 22.516 Additional showing required with application for assignment of additional frequency or frequencies, or as otherwise required by the Commission's Rules.

Traffic load studies shall be required:

(1) With an application requesting the assignment of an additional frequency for an existing one-way signaling station; (2) with an application requesting the assignment of one or more additional frequencies for an existing two-way station; or (3) as the Commission may otherwise prescribe. A traffic load study shall include a showing of the following:

2. Part 22 is amended by adding new § 22.525 to read as follows:

§ 22.525 One-way signaling stations.

(a) An applicant for a new one-way signaling station may request no more than one channel. No showing of public need will be required of an applicant for an initial channel regardless of the band for which the request is made.

(b) An applicant requesting a new 900 MHz one-way signaling station will be deemed to be requesting additional frequencies for its existing station if there is less than forty miles distance between the applicant's existing base station and its proposed base station. An existing 900 MHz licensee requesting a one-way frequency will be deemed to be requesting an additional frequency if its proposed base station is less than forty miles from its existing 900 MHz base station.

(c) An applicant for an additional transmitter location within the service area of its existing station, and on the same frequency, will not be required to demonstrate public need for the new facility. The applicant may not reduce the distance between its own station location(s) and a co-channel station below that specified in § 22.503(c) as a result of the addition of a new transmitter location unless the frequency is time-shared to avoid interference.

(d) An applicant for an additional channel must demonstrate the need for it by submitting a traffic load study pursuant to § 22.516.

(e) An applicant filing an application for a 900 MHz paging frequency at a location within forty miles of a pending one-way application, without dismissing the previously filed pending application, will be treated as amending the previous application. The amended application will be considered newly filed and subject to the applicable cut-off procedures. A pending 900 MHz application will be amended by a subsequent application for any one-way paging frequency, if the base station location is within forty miles of the location requested in the pending 900 MHz application.

(f) In the cases where the pending or newly filed applications do not involve the 900 MHz band, an applicant requesting a new one-way signaling station will be deemed to be requesting additional frequencies for its existing station if either (1) the transmitter location specified in the new application is within the service area of the existing station, or (2) there is an overlap or 50 percent or more between the service areas of the existing and proposed facilities.

[FR Doc. 82-32476 Filed 11-24-82; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION Federal Highway Administration 49 CFR Part 395

[BMCS Docket No. MC-99; Amendment No. 81-6]

Driver's Logs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending the Federal Motor Carrier Safety Regulations (FMCSR) to reduce the burden for drivers and motor carriers by revising the requirements for recording a driver's duty status, reducing the record retention period for both the motor carrier and the driver, and relaxing the 100-mile radius driver exemption by increasing the consecutive hours worked criterion from 12 to 15 hours.

EFFECTIVE DATE: January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, (202) 426-9767; or Mrs. Kathleen S. Markman, Office of the Chief Counsel, (202) 426-0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Information collection requirements contained in this regulation (§ 395.8) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2125-0016.

The FHWA has determined that this document is a major regulatory reduction action under Executive Order 12291 and that this rulemaking action is considered to be significant under the DOT's regulatory policies and procedures. A regulatory impact analysis and regulatory flexibility analysis is available for inspection in the public docket and may be obtained by contacting Mr. Neill Thomas of the program office at the address specified above.

On February 17, 1982, the FHWA issued a Notice of Proposed Rulemaking (NPRM) (Docket No. MC-99; No. 82-2, 47 FR 7702, February 22, 1982) seeking comments on a proposal to reduce the paperwork burden for motor carriers and drivers by eliminating the required driver's log forms. Comments were due by April 23, 1982.

The driver's log has been the primary regulatory tool used by the Federal government, State governments, drivers, and commercial motor carriers to determine a driver's compliance with the maximum hours of service limitations prescribed in the FMCSR. For example, during the last six months of 1981, the Bureau reviewed over 600,000 logs for driver and carrier compliance with the hours of service requirements. This included logs checked during management audits made at the carrier's terminals and those checked during roadside inspections. The information obtained from the log is used to place drivers out of service when they are in violation of the maximum limitations at the time of inspection. It is also used in determining a motor carrier's overall safety compliance status in controlling excess on duty hours, a major contributory factor in fatigue induced accidents. Additionally, it has traditionally been the principal document that is accepted by the court system as evidence to support enforcement actions for excess hours of service violations. Many motor carriers use the log to determine whether a driver has available hours to drive within the limitations set out in the regulations. Currently, it is the only single universally recognized instrument available to both Government and industry to insure compliance with the hours of service rules. Termination of a recordkeeping requirement, in light of the demonstrated need for enforcement, would be contrary to the very essence of the safety regulatory philosophy of the FHWA and in contradiction to the Act under which it was promulgated.

History

In 1935, Congress enacted the Motor Carrier Act, 49 Stat. 543, which was designated as Part II of the Interstate Commerce Act (IC Act). The major objective of the Act was the preservation and fostering of safe, efficient and economical highway movements in interstate commerce.

The statutory authority under which the FMCSR are issued is contained in 49 U.S.C. 304, Interstate Commerce Act, and 49 U.S.C. 1655, Department of Transportation Act.

Section 204(a) of the IC Act provides for the establishment of regulations relating to the qualifications and maximum hours of service of employees of common and contract carriers, as well as the safety of operations and equipment of those carriers. In addition, the regulations apply to the safety of operations of private carriers of property pursuant to Section 204(a)(3) of the IC Act which authorizes subjecting

certain private motor carriers to safety regulations "if need therefor is found." The Interstate Commerce Commission (ICC) made that requisite finding in 1940. (Motor Carrier Safety Regulations—Private Carriers, 23 M.C.C. 1 (1940), modified on reconsideration, 26 M.C.C. 205 (1940), further modified, 26 M.C.C. 477 (1940)). Private carriers of property are governed by the same safety regulations as common or contract carriers.

The driver's daily log was first prescribed by the ICC in Ex Parte MC-2, by order dated July 15, 1938, and later modified by order issued February 8, 1939, effective January 1, 1940. The original log contained eight separate duty status lines plus a remarks section. In addition, it contained the carrier name and main office address, date, driver's signature, home terminal, mileage, company accounting number, and summary of duty hours.

In establishing the log requirement, the ICC stated "For the enforcement of the regulations prescribed herein and for other purposes, we will require the keeping of a driver's log. This log, the precise form of which will be defined in a supplemental order prior to the effective date of our regulations herein, will bring out the essential facts respecting the places at or between which the driver has operated vehicles within a 24 hour period, the length of the on-duty period, the distribution of this period between driving time and time otherwise spent, and such other information as is deemed necessary. The log will be written up by the driver, and he will be required to keep one copy with him while on duty. A second copy will be required to be filed with the carrier-employer daily or at the end of each trip. This copy will be retained by such carrier in its files, subject to our inspection or other use, for such time as our regulations with respect to the destruction of records, shall require. Where, as the record shows, carriers use for payroll or other purposes data of a kind required to be shown on this log, there will be no objection to the entering, by the driver or the carrier, of additional information on such log."

Effective July 1, 1952, the log was completely revised as Form BMC 54, prescribed by the ICC (Budget Bureau No. 60-R253.2). The log was reduced from 8 duty status lines to four: 1. off duty; 2. sleeper berth; 3. driving; and 4. on duty (not driving). Minor revisions were made in 1965 (Budget Bureau No. 60-R253.3) to establish the log which is used today, i.e., Form MCS-59, Driver's Daily Log.

Since that time, several rulemaking actions have been initiated concerning the log requirements. For example, a one year test program commenced April 1, 1973, in response to a petition for rulemaking filed by the American Trucking Associations, Inc. (ATA). The ATA requested adoption of a form of log which would permit 7 days of driver's activities to be entered on a single sheet of paper. A variety of problems were encountered during this test program.

An Advance Notice of Proposed Rulemaking (ANPRM), published in the **Federal Register** on September 10, 1974 (39 FR 32620), proposed to permit the use of a 7-day log accompanied by restrictions and limitations on its general use. The comments submitted in response to the ANPRM indicated concerns and problems similar to those encountered during the test program.

As a result of the comments filed in response to the ANPRM and the results of the test program, an NPRM was published in the **Federal Register** on January 22, 1976 (41 FR 3311), proposing a 4-day log. The 4-day log was proposed in lieu of the 7-day log to offset the many enforcement problems that would have arisen through the use of the 7-day log.

In response to the aforementioned two rulemaking proposals, the ANPRM (7-day log) and the NPRM (4-day log), another NPRM was published in the **Federal Register** on April 4, 1977 (42 FR 17891), which proposed a multi-day log. Twenty-six supporting comments favoring the multi-day log concept were received. There were no opposition comments received. A final rule was published on November 2, 1977, (42 FR 58525) implementing a multi-day log. The final rule became effective upon issuance.

The multi-day log consists of two parts. Form MCS-139 is the first part of the multi-day log and may be used independently as a single-day log. This part includes information not included on form MCS-139A, which is a continuation portion of the multi-day log. Motor carriers may have as many as 8 day's logs on one sheet of paper. This action reduced considerably the number of sheets of paper a carrier or driver processed if the carrier chose to use the multi-day log as prescribed in § 395.9 of the FMCSR.

In 1938, when the ICC prescribed a log, relatively little criticism was directed against the rule. Substantially all of the witnesses agreed that a log was necessary insofar as over-the-road vehicles were concerned. Since that time, many modifications of the log have been made when research or petitions

provided information which warranted such action. It has been the policy of the FHWA to consider burden reduction when such action does not negatively affect safety.

On December 27, 1974, Congress created the Commission on Federal Paperwork (CFP) (Pub. L. 93-556). The CFP was established to study and investigate statutes, policies, rules, regulations, and information management procedures of Federal agencies to ascertain changes necessary to reduce paperwork burden on the public and/or industry. The legislation further directed the CFP to identify specific paperwork problems and initiate actions with responsible Federal agencies to achieve immediate solutions where possible.

In 1976, during the course of its studies, the CFP pinpointed the driver's logs as excessively burdensome. The CFP recommended that the FHWA discontinue the log and that an alternate monitoring system be devised to attain compliance with the hours of service regulations. Because the FHWA was already considering the use of multi-day logs at the time of the recommendation, no additional rulemaking was initiated in response to the CFP's recommendation.

When the CFP was dissolved, the implementation of its recommendations was assigned to the OMB. The OMB has, since that time, received further authority to oversee regulatory actions, past and present, to assure that unnecessary or particularly burdensome requirements are alleviated. The statutory authority for this function is found in the Paperwork Reduction Act of 1980, Pub. L. 96-511. Additional authority is contained in Executive Order 12291, dated February 17, 1981. Further attention has been given to the matter of regulatory burden on small business in the Regulatory Flexibility Act of 1980, Pub. L. 96-354.

The driver's log has existed with OMB (formerly the Bureau of Budget) approval for at least 30 years. However, in light of the CFP recommendations and the other cited authority, the OMB renewed its approval of the forms pending completion of a research study, entitled "Alternate Methods of Regulating Commercial Motor Vehicle Drivers' Hours of Service," Chilton Co., Contract No. DOT-FH-11-9414, and subsequent rulemaking action based on the findings of the study. The study was completed in February 1982. Authority for the use of the present logs has been extended until January 1, 1983.

Test Program

Although the preliminary results of the test program indicated that the modified trip report appeared to be an acceptable alternative to the driver's log, there is a distinct unavoidable bias in the final test program results. The drivers in the program were all employed by fleets whose managements were initially receptive to experimentation with the alternate concepts. Having made such a decision, these managements, it could be argued, had a vested interest in making the program work. Management reactions to the alternatives were almost universally enthusiastic for the modified trip report, but ranged from enthusiastic to negative for the tachograph chart. In both cases, there appeared to be little or no increase in administrative costs while supportive evidence, particularly in the larger fleets, did surface to suggest that an administrative cost reduction does result with the use of modified trip reports.

Although there were a number of problems enumerated and discussed throughout the final report of the test program (Alternative Methods of Regulating Commercial Motor Vehicle Drivers' Hours of Service, Final Report, February 1982, Chilton Company, Radnor, Pennsylvania), the contractor noted one exception in the report which it felt should be addressed in future regulatory action—that of multiple employers. One carrier withdrew from the program due to the refusal of interlining motor carriers to accept, in this case, the tachograph chart in lieu of the log and the drivers' objections to maintaining both duty status reports. The report stated that the regulations must stress that "there can be only one official logging record on any given day and that record must contain all hours of service activity for all employers and that each employer must receive the same identical copy of the driver's total hours of service activity."

The final rule set forth hereafter will eliminate most of the problems encountered during the test program.

Current Rulemaking Action

Approximately 1,300 comments were received in response to the NPRM of February 17, 1982, from a wide variety of respondents as shown below:

1. State regulatory agencies.
2. Trucking associations.
3. Private carriers.
4. Drivers.
5. Driver associations.
6. Union representatives.
7. Transportation groups.
8. Owner operators.

9. Hazardous materials carriers.

10. Bus associations.

11. Other interested parties.

These commenters addressed the proposed changes to the driver's log as well as a proposal concerning the present 100-mile radius driver exemption. The 100-mile radius driver exemption proposal was a response to petitions filed by the Private Truck Council of America, Inc. (PTCA), and the Continental Group, Inc., of Chicago, Illinois. The specifics of this proposal are addressed in detail later in this document.

Assessment of Comments

Supportive (No Log Requirement; Relaxation of Present Rules)

Approximately 90 of the comments received supported the proposed rules. This group of commenters was composed primarily of national associations representing motor carriers and intercity bus operators, as well as associations representing owner-operators. There were many supporting comments offered by individual motor carriers and individual owner-operators.

The comments ranged from those advocating complete abolition of all recordkeeping requirements to those urging only a slight relaxation of the present rule. For example, the Owner-Operators Independent Driver's Association of America "strongly supports elimination of the daily log as a pernicious regulation, unenforceable or inconsistently enforced, an invasion of privacy, a method of driver harassment, used to enforce ancillary regulations, often used as a strategy or method of withholding payment, and a means for carriers to enforce internal work rules." It goes on to say that the logs create a burden on owner-operators since State and local jurisdictions increase their revenues through fines for log violations. It estimates that 4 to 6 hours per week are spent filling in the log book correctly. It recommended a check-in, check-out system be used in place of the log.

Approximately 70 of the comments received in support of a rule change were from owner-operators and other drivers who urged the complete elimination of the logs as well as any other recordkeeping requirement. Those comments were based on the belief that maintenance of the logs is too costly during this current economic recession, as well as the belief that truckers realize when they need to stop for rest based on common sense. No evidence was submitted to support these contentions. Many of these commenters urged the

elimination of the hours of service rules also, which is a matter beyond the scope of this rulemaking action.

Other commenters, such as the United Parcel Service (UPS) and the American Bus Association (ABA), favor the elimination of the log requirements, particularly for regular route drivers. The UPS stated that the logs duplicate its own records which contain information required to monitor hours of service. It explained that time cards serve the same purpose as the logs for drivers who operate vehicles between fixed locations on a repetitive basis. The ABA shares this belief because, it says, bus companies establish trip schedules which are in compliance with the hours of service rules, and thus driver's hours of service are controlled with a view toward safety of bus operations. The ABA comments, which were supported by comments of Greyhound, do express support, however, of recordkeeping requirements for spare drivers.

Other commenters advocated action less extreme than the total elimination of the logs. Also, their comments more closely addressed that which was proposed in the NPRM. The American Trucking Associations, Inc. (ATA) comments were typical of the majority of comments received supporting the proposal. The ATA recommends that, in addition to allowing optional forms for the recording of time, certain information should be deleted from the forms. The items recommended for deletion were:

1. The company name and address (optional).
2. Driver's home terminal.
3. Location of intermittent change of duty status.
4. Shipping document information.
5. Off-duty time.

The Common Carrier Conference of the ATA also requested that four informational items be eliminated:

1. Driver off-duty time.
2. Location of each change of duty status.
3. On-duty driving and on-duty not driving time.
4. Carrier's home terminal address.

Many of the other commenters supporting the proposal to allow alternate forms did so with the condition that the hours of service rules continue to be strictly enforced. Some commenters, such as the National Tank Truck Carriers, Inc., urged even stricter enforcement than that which presently exists.

Opposed (to Log Elimination)

The continued use of the driver's log was supported by a large majority of commenters. Approximately 1,200

comments received were in opposition to the proposed rule change with expressed concerns focusing primarily on the potential for unnecessary confusion among law enforcement, regulatory and industry personnel. Twenty-seven State regulatory agencies from 23 States submitted comments in total support of the retention of the current driver's log, with only minor exceptions. These exceptions, which were put forth by several State agencies, indicated that trip reports may be acceptable provided the forms were uniform and the information necessary for enforcement purposes is specified to be contained therein.

The need for uniformity was a concern expressed by the States, carriers, drivers, individuals and national organizations such as the International Brotherhood of Teamsters (IBT), the Professional Drivers Council of Teamsters for a Democratic Union (PROD), and the Commercial Vehicle Safety Alliance (CVSA). The CVSA, for example, stated that the current log provides uniformity because it is universally understood by both law enforcement personnel, and the regulated industry, and is accepted by the courts. The CVSA also believes that any benefits gained by reducing the recordkeeping requirement at the Federal level would be more than offset by different or unique requirements promulgated by each of the States. It was also frequently pointed out that a multitude of dissimilar recordkeeping forms and techniques for enforcement personnel to become familiar with would be costly in terms of both time and money for enforcement agencies as well as the motor carriers. PROD, in its comments, expressed the belief that the acceptance of many forms will actually escalate enforcement costs due to the effort required in obtaining information from dissimilar forms. The PROD goes on to say that the proposal fails to promote, and would actually undermine, the objectives of the Paperwork Reduction Act. Another commenter continues along these lines by saying that the paperwork burden would only be shuffled from the carrier onto the drivers and enforcement personnel by allowing many different types of forms.

The IBT urges the FHWA to drop the entire rulemaking action based on the following rationale. It states its belief that the elimination of the log requirement will drastically weaken efforts to enforce the hours of service rules. It further states that the proposed rules would allow documentation through production and retention of a series of detached records with the possibility of lost, misplaced or

destroyed records increasing with each document created.

A motor carrier Vice President, in opposing the proposed rule change, stated "I would hope that the Federal Government would not, in this case, let the Federal regulations descend to the State level for control. I feel we would be in the same mess we are faced with on permits. Every State would have their own formula for writing the laws and enforcing them. Let us stay at the Federal level and keep one set of laws."

Responses to a survey of owner-operators conducted by the Trucker's Action Conference, Baltimore, Maryland, indicated almost total opposition to replacing the existing log book with another timekeeping record. Results of the survey show, according to the Conference, that the log is easily updated during the time a driver spends waiting for meals to be served, engine warm-up and cool-down, on coffee breaks, etc. As a result of the survey, the Conference has taken the position that the log book controversy is largely a smoke screen. "The log book," it states, "serves its purpose to a degree, which is to protect the driver and the public from abuse. It makes carriers and drivers use caution in exceeding the regulations."

Additional Comments

Several commenters requested permission to use terminal codes to indicate the points at which the driver begins and ends a tour of duty. There is no objection to a motor carrier using its own terminal codes on the driver's time records in addition to the information required on driver's records of duty status.

It has been requested that a section be included authorizing the FHWA's Associate Regional Administrator for Motor Carrier Safety to approve innovative time control systems which do not meet the requirements of the driver's duty status record. There are procedures for filing petitions for changes in the regulations (49 CFR Part 389). Any deviation from the requirements as set forth in the FMCSR must be handled through appropriate rulemaking action.

The proposed use of the recording tachograph met with a great deal of opposition. The California Highway Patrol, for example, addressed the issue in its comments by stating that the modified tachograph (when legible) would be satisfactory for after-the-fact inspections, but less than adequate for on-highway enforcement, which is considered to be of prime importance. The CVSA also commented on the problems associated with the use of

tachographs such as the variations in style and type of charts and that modifications render the charts illegible. It also pointed out that the use of such a mechanical recorder is subject to breakdown and is far from being tamper proof when unlocked and inaccessible when locked. The comments of the CVSA were endorsed by many of the States who commented. The National Conference of State Transportation Specialists presented similar arguments. It contends that the use of tachographs overlooks the fact that safety enforcement is done on the highway and not at the carrier's terminal. The enforcement by the States is for the purpose of removing the unsafe driver from the highway and is not predicated on after-the-fact investigation. Another issue in the discussion of tachographs is the fact that the admissibility of the tachograph chart as evidence in court is suspect.

Discussion

Record Format

It is conceivable that the paperwork burden will increase if the various States adopt differing recordkeeping requirements. The situation could worsen if some States refused to accept records prescribed by other States. A Federal standard is needed to regulate a diverse national industry that operates its vehicles into and through all States. The safety of the traveling public must not be compromised by weakening a national enforcement capability solely for the purpose of reducing paperwork burden.

On the other hand, the arguments presented by those commenters urging the use of alternate forms which meet the needs of each company have a great deal of merit. These commenters contend that this course of action would preserve the national hours of service enforcement capability and, at the same time, permit an easing of the paperwork burden for many carriers and drivers.

Having considered all comments, both pro and con, it has been decided that each motor carrier may use the recordkeeping form of its choice provided that the required information and the required graph grid (see illustrations in paragraph (g) of the final rule) appear on that form. The presence of a standard grid on the carrier's form will result in universal recognition of any document tendered as an official hours of service record, thus overcoming most objections to the complete elimination of a standardized form requirement. This does not preclude the continued use of the daily log or the multi-day log if a motor carrier so

chooses. All "divided record" approvals now in effect for the driver's daily log or multi-day log do not have to be resubmitted for approval if the carrier elects to use its own driver's record of duty status.

The decision to require the use of the graph grid instead of other systems tested and subsequently proposed in the NPRM is based on the convincing arguments presented by the large majority of commenters who stressed their desire for universal uniformity. While this rule offers broad relief by allowing substantial freedom of design for the recordkeeping format, the use of alternate grids cannot be justified considering the large number of commenters dramatically opposed to such a change.

Another consideration that led to this decision was the results of the test program. Even though the preliminary results indicated that the modified trip report appeared to be an acceptable alternative to the driver's log, the final report revealed some difficulties with the alternatives tested. The difficulties encountered were not insurmountable, but did lend added weight to the arguments urging a universally acceptable and recognizable duty status record.

The decision to allow the use of any form chosen by a motor carrier was based in part on the results of the test program. Those results indicated that the use of a duty status record, when incorporated into any motor carrier form, presented no serious problems for the motor carriers, drivers, or enforcement personnel involved in the test program. It is believed, after due consideration of the comments to the docket and the results of the test program, that the graph grid (used either vertically or horizontally to fit the needs of the motor carrier) will provide substantial relief without jeopardizing uniformity and thus, the enforcement capability about which a large majority of commenters expressed concern.

The tachograph was one of the alternate methods used in the test program. The test program results indicate that there are some problems associated with the tachograph similar to those mentioned above, such as the potential for mechanical breakdowns.

The arguments provided against the use of the tachographs, the potential enforcement problems associated with it, and the problems encountered in the test program are justification enough for the FHWA to no longer consider the tachograph as a viable option for recordkeeping.

Record Retention

In response to many comments requesting reduction in the retention period for logs, it has been determined that the retention time presently required of motor carriers and drivers for the logs is longer than is absolutely necessary. Safety of operations or enforcement efforts will not be adversely affected if the retention requirement is reduced from 12 months to 6 months for carriers and from 30 days to 8 days for drivers. The rule is being changed to reflect this shorter retention requirement.

Data Elements

It has also been determined that certain information currently required on the log may be unnecessary for enforcement purposes. For that reason the following items will no longer be required:

1. Total mileage today.
2. Name of co-driver.
3. Home terminal address.
4. Total hours (as found at far right edge of grid).
5. Shipping document number(s), or name of shipper and commodity.
6. Origin.
7. Destination or turnaround point.

One other change to the recordkeeping format is that of the beginning time itself. The time record may commence at any time and will record a 24-hour period of time. Presently, motor carriers are allowed to use midnight to midnight or noon to noon time bases. This rule will allow a motor carrier to commence the time base as it so chooses. However, the commencement time used must be constant within each terminal of the motor carrier's operation.

In view of the support for continuing the use of the driver's log, it is apparent that a fairly uniform method of recordkeeping is necessary to ensure continued compliance with the hours of service regulations. The FHWA's concern for such uniformity has not been compromised in this effort to reduce the regulatory burden associated with the requirement.

The alternate methods allowed herein permit motor carriers to choose between the driver's log and recordkeeping documents that are an integral part of the company's operations. Those carriers who choose to combine company information with the required graph grid and essential data elements, can now consolidate all of the information onto one piece of paper. Additionally, the information now required on the recordkeeping form has

been reduced from 16 data elements to eight. Many company reports, such as trip reports, already contain most of these data elements. These deletions are expected to reduce driver preparation time by approximately 50 percent without affecting the enforcement capability.

Burden Reduction

Based on projected costs and burden hours involved in the preparation of the driver's duty status record, combined with the filing and retention time, it is estimated that a burden reduction of 11.2 million hours and a dollar savings of \$164.1 million will result from this rulemaking action. This represents a 54.2 percent burden hour reduction in the recordkeeping requirements and a 56.0 percent reduction in associated costs.

Many company trip reports already contain most of the data items being required by the final rule and would continue to be included by the companies even if there were no Federal requirement. The preparation burden should, therefore, be further reduced to only include, in most instances, the time involved in completing the graph grid.

Alternatives

This rule provides motor carriers with five alternatives for controlling a driver's hours of service. The five alternatives are as follows:

1. Daily log (as is or modified);
2. Multi-day log (as is or modified);
3. Graph grid (vertical), combined with a company record;
4. Graph grid (horizontal), combined with a company record; or
5. Graph grid, combined with only eight required data elements.

Exemption to Record of Duty Status Preparation

The NPRM proposed to increase, from 12 consecutive hours to 15 consecutive hours, the number of hours a driver may be on duty under the present 100-mile radius driver exemption. This proposal was in response to petitions filed by PTCA, and the Continental Group, Inc., of Chicago, Illinois, in which they requested that the 50-mile radius driver exemption be restored as an option.

The petitioners contended that many drivers previously exempt from the log requirement are now required to prepare logs due to the 12-hour limitation. The petitioners pointed out that many companies engaged in such businesses as container manufacturing, merchandise packaging, home heating oil delivery, farm fertilizer delivery and retail services experience a seasonal need which clearly necessitates the 15-

hour on-duty time limit in order to reduce the paperwork burden.

Expanding the 50-mile radius driver exemption to 100 miles did create the situation described by the petitioners. The creation of such a situation was not intended. Rather than reestablish a separate 50-mile radius driver exemption, it was proposed that the current 100-mile radius driver exemption rule be revised to permit drivers to be on duty for 15 consecutive hours and not be required to prepare the driver's duty status record.

A large majority of commenters responding to the proposal supported the proposed change. Some commenters, however, such as the IBT and PROD, expressed opposition to the proposal because of the fear that drivers operating under this exemption may be required to drive in excess of the current 10-hour allowance without preparing the necessary paperwork to determine if violations were committed.

The decision to increase the on-duty time to 15 consecutive hours for drivers operating within the 100 air-mile radius of the work reporting location does not negate the 10 hour driving time rule. Under this exemption a driver may not drive more than 10 hours following 8 consecutive hours off duty, nor drive after being on duty 15 consecutive hours. While the log exemption would make violating more difficult to detect, we believe that investigative techniques will allow adequate enforcement of the regulation. If experience shows this is not the case, appropriate rulemaking action will be initiated.

Further, any time a driver leaves the exempt area, or is on duty more than 15 consecutive hours, a record of the driver's duty status must be prepared for that day by the driver. Under this provision, there is no limitation on the number of times the driver may operate beyond the 100 air-mile radius or be on duty in excess of 15 consecutive hours in a nondriving capacity.

Conforming Changes

Conforming changes are being made in § 395.2, Definitions, and § 395.13, Drivers declared out of service, to make these sections compatible with the new rule. In addition, § 395.9, Driver's multi-day log, is being rescinded because the provisions contained therein have been incorporated into the revised rule.

Another conforming change being made is the elimination of the exemption that provided for the use of Canadian forms by Canadian motor carriers operating into the United States. Since there will be no prescribed Canadian log form in the future, there is no need for an exemption. Any form

used, including forms used by Canadian motor carriers, must conform to the requirements for the driver's record of duty status issued herein. Continued use of the previously prescribed Canadian log form is allowed as is the current daily log and multi-day log.

Summary

In view of the overwhelming number of comments received urging retention of the current driver's log requirement, it is evident that rulemaking on this issue must consider the need for uniformity in recordkeeping as a critical and primary consideration. In addition, because a substantial number of commenters expressed support of the proposal, and considering the results of the test program, it is apparent that some of the burden imposed by the existing log requirement can be eliminated without jeopardizing safety of operations.

The final rule differs from the proposed rule in that it specifies that a uniform grid must be used in conjunction with any form a motor carrier uses, while at the same time permitting the continued use of the current driver's daily log or multi-day log. By doing so, uniformity has not been compromised. Further, the relaxation of this rule will allow for a substantial reduction of paperwork burden on the industry while not affecting the ability of Federal and State enforcement personnel to audit a carrier's or driver's compliance with the regulations.

Actual cost reductions were reported by several fleets that participated in the test program. Those cost savings resulted from the elimination of collecting, processing, auditing, and filing of the log as a separate document. In some cases, such advantages as improved quality and quantity of hours of service compliance auditing was achievable by taking advantage of the savings in administrative time.

This rule represents a compromise of well-stated positions, both pro and con, with the concerns of both factions having been weighed and given full and serious consideration. In addition, the test program has provided the needed evidence that the implementation of this rule does not present a safety hazard to the industry, its drivers, or the public.

In accordance with the provisions of Executive Order 12291, in promulgating this rule the FHWA has determined that (a) the rule is clearly within the authority delegated by law and consistent with congressional intent, and (b) the factual conclusions upon which the rule is based have substantial support in the agency record, viewed as a whole, with full attention to public

comments in general and the comments of persons directly affected by the rule in particular.

List of Subjects in 49 CFR Part 395

Motor carriers—drivers hours of service, reporting and recordkeeping requirements.

In consideration of the foregoing, Title 49, Code of Federal Regulations, Subtitle B, Chapter III, Part 395 is amended as set forth below.

PART 395—HOURS OF SERVICE OF DRIVERS

1. Amend § 395.2 by revising paragraph (c), (d) and (e) and by adding a new paragraph (j) to read as follows:

§ 395.2 Definitions.

(c) *Seven consecutive days.* The term "7 consecutive days" means the period of 7 consecutive days beginning on any day at the time designated by the motor carrier for a 24-hour period.

(d) *Eight consecutive days.* The term "8 consecutive days" means the period of 8 consecutive days beginning on any day at the time designated by the motor carrier for a 24-hour period.

(e) *Twenty-four hour period.* The term "24-hour period" means any 24 consecutive hour period beginning at the time designated by the motor carrier for the terminal from which the driver is normally dispatched.

(j) *Principal place of business or main office address.* The principal place of business or main office address is the geographic location designated by the motor carrier where the records required to be maintained by this part will be made available for inspection.

2. Section 395.8 is revised in its entirety to read as follows:

§ 395.8 Driver's record of duty status (Approved by the Office of Management and Budget under OMB Control number 2125-0016).

(a) Every motor carrier shall require every driver used by the motor carrier to record his/her duty status, in duplicate, for each 24-hour period. Every driver who operates a motor vehicle shall record his/her duty status, in duplicate, for each 24-hour period. The duty status time shall be recorded on a specified grid, as shown in paragraph (g) of this section. The grid and the requirements of paragraph (d) of this section may be combined with any company forms. The previously approved format of the Daily

Log, Form MCS-59 or the Multi-day Log, MCS-139 and MCS-139A, which meets the requirements of this paragraph, may continue to be used.

(b) The duty status shall be recorded as follows:

(1) "Off duty" or "OFF."

(2) "Sleeper berth" or "SB" (only if a sleeper berth used).

(3) "Driving" or "D."

(4) "On-duty not driving" or "ON."
(c) For each change of duty status (e.g., the place of reporting for work, starting to drive, on-duty not driving and where released from work), the name of the city, town, or village, with State abbreviation, shall be recorded.

Note.—If a change of duty status occurs at a location other than a city, town, or village, show one of the following: (1) The highway number and nearest milepost followed by the name of the nearest city, town, or village and State abbreviation, (2) the highway number and the name of the service plaza followed by the name of the nearest city, town, or village and State abbreviation, or (3) the highway numbers of the nearest two intersecting roadways followed by the name of the nearest city, town, or village and State abbreviation.

(d) The following information must be included on the form in addition to the grid:

(1) Date;

(2) Total miles driving today;

(3) Truck or tractor number;

(4) Name of carrier;

(5) Driver's signature/certification; and

(6) 24-hour period starting time (e.g., midnight, 9:00 a.m., noon, 3:00 p.m.); and

(7) Main office address.

(8) Remarks.

(e) Failure to complete the record of duty activities, failure to preserve a record of such duty activities, or making of false reports in connection with such duty activities as prescribed herein shall make the driver and/or the carrier liable to prosecution.

(f) The driver's activities shall be recorded in accordance with the following provisions:

(1) *Entries to be current.* Drivers shall keep their record of duty status current to the time shown for the last change of duty status.

(2) *Entries made by driver only.* All entries relating to driver's duty status must be legible and in the driver's own handwriting.

(3) *Date.* The month, day and year for the beginning of each 24-hour period shall be shown on the form containing the driver's duty status record.

(4) *Total mileage driven.* Total mileage driven during the 24-hour period shall be recorded on the form containing the driver's duty status record.

(5) *Vehicle identification.* The carrier's vehicle number or State and license number of each truck or tractor unit operated during that 24-hour period shall be shown on the form containing the driver's duty status record.

(6) *Name of carrier.* The name(s) of the motor carrier(s) for which work is performed shall be shown on the form containing the driver's duty status record. When work is performed for more than one motor carrier during the same 24-hour period, the beginning and finishing time, showing a.m. or p.m., worked for each carrier shall be shown after each carrier name. Drivers of leased vehicles shall show the name of the motor carrier performing the transportation.

(7) *Signature/certification.* The driver shall certify to the correctness of all entries by signing the form containing the driver's duty status record with his/her legal name or name of record. The driver's signature certifies that all entries required by this section made by the driver are true and correct.

(8) *Time base to be used.* (i) The driver's duty status record shall be prepared, maintained, and submitted using the time standard in effect at the driver's home terminal, for a 24-hour period beginning with the time specified by the motor carrier for that driver's home terminal.

(ii) The term "7 or 8 consecutive days" means the 7 or 8 consecutive 24-hour periods as designated by the carrier for the driver's home terminal.

(iii) The 24-hour period starting time must be identified on the driver's duty status record. One-hour increments must appear on the graph, be identified, and preprinted. The words "Midnight" and "Noon" must appear above or beside the appropriate one-hour increment.

(9) *Main office address.* The motor carrier's main office address shall be shown on the form containing the driver's duty status record.

(10) *Recording days off duty.* Two or more consecutive 24-hour periods off duty may be recorded on one duty status record.

(g) *Graph grid.* The following graph grid must be incorporated into a motor carrier recordkeeping system which must also contain the information required in paragraph (d) of this section.

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(h) *Graph Grid Preparation.* The graph grid may be used horizontally or vertically and shall be completed as follows:

(1) *Off duty.* Except for time spent resting in a sleeper berth, a continuous line shall be drawn between the appropriate time markers to record the period(s) of time when the driver is not on duty, is not required to be in readiness to work, or is not under any responsibility for performing work.

(2) *Sleeper berth.* A continuous line shall be drawn between the appropriate time markers to record the period(s) of time off duty resting in a sleeper berth, as defined in § 395.2(g). (If a non-sleeper berth operation, sleeper berth need not be shown on the grid.)

(3) *Driving.* A continuous line shall be drawn between the appropriate time markers to record the period(s) of time on duty driving a motor vehicle, as defined in § 395.2(b).

(4) *On duty not driving.* A continuous line shall be drawn between the appropriate time markers to record the period(s) of time on duty not driving specified in § 395.2(a).

(5) *Location—Remarks.* The name of the city, town, or village, with State abbreviation where each change of duty status occurs shall be recorded.

Note.—If a change of duty status occurs at a location other than a city, town, or village, show one of the following: (1) The highway number and nearest milepost followed by the name of the nearest city, town, or village and State abbreviation, (2) the highway number and the name of the service plaza followed by the name of the nearest city, town, or village and State abbreviation, or (3) the highway numbers of the nearest two intersecting roadways followed by the name of the nearest city, town, or village and State abbreviation.

(i) *Filing driver's record of duty status.* The driver shall submit or forward by mail the original driver's record of duty status to the regular employing motor carrier within 13 days following the completion of the form.

(j) *Drivers used by more than one motor carrier.* (1) When the services of a driver are used by more than one motor carrier during any 24-hour period in effect at the driver's home terminal, the driver shall submit a copy of the record of duty status to each motor carrier. The record shall include:

(i) All duty time for the entire 24-hour period;

(ii) The name of each motor carrier served by the driver during that period; and

(iii) The beginning and finishing time, including a.m. or p.m., worked for each carrier.

(2) Motor carriers, when using a driver for the first time or intermittently, shall obtain from the driver a signed statement giving the total time on duty during the immediately preceding 7 days and the time at which the driver was last relieved from duty prior to beginning work for the motor carriers.

(k) *Retention of driver's record of duty status.* (1) Driver's records of duty status for each calendar month may be retained at the driver's home terminal until the 20th day of the succeeding calendar month. Such records shall then be forwarded to the carrier's principal place of business where they shall be retained with all supporting documents for a period of 6 months from date of receipt.

(2) *Exception.* Upon written request to, and with the approval of, the Associate Regional Administrator for

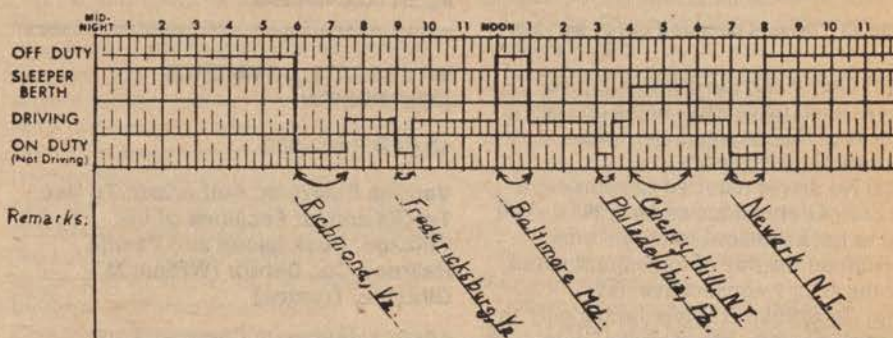
Motor Carrier Safety for the region in which the motor carrier has its principal place of business, a motor carrier may forward and maintain such records at a regional or terminal office. The addresses and jurisdictions of the Associate Regional Administrator's offices are shown in § 390.40 of this subchapter.

(3) The driver shall retain a copy of each record of duty status for the previous 7 consecutive days which shall be in his/her possession and available for inspection while on duty.

Note.—Driver's record of duty status.

The graph grid, when incorporated as part of any form used by a motor carrier, must be of sufficient size to be legible.

The following executed specimen grid illustrates how a driver's duty status should be recorded for a trip from Richmond, Virginia, to Newark, New Jersey. The grid reflects the midnight to midnight 24 hour period.



Graph Grid (Midnight to Midnight Operation)

The driver in this instance reported for duty at the motor carrier's terminal. The driver reported for work at 6 a.m., helped load, checked with dispatch, made a pretrip inspection, and performed other duties until 7:30 a.m. when the driver began driving. At 9 a.m. the driver had a minor accident in Fredericksburg, Virginia, and spent one half hour handling details with the local police. The driver arrived at the company's Baltimore, Maryland, terminal at noon and went to lunch while minor repairs were made to the tractor. At 1 p.m. the driver resumed the trip and made a delivery in Philadelphia, Pennsylvania, between 3 p.m. and 3:30 p.m. at which time the driver started driving again. Upon arrival at Cherry Hill, New Jersey, at 4 p.m., the driver entered the sleeper berth for a rest break until 5:45 p.m. at which time the driver resumed driving again. At 7 p.m. the driver arrived at the company's terminal in Newark, New Jersey. Between 7 p.m. and 8 p.m. the driver prepared the required paperwork including completing the driver's record of duty status, vehicle condition report, insurance report for the Fredericksburg, Virginia accident, checked for the next day's dispatch, etc. At 8 p.m., the driver went off duty.

(l) *Exemptions.*—(1) 100 air-mile radius driver. A driver is exempt from the requirements of this section if:

(i) The driver operates within a 100 air-mile radius of the normal work reporting location;

(ii) The driver, except a driver salesperson, returns to the work reporting location and is released from work within 15 consecutive hours;

(iii) The driver had 8 consecutive hours off duty prior to reporting for duty;

(iv) The driver does not exceed 10 hours maximum driving time following 8 consecutive hours off duty;

(v) The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing:

(A) The time the driver reports for duty each day;

(B) The total number of hours the driver is on duty each day;

(C) The time the driver is released from duty each day; and

(D) The total time for the preceding 7 days in accordance with paragraph (i) of

this section for drivers used for the first time intermittently.

(2) *Drivers of lightweight vehicles.* The rules in this section do not apply to a driver of a lightweight vehicle as defined in § 390.17.

(3) *Drivers operating in Hawaii.* The rules in this section do not apply to a driver who drives a motor vehicle in the State of Hawaii, if the motor carrier who employs the driver maintains and retains for a period of 6 months accurate and true records showing—

- (i) The total number of hours the driver is on duty each day; and
- (ii) The time at which the driver reports for, and is released from, duty each day.

§ 395.9 [Removed and reserved]

3. Section 395.9 is removed and the section number is reserved.

4. Amend § 395.13 by revising paragraphs (b), (c), and (d)(1) and (2) to read as follows:

§ 395.13 Drivers declared out of service.

(b) *Out of service criteria.* (1) No driver shall drive after being on duty in excess of the maximum periods permitted by this part.

(2) No driver required to maintain a record of duty status under § 395.8 shall fail to have a record of duty status current on the day of examination and for the prior 7 consecutive days.

(3) *Exception.* A driver failing only to have possession of a record of duty status current on the day of examination and the prior day, but has completed records of duty status up to that time (previous 6 days), will be given the opportunity to make the duty status record current.

(c) *Responsibilities of motor carriers.*

(1) No motor carrier shall:

(i) Require or permit a driver who has been declared out of service to operate a motor vehicle until that driver may lawfully do under the rules in this part.

(ii) Require a driver who has been declared out of service for failure to prepare a record of duty status to operate a motor vehicle until that driver has been off duty for 8 consecutive hours and is in compliance with this section. The consecutive 8 hour off-duty period may include sleeper berth time.

(2) A motor carrier shall complete the "Motor Carrier Certification of Action Taken" portion of the form MCS-63 (Driver-Vehicle Examination Report) and deliver the copy of the form either personally or by mail to the Associate Regional Administrator for Motor Carrier Safety, Federal Highway Administration, at the address specified upon the form within 15 days following

the date of examination. If the motor carrier mails the form, delivery is made on the date it is postmarked.

(d) *Responsibilities of the driver.* (1) No driver who has been declared out of service shall operate a motor vehicle until that driver may lawfully do so under the rules of this part.

(2) No driver who has been declared out of service, for failing to prepare a record of duty status, shall operate a motor vehicle until the driver has been off duty for 8 consecutive hours and is in compliance with this section.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

(49 U.S.C. 304, 1653; 49 CFR 1.48 and 301.60)

Issued on: November 22, 1982.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

[FR Doc. 82-32331 Filed 11-24-82; 8:45 am]

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INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

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

AGENCY: Interstate Commerce Commission.

ACTION: Forty-Sixth Revised Service Order No. 1473.

SUMMARY: Pursuant to Section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Public Law 96-254, this order authorizes various railroads to provide interim service over the 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.

EFFECTIVE DATES: 12:01 a.m., November 24, 1982, and continuing in effect until 11:59 p.m., January 31, 1983, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275-7840 or 275-1559.

SUPPLEMENTAL INFORMATION:

Decided: November 19, 1982.

Pursuant to Section 122 of the Rock Island Railroad 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 those operations.

In view of the urgent need for continued rail service over RI's lines pending the implementation of long-range solutions, this order permits carriers to provide service to shippers which may otherwise be deprived of essential rail transportation.

Appendix A, to the previous order, is revised by deleting at 4.S, the authority for the Chicago and North Western Transportation Company (CNW) to operate over Peoria Terminal Trackage between Hollis and Iowa Junction, Illinois. This line segment was purchased by CNW.

Appendix A is further revised by adding at Item 26, the authority for Texas North Western Railway Company (TNW) to operate between Hardesty, Oklahoma and Liberal, Kansas, a distance of approximately 33 miles. This line connects with a line segment already purchased by TNW from Rock Island at Hardesty, Oklahoma. Appendix A is further revised by modifying the authority of the Cadillac and Lake City Railway Company (CLK) at Item 8, to reflect the terms of its lease agreement with the Trustee.

Appendix B of Forty-Third Revised Service Order No. 1473 is unchanged and is incorporated into this order by reference.

It has been brought to the attention of the Board that, in certain cases, payment of compensation to the Trustee for the use of Rock Island property is in arrears. All interim operators are reminded that compensation, whether determined by lease, agreement, or the Rock Island Formula, is a requirement of this order and should remain current.

It is the opinion of the Commission that an emergency exists requiring that the railroads listed in the named 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.

PART 1033—[AMENDED]

It is ordered,

§ 1033.1473 Service Order No. 1473.

(a) *Various railroads authorized to use tracks and/or facilities of the*