agencies: West Virginia Human Rights Commission, Philadelphia Commission on Human Relations, and Pennsylvania Human Relations Commission.

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

PART 1601—[AMENDED]

§ 1601.80 [Amended]

Accordingly, 29 CFR Part 1601 is amended in § 1601.80 by adding the West Virginia Human Rights Commission, Philadelphia Commission on Human Relations, and Pennsylvania Human Relations Commission in alphabetical order.

(42 U.S.C. 2000e-12(a))

Signed at Washington, D.C. this 1st day of November 1983.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 83-30633 Filed 11-10-83; 8:45 am]

BILLING CODE 6570-06-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 420

[WH-FRL 2470-8]

Iron and Steel Manufacturing Point Source Category Effluent Limitations Guidelines; Correction

AGENCY: Environmental Protection Agency.

ACTION: Notice of Correction.

SUMMARY: EPA is correcting a minor error in the October 14, 1983 **Federal Register** (48 FR 46942) notice of final and interim amendments to the effluent limitation guidelines and standards for the Iron and Steel Manufacturing Point Source Category.

FOR FURTHER INFORMATION CONTACT: Mr. Ernst P. Hall, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Telephone (202) 382-7126.

DATES: This correction is effective November 14, 1983. The comment period on the interim regulation, corrected here, closes on November 14, 1983.

Correction

In the **Federal Register** notice published on October 14, 1983, (48 FR 46942), a correction is required as follows:

On page 46943, column 2, line 8; change: "40 CFR 420.03" to "40 CFR 420.04".

Dated: November 9, 1983.

Steven Schatzow,

Acting Assistant Administrator for Water.

[FR Doc. 83-30783 Filed 11-10-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61 and 64

[Docket No. 20840; FCC 83-479]

Use of Recording Devices in Connection With Telephone Service

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order.

SUMMARY: The Commission reconsidered and clarified its 1981 order in Docket 20840 in which it modified its policies concerning the use of recording devices in connection with telephone service to allow mutual consent as an alternative to the beep tone requirement and adopted three exceptions in which the recording party need not obtain prior consent from the other party nor use a beep tone. In response to requests for clarification or reconsideration, the Commission broadened the exception for law enforcement recording; clarified that consent to record must be obtained prior to the recording; and specified that under the emergency exception, emergencies are to be defined broadly. The reconsideration and clarification are in response to petitions filed by the American Telephone and Telegraph Company, the Department of Defense and the Department of Justice.

FOR FURTHER INFORMATION CONTACT: Barry Lambergman (202) 632-6917.

Memorandum Opinion and Order

In the matter of use of recording devices in connection with Telephone Service; Docket No. 20840.

Adopted: October 19, 1983.
Released: October 27, 1983.

By the Commission: Commissioner Quello absent.

I. Introduction

1. Before the Commission are three petitions for clarification or reconsideration of portions of our Memorandum Opinion and Order in this proceeding, 86 FCC 2d 313 (1981) *(Order)*, filed by American Telephone and Telegraph Company (AT&T),[1] the U.S. Department of Defense (DOD), and the U.S. Department of Justice (Justice).[2] In that decision, *inter alia*, we modified our policies concerning the use of recording devices in connection with telephone service to allow mutual consent to record as an alternative to the beep tone requirement, and we adopted three exceptions under which the recording party need neither obtain consent of the other party nor use a beep tone.[3]

2. The petitions for clarification or reconsideration do not question our decision to allow mutual consent as an alternative to the beep tone, although Justice and UTC raise the more fundamental question of the authority of the Commission to regulate in this area at all. Rather, the petitions seek clarification or embellishment of the specifics of this framework. Thus, they argue that our exception for court-ordered wiretaps is drawn too narrowly. In addition, AT&T asks us to: (1) Declare that consent must be given prior to recording; (2) prescribe the method for obtaining oral consent; (3) declare that the burden should be on the recording party to prove consent; and (4) clarify our exception concerning emergencies.

3. Upon further reflection, and without reaching the issue of the Commission's authority, we have come to the conclusion that there are sound reasons to discontinue regulation in this area altogether, rather than to continue to refine a regulation whose efficacy and lawfulness have been called into serious question. Accordingly, we will issue a Further Notice of Proposed Rulemaking to solicit comments on our proposal to vacate the current tariff prescription order and revoke § 64.501 of the Rules, 47 CFR 64.501.[4]

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[1] AT&T's petition is for clarification only. AT&T also requested in its petition that the time for filing revised tariffs to comport with the order be extended until after the Commission resolved the petition for clarification. That extension was granted by the Chief, Common Carrier Bureau, Mimeo No. 4558, released June 14, 1982.

[2] The American Automobile Association (AAA) and Delphi Communications Corp. (Delphi) have each filed oppositions to AT&T's petition, and the Utilities Telecommunications Council (UTC) has replied to Delphi's opposition.

[3] The first exception is for incoming calls made to telephone numbers publicized for emergencies and outgoing calls made in immediate response. The second is for recording incoming calls made for patently unlawful purposes, such as bomb threats, kidnap ransom requests, and obscene telephone calls, and outgoing calls made in immediate response to such calls. The third exception is for recordings made pursuant to an explicit and lawful order of a court issued pursuant to 18 U.S.C. 2516. 86 FCC 2d at 321.

[4] This section requires telephone common carriers to use a beep tone device or obtain all party consent

Continued

4. In the meantime, however, leaving open the possibility that the comments persuade us that it is in the public interest to retain some restrictions, we resolve below the other issues raised in the petitions for clarification or reconsideration.

II. Petitions for Clarification or Reconsideration

A. Consent To Record

5. In its petition for clarification, AT&T poses three requests concerning consent. First, under the supposition that our *Order* is unclear on the requirement that consent be obtained prior to recording, it asks that we amend the ordering clauses to specify prior consent. Second, noting that our order does not mandate the manner in which verbal consent is to be obtained, it asks that we require such consent to be recorded. Lastly, AT&T asks that we place the burden of proof on the recording party to demonstrate that consent to record has been properly obtained.

6. AAA and Delphi each partially oppose AT&T's request for clarification. They argue that the requirement of recording the actual consent would be an unnecessary regulation and that the method of obtaining consent should be left to the recording party. Delphi believes that the caller who speaks to an answering service, for instance, is effectively on notice that the conversation is being recorded. Therefore, it reasons, consent to record may be inferred, and the burden of requiring consent to be recorded would be disruptive to the operation of telephone answering systems.

7. After carefully considering the above arguments, we will grant AT&T's request in part. We clearly intended that consent to record be obtained prior to recording a conversation. We will therefore clarify paragraph 23 of the Order to specify that the "all party consent requirement" is satisfied only if the consent is obtained prior to recording the conversation.[5] Moreover, while we recognize AAA's and Delphi's concern that the method of obtaining consent remain flexible, we are persuaded that if there is to be any possibility of enforcement, the consent, if verbal, must be recorded. Thus, if a telephone company's investigation into alleged non-consensual recording discloses a conflict between the parties to the conversation on the matter of consent, the recording party will have to provide taped or written evidence that consent was obtained. At the same time, of course, as with all tariff prohibitions, the carrier will bear the burden of proving that a violation has occurred before it implements any enforcement procedures.

B. Exceptions

8. In our *Order*, we adopted three limited exceptions to our requirement of either a beep tone or all party consent prior to recording a telephone conversation. The first of those exceptions is "for incoming calls made to telephone numbers publicized for emergencies and outgoing calls made in immediate response." 86 FCC 2d at 321. AT&T requests that we clarify our intent with respect to the scope of this exception. It asks whether the definition is limited to fire, health care, and police type emergencies or whether it also includes situations such as emergency road service, emergency electrical outages, chemical emergencies, gas leaks, water main breaks, and downed electrical wires. AT&T further asks us to clarify what we mean by "health care emergencies."

9. Simply put, when we adopted this exception we intended to broadly define emergencies, including health emergencies. The exception is not limited to police, fire, and ambulance services, but rather is intended to also include numbers publicized to handle situations such as gas leaks, emergency road service, and chemical emergencies. In order words, we intend this emergency exception to include telephone numbers publicized for any emergency where health or safety of life and property is at stake.

10. Another exception to the beep tone or mutual consent requirement is "for recordings made pursuant to an explicit and lawful order of a court issued pursuant to 18 U.S.C. 2516." AT&T, DOD and Justice all claim that this exception is too narrowly drawn, and ask that the exception be broadened to include: (a) Interceptions authorized pursuant to the Foreign Intelligence Surveillance Act of 1978 (Foreign Intelligence Act), 50 U.S.C. 1801 *et seq.*, and (b) emergency and other electronic surveillance permitted without a court order pursuant to the Omnibus Crime Act. In addition, AT&T asks that the exception be extended to include lawful electronic surveillance by state law enforcement authorities, while DOD asks that the exception include communication security monitoring conducted by the National Security Agency pursuant to Executive Order 12036, 43 FR 3682, 3683 (1978), United States Code Cong. & Ad. News 7 at 9650–9652. Lastly, DOD and Justice both argue that the wording in our exception should be revised to delete the words "explicit and lawful." They claim that such wording seems to place an obligation on the common carrier to verify the validity of the order. Without such wording, according to petitioners, the common carrier would be able to comply with the order automatically when it is presented.

11. We agree that the exception for recordings made pursuant to a court order should be clarified and expanded. We agree with the DOD and Justice argument that a common carrier should be able to assist law enforcement officials by providing an interception pursuant to a court order without having to judge the lawfulness of that order independently. Thus, the words "explicit and lawful" will be deleted. Moreover, it is not our intention to interfere with federal communications security monitoring or legitimate recording by law enforcement or federal intelligence agencies. We agree therefore that our exception should be broad enough to encompass recordings authorized by court orders issued pursuant to statutes in addition to the Omnibus Crime Act, as well as law enforcement and federal intelligence recordings and communications security monitoring permitted without a court order by the Omnibus Crime Act, other statutes or Executive Order. Accordingly, we will amend the third exception (Order, Para. 21) as follows:

> The third exception is for recordings made by Federal, State, or local law enforcement authorities or federal intelligence authorities acting under color of law. We adopt this exception so that our requirement will not hinder law enforcement efforts.

III. Conclusions and Ordering Clauses

12. As discussed above, after considering the arguments presented here, we have decided to broaden the exception for law enforcement recording. Additionally, we have clarified that the consent to record must be obtained prior to the recording; that the consent, if verbal, must be recorded; and that "emergencies" are to be defined broadly in the exception "for incoming calls made to telephone numbers publicized for emergencies and outgoing calls made in immediate response." Finally, in a separate document we are issuing a notice of proposed rulemaking to solicit comments on our proposal to discontinue regulation in this area.

before recording a telephone conversation between a member of the public and a person acting for or employed by the common carrier.

[5] The ordering paragraph 25, however, which directs carriers to revise their tariffs to comport with the Order, does not need revision as it is already broad enough to include the requirement of prior consent.

13. Accordingly, it is ordered, That, the petitions for clarification or reconsideration filed by American Telephone and Telegraph Company, the U.S. Department of Defense, and the U.S. Department of Justice are granted to the extent indicated above and are otherwise denied.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 83-30546 Filed 11-10-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 80-520; RM-3358; RM-3795; RM 3796]

FM Broadcast Stations in Aguada, Arecibo, Cidra, Lajas, Manati, Mayaguez, Quebradillas, Utuado, and Cabo Rojo, Puerto Rico; Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action denies the Petition for Reconsideration filed by Jose Arzuaga of the *Report and Order*, 51 R.R. 2d 1329 (1982), which denied the proposal to change three existing FM stations in Puerto Rico from Class A to Class B channels and to make a new Class A assignment at Lajas, Puerto Rico.

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

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Memorandum Opinion and Order

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations (Aguada, Arecibo, Cidra, Lajas, Manati, Mayaguez, Quebradillas, Utuado and Cabo Rojo, Puerto Rico); BC Docket No. 80-520, RM-3358, RM-3795, RM-3796.

Adopted: October 14, 1983.

Released: November 2, 1983.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the Petition for Reconsideration of the *Report and Order*, 51 R.R. 2d 1329 (1982), which denied the proposal to change three existing FM stations in Puerto Rico from Class A to Class B channels and to make a new class A assignment at Lajas, Puerto Rico.[1] The petition was filed by Jose J. Arzuaga ("Arzuaga") licensee of FM Station WREI, Quebradillas, Puerto Rico. Oppositions were submitted by Guayama Broadcasting Company, Inc. ("Guayama"), licensee of Station WXRF-FM, Guayama, Puerto Rico, and jointly by Radio Americas Corporation ("Americas"), licensee of FM Station WIOA, Mayaguez, Puerto Rico, and Arecibo Broadcasting Corporation ("Arecibo"), licensee of FM Station WMLD, Manati, Puerto Rico. Arzuaga replied to the oppositions.[2] In addition, David Ortiz Radio Corporation has filed a petition to reassign Channel 279 from Lajas to Cabo Rojo. Although the petition was filed too late to be treated as a formal request in this proceeding, we have treated the pleading as comments in support of the Arzuaga petition. See par. 13, *infra*.

2. In the *Notice of Proposed Rule Making*, 45 FR 45602, published July 7, 1980, we held that an adequate public interest basis for the proposals had not been fully established. However, rather than denying the petition at that time, we found that further discussion seemed appropriate in order to afford adequate opportunity for ascertaining the public interest factors.

3. Originally, in support of their proposal, petitioners claimed that the modifications would remedy the inability of their Class A stations to serve their own "municipios," improve their present service, provide a greatly expanded service over a wide area of Puerto Rico, create a new Class A station, eliminate a present short-spacing between two FM stations and better enable the stations to compete with existing Class B stations (*Notice*, para. 9).

4. In response, we reiterated that the term "municipio" corresponds to a county in the United States and is to be distinguished from a pueblo or town. *WSTE-TV Inc.* (F.C.C. 79-821, December 1979). Therefore, it was the boundaries of the pueblo rather than the municipios which were relevant for the Commission's principal city coverage requirements. We found that Class B assignments were not necessary for the purpose of providing adequate signal coverage to the pueblo.

5. Although petitioners further claimed that their proposal would greatly improve their present service area, we found in the *Report and Order* that substantial improvements could be made by less disruptive means than by changing the frequencies of four existing stations. For these four stations, we noted that planned improvements of their coverages would also be affected by the changeovers. Instead, we favored another alternative for improving the Class A stations' coverages by our recent action in BC Dkt. 81-421, *Increased Antenna Height of Class A Stations in Puerto Rico*, 48 FR 24898, published June 3, 1983, wherein the Commission approved an increase in the antenna height for all Class A stations in Puerto Rico from 300 feet to 1100 feet. Such an increase was thought to provide substantial improvement for the specific Class A stations involved here.

6. Concerning the new Class A assignment (Channel 249A to Lajas), we noted that this community could be assigned a Class B channel (279) instead without any change in channels for existing stations. We also had received a counterproposal for the assignment of Channel 279 to Cabo Rojo. We determined that Lajas had no local aural service and the assignment would be its first full-time FM service whereas Cabo Rojo has a full-time AM station. Thus, we assigned Channel 279 to Lajas. We further noted that the assignment of Channel 279 to Lajas could be used at Cabo Rojo, if applied for under the fifteen-mile rule (see § 73.203(b)). On the basis of the above findings, we concluded that petitioners had failed to adequately support their case by demonstrating an inability to serve their communities of license or by otherwise showing that their proposal would be in the public interest.

7. In its Petition for Reconsideration, Arzuaga opposes the assignment of Channel 279 to Lajas. Arzuaga contends that the mileage separation requirements severely limit the available transmitter sites to the lower elevation areas where intervening terrain would cause a shadow over much of Lajas unless a 1,000 foot tower is used. In addition, Arzuaga argues that the Sierra Bermeja Mountains would shadow the "La Parguera" tourist resort area which petitioner claims is a significant economic contributor to the

[1] The three channel assignments requested to be upgraded were: Channel 281 for Aguada (to replace 288A), Channel 248 for Cidra (to replace Channel 249A); and Channel 258 for Quebradillas (to replace Channel 252A). These substitutions would have required four other substitutions of channels for existing Puerto Rican FM stations: Channel 251 for Channel 293 at Arecibo (WNIR-FM), Channel 293 for Channel 245 at Manati (WMLD), Channel 291 for Channel 248 at Mayaguez (WIOA) and Channel 279 for Channel 281 at Utuado (WERR).

[2] Guayama opposed a later filing by Arzuaga of a "Reply to Supplement of Radio Americas." The supplemental pleading of Radio Americas brought the Commission's attention to the filing by David Ortiz Radio Corporation of an application for a permit to construct a new FM station on Channel 279 at Cabo Rojo, Puerto Rico. Upon review of the supplement, it appears that it merely informs the Commission of facts already on record. Consequently, the supplement and any responsive pleadings need not be accepted in order for the Commission to consider this additional information.

Lajas market. Consequently, Arzuaga contends that any station licensed to Lajas must be able to cover the resort area.

8. Arzuaga speculates that the cost for a 1,000 foot tower is prohibitive and would deprive Lajas of its first aural service. Arzuaga reiterates that the use of alternate Channel 249A would permit a site on Sierra Bermeja Mountains which he claims would adequately cover the entire community of service without shadows. Although Channel 249A cannot be used unless all of the frequency changes in the original proposal are made, Arzuaga argues that the proposed changes would not prevent the three Class B stations from improving their coverage. Arzuaga concedes that the instant proposal limits the land area available to the existing licensees for site selection, however, he states that there are suitable alternate transmitter locations. Finally, Arzuaga asserts that the instant proposal eliminates two short-spaced operations and would possibly create another assignment (Channel 282) in eastern Puerto Rico.

9. In their Oppositions, Guayama, Americas, and Arecibo (opponents) contend that the Bureau properly denied WREI's petition. Opponents assert that no new arguments were presented and a petition for reconsideration may rely on new facts only in certain circumstances, none of which is presented here. Therefore, they argue that the petition should be dismissed, citing § 1.429 of the Commission's Rules. Guayama further argues that Arzuaga's counterproposal of alternative FM channels in Puerto Rico is untimely since counterproposals, if they are to be considered, must be presented at the comment stage. Guayama notes that no party has expressed an interest in the proposed FM channel assignment (Channel 282). Lastly, Guayama contends that Arzuaga has presented no evidence that the short-spaced channels cause any problems in providing needed FM broadcast service in Puerto Rico, or that the affected stations have suffered adverse consequences.

10. In reply, Arzuaga contends that the possibility of assigning Channel 282 was previously mentioned in a preclusion study submitted in the instant proceeding. Arzuaga submitted a letter from Francisco Resto expressing an interest in filing an application for Channel 282 at Naguabo, Puerto Rico. Petitioner reasserts: (1) that alternative site possibilities are available for existing licensees to make improvements, (2) that it is in the public interest to create a first local service for Naguabo, and (3) that the community of license is the municipality and not simply the pueblo as determined by the Commission. Petitioner maintains that it would not be economically viable for a permittee to construct a station at Lajas. Petitioner concludes that the assignment of Channel 279 is inadequate and will perpetuate a lack of FM service to the area.

11. Section 1.429 of the Commission's Rules sets out the limited provisions under which the Commission will reconsider a rulemaking action. The Commission will not reconsider arguments in a petition for reconsideration that have already been considered. *Eagle Broadcasting Co. v. F.C.C.*, 514 F. 2d 852 (D.C. Cir. 1952). We agree that the petitioner presents no new arguments with regard to its original Channel 249A proposal which the Commission failed to consider in its *Report and Order*. While opposing the assignment of Channel 279 to Lajas, the petitioner reiterates the same arguments previously advanced in its petition for rulemaking. Thus, we will only consider the merits of the Channel 249A proposal to the extent that it is relevant to our reconsideration of the Channel 279 assignment.

12. Based on its own engineering study, petitioner argues that the requirement for a 1,000 foot tower probably would preclude the installation of a new station for Lajas due to the prohibitive cost. However, a profile study performed by our staff indicates that a 670 foot tower (plus antenna) should be adequate to provide an almost shadow free coverage of Lajas from the site mentioned by the petitioner (the highest point in the Penones de Melones—106 meter elevation). More important, however, it was discovered from an analysis of the terrain, that by moving the antenna site about 1/2 mile to the southeast of the point specified by the petitioner, to a 60 meter elevation site, a less obstructed path could be obtained. The study indicated that from this site and with an antenna height of about 380 feet (plus antenna) adequate city coverage of Lajas can be provided. Thus it appears that a suitable site for a Class B station with average height should be available to give satisfactory coverage. As for the La Parguera resort area, coverage of the region, while it may be attractive to a licensee, is not a technical requirement of our allocation rules. Therefore, we do not agree with Arzuaga that coverage of the resort is a necessary consideration for the assignment of Channel 279 to Lajas.

13. As for Ortiz' petition to reassign Channel 279 from Lajas to Cabo Rojo, Ortiz argues that contrary to the Commission's decision in the *Report and Order, supra*, petitioner was unable to designate Cabo Rojo as its community of license pursuant to § 73.203(b), since Cabo Rojo had one FM assignment (Channel 221A) which is in use at Hormigueros and which has been proposed for deletion from Cabo Rojo. Ortiz further argues that Channel 279 cannot be located to provide the requisite coverage to Lajas. Ortiz notes that although there is a proposal pending to assign Channel 272A to Cabo Rojo, this channel does not represent a viable alternative since the channel allegedly cannot provide city grade service to Cabo Rojo.

14. We believe that it would not be in the public interest to reassign Channel 279 from Lajas to Cabo Rojo based on the comparative factors relied upon in the *Report and Order, supra*. We note that two applications for Channel 279 at Lajas (Bonnet Associates, File No. 830420AC and FM Minority, Broadcasting, File No. 830429AK) are currently on file and our determination in paragraph 12, *supra*, that a grant of a construction permit at Lajas can be made in compliance with the Commission's technical rules. As for the proposal to assign Channel 272A, the pertinent issues are being considered in BC Dkt. 82-729. In that proceeding, we recently assigned Channel 272A there to provide interested parties an opportunity to operate a first FM service at Cabo Rojo.

15. As for the availability of Channel 282, the fact that it was mentioned in a preclusion study does not automatically raise it to the level of a counterproposal. The interest expressed in Channel 282 by Resto was not specifically advanced as a counterproposal in a timely fashion. Therefore, the proposed assignment of Channel 282 to Naguabo is untimely and cannot now be considered as a counterproposal in the instant proceeding.

16. In view of the above, it is ordered, That the Petition for Reconsideration, filed herein by Jose Arzuaga, is denied.

17. It is further ordered, That the Petition for Rule Making, filed by David Ortiz Radio Corporation, is denied.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-30552 Filed 11-10-83; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1003, 1043, and 1084

[Ex Parte No. MC-5; Sub-2; Ex Parte No. 159; Sub-1]

Motor Carrier and Freight Forwarder Insurance Procedures and Minimum Amounts of Liability

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rules.

SUMMARY: The Commission is adopting requirements for filing evidence of security for the protection of the public. It is permitting aggregation of coverage through multiple policies from the first dollar of coverage for bodily injury and property damage liability for motor carriers of passengers, freight forwarders, and for all motor carriers of property operating fleets composed only of those freight vehicles having gross vehicle weight ratings (GVWR) of under 10,000 pounds which are not subject to regulation by the Department of Transportation. Previously, the Commission authorized aggregation of coverage for motor carriers of property subject to regulation by both the Commission and the Department of Transportation.

The Commission is also permitting aggregation of coverage, through multiple policies from the first dollar of coverage for cargo liability for motor common carriers of property and for freight forwarders.

The financial standard for qualifying insurance and surety companies is being eliminated. Any state authorized insurer or surety company which underwrites the liability of a motor carrier or freight forwarder will be allowed to make filings with this Commission.

The Commission is also increasing the minimum amounts of bodily injury and property damage liability for freight forwarders operating motor vehicles to the same limits required for motor property carriers subject also to minimum finanical security requirements of the Department of Transportation.

The minimum limits for motor property carriers operating vehicles in transportation which is subject only to Commission's security requirements are being changed to a single limit of $300,000 for bodily injury and property damage liability.

The Commission is adopting these final rules in order to eliminate any conflict with the insurance rules of the U.S. Department of Transportation, thereby easing the burden on small entities. These rules now conform to the statutory requirements under Sections 29 and 30 of the Motor Carrier Act of 1980 and the Surface Transportation Assistance Act of 1982, codified as 49 U.S.C. 10927.

EFFECTIVE DATE: January 13, 1984.

FOR FURTHER INFORMATION CONTACT:

Alice K. Ramsay, (202) 275-0854

or

Maragret Richards, (202) 275-1538.

SUPPLEMENTARY INFORMATION:

Background

The Commission, by decision served December 13, 1982, in *Ex Parte No. MC-5 (Sub-No. 1)*, adopted insurance rules and procedures which conform to the rules and regulations prescribed by the U.S. Department of Transportation (D.O.T.) in 49 CFR Part 387. The rules were published in the **Federal Register** on December 14, 1982, at 47 FR 55939. Our rules were postponed and later modified on September 16, 1983. (48 FR 43331, September 23, 1983.) The final rules adopted permitted aggregation of coverage through multiple policies for motor carriers of property having freight vehicles with gross vehicle weight ratings (GVWR) of 10,000 pounds or more and those operating freight vehicles of any size transporting certain hazardous commodities, from the first dollar amount of coverage for bodily injury and property damage liability.

In the *(Ex Parte No. MC-5 (Sub-No. 1)* proceeding, the U.S. Department of Transportation and the Professional Insurance Agents stated that the Commission's method of qualifying insurance and surety companies, which included meeting a minimum financial standard, should be eliminated. They recommended that the Commission adopt D.O.T.'s qualification regulations which simply recognize state authorizations, and have no minimum financial standard requirement.

The Commission found, however, that the notice to the public in the *Sub-No. 1* proceeding was not broad enough to allow us to change our insurance and surety company qualification requirements and instituted this proceeding. In this proceeding we proposed eliminating all insurance and surety company qualification requirements beyond those adopted by the Department of Transportation.

In this proceeding, we also proposed:

- Permitting aggregation of policies to provide public liability protection for motor carriers of passengers, freight forwarders, and for motor carriers of property not subject to regulation by the Department of Transportation. (Those are fleets which include only vehicles having gross vehicle weight rating (GVWR) of under 10,000 pounds that do not transport specified hazardous commodities.)
- Increasing the minimum amounts of bodily injury and property damage liability for freight forwarders operating motor vehicles to the same limits required by the Department of Transportation for motor property carriers.
- Replacing the limits for bodily injury and property damage for freight forwarders and motor carriers operating vehicles under 10,000 pounds GVWR to a combined single limit of $300,000.

In addition, comments and/or suggestions were requested regarding establishing procedures for the collection of processing fees from insurance and surety companies, if the number of eligible companies increases. Comments were also requested concerning whether any problems exist which would warrant extending aggregation to cargo liability coverage and property broker surety bonds.

The Commission on, December 14, 1982, published a Notice of Proposed Rulemaking in the **Federal Register** at 47 FR 55976, which invited written comments from all interested parties on the subject issues and proposals. Statements regarding these proposals were received from the following nine (9) respondents:

Alliance of American Insurers
American Bus Association (ABA)
American Trucking Associations, Inc. (ATA)
Corroon & Black/Dawson & Co., Inc.
National Association of Casualty & Surety Agents (NACSA)
National Association of Independent Insurers (NAII)
National Association of Professional Insurance Agents (PIA)
Truck Insurance Exchange
U.S. Department of Transportation (DOT)

Comments and Discussion

We have reviewed and carefully considered all comments received, and have found them to be very helpful in reaching conclusions regarding these rules. Although most of the comments did not address all of the proposals, they were generally favorable to their thrust and were specifically supportive of all the particular proposals they did address. ATA favors extending aggregation even further to the aggregation of cargo liability coverage. While PIA generally supported the proposals, its comments also strongly urged legislative action to remove the statutory filing requirements in order to unify and simplify the security requirements imposed on carriers now subject to both I.C.C. and D.O.T. regulation. We will address the proposed issues in the order in which they appeared in the Notice of Proposed Rulemaking and make reference to the comments where helpful to the discussion. The final rules, reflecting our conclusions, appear at the end of this decision and, in some instances, editorial revisions are being made solely to update statutory references.

Qualifications of and Agreements With Insurance and Surety Companies

At present, the Commission only accepts evidence of insurance and surety bonds from companies which possess and maintain surplus funds (policyholders' surplus) of not less than $1 million. This minimum is determined on the basis of the value of assets and liabilities as shown in the financial statements filed with and approved by the insurance regulatory authority of the state of domicile of the insurance or surety company. We are eliminating this financial resources standard for insurance and surety companies under § 1043.8(b) and § 1084.6(b) because we believe this standard no longer serves a useful purpose and that it unnecessarily duplicates state regulation. Effective insurers and sureties will have to comply only with the state authority and designation of agent requirements of the States to be eligible to write policies and bonds for any carrier, broker, or freight forwarder under I.C.C. jurisdiction.

Each authorized insurance and surety company has on file with the Commission a written agreement which states that the insurer or surety will furnish a designation in writing of the name and address of a person upon whom court process may be served for a state in which it is not authorized to issue policies or bonds. We have rarely had to seek information under these agreements. Thus we are also eliminating this requirement, eliminating the necessity of executing an agreement with each insurer and lessening the paperwork burden of both the insurer and this Commission. We have incorporated a statement of certification of state authority in each certificate of insurance filed with the Commission and will incorporate a similar certification on all surety bonds filed with the Commission. We believe that a certification statement of this type from an insurer or surety company adequately protects the public from companies not in compliance with state requirements.

Fees and Fees Payment

Until November 1, 1982, companies had been assessed processing fees on an annual basis for the filings they made on behalf of their insureds during the preceding year. On that date, the Commission instituted the practice of monthly billing, see 49 CFR 1002.2(d) item 39, 47 FR 43068 (September 30, 1982). The fee per accepted certificate of insurance or surety bond is $10, with a minimum annual service fee of $50 for each insurer or surety company making filings. In the Notice of Proposed Rulemaking, we requested suggestions regarding how the Commission can minimize potential problems in collecting these fees, if the number of insurance and surety companies eligible to make filings increases.

We have decided that the most effective approach is to have those companies failing to pay processing fees prohibited from making additional security filings with the Commission while their bills are in arrears. The Commission's staff, will maintain and make available, on informal request, a list of those companies which fall into default for payments due. Those carriers for which a defaulting company has filed evidence of security will be advised to obtain replacement coverage in a reasonable time.

The Truck Insurance Exchange states that the Commission is concerned about a problem which will not occur. It contends, and we agree, that, since it is in the best interest of companies to be able to make the filings and remain in a position to write and retain business, few insurers will fail to pay these fees.

Aggregation

The final rules will permit aggregation of insurance for motor carriers of passengers, freight forwarders and for all motor carriers of property, including those operating only those freight vehicles having gross vehicle weight ratings of less than 10,000 pounds which are not subject to any minimum coverage requirements under D.O.T. regulation. The aggregation allowed may be from the first dollar amount of coverage for bodily injury and property damage liability. Aggregation means the provision of the required insurance amount for one carrier risk by more than one insurance company so that multiple policies provide the required coverage; See discussion in *Ex Parte No. MC-5 (Sub-No. 1)*, published at 47 FR 55942, December 14, 1982.

American Trucking Associations, Inc., believes the aggregation privilege should not be denied for cargo liability coverage arguing that "if motor carriers and insurers find that there is a benefit in aggregating coverage, they should be allowed to do so." We agree. As a general matter, aggregation is cost-effective and is being authorized should small carriers find it advantageous. Our Form B.M.C., 32 endorsement and Form B.M.C. 34 certificate of insurance will be revised to allow aggregation from the first dollar of coverage. This will also require some revision of our Form B.M.C. 35 Notice of Cancellation motor carrier policies of insurance.

Freight Forwarder Limits of Liability

The insurance regulations of D.O.T. apply to any motor vehicle transporting described hazardous commodities in interstate or foreign commerce and to those of 10,000 pounds or more GVWR which are engaged in the transportation of nonhazardous property. Therefore, vehicles operated by or under the direction and control of a freight forwarder in the performance of transfer, collection or delivery service, are subject to D.O.T.'s insurance rules, or this Commission's rules alone, according to the size of the vehicle and the commodities transported. We have increased the limits of liability for freight forwarders here in order to make these requirements conform with D.O.T.'s requirements and with our requirement for motor carriers conducting operations not subject to D.O.T.'s requirements. Similarly freight forwarders operating motor vehicles are being made subject to the same cargo liability requirements as motor carriers. It would be unreasonable to maintain different limits of liability on a motor vehicle dependent on whether the operator is a freight fowarder or a motor carrier of property.

As a paper reduction measure, we are not establishing separate freight forwarder insurance and surety bond forms and will require freight forwarders to file the motor carrier insurance and surety bond forms which have been modified for this use. The final rules under Section 1084 reflect the requirement that motor carrier forms be used by freight forwarders as their evidence of security.

In response to the Truck Insurance Exchange's concern that there may be confusion about the effective date, we note that the new liability limits will be effective 60 days from publication of this notice in the **Federal Register**. They are not retroactive.

Small Freight Vehicles, Limits of Liability

In this proceeding, we are adopting a combined or split single limit of $300,000 for bodily injury and property damage liability for motor carriers and freight forwarders of property operating those vehicles with a gross vehicle weight rating of under 10,000 pounds which are not subject to regulation by D.O.T. This is fully supported by the comments and will provide uniformity with respect to this aspect of our financial responsibility program when all our new rules become effective.

Passenger Carriers

As stated in the Notice of Proposed Rulemaking, Congress has enacted legislation which adopts a single limit for bodily injury and property damage, liability for passenger carriers, depending on the seating capacity of the passenger vehicle. Hence, the level of passenger carrier insurance requirements will be re-addressed by us upon adoption of provisions under Section 18 of the Bus Regulatory Reform Act of 1982 (the BRRA) by the Secretary of Transportation. To implement those requirements, the Federal Highway Administration of the Department of Transportation (D.O.T.) published a Notice of Proposed Rulemaking, on May 31, 1983, 84 FR 24147, which at p. 24152 proposes the following schedule of limits of public liability, for for-hire motor carriers of passengers operating in interstate or foreign commerce:

Vehicle seating capacity	Effective dates	
	Nov. 19, 1983	Nov. 19, 1985
(1) [Any vehicle] with a seating capacity of 16 passengers or more.	$2,500,000 to $5,000,000.	$5,000,000
(2) [Any vehicle] with a seating capacity of 15 passengers of less.	$750,000 to $1,500,000	1,500,000

Unless D.O.T. establishes lower limits (within the described range) by November 19, 1983, the limits listed for November 19, 1985, will, by operation of law, become effective on that earlier date. Thus, it is certain that new limits for passenger carriers, which are subject to both I.C.C. and D.O.T. minimum limits requirements, will be increased by November 19, 1983, to either the statutory limits listed in the second limits column or a lower limit established by D.O.T. within the range appearing in the first limits column. In light of the certainty of these major changes in limits requirements and the additional requirement of Section 18 of the BRRA that the Commission require security "in an amount not less than" prescribed by the Secretary of Transportation, no new limits will be prescribed for passenger carriers in this proceeding at this time. Instead, in order to minimize confusion, we will make changes in § 1043.2(b)(1)(b), as soon after completion of the D.O.T. proceeding as possible.

Combined and Split Limits

In this, and the companion *Ex Parte No. MC-5 Sub-No. 1* proceeding, we are allowing insurance companies the flexibility to write policies for combined single limit or split limit coverage to meet the required public liability and cargo liability minimums for each category of carrier. This decision to allow uniform level split limits follows the decision published by D.O.T. at 47 FR 55977, on March 25, 1982. D.O.T. noted the increasing trend toward combined single limits but did not want to put companies offering only split limit coverage at a competitive disadvantage. Therefore, in the Commission's program we also are allowing the same flexibility by permitting the use of either combined single limit or split limit coverage, provided the levels of financial responsibility written meet the required minimums.

Environmental and Energy Considerations

The decision will not significantly affect the quality of human environment or the conservation of energy resources.

Final Regulatory Flexibility Analysis

We certify that these rules will not have an adverse economic impact upon the small entities affected as they do not impose excessive regulatory burdens or require unnecessary Federal supervision. None of the comments objected to these rules on the basis of any concerns reflected in the Regulatory Flexibility Act.

The Commission is adopting these final rules in order to eliminate any conflict with the insurance rules of the U.S. Department of Transportation, thereby easing the burden on small entities. These rules now conform to the statutory requirements under Sections 29 and 30 of the Motor Carrier Act of 1980 and the Surface Transportation Assistance Act of 1982, codified as 49 U.S.C. 10927.

The small entities affected by these final rules are included in approximately 25,000 motor carrier of property, 250 freight forwarders, and as many as 800 insurance and surety companies writing commercial auto policies. The only motor carriers and freight forwarders affected are those operating under the jurisdiction of this Commission.

Most of the reporting and maintaining of insurance records are performed by the insurance and surety companies on behalf of their client motor carriers and freight forwarders. These companies have the professional skills necessary to submit the insurance filings and bonds, and maintain the proper records. An increase in filings of approximately 15 to 30 percent is expected due to the fact that the Commission will now accept filings from a greatly expanded number of companies and will also allow aggregation of policies and bonds.

These final rules overlap the insurance rules and regulations of the U.S. Department of Transportation, but they do not duplicate its rules because D.O.T. does not require evidence of insurance or bonds to be filed.

Although a substantial number of small entities will be affected by these rules, the impact will be beneficial because it should lower the carriers' costs for insurance and surety bonds. There are no significant alternatives which would accomplish the objective stated in this proceeding.

A copy of this notice will be served on the Chief Counsel for Advocacy of the Small Business Administration, the Director of the Office of Management and Budget, and the Federal Highway Administrator of the Department of Transportation.

List of Subjects

49 CFR Part 1003

Brokers, Freight forwarders, Maritime carriers, Motor carriers, Securities.

49 CFR Part 1043

Insurance, Motor carriers, Surety bonds.

49 CFR Part 1084

Freight forwarders, Insurance, Surety bonds.

Final Rules

Parts 1043, 1084, and 1003, Subtitle B, Chapter X of Title 49 of the *Code of Federal Regulations* are amended as follows:

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

1. Section 1043.1 is revised to read as follows:

§ 1043.1 Surety bond, certificate of insurance, or other securities.

(a) *Public liability.* (1) No common or contract carrier subject to Subchapter II, Chapter 105, Subtitle IV of Title 49 of the United States Code shall engage in interstate or foreign commerce, and no certificate or permit shall be issued to such a carrier or remain in force unless and until there shall have been filed with and accepted by the Commission surety bonds, certificates of insurance, proof of qualifications as self-insurer, or other securities or agreements, in the amounts prescribed in § 1043.2, conditioned to pay any final judgment recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance or use of motor vehicles in transportation subject to Subchapter II, Chapter 105, Subtitle IV of Title 49 of the United States Code, or for loss of or damage to property of others, or, in the case of motor carriers of property operating freight vehicles described in § 1043.2(b)(2) of this Part, for environmental restoration.

(2) Motor Carriers of property which are subject to the conditions set forth in paragraph (a)(1) of this section and transport the commodities described in § 1043.2(b)(2), are required to obtain security in the minimum limits prescribed in § 1043.2(b)(2).

(b) Common carriers-cargo insurance; exempt commodities. No common carrier by motor vehicle subject to Subchapter II, Chapter 105, Subtitle IV of Title 49 of the United States Code shall engage in interstate or foreign commerce, nor shall any certificate be issued to such a carrier or remain in force unless and until there shall have been filed with and accepted by the Commission, a surety bond, certificate of insurance, proof of qualifications as a self-insurer, or other securities or agreements in the amounts prescribed in § 1043.2, conditioned upon such carrier making compensation to shippers or consignees for all property belonging to shippers or consignees and coming into the possession of such carrier in connection with its transportation service: Provided, that the requirements of this paragraph shall not apply in connection with the transportation of the following commodities:

Agricultural ammonium nitrate.
Agricultural nitrate of soda.
Anhydrous ammonia—used as a fertilizer only.
Ashes, wood or coal.
Bituminous concrete (also known as blacktop or amosite), including mixtures of asphalt paving.
Cement, dry, in containers or in bulk.
Cement, building blocks.
Charcoal.
Chemical fertilizer.
Cinder blocks.
Cinders, coal.
Coal.
Coke.
Commercial fertilizer.
Concrete materials and added mixtures.
Corn cobs.
Cottonseed hulls.
Crushed stone.
Drilling salt.
Dry fertilizer.
Fish scrap.
Fly ash.
Forest products; viz: Logs, billets, or bolts, native woods, Canadian wood or Mexican pine; pulpwood, fuel wood, wood kindling; and wood sawdust or shavings (shingle tow) other than jewelers' or paraffined.
Foundry and factory sweepings.
Garbage.
Gravel, other than bird gravel.
Hardwood and parquet flooring.
Haydite.
Highway construction materials, when transported in dump trucks and unloaded at destination by dumping.
Ice.
Iron ore.
Lime and limestone.
Liquid fertilizer solutions, in bulk, in tank vehicles.
Lumber.
Manure.
Meat scraps.
Mud drilling salt.
Ores, in bulk, including ore concentrates.
Paving materials, unless contain oil hauled in tank vehicles.
Peat moss.
Peeler cores.
Plywood.
Poles and piling, other than totem poles.
Potash, used as commercial fertilizer.
Pumice stone, in bulk in dump vehicles.
Salt, in bulk or in bags.
Sand, other than asbestos, bird, iron, monazite, processed, or tobacco sand.
Sawdust.
Scoria stone.
Scrap iron.
Scrap steel.
Shells, clam, mussel, or oyster.
Slag, other than slag with commercial value for the further extraction of metals.
Slag, derived aggregates—cinders.
Slate, crushed or scrap.
Slurry, as waste material.
Soil, earth or marl, other than infusorial, diatomaceous, tripoli, or inoculated soil or earth.
Stone, unglazed and unmanufactured, including ground agricultural limestone.
Sugar beet pulp.
Sulphate of ammonia, bulk, used as fertilizer.
Surfactants.
Trap rock.
Treated poles.
Veneer.
Volcanic scoria.
Waste, hazardous and nonhazardous, transported solely for purposes of disposal.
Water, other than mineral or prepared—water.
Wood chips, not processed.
Wooden pallets, unassembled.
Wreck or disabled motor vehicles.
Other materials or commodities of low value, upon specific application to and approval by the Commission.

(c) Continuing compliance required. Such security as is accepted by the Commission in accordance with the requirements of Section 10927, Subchapter II, Chapter 109, Subtitle IV of Title 49 of the United States Code, shall remain in effect at all times.

2. In § 1043.2, paragraph (b)(1) is revised to read as follows:

§ 1043.2 Security for the protection of the public: Minimum limits.

* * * * *

(b)(1) Motor carriers subject to § 1043.1(a)(1) are required to have security for the required minimum limits as follows:

(a) *Small Freight Vehicles:*

Kind of equipment	Transportation provided	Minimum limits
Fleet including only vehicles under 10,000 pounds GVWR.	Commodities not subject to 49 CFR 1043.2(b)(2)(d).	$300,000

(b) *Passenger Carriers:*

Kind of equipment	Limit for bodily injuries to or death of one person	Limits for bodily injuries to or death of all persons injured or killed in any one accident (subject to a maximum of $100,000 for bodily injuries to or death of one person)	Limit for loss or damage in any one accident to property of others (excluding cargo)
Passenger equipment (seating capacity): 12 passengers or less	$100,000	$300,000	$50,000
More than 12 passengers	100,000	500,000	50,000

3. The heading and text of § 1043.4 are revised to read as follows:

§ 1043.4 Property broker surety bond.

A property broker must have a surety bond in effect for $10,000. The Commission will not issue a property broker license until a surety bond for the full limits of liability prescribed herein is in effect. The broker license shall remain in effect only as long as a surety bond remains in effect and shall ensure the financial responsibility of the broker.

4. In § 1043.5, the section heading and paragraph (b) are revised to read as follows:

§ 1043.5 Qualifications as a self-insurer and other securities or agreements.

* * * * *

(b) *Other securities or agreements.* The Commission also will consider applications for approval of other securities or agreements and will approve any such application if satisfied that the security or agreement offered will afford the security for protection of the public contemplated by 49 U.S.C. 10927.

5. In § 1043.6, paragraph (b) is revised and a new paragraph (c) is added to read as follows:

§ 1043.6 Bonds and certificates of insurance.

* * * * *

(b) Cargo Liability. Each form B.M.C. 83 surety bond filed with the Commission must be for the full limits of liability required under § 1043.2(c). Each Form B.M.C. 34 certificate of insurance filed with the Commission will represent the full security limits under § 1043.2(c) or the specific security limits of coverage as indicated on the face of the form. If the filing reflects aggregation, the certificate must show clearly whether the insurance is primary or, if excess coverage, the amount of underlying coverage as well as amount of the maximum limits of coverage.

(c) Each policy of insurance in connection with the certificate of insurance which is filed with the Commission, shall be amended by attachment of the appropriate endorsement prescribed by the Commission or the Department of Transportation and the certificate of insurance filed must accurately reflect that endorsement.

6. In § 1043.7, paragraphs (a) (2) and (3) are amended by adding a new sentence at the end of each paragraph to read as follows:

§ 1043.7 Forms and procedures.

(a) *Forms for endorsements, certificates of insurance and others.*

* * * * *

(2) *Aggregation of insurance.*

* * * * *

When insurance is provided by more than one insurer to aggregate coverage for security limits under Section 1043.2(c) a separate Form B.M.C. 32 endorsement and Form B.M.C. 34 certificate of insurance is required for each insurer.

(3) *Use of certificates and endorsements in B.M.C. Series.*

* * * * *

Form B.M.C. 32 endorsement and *Form B.M.C. 34* certificate of insurance and *Form B.M.C. 83* surety bonds are used for the limits of cargo liability under § 1043.2(c).

* * * * *

7. Section 1043.7 is amended by adding a cross-reference to the end of the section to read as follows:

§ 1043.7 Forms and procedures.

* * * * *

Cross Reference: For list of forms prescribed, see § 1003.1(b) of this chapter.

8. The heading and text of § 1043.8 are revised to read as follows:

§ 1043.8 Insurance and surety companies.

A certificate of insurance or surety bond will not be accepted by the Commission unless issued by an insurance or surety company which (a) is legally authorized to issue such bonds or underlying insurance policies in each state in which the motor carrier is authorized by the Commission to operate, or (b) is legally authorized to issue such policies or bonds in the state in which the carrier has its principal place of business or domicile, and will designate in writing upon request by the Commission, a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any state in which the carrier operates, or (c) is legally authorized to issue such policies or bonds in any state of the United States and is eligible as an excess or surplus lines insurer in any state in which business is written, and will designate in writing upon request by the Commission, a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any state in which the carrier operates.

PART 1084—SURETY BONDS AND POLICIES OF INSURANCE

9. Section 1084.1 is revised to read as follows:

§ 1084.1 Definitions.

(a) Freight forwarder means a person holding itself out to the general public (other than as a carrier, subject to Subchapter I, II, or III of Chapter 105, Subtitle IV of Title 49 of the United States Code) to provide transportation of property for compensation in interstate commerce and in the ordinary course of its business, (1) assembles and consolidates or provides for assembling and consolidating shipments and performs or provides for break-bulk and distribution operations of the shipments, and (2) assumes responsibility for the transportation from place of receipt to the place of destination, and (3) uses for any part of the transportation a carrier subject to Subchapter I, II, or III of Chapter 105, Subtitle IV of Title 49 of the United States Code.

(b) Motor vehicle means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of property, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails. The following combinations will be regarded as one motor vehicle: (1) a tractor and trailer or semitrailer when the tractor is engaged in drawing the trailer or semitrailer, and (2) a truck and trailer when both together bear a single load.

(c) Any one conveyance means any one railroad car, motor vehicle, truck, trailer, semitrailer, or any other vehicle (except a watercraft) used in the transportation of property performed by a freight forwarder subject to Subchapter IV of Chapter 105, Subtitle IV of Title 49 of the United States Code.

(d) Any one watercraft means any vessel or other artificial contrivance used in the transportation by water of property performed by a freight forwarder subject to Subchapter IV of Chapter 105, Subtitle IV of Title 49 of the United States Code.

(e) Fiduciary has the meaning defined in § 1181.5, *Operations by fiduciaries.*

10. Section 1084.2 is revised to read as follows:

§ 1084.2 General requirements.

(a) Cargo. No freight forwarder shall engage in service subject to Subchapter IV of Chapter 105, Subtitle IV of Title 49 of the United States Code unless and until there shall have been filed with and accepted by the Commission a surety bond, certificate of insurance, qualifications as a self-insurer or other securities or agreements, in the amounts prescribed in § 1084.3 for loss of or damage to property to which said freight forwarder performs service subject to Subchapter IV of Chapter 105, Subtitle IV of Title 49 of the United States Code.

(b) Public liability. No freight forwarder shall perform transfer, collection and delivery service subject to Subchapter IV, Chapter 105, Subtitle IV of Title 49 of the United States Code unless and until there shall have been filed with, and accepted by the Commission, a surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts prescribed in § 1084.3, conditioned to pay any final judgment recovered against such freight forwarder for bodily injuries to or the death of any person, or loss of or damage to property of others (except cargo), or, in the case of freight vehicles described in Section 1043.2(b)(2) of this Chapter, for environmental restoration, resulting from the negligent operation, maintenance, or use of motor vehicles operated by or under its direction and control in the performance of transfer, collection or delivery service.

11. Section 1084.3 is revised to read as follows:

§ 1084.3 Limits of liability.

The prescribed minimum amounts for cargo and public liability security referred to in § 1084.2 are identical with these minimum limits prescribed for motor carriers in Section 1043.2 of this Chapter.

12. The heading and text of § 1084.4 are revised to read as follows:

§ 1084.4 Surety bonds and certificates of insurance.

(a) *Cargo liability.* The limits of liability under § 1084.3 for cargo liability may be provided by aggregation using the same forms prescribed and in accordance with the requirements of Part 1043 of this Chapter.

(b) *Public liability.* The limits of liability required under § 1084.3 for bodily injury, property damage, or environmental restoration may be provided by aggregation using the same forms prescribed and in accordance with the requirements of Part 1043 of this Chapter.

(c) Each policy of insurance used in connection with certificate of insurance which is filed with the Commission, shall be amended by attachment of the appropriate endorsement prescribed by the Commission (or the Department of Transportation, where applicable).

§ 1084.5 [Reserved]

13. Section 1084.5 is removed and reserved for future use.

14. Section 1084.6 is revised to read as follows:

§ 1084.6 Insurance and surety companies.

A certificate of insurance or surety bond will not be accepted by the Commission unless issued by an insurance or surety company which (a) is legally authorized to issue such bonds or underlying insurance policies in each state in which the freight forwarder is authorized by the Commission to perform service, or (b) is legally authorized to issue such policies or bonds in the state in which the freight forwarder has its principal place of business or domicile, and will designate in writing upon request by the Commission, a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any state in which the freight forwarder performs service, or (c) is legally authorized to issue such policies or bonds in any state of the United States and is eligible as an excess or surplus lines insurer in any state in which business is written, and will designate in writing upon request by the Commission, a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any state in which the freight forwarder performs service.

15. In § 1084.7, paragraph (b) is revised to read as follows:

§ 1084.7 Qualifications as a self-insurer and other securities or agreements.

* * * * *

(b) Other securities and agreements. The Commission will consider applications for approval of other securities and agreements and will approve any such application if satisfied that the security or agreement offered will afford the security for the protection of the public contemplated by Section 10927(c), Title 49 of the United States Code.

16. In § 1084.8, paragraph (a) is revised to read as follows:

§ 1084.8 Forms and procedure.

(a) *Forms.* Endorsements for policies of insurance, surety bonds, certificates of insurance, applications to qualify as a self-insurer or for approval of other securities or agreements and notices of cancellation must be in the same form prescribed and approved by the Commission under Part 1043 of this chapter.

* * * * *

PART 1003—LIST OF FORMS

17. In § 1003.1(b) the form references to forms B.M.C. 91 and 91X are amended to read as follows:

§ 1003.1 Motor Carrier and Broker Forms.

* * * * *

(b) * * *

B.M.C. 91 (Rev. 1982)

Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance.

B.M.C. 91X (1/1982)

Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance.

* * * * *

18. In § 1003.3 paragraph (a) is revised to read as follows:

§ 1003.3 Freight Forwarder Forms.

(a) Application forms.

OP-1

Application for motor carrier authority, broker or freight forwarder authority, and water carrier exemption.

Cross Reference: Part 1160 of this chapter.

* * * * *

Authority: 49 U.S.C. 10321, 10927, and 5 U.S.C. 553.

Decided October 28, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-30692 Filed 11-10-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 31104-218]

Pacific Coast Groundfish Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Rule-related notice; fishery closure and request for comments.

SUMMARY: NOAA issues this notice prohibiting retention and landing of Pacific ocean perch taken from the Columbia subarea (between 43°00′ and 47°30′ N. latitude) off the coasts of Oregon and Washington, and seeks public comment on this action. The optimum yield for this species has been exceeded. This action is mandated by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan.

DATES: This notice is effective from 0001 hours (Pacific Standard Time) November 10, 1983 until 2400 hours (Pacific Standard Time) December 31, 1983. Comments will be accepted through November 25, 1983.

ADDRESS: T. F. Kruse, Deputy Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Bin Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: T. E. (Gene) Kruse, 206-527-6150; or Floyd Anders, 213-548-2575.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) was approved on January 4, 1982, and final implementing regulations were published October 5, 1982 (47 FR 43964). The regulations provide a numerical