amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective October 18, 1983, the FM Table of Assignments, § 73.202(b) of the Commission's Rules is amended, with respect to the following community:

| City | Channel No. |
|---|---|
| Albion, Nebraska | 224A |

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

5. For further information concerning the proceeding, contact Mark N. Lipp, Mass Media Bureau (202) 634–6530

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

Federal Communications Commission.

**Roderick K. Porter,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 83-23216 Filed 8-23-83; 8:45 am]

BILLING CODE 6712-01-M

## 47 CFR Part 73

**[MM Docket No. 83-89; RM-4217]**

## Radio Stations; FM Broadcast Stations in San Angelo, Texas; Changes Made in Table of Assignments

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action assigns a sixth FM channel to San Angelo, Texas, in response to a petition filed by Walton A. Foster.

**DATE:** Effective: October 18, 1983

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

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**Report and Order; Proceeding Terminated**

In the mater of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (San Angelo, Texas); MM Docket No. 83–89, RM–4217.

Adopted: August 11, 1983.
Released: August 19, 1983.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 48 FR 7485, published February 22, 1983, proposing the assignment of Channel 254 to San Angelo, Texas, as its sixth FM assignment. The *Notice* was issued in response to a petition filed by Walton A. Foster ("petitioner"). Supporting comments were filed by the petitioner, restating his interest in a Channel 254 assignment at San Angelo. No oppositions to the proposal were received.

2. Mexican concurrence has been obtained in the proposed assignment of Channel 254 to San Angelo, Texas, since that community is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

3. We find that the public interest would be served by assigning Channel 254 to San Angelo, Texas, to provide a sixth local FM service. The transmitter site is restricted to 7.3 miles east of the city to avoid shortspacing to Station KTYE (Channel 257A), Tye, Texas, and a Channel 252A assignment at Big Lake, Texas.

4. Accordingly, it is ordered, that effective October 18, 1983, the FM Table of Assignments, Section 73.202(b) of the Commission's Rules, is amended with respect to the following community:

| City | Channel No. |
|---|---|
| San Angelo, Texas | 225, 230, 234, 248, 254, and 298. |

5. Authority for the action taken herein is contained in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules.

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

7. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

**Roderick K. Porter,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 83-23215 Filed 8-23-83; 8:45 am]

BILLING CODE 6712-01-M

## 47 CFR Parts 17, 73, and 74

**[BC Docket No. 82-537; FCC 83-338]**

## Operating and Maintenance Logs for Broadcast and Broadcast Auxiliary Stations

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission eliminates the majority of the operating and maintenance logging requirements applicable to broadcast and broadcast auxiliary station operation. This action is necessary for the Commission to continue its ongoing deregulation efforts. The effect of this action is to relieve broadcasters of regulatory burdens which are no longer deemed necessary in view of present broadcast equipment capability and marketplace incentives for licensees to maintain the proper technical operation of their stations.

**DATE:** Effective September 19, 1983.

**FOR FURTHER INFORMATION CONTACT:** James E. McNally, Jr., Mass Media Bureau, Policy and Rules Division, Technical and International Branch (202) 632–9660.

**List of Subjects**

*47 CFR Part 17*

Aviation safety, Communications equipment.

*47 CFR Part 73*

Radio broadcasting.

*47 CFR Part 74*

Television broadcasting.

**Report and Order (Proceeding Terminated)**

In the matter of operating and maintenance logs for broadcast and broadcast auxiliary stations; BC Docket No. 82–537.

Adopted: July 14, 1983.
Released: August 12, 1983.

By the Commission.

*Introduction*

1. On August 4, 1982, the Commission adopted a *Notice of Proposed Rule Making (Notice)* in the above-entitled matter. (47 FR 36453, August 20, 1982.) This proceeding was initiated by the Commission on its own motion to examine the usefulness of the rules that require broadcast licensees to make periodic equipment observations and to record the results in operating and maintenance logs.

2. Briefly, the Commission questioned the necessity of mandatory inspection and logging procedures, given a licensee's basic obligation to ensure proper technical station operation. We noted that use of state-of-the-art equipment produces fewer situations requiring remedial action by the broadcaster and pointed out that current requirements for periodic inspection and logging may be inadequate for some stations and excessive for others. Consistent with our philosophy of letting the competitive marketplace substitute

for federal regulation wherever possible, we suggested that a broadcaster's best self-interest is served by taking whatever steps are necessary to ensure that station operation is consistent with the Commission's technical rules and the terms on the station license. In view of these considerations, we proposed to extend our deregulatory initiatives to the required periodic measurement and operating and maintenance logging areas.

3. Accordingly, we recommended reduction or elimination of the logging requirements governing full service stations (§§ 73.1820 and 73.1830), together with the mandated schedule of meter and monitor readings, inspections and other measurements. In lieu of these requirements, we proposed to require technical record keeping only on a case-by-case basis when necessary to resolve an interference situation or correct a severely deficient operation. Similar proposals were made for most types of broadcast auxiliary stations licensed under Part 74 of the Commission's rules.

4. However, we did ask whether several exceptions to this general deregulation should be made. For example, we suggested retaining the logging requirements pertaining to experimental and developmental broadcast stations (those authorized pursuant to Part 74, Subparts A, B and C). We also noted that the current logging requirements distinguish between directional AM stations having approved antenna monitor sampling systems and those that do not. Deleting the requirement for periodic measurement could remove the incentive for licensees of older AM stations to upgrade their sampling systems—something clearly encouraged by the current rules. We also questioned the effect such action would have on AM directional interstation interference. Also raised was the impact of the proposed deregulation on proper tower light operation required for aeronautical safety and tests of the Emergency Broadcast System (EBS).

5. In conclusion, we emphasized that in proposing the elimination of periodic inspection, measurement and logging requirements, we did not intend to relieve licensees of their responsibility to effectively monitor station technical performance and to strictly comply with the terms of their station's authorization. We indicated that if an inspection by the Commission revealed a violation of the rules, the licensee would be asked to indicate what procedures had been employed to ensure proper operation. If these procedures were considered inadequate, a forfeiture could be issued for willful violation of the rules involved.

*Comments*

6. Twenty-four comments and five reply comments were filed in response to the *Notice*. Generally, those favoring the deregulation reiterated the arguments advanced by the Commission in the *Notice* or affirmed its suppositions. Thus, the comments widely asserted that marketplace forces, rather than government rules, would effect the appropriate regulation. They also asserted that because a station's success depended upon its audience level, it would clearly be in the broadcaster's best interest to ensure proper facility performance in order to maintain a quality signal. Accordingly, they stated that it would be appropriate for the Commission to delete the periodic inspection, observation and logging requirements where marketplace forces can provide more effective and flexible regulation. Many also expressed the belief that each licensee should be free to develop procedures for monitoring station facilities. The commenters affirmed that in the past, broadcasters have demonstrated the ability to do on their own what the Commission had previously required them to do by rule, and that there was no reason to assume that they would do less in the technical area.

7. Comments and reply comments filed in opposition to the Commission's proposal also exhibited many similarities. Concern was expressed that abandonment of periodic inspection and logging requirements would result in increased interference and deterioration in the quality of radio and television service. Further, concern was expressed that some broadcasters might interpret log elimination as a "de facto" relaxation of the FCC's technical standards and that our confidence that licensees would take "reasonable measures to ensure proper operation" could become subject to personal interpretation. There was a consensus among the opponents that while the Commission was to be applauded for attempting to reduce unneeded paperwork, wholesale elimination of the current logging requirements would be going too far. Logging was viewed as an important tool in the prevention of interference, both as an enforcement aid to the Commission and as a detailed check list of important station operating parameters. Several parties expressed the belief that if the Commission eliminated the current periodic measurement and logging requirements, few broadcasters would be concerned about out-of-tolerance operation because the burden of proof would be placed on either the FCC or the adversely affected licensee(s). The argument also was made that because the FCC lacks the enforcement personnel necessary to check stations on a regular basis, the chances of it discovering a rule infraction were small.

8. Other comments suggested that where records and reports promoted efficiency in use of public spectrum for the public benefit, they should be retained, and that periodic measurement and logging for FCC inspection constituted no additional burden on conscientious radio operators. The suggestion was made that because the smaller stations with limited engineering capability would benefit economically the most from the Commission's proposals, relief for them would potentially be at the expense of the best use of the spectrum because they already have the least capacity to detect their own errors and infringements.

9. The Commission's reliance on the marketplace to ensure technical compliance also drew criticism. Several commenters argued that the marketplace would have an effect opposite that intended by the Commission, at least with respect to those operating parameters relevant to the protection of other licensees' signals. The belief was expressed that the marketplace would pressure a licensee to exceed the proper values and increase the signal for local market benefit without regard to the damage done to the signals of other radio stations. The audience of the adversely affected station(s) would be poorly equipped to determine the cause of a seemingly inexplicable reception problem and would have to rely on the broadcaster to determine the cause. The latter might have to spend considerable effort evaluating the matter, only to have to seek relief from an "allegedly" reluctant and understaffed FCC. Additionally, in the case of AM stations in particular, commenters requested that "substantial adverse effect" (as proposed in the *Notice*) should not have to be proven before observation and logging requirements are placed on an offending station, because an accumulation of small effects by several stations could escape regulatory penalty even though their aggregate impact was considerable.

10. Opinion was again divided on the question of whether AM stations without approved sampling systems should benefit from the proposed deregulation.[1] Prevention of interference

[1] By "approved sampling system", we mean one meeting the installation and requirements of

was the principal reason cited by parties favoring retention of logs for AM stations, particularly those with critical arrays.[2] Concern was expressed that many of the older antenna monitoring systems, which could not be approved under today's standards cannot be relied upon to ensure the requisite degree of protection that should be provided by the directional antenna system. Consequently, there was a feeling that licensees of stations using the older sampling systems should continue to be required to monitor their directional antenna systems more closely and more often, including frequent monitor point field intensity measurements. One highly critical commenter expressed the belief that absent the use of logs, some AM station licensees would not reduce power and change antenna pattern as required when shifting from day to night time operation. However, the more moderate and widely held view was that logging requirements for AM stations without approved sampling systems should be retained, otherwise the incentive to upgrade the sampling system would be removed. Once upgraded, such station licensees should be able to benefit from the relaxation of the rules. However, several commenters argued that AM stations should not be treated differently than others, and that operating economies would ensure continued upgrading of directional AM station sampling systems. These parties generally expressed the view that in the few cases where AM station licensees might act irresponsibly, the Commission's proposed case-by-case logging provisions would suffice to bring operation back into compliance.[3]

11. Similar division of opinion was evident on the questions of logging experimental station operation, tests of the Emergency Broadcast System and antenna tower light observation. One line of thought held that due to the experimental or public safety nature of the current logging and inspection requirements applicable to these areas of operation, they should be retained. The opposing view held that in the matter of experimental stations, a case-by-case approach should be taken. The inference was that the Commission should limit its interest to the experimental aspect of the operation and the licensee's findings and conclusions, rather than also request information about traditional or incidental details of comparatively little importance. More clearly expressed was the belief that licensee self-interest would ensure proper attention to the requirements applicable to Emergency Broadcast System operation and antenna tower lighting maintenance. On the latter point, comments from the Federal Aviation Administration favored elimination of logging routine antenna lighting inspection results, but did request continued periodic inspection, and retention of the limited logging requirements contained in § 17.49 as proposed in the Appendix to the *Notice*.

*Discussion*

12. The Commission has confidence in the general integrity of its broadcast licensees. We recognize that rule violations occur, but we believe most are inadvertent or accidental. Some are due to negligence arising from adverse economic situations, but our experience has indicated that few can be attributed to a licensee's complete indifference to (or contempt of) our regulations, or a willful desire to improve a station's competitive position through technical means which could cause interference to other licensees. We do not believe that a deregulatory action intended to benefit many should be subverted by the potential for misuse by a few. For this reason, and for the reasons discussed in the *Notice* (which are summarized briefly in Paragraph 2, *supra*), we have decided to amend the rules essentially as proposed.

13. Thus, with several exceptions discussed below, broadcast licensees will no longer be required to follow a schedule of meter and monitor readings, inspections, observations and certain other measurements as previously required; nor will they be required to enter the results of these activities in a station log. Rather, licensees will be free to develop their own schedules based on the performance characteristics of their transmitting equipment.

14. *First*, as proposed in the *Notice*, we are eliminating the rules in Parts 17, 73 and 74 which relate to recording of routine information pertaining to observation of antenna tower lighting operation. However, as was also proposed, we are retaining the observation and inspection requirements in § 17.47 of the Commission's Rules and modifying § 17.49 to require log entries only in the event of tower light extinguishment or malfunction. This approach is in the interest of aeronautical safety and was endorsed by the Federal Aviation Administration in its comments.

15. *Second*, as proposed in the *Notice*, we are retaining the current logging requirements applicable to experimental broadcast stations authorized pursuant to Subparts A, B and C of Part 74. We have reviewed these logging requirements and find that they are appropriate for the experimental or developmental type of operation being authorized, and the information so requested is of considerable interest to the Commission in providing new and innovative services to the public. Nevertheless, we will delete certain routine logging requirements that essentially are unrelated to the experimental or developmental operation (*e.g.*, the need to log the results of antenna tower lighting inspections). The precise changes are set forth in the Appendix.

16. *Third*, we believe there are strong reasons for not including AM broadcast stations without Commission-approved antenna sampling systems from certain benefits of the proposed deregulation. These stations must continue to periodically observe and log information pertaining to proper antenna system operation. In all other respects, they will benefit to the same extent as stations with approved sampling systems. Consistent with the general thrust of the comments, we have decided to retain these limited provisions to increase the incentive for those licensees who have not already done so to upgrade their sampling systems and to preserve regulations which we believe effectively ensure non-interference to the service areas of other licensees.

17. *Fourth*, we are adopting our proposal to require licensees, on a case-by-case basis, to maintain a log in situations involving interference or deficient operation. This option received considerable support in the comments and it represents an enforcement action which, for the latter situation, should be useful in discouraging potential carelessness. Moreover, in individual circumstances the use of appropriate operating and maintenance procedures will contribute to the resolution of interference cases. The need to complete a log requires periodic observations or measurements that should identify any need for transmission system adjustment. This enables us to tailor any

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§ 73.68(c) of the rules and specifically approved by the Commission as meeting certain performance standards.

[2] A "critical array" is an AM station directional antenna system which, for the protection of other stations, has a license-specified phase tolerance more stringent than ±3°.

[3] There was one commenter skeptical of this view who argued that such record-keeping would not resolve interference problems, but that proper operation and maintenance of transmitters, for which there are adequate incentives unrelated to logs, would. These incentives, however, were not enumerated. This party further argued that reimposing logging requirements on a case-by-case basis would be likely to restore burdens without corresponding benefits

logging requirement to the individual circumstances of a particular interference situation in such a way that the resolution of the problem is facilitated. Also, we have concluded that the concern about a licensee having to demonstrate "substantial adverse effect" (see Paragraph 9, *supra*) is valid, because the impact of a number of individually small errors can be considerable. Further, use of the term "substantial" would place us in the position of having to develop some standard or other means of quantifying the adverse operation or interference. Thus, proposed Sections 73.1835 and 74.19 have been reworded to give the Commission greater flexibility in imposing periodic observation and logging requirements. Additionally, we note that in the *Report and Order* in PR Docket No. 82-726 (Elimination of logging requirements in the Amateur Radio Service), adopted May 26, 1983, § 0.314(x) was created to grant additional delegated authority to the Commission's local Engineers-in-Charge to require licensees to keep station records in order to resolve interference problems, rule violations or instances of obvisouly deficient operation. Similar authority in the case of broadcast and broadcast auxiliary operation is herein conveyed. Nevertheless, we would emphasize that these rules will not be invoked or imposed in an arbitrary or capricious manner (as might be the case if interference was merely alleged), but only after a showing of adverse impact, deficient operation, or rule violation.

18. *Fifth*, we have decided to require all broadcast licensees to continue to keep a record of the results of tests of the Emergency Broadcast System (EBS).[4] These rules will be revised to indicate that the required entries should be made in the "station log or records" rather than specifying an operating or maintenance log. Proper functioning of the EBS in a time of national emergency is a matter of the highest priority and experience demonstrates that certain mandatory logging procedures are necessary to achieve that end.

19. For example, EBS test logging previously has revealed many instances where the usual expected test transmissions have not been received. This has led licensees to contact the Commission's Emergency Communications Division out of concern that their failure to log a test could result in a citation. However, we have found that the concerned licensee's failure to receive (and therefore log) an EBS test is generally not due to any fault of the receiving station (specifically, its EBS receiver), but due to improper activating tones being transmitted by the primary EBS station. Further, regardless of how well intentioned a licensee may be, it is easy to overlook a "non-event", such as failure to receive an EBS test. Even if such a test is discussed verbally, but not logged, there could be confusion later as to whether or not it took place as expected. The temptation to assume that events generally occur as scheduled could be very detrimental to reliable EBS operation. Thus, EBS test logging provides a certain means of identifying failures in the system within a reasonable timeframe.

20. We have no doubt that the majority of our broadcast licensees will continue to keep some kind of technical records, and that many would continue to log EBS tests voluntarily. Nevertheless, brief recording of EBS tests is so minimally burdensome and provides such an effective verification of proper EBS operation, we have decided that the current minimal EBS logging requirements should be retained. This requirement should represent little, if any burden, on the conscientious licensee.

21. Lastly, two new issues were raised in the comments which fall within the scope of this proceeding and require our attention. A suggestion was made that low power TV stations be excluded from the benefits to be afforded by this proceeding on the basis that they operate at less than standard mileage separations from full power TV stations. Also, several parties requested that the Commission eliminate the rules which require licensees to retain their logs for some period of time (usually two years) after completion.

22. We believe there is inadequate justification to exclude low power TV stations from the limited benefits which would accrue to them as a result of action taken in this proceeding. The logging requirements applicable to low power TV station operation are already minimal. The only change we contemplated was elimination of the requirements currently contained in § 74.781 (b) and (c) to log results of inspections of antenna tower lighting and control equipment. The showings and records of initial station operating parameters required by § 74.750(g) and § 74.751(d) are retained. These measurements are performed only once, at the time a low power TV station is placed in operation, and are used to verify that station performance conforms to FCC technical standards. Thus they do not constitute an ongoing regulatory burden.

23. Further, the argument that low power TV stations are located at less than "standard" mileage separations from regular TV stations appears to be without merit. The spacing is less because the power and service area of a low power TV station is considerably less than a regular TV station. Also, the protection afforded by the rules in cases of low power TV station operation is better than that afforded in the case of regular TV station operation. (Compare § 74.707 with § 73.610.) In view of these considerations, and because there is no reason to assume that low power TV station licensees will be less diligent than any other type of broadcast licensee with respect to the proper operation of their stations, the request to exclude them from the minimal benefits provided by this proceeding is denied.

24. On the matter of log retention, we will not amend the rules as suggested because, to the minimal extent that we are continuing to require licensees to maintain station records, we want them available for inspection for the usual two year period. EBS test results, for example, are usually contained in the operating log. In most cases, discarding the operating log would also entail discarding the EBS test results. A similar situation exists with respect to antenna tower lighting information and the maintenance log. The burden of log retention is minimal and warranted, we believe, by the foregoing considerations.

25. To assist licensees in determining whether their operating and maintenance policies are appropriate, the Commission will identify and publish through public notices common rule violations and any undesirable trends detected in the course of inspection of randomly selected stations. It is likely that these notices will be duplicated in many trade publications. Occasionally, the Commission may target certain problem areas for enforcement actions intended to restore full licensee compliance with the applicable regulations. Licensees who cannot demonstrate that they have been taking reasonable measures to ensure proper station operation will be viewed as willfully violating the rules and will incur forfeitures.

26. In conclusion, we reiterate that while we are amending the rules essentially as proposed in the *Notice*, there is no change in the fundamental responsibility of licensees to operate their stations in accordance with the rules and to adopt whatever procedures are necessary to guarantee it. The action we are taking here is not intended to serve as a license for negligence, but to allow licensees to implement the most

[4] See §§ 73.931(d)(2), 73.961 and 73.962(e)(4) of the Commission's rules.

cost-effective operating and maintenance policies appropriate for their stations. Nevertheless, should this privilege be abused and instances of interstation interference increase, or if circumstances indicate that the public is being ill served by this deregulation, we will revisit this area to determine to what extent the former requirements should be reimposed. We expect that many licensees will continue to maintain their own technical record of station operation and maintenance procedures. We encourage this. At a minimum, however, licensees must maintain a station log containing the information required by the new rules, as discussed above.

27. *Regulatory Flexibility Act Final Analysis*

I. *Need for Rules.* The Commission believes that its rules mandating periodic equipment observation, inspection and measurement, and concomitant logging of these results, no longer serves a useful regulatory purpose. Accordingly, we conclude that the majority of them can be eliminated without any adverse impact.

II. *Purpose of Rules.* As indicated above, we believe that the majority of the rules under consideration in this proceeding serve little constructive regulatory purpose. This proceeding is deregulatory in nature and is intended to afford broadcast licensees maximum flexibility in determining the operating procedures and maintenance schedules appropriate for their stations. The action taken herein is expected to result in more cost effective station operation, thereby contributing at least indirectly to the public benefit.

III. *Flexibility Issues Raised in the Comments.* None.

IV. *Significant Alternatives Not Adopted.* The Commission is continuing to require licensees to maintain some record of tests of the Emergency Broadcast System in order to ensure its proper operation in times of national or local emergencies. We are also requiring that data pertaining to antenna tower lighting extinguishment or malfunction be entered into the station log. In comparison to the former regulatory burdens, these requirements are minimal and cannot possibly be construed as a hardship on any licensee. Also, the Commission is continuing to require licensees of directional AM broadcast stations without approved sampling systems to periodically measure and log certain directional antenna operating parameters and field strength measurements. This is being done to encourage these licensees to upgrade the quality of their antenna sampling systems and to preclude interstation interference.

28. Accordingly, it is ordered, pursuant to the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, that Parts 73 and 74 of the Commission's Rules are amended, effective September 19, 1983, as set forth in the attached Appendix. It is further ordered that this proceeding is terminated.

29. Further information on this matter may be obtained by contacting James E. McNally, Jr., Mass Media Bureau, (202) 632-9660.

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

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

## Appendix

## PART 17—[AMENDED]

Parts 17, 73 and 74 of the Federal Communications Commission rules and regulations are amended as follows:

1. Section 17.49 is revised to read as follows:

### § 17.49 Recording of tower light inspections in the station record.

The licensee of any radio station which has an antenna structure requiring illumination must make the following entries in the station record in the event of any observed or otherwise known extinguishment or improper functioning of a tower light:

(a) The nature of such extinguishment or improper functioning.

(b) The date and time the extinguishment or improper operation was observed or otherwise noted.

(c) The date, time and nature of adjustments, repairs or replacements made.

## PART 73—[AMENDED]

2. In § 73.51, paragraph (d) introductory text, paragraph (e)(2) paragraphs (f)(1) and (f)(2)(i) are revised as follows:

### § 73.51 Determining operating power.

* * * * *

(d) The indirect method of determining antenna input power, as decribed in paragraphs (e) and (f) of this section, may be used on a temporary basis only. Prior authority from the FCC is not required. The indirect method may be used in the following situations:

* * * * *

(e) * * *

(2) The value of F applicable to each mode of operation must be entered in the station log with a notation as to its derivation. This factor is to be established by one of the methods described in paragraph (f) of this Section. The product of the DC input current and voltage to the final RF power amplifier stage, or, alternatively, the antenna input power as determined by the formula above must be entered in the operating log under an appropriate heading for each log entry of final RF power amplifier input current and voltage.

* * * * *

(f) * * *

(1) If the station had previously been authorized and operating by determining the antenna input power by the direct method, the factor F is the ratio of the antenna input power (determined by the direct method) to the corresponding final radio frequency power amplifier input power.

(2) * * *

(i) The factor F as shown in the transmitter manufacturer's test report, if such a test report specifies a unique value of F for the power level and frequently used; or,

* * * * *

3. In § 73.57, paragraph (d) introductory text is revised, paragraph (d)(1) is removed and marked "Reserved"; and paragraph (g) is revised as follows:

### § 73.57 Remote reading antenna and common point meters.

* * * * *

(d) Calibration of remote reading ammeters must be made against their corresponding regular ammeters for each mode of operation as often as necessary to ensure their accuracy and:

(1) [Reserved.]

* * * * *

(g) If a malfunction affects the remote reading indications of the antenna or common point ammeter, the operating power may be determined by the indirect method using the procedures described in § 73.51(e) for a period not to exceed 60 days. Alternatively, the operating power may be determined by the direct method on a continued basis by reading the regular antenna or common point ammeters.

4. In § 73.58, paragraph (e)(1) is removed and marked "Reserved" and paragraph (e)(2) is revised as follows:

### § 73.58 Indicating instruments.

* * * * *

(e) * * *

(1) [Reserved.]

(2) If the defective instrument is an antenna base current ammeter of a

directional antenna system, the indications may be obtained from the antenna monitor pending the return to service of the regular meter, provided other parameters are maintained at their normal values.

* * * * *

5. In § 73.61, paragraph (a) introductory text is revised to read as follows:

**§ 73.61 AM directional antenna field measurements.**

(a) Each AM station using a directional antenna system must make field strength measurements at the monitoring point locations specified in the instrument of authorization as often as necessary to insure proper directional antenna system operation. Stations having approved sampling systems (see § 73.68) are not required to make measurements by a specified schedule. Stations not having approved sampling systems are to make the measurements once each calendar month at intervals not exceeding 40 days. However, such stations that are required by the terms of the authorization to make measurements once each week must do so at intervals not exceeding 10 days. Results of the measurements are to be entered into the station log pursuant to the provisions of § 73.1820.

* * * * *

6. In § 73.67, paragraph (a)(5) is revised, paragraph (a)(5)(i) is removed and marked "Reserved"; and paragraph (c)(3) is revised as follows:

**§ 73.67 Remote control operation.**

(a) * * *

(5) Calibration of required indicating instruments at each remote control point must be made against their corresponding instruments at the transmitter site for each mode of operation as often as necessary to ensure their accuracy, and:

(i) [Reserved.]

* * * * *

(c) * * *

(3) The tone must be transmitted only at such time and during such intervals that the transmitted information is actually being observed.

* * * * *

7. In § 73.68, paragraph (d) and paragraph (e)(2) are revised as follows:

**§ 73.68 Sampling systems for antenna monitors.**

* * * * *

(d) In the event that the antenna monitor sampling system is temporarily out of service, the station may be operated pending completion of repairs for a period not exceeding 60 days without further authority from the FCC, if the base currents, their ratios, and the deviations of those ratios, in percent, from values specified in the station authorization must be determined for each radiation pattern used.

(e) * * *

(2) Immediately prior to modification or replacement of components of the sampling system not on the towers, and after a verification that all monitoring point values, base current ratios and operating parameters are within the limits or tolerances specified in the instrument of authorization or the pertinent rules, the following indications must be read for each radiation pattern: Final plate current and plate voltage, common point current, base currents and their ratios, antenna monitor phase and current indications, and the field strength at each monitoring point. Subsequent to these modifications or changes the above procedure must be repeated.

* * * * *

8. In § 73.69, paragraph (b) is revised, paragraphs (b)(1), (2) and (3) are removed, paragraphs (d)(2) and (d)(3) are revised, and paragraph (e) is revised as follows:

**§ 73.69 Antenna monitors.**

* * * * *

(b) In the event an antenna monitor becomes defective, the station may be operated without the monitor pending its repair or replacement for a period not in excess of 60 days without further authority from the FCC, if the base currents, their ratios, and the derivations of those ratios, in percent, from the values specified in the station authorization must be determined for each radiation pattern used.

* * * * *

(d) * * *

(2) Immediately prior to the replacement of the antenna monitor, after a verification that all monitoring point values and base current ratios are within the limits or tolerances specified in the instrument of authorization or the pertinent rules, the following indications must be read for each radiation pattern: Final plate current and plate voltage, common point current, base currents, antenna monitor phase and current indications, and the field strength at each monitoring point.

(3) With the new monitor substituted for the old, all indications specified in paragraph (d)(2) of this Section, again must be read. If no change has occurred in the indication for any parameter other than the indications of the antenna monitor, the new antenna monitor indications must be deemed to be those reflecting correct array adjustments.

* * * * *

(e) The antenna monitor must be calibrated according to the manufacturer's instructions as often as necessary to ensure its proper operation.

9. Section 73.140 is amended by revising paragraph (c) as follows:

**§ 73.140 Use of automatic transmission systems (ATS).**

* * * * *

(c) Upon receipt of notification from the FCC, the station can commence full ATS operation.

* * * * *

10. In § 73.142, paragraph (d)(5) is revised as follows:

**§ 73.142 Automatic transmission system facilities.**

* * * * *

(d) * * *

(5) The accuracy of the clock must be maintained within an accuracy of ±1 minute at all times. The clock accuracy must be checked as often as necessary, but at least once each calendar month as part of the required transmitting inspections. The primary standard of time will be the signals of stations WWV or WWVH of the National Bureau of Standards.

* * * * *

11. In § 73.144, paragraph (c) is revised as follows:

**§ 73.144 Fail safe transmitter control for automatic transmission systems.**

* * * * *

(c) If termination of the station transmission was caused by any failure of the ATS control or alarm functions, ATS operation of the station must not be resumed until all necessary repairs or adjustments have been completed.

12. In § 73.146, paragraph (e) is revised as follows:

**§ 73.146 Automatic transmission system monitoring and alarm points.**

* * * * *

(e) Whenever a required alarm condition occurs, the alarm signal must remain continuously activated until the condition causing the alarm is corrected or manual control of the transmitting system is assumed, provided that if a visual alarm is also provided, the aural alarm may be turned off if the visual alarm remains activated.

* * * * *

13. In § 73.258, paragraph (e)(1) is removed and marked "Reserved".

**§ 73.258 Indicating instruments.**

* * * * *

(e) * * *

(1) [Reserved.]

14. In § 73.267, paragraph (b) introductory text and paragraphs (c)(3) introductory text and (c)(3)(i) are revised as follows:

**§ 73.267 Determining operating power.**

* * * * *

(b) *Direct method.* The direct method of power determination for an FM station uses the indications of a calibrated transmission line meter (responsive to relative voltage, current or power) located at the RF output terminals. The indications of the calibrated meter are used to observe and maintain the authorized operating power of the station. This meter must be calibrated by the licensee whenever there is any indication that the calibration is inaccurate or whenever any component in the metering circuit is repaired or replaced. The following calibration procedures are to be used:

* * * * *

(c) * * *

(3) The value of F is to be determined by one of the following procedures listed in order of preference:

(i) Using the most recent measurement data for calibration of the transmission line meter according to the procedures described in paragraph (b) of this Section or the most recent measurements made by the licensee establishing the value of F. In the case of composite transmitters or those in which the final amplifier stages have been modified pursuant to FCC approval, the licensee must furnish the FCC the measurement data used as a basis for determining the value of F.

* * * * *

15. In § 73.275, paragraph (a)(5) introductory text is revised, paragraph (a)(5)(i) is removed and marked "Reserved"; and paragraph (c) is revised as follows:

**§ 73.275 Remote control operation.**

(a) * * *

(5) Calibration of required indicating instruments at each remote control point must be made against their corresponding instruments at the transmitter site as often as necessary to ensure their accuracy.

(i) [Reserved.]

* * * * *

(c) When a subcarrier is used for telemetry of remote control data from the transmitter to the control point, radiation of the subcarrier is only necessary when remote transmitter readings are being made. However, the subcarrier must be available for telemetry at all times.

**§ 73.295 [Amended]**

16. In § 73.295, paragraph (f) is removed.

17. In § 73.297, paragraph (b) is revised as follows:

**§ 73.297 FM multichannel sound broadcasting.**

* * * * *

(b) Each licensee or permittee engaging in multichannel broadcasting must measure the pilot subcarrier frequency as often as necessary to ensure that it is kept at all times within 2 Hz of the authorized frequency.

18. Section 73.340 is amended by revising paragraph (c) as follows:

**§ 73.340 Use of automatic transmission systems (ATS).**

* * * * *

(c) Upon receipt of notification from the FCC, the station can commence full ATS operation.

* * * * *

19. In § 73.344, paragraph (c) is revised as follows:

**§ 73.344 Fail-safe transmitter control for automatic transmission systems.**

* * * * *

(c) If a termination of the station transmissions is caused by any failure of the ATS control or alarm function, ATS operation may not be resumed until all necessary repairs or adjustments have been completed.

20. In § 73.346, paragraph (e) is revised as follows:

**§ 73.346 Automatic transmission system monitoring and alarm points.**

* * * * *

(e) Whenever a required alarm condition occurs, the alarm signal must remain continuously activated until the condition causing the alarm is corrected or manual control of the transmitting is assumed, provided that if a visual alarm is also provided, the aural alarm may be turned off if the visual alarm remains activated.

* * * * *

21. Section 73.540 is amended by revising paragraph (c) as follows:

**§ 73.540 Use of automatic transmission systems (ATS).**

* * * * *

(c) Upon receipt of notification from the FCC, the station can commence full ATS operation.

* * * * *

22. In § 73.544, paragraph (c) is revised as follows:

**§ 73.544 Fail-safe transmitter control for automatic transmission systems.**

* * * * *

(c) If a termination of the station transmissions is caused by any failure of the ATS control or alarm function, ATS operation may not be resumed until all necessary repairs or adjustments have been completed.

23. In § 73.546, paragraph (e) is revised as follows:

**§ 73.546 Automatic transmission system monitoring and alarm points.**

* * * * *

(e) Whenever a required alarm condition occurs, the alarm signal must remain continuously activated until the condition causing the alarm is corrected or manual control or the transmitting is assumed, provided that if a visual alarm is also provided, the aural alarm may be turned off if the visual alarm remains activated.

24. In § 73.558, paragraph (e)(1) is removed and marked "Reserved":

**§ 73.558 Indicating instruments.**

* * * * *

(e) * * *

(1) [Reserved.]

* * * * *

25. In § 73.575, paragraph (a)(5) introductory text is revised as follows and paragraph (a)(5)(i) is removed and marked "Reserved":

**§ 73.575 Remote control operation.**

(a) * * *

(5) Calibration of required indicating instruments at each remote control point must be made against their corresponding instruments at the transmitter site as often as necessary to ensure their accuracy, and:

(i) [Reserved.]

* * * * *

26. In § 73.597, paragraph (b) is revised as follows:

**§ 73.597 Multichannel sound broadcasting.**

* * * * *

(b) Each licensee or permittee engaging in stereophonic broadcasting must measure the pilot carrier frequency as often as necessary to ensure that it is within 2 Hz of the authorized frequency.

27. In § 73.663, paragraphs (d)(3) introductory text and (d)(3)(i) are revised as follows:

**§ 73.663 Determining operating power.**

* * * * *

(d) * * *

(3) The value of F is to be determined by one of the following procedures listed in order of preference:

(i) Using the most recent measurement data for calibration of the transmission line meter according to the procedures

described in paragraph (c) of this Section or the most recent measurements made by the licensee to establish the value of F. In the case of composite transmitters or those in which the final amplifier stages have been modified pursuant to FCC approval, the licensee must furnish the FCC the measurement data for determining the value F.

* * * * *

28. In § 73.676, paragraphs (a)(2), (c) and (g) are revised as follows:

**§ 73.676 Remote control operation.**

(a) * * *

* * * * *

(2) Suitable instruments for indicating the operating parameters. The indicating instruments must show the actual values of such parameters, or decimal multiples of those parameters and must be calibrated to provide an indication within 2% of the corresponding instrument at the transmitter site.

* * * * *

(c) The control circuits from the control point to the transmitter and the return telemetry circuit must be so designed and installed that open circuits, short circuits, accidental grounding or other line faults, where lines are used, or equipment failures, casual signals or random noise impulses, if other means are used, will not activate the transmitter. Any fault or failure which results in loss of control must cause the transmitter to cease operation. The loss of any telemetry function which provides information necessary to ascertain proper station operation must result in the actuation of automatic circuitry which, not more than 1 hour from the time of telemetry failure, will terminate operation of the transmitter, and operation by remote control may not resume until all telemetry functions are fully restored.

* * * * *

(g) The remote control and monitoring equipment must be calibrated and tested, and the television broadcast transmitter must be inspected as often as necessary to ensure operation with this Subpart E.

29. In § 73.688, paragraph (e)(1) is removed and marked "Reserved".

**§ 73.688 Indicating instruments.**

* * * * *

(e) * * *

(1) [Reserved.]

* * * * *

30. In § 73.781, the introductory paragraph is revised and paragraphs (b), (c) and (d) are removed:

**§ 73.781 Logs.**

The licensee or permittee of each international broadcast station must maintain the station log in the following manner:

* * * * *

**§ 73.786 [Removed]**

31. Section 73.786 removed.

32. In § 73.932, paragraphs (d)(1) and (d)(2) are revised as follows:

**§ 73.932 Radio monitoring and attention signal transmission requirements.**

* * * * *

(d) * * *

(1) Appropriate entries must be made in the station log, indicating reasons why Weekly Test Transmissions were not received or conducted and;

(2) Appropriate entries must be made in the station log showing the date and the time the equipment was removed and restored to service.

* * * * *

33. In § 73.961, the introductory paragraph is revised as follows:

**§ 73.961 Tests of the Emergency Broadcast System procedures.**

Tests of the EBS procedures will be made at regular intervals as indicated below. Appropriate entries must be made consistently in the station log concerning EBS tests received and transmitted by broadcast stations.

* * * * *

34. In § 73.962 paragraph (e)(4) is revised as follows:

**§ 73.962 Closed circuit tests of approved national level interconnecting systems and facilities of the Emergency Broadcast System.**

* * * * *

(e) * * *

(4) Enter the time of receipt of the Closed Circuit Test consistently in your station log.

* * * * *

35. In § 73.1215, paragraph (e) is revised as follows:

**§ 73.1215 Specifications for indicating instruments.**

* * * * *

(e) Digital meters, printers, or other numerical readout devices may be used in addition to or in lieu of indicating instruments meeting the specifications of paragraphs (a), (b), (c) and (d) of this Section. If a single digital device is used at the transmitter for reading operating parameters, either (1) Indicating instruments meeting the above-mentioned specifications must be installed in the transmitter and antenna circuit; or (2) a spare digital device must be maintained at the transmitter with provision for its rapid substitution for the main device should that device malfunction. The readout of the device must include at least three digits and must indicate the value or a decimal multiple of the value of the parameter being read to an accuracy of at least 2%. The multiplier to be applied to the reading of each parameter must be indicated at the operating position of a switch used to select the parameter for display.

* * * * *

36. In § 73.1225 paragraph (d) is revised as follows:

**§ 73.1225 Station inspections by FCC.**

* * * * *

(d) The station log and special technical records must be made available for inspection upon request by a representative of the FCC.

37. In § 73.1515, paragraph (c)(4) is removed and marked "Reserved".

**§ 73.1515 Special field test authorization.**

* * * * *

(c) * * *

(4) [Reserved.]

* * * * *

38. In § 73.1550, paragraph (c) introductory text is revised, paragraph (c)(1) is removed and marked "Reserved"; paragraphs (d)(1), (d)(2), (d)(3) and (d)(4) are revised, and paragraph (e) is revised as follows:

**§ 73.1550 Extension meters.**

* * * * *

(c) The extension meters required, pursuant to paragraph (b) of this Section, must be calibrated against their corresponding regular meters as often as necessary to ensure their accuracy, and.

(1) [Reserved.]

* * * * *

(d) * * *

(1) *All stations.* If the malfunction affects the meters for indicating the DC input power to the last radio stage of the transmitter power amplifier, the indications must be read at the transmitter.

(2) *AM stations.* In addition to (1) above, if the malfunction affects the extension indications of antenna or common point ammeter, the operating power may be determined by the indirect method using the procedures described in § 73.51(e) for a period not to exceed 60 days. Alternatively, the operating power may be determined by the direct method on a continued basis by reading the regular antenna or common point ammeter for each mode of operation until the defective extension metering is repaired.

(3) *FM stations.* In addition to (1) above, if the malfunction affects the transmission line meter, the indications must be read at the transmitter.

(4) *TV stations.* In addition to (1) above, if the malfunction affects the transmission line meter(s), indications must be read at the transmitter. If the malfunction affects the indications of the visual monitoring equipment, the licensee must, pending repair or replacement, provide other suitable means for monitoring visual modulation at the extension meter location.

(e) If a malfunctioning component cannot be repaired or replaced within 60 days from the date faulty operation is detected, the Engineer-in-Charge of the radio district in which the station is located must be notified and request made for such additional time as is needed to complete the necessary repairs or replacement.

39. Section 73.1580 is revised as follows:

**§ 73.1580 Transmission system inspections.**

Each AM, FM, and TV station licensee or permittee must conduct a complete inspection of the transmitting system and all required monitors as often as necessary to ensure proper station operation.

40. In § 73.1665, paragraph (c) is revised as follows:

**§ 73.1665 Main transmitters.**

* * * * *

(c) A licensee may, without further authority or notification to the FCC, replace an existing main transmitter or install additional main transmitters for use with the authorized antenna if the replacement or additional transmitter(s) is type accepted as shown in the FCC "radio equipment list". Within 10 days after commencement of regular use of the replacement or additional transmitter(s), equipment performance measurements, as prescribed for the type of station are to be completed.

41. In § 73.1800, paragraphs (a), (b), (f), (g) and (h) are revised as follows:

**§ 73.1800 General requirements related to the station log.**

(a) The licensee of each station must maintain a station log as required by §§ 73.1810 and 73.1820. This log will be kept by the station employee or employees competent to do so, having actual knowledge of the facts required. All entries, whether required or not by the provisions of this Part, must accurately reflect the station operation. When the employee making a log entry signs the log, that person attests to the fact that the log, with any corrections or additions made before it was signed, is an accurate representation of what transpired.

(b) The station log must be kept in an orderly and legible manner, in suitable form and in such detail that the data required for the particular class of station concerned are readily available. Key letters or abbreviations may be used if the proper meaning or explanation is contained elsewhere in the log. Each sheet must be numbered and dated. Time entries must be made in local time and must be indicated as advanced (e.g., EDT) or non-advanced time (e.g., EST).

* * * * *

(f) Entries must be made in the station log as required by §§ 73.1810 and 73.1820. Additional information, such as that needed for administrative or operational purposes, may also be included in the log and is not subject to the restrictions and limitations concerning corrections or changes made in the log. Such additional information may be physically removed at the option of the licensee, without altering required information in any way, before making the log a part of an application or available for public inspection.

(g) Application forms for licenses and other authorizations require that certain operating and program data be supplied. These applications should be kept in mind in connection with formulating the contents of the station log, since it may contain information previously retained in operating and maintenance logs pursuant to rules no longer in effect.

(h) Application forms for licenses and other authorizations require that certain operating data be supplied. These forms should be kept in mind in connection with the maintenance of the station log.

42. In § 73.1810, paragraph (b)(5) is revised as follows:

**§ 73.1810 Program logs.**

* * * * *

(b) * * *

(5) *For Emergency Broadcast System Operations.* The results of tests of the EBS procedures pursuant to the requirements of Subpart G of this Part and the appropriate station EBS checklist must be entered in the station log (in the case of television stations, the station log may be the program log).

43. Section 73.1820 is re-entitled "Station log" and paragraphs (a) and (c) are revised as follows:

**§ 73.1820 Station log.**

(a) Entries must be made in the station log either manually by a properly licensed operator in actual charge of the transmitting apparatus, or by automatic devices meeting the requirements of paragraph (b) of this Section. Indications of operating parameters must be logged prior to any adjustment of the equipment. Where adjustments are made to restore parameters to their proper operating values, the corrected indications must be logged and accompanied, if any parameter deviation was beyond a prescribed tolerance, by a notation describing the nature of the corrective action. Indications of all parameters whose values are affected by modulation of the carrier must be read without modulation. The actual time of observation must be included in each log entry. The following information must be entered.

(1) *All stations:* (i) Entries required by § 17.49 of this chapter concerning any observed or otherwise known extinguishment or improper functioning of a tower light:

(A) The nature of such extinguishment or improper functioning.

(B) The date and time the extinguishment or improper operation was observed or otherwise noted.

(C) The date, time and nature of adjustments, repairs or replacements made.

(ii) Any entries not specifically required in this Section, but required by the instrument of authorization or elsewhere in this part.

(iii) An entry of each test of the Emergency Broadcast System procedures pursuant to the requirements of Subpart G of this Part and the appropriate EBS checklist, unless (in the case of TV stations) such entries are consistently made in the station program log.

(2) *Directional AM stations without an FCC-approved antenna sampling system* (See § 73.68): (i) An entry at the beginning of operations in each mode of operation, and thereafter at intervals not exceeding 3 hours, of the following (actual readings observed prior to making any adjustments to the equipment and an indication of any corrections to restore parameters to normal operating values):

(A) Common point current.

(B) When the operating power is determined by the indirect method, the efficiency factor F and either the product of the final amplifier input voltage and current or the calculated antenna input power. See § 73.51(e).

(C) Antenna monitor phase or phase deviation indications.

(D) Antenna monitor sample currents, current ratios, or ratio deviation indications.

(ii) Entries required by § 73.61 performed in accordance with the schedule specified therein.

(iii) Entries of the results of calibration of automatic logging devices (see paragraph (b) of this section), extension meters (see § 73.1550) or indicating instruments (see § 73.67) whenever performed.

* * * * *

(c) In preparing the station log, original data may be recorded in rough form and later transcribed into the log.

**§ 73.1830 [Removed]**

44. Section 73.1830 is removed.

45. A new § 73.1835 is added to read as follows:

**§ 73.1835 Special technical records.**

The FCC may require a broadcast station licensee to keep operating and maintenance records as necessary to resolve conditions of actual or potential interference, rule violations, or deficient technical operation.

46. In § 73.1870, paragraphs (c)(3) and (c)(4) are revised as follows:

**§ 73.1870 Chief operators.**

* * * * *

(c) * * *

(3) Review of the station records at least once each week to determine if required entries are being made correctly. Additionally, verification must be made that the station has been operated as required by the rules or the station authorization. Upon completion of the review, the chief operator or his designee must initiate any corrective action which may be necessary and advise the station licensee of any condition which is a repetitive problem.

(4) Any entries which may be required in the station records. (See § 73.1820.)

47. The following listings are removed in their entirety from the Alphabetical Index to Part 73 of the Commission's rules:

| | |
|---|---|
| Logs, Maintenance | 73.1830 |
| Maintenance logs | 73.1830 |
| Logs, Operating | 73.1820 |
| Operating logs | 73.1820 |

48. The following listings are added in sequence to the Alphabetical Index to Part 73 of the Commission's rules:

| | |
|---|---|
| Station log | 73.1820 |
| Log, Station | 73.1820 |
| Special technical records | 73.1835 |
| Technical records, Special | 73.1835 |
| Records, Special technical | 73.1835 |

## PART 74—[AMENDED]

49. In Part 74, a new § 74.19 is added to read as follows:

**§ 74.19 Special technical records.**

The FCC may require a broadcast auxiliary station licensee to keep operating and maintenance records necessary to resolve conditions of actual or potential interference, rule violations, or deficient technical operation.

50. Section 74.181 is re-entitled "Station records", paragraph (a) is revised, paragraphs (b) and (c) are removed and present paragraph (d) is redesignated new paragraph (b) and revised as follows:

**§ 74.181 Station records.**

(a) The licensee of each experimental television broadcast station must maintain adequate records of the operation, including:

(1) Program transmitted.

(2) In case of relay or pickup station, an entry giving points of program origination and receiver location.

(3) Entries concerning any specific information requested by the FCC deriving from the purpose of the experimental grant.

(4) Such other information deemed useful by the licensee for evaluating the experimental operation.

* * * * *

(b) Station records must be retained for a period of 2 years.

51. Section 74.281 is re-entitled "Station records", paragraph (a) is revised, paragraphs (b) and (c) are removed and present paragraph (d) is redesignated new paragraph (b) and revised as follows:

**§ 73.281 Station records.**

(a) The licensee of each experimental facsimile broadcast station must maintain adequate records of the operation, inluding:

(1) Program transmitted.

(2) Entries concerning any specific information requested by the FCC deriving from the purpose of the experimental grant.

(3) Such other information deemed useful by the licensee for evaluating the experimental operation.

(b) Station records must be retained for a period of 2 years.

52. Section 74.381 is re-entitled "Station records"; paragraph (a) is revised, paragraphs (b) and (c) are removed and present paragraph (d) is redesignated as new paragraph (b) and revised as follows:

**§ 74.381 Station records.**

(a) the licensee of each experimental television broadcast station must maintain adequate records of the operation, including:

(1) Program transmitted.

(2) In case of relay or remote pickup station, an entry giving points of program origination and receiver location must be included.

(3) Entries concerning any specific information requested by the FCC deriving from the purpose of the experimental grant.

(4) Such other information deemed useful by the licensee for evaluation of the experimental operation.

(b) station records must be retained for a period of 2 years.

53. § 74.465, paragraph (a) is revised as follows:

**§ 74.465 Frequency monitors and measurements.**

(a) The licensee of a broadcast remote pickup station or system must provide the necessary means to insure that all operating frequencies are maintained within the allowed tolerances.

* * * * *

54. Section 74.562 is revised as follows:

**§ 74.562 Frequency monitors and measurements.**

The licensee of each aural broadcast STL and intercity relay station must provide the necessary means for determining that the frequency of the station is within the allowed tolerance. Sufficient observations must be made to ensure that the assigned carrier frequency is maintained within the prescribed tolerance.

**§ 74.581 [Removed]**

55. Part 74 is amended by removing § 74.581.

56. Section 74.662 is revised as follows:

**§ 74.662 Frequency monitors and measurements.**

The licensee of a television broadcast auxiliary station must provide means for measuring the operating frequency in order to ensure that the emissions are confined to the authorized channel.

**§§ 74.681, 74.781, 74.981 and 74.1281 [Removed]**

57. Part 74 is amended by removing § 74.681, 74.781, 74.881, 74.981, and 74.1281.

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BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

[BMCS Docket No. MC-92; Amdt. No. 81-12]

## Qualifications of Drivers; Handicapped Driver Waiver Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending the Federal Motor Carrier Safety Regulations (FMCSR) to expand the current Handicapped Driver Waiver Program (hereafter referred to as the Waiver Program) to include operations of hazardous materials-laden and passenger-carrying vehicles. This amendment is being adopted because accident statistics do not indicate that drivers who have suffered the loss or impairment of a limb and who are granted waivers are less safe than nonhandicapped drivers. Furthermore, the FHWA is revising the Waiver Program's application process to allow the option of unilateral waiver applications from limb-handicapped drivers. This action will permit handicapped drivers who have unilateral waivers to present themselves to their initial employing motor carrier for immediate employment consideration.

EFFECTIVE DATE: August 24, 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 St., SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The FMCSR currently permit an individual who has lost a limb or has a limb impairment to drive in interstate or foreign commerce although not physically qualified under 49 CFR 391.(b) (1) and (2). Upon application to a Regional Administrator of the FHWA, a waiver of the physical requirement may be granted on a case-by-case basis with two exceptions: (1) A handicapped driver who intends to drive a hazardous material-laden (HML) vehicle, and (2) a handicapped driver who intends to drive a passenger-carrying vehicle. On June 12, 1980, a notice of request for public comment (NRPC) was published in the Federal Register (45 FR 39872). Its purpose was to review these two exceptions.

In the NRPC, the FHWA related the history of the Waiver Program and discussed the rationale for the two exceptions. Studies were cited which showed handicapped drivers (of automobiles) to be associated with increased accidents and traffic violations. Also discussed was the difference in operations among general commodity, passenger, and hazardous materials cargo (HMC) transportation.

The FHWA received 57 written comments to the NRPC. Thirty-one argued to retain the exceptions, 18 argued to grant relief, six argued positions not relevant to the NRPC, and two expressed no preference. Those favoring retaining the exceptions argued that handicapped drivers: (1) Cannot perform the complex eye-hand-foot coordinating tasks required of bus drivers; (2) cannot perform the nondriving safety-related functions required of bus and HMC drivers; (3) cannot perform the vehicle inspection and safety maintenance tasks (such as securing the manhole cover on an HMC tanker) required of HMC and bus drivers; and (4) finally, they argued that handicapped drivers would, because of these inadequacies, increase the potential for a catastrophic HMC or bus accident.

Those seeking relief through the abolition of the exceptions argued that the FHWA's own evaluation of its program in 1974 showed that drivers granted waivers under the Waiver Program operated commercial motor vehicles as safely as nonhandicapped drivers. Furthermore, they pointed out that individual determinations are presently made of waiver applications for the transportation of general commodities and no strong argument has been put forth that vehicles transporting HMC or passengers are significantly different from general commodity-laden vehicles. They therefore conclude that the present program with minimum modifications could be used to evaluate those who desire to operate HML or passenger-carrying vehicles.

This point concerning individual determinations is related to regulations stemming from the Rehabilitation Act of 1973 (RA of 1973), Pub. L. 93-112, 87 Stat. 355, as amended in 1978, Pub. L. 95-602, 92 Stat. 2984. The 1978 amendment required the agencies of the Executive Branch of the Federal government to examine their regulations and programs to bring them into compliance with the RA of 1973.

Court review of cases involving the RA of 1973 established that exceptions (discrimination) may be warranted if two considerations are present: (1) A subgroup, such as in the present case, are statistically shown to be a risk, and (2) one cannot make individual determinations within this subgroup of those handicapped individuals who are not at risk.

Applying these conditions to the Waiver Program, those favoring retention of the prohibition of drivers with a waiver from operating HML or passenger-carrying vehicles would have to show, with a preponderance of evidence, that limb-handicapped individuals cannot be evaluated while performing the safety-related driving and nondriving duties of a driver of a HML or passenger-carrying vehicle. Most industry representatives gave the opinion that the limb-handicapped cannot perform safety-related driving and nondriving duties of a HMC or passenger-carrying driver. However, it is important to note that the comments received from those supporting the retention of the existing rule lacked substantive evidence to support their contentions.

Those favoring rescinding the prohibition took issue with the FHWA's interpretation of handicapped accident statistics stating that the studies do not conclusively demonstrate that all limb-handicapped drivers are unsafe.

The FHWA gave consideration to all viewpoints. The FHWA also considered its own 1974 risk analysis study of the Waiver Program and an ongoing risk analysis study of the Waiver Program. Further, it sought the advice and counsel of its cadre of Regional Waiver Program Specialists (RMPS). This cadre has been trained to administer and perform all the evaluations of applicants to the Waiver Program. They were trained by transportation and rehabilitation experts, physicians, and a limb-handicapped individual who is a chief of a department of Prosthetics and Sensory Devices, at a Veterans Medical Center.

The 1974 risk analysis study revealed that the Waiver Program participants' accident rate per million miles driven was identical to that of nonhandicapped drivers. The present ongoing study reveals that the accident rate per million miles for Waiver Program participants is lower than that for all commercial drivers. The present study evaluates several times the number of Waiver Program participants as did the 1974 study.

It was concluded from the responses to the NRPC, the FHWA's assessment of its risk analysis studies, and the FHWA's responsibilities under the RA of 1973 that the Waiver Program

participants should be allowed, on a case-by-case basis, to apply for waivers to operate HML or passenger-carrying vehicles.

A notice of proposed rulemaking (NPRM) was published on November 8, 1982, proposing to amend the FMCSR to expand the current Waiver Program to include commercial operations of HML and passenger-carrying vehicles. Further, the FHWA proposed to rescind the requirements for a coapplicant motor carrier for each waiver application.

A total of 29 commenters responded to the NPRM. Of that total, nine commenters opposed the proposal, 18 commenters supported the proposal, and two commenters partially supported the proposal.

**Summary of Comments.**

Those in opposition to the NPRM include: Three motor carrier associations, some of whose members transport HMC exclusively; three motor carriers, all of whom transport HMC; a bus association; a passenger-carrying motor carrier; and an insurance association.

The Private Truck Council of America, Inc. (PTC) relates a concern in its comments that several other commenters mentioned:

> We recognize that with driver training for the handicapped, coupled with cab alteration to accommodate the individual impairment, a person that is handicapped may indeed drive as well as someone who is not impaired.
>
> However, there is more to driving a hazardous material than simply driving the vehicle.
>
> We believe that a driver needs above average physical and mental attributes when working with a hazardous substance. We are aware of the conditions that sometimes arise in moving of hazardous substances that require a driver to move swiftly from his cab and climb quickly and safely onto the trailer in order to shut off or examine a potentially dangerous leaking valve.
>
> The speed and agility with which these tasks are performed cannot only save the life of the driver but also the lives of the other nearby citizens.

The Austin Powder Company further articulates on the safety-related nondriving tasks of HMC drivers. It related the story of a driver who noticed

> * * * a fire in the cargo area of his truck * * * Due to the ability of our driver to run and alert everyone of the impending explosion, there were no fatalities and few injuries. We doubt the results would have been the same had he not had full use of his legs.
>
> Another area of concern is how an individual missing a hand or an arm could remove an overheated tire from a vehicle laden with explosives * * * Section 397.17(c) of the Federal Motor Carrier Safety Resultations requires the driver to cause an overheated tire to be removed and placed at a safe distance from the vehicle. * * * Austin and other explosive carriers do not always operate in populous areas where help can be obtained. We equip all our trucks with a lug wrench and jack so that the driver can remove an overheated tire before it can catch fire.

The National LP-Gas Association (NLPGA) expresses similar views on the evaluation of nondriving safety-related job tasks. Further, the association believes the FHWA is placing HMC carriers in a "catch-22" position. The NLPGA states,

> BMCS also appears to place great weight on the fact that carriers may impose more stringent qualifications and, in the final analysis, need not hire anyone they do not feel is qualified for the job. Unfortunately, such statements are short-sighted and fail to account for the fact that finalization of this rule could place hazardous materials operators in a very difficult, 'Catch 22' situation. Thus, when confronted with an applicant in possession of a waiver granted by the Regional Federal Highway Administrator, the employer is faced with the difficult choice between hiring the individual and running the risk of a serious accident and resultant liability exposure, or facing a discrimination suit under the equal employment opportunity laws.

The American Insurance Association (AIA) opposed the NPRM because the FHWA has not identified specific safety-related job tasks associated with HMC transportation.

The Greyhound Lines, Inc. with a national fleet of 4,000 buses and 8,200 drivers makes three points in its opposition to the NPRM proposal:

1. The 1974 Waiver Program risk analysis study was too small a sample, too short a sampling period, and did not evaluate variables such as weather and terrain.

2. The reliance of the BMCS [FHWA's Bureau of Motor Carrier Safety] on an ongoing study is premature since the data is incomplete or inadequate.

3. It is unreasonable to require Greyhound to modify its entire fleet of vehicles for one or two drivers with waivers who have need for vehicle modifications. Also these modifications may in fact conflict with each other.

The American Bus Association (ABA) believes it is uncertain whether motor carriers of passengers would be required under the proposed rule to hire any Waiver Program participant. The ABA quotes a passage from the NPRM, "In addition, the FMCSR are minimum qualifications and do not prevent a motor carrier from enacting policies imposing more stringent or additional qualifications, requirements, examination, or certificates." The ABA interprets this to mean a handicapped driver, even though granted a waiver by the FHWA, would not have to be hired if a carrier has more stringent physical standards. Their interpretation is correct.

Those in support of the NPRM include: three State agencies that assist the handicapped, one State Governor, two motor carriers, two advocate organizations for the handicapped, nine individuals, and two representatives of transportation unions.

Governor William A. O'Neill of the State of Connecticut found the proposal based on solid statistical data. The Governor's Council on Disabled Persons for the State of Ohio wrote that "A change in this portion of the regulation will provide additional employment opportunities for qualified disabled truck drivers." The Division of Rehabilitation Services of the State of Georgia supports the expansion of this program. "Further we [Georgia] support the continued screening of drivers on a case by case basis to assure the safety of drivers, passengers, and other motorists."

A former bus driver, who lost part of his leg while employed by Continental Trailways, writes that a person with his experience and physical capabilities would be an ideal candidate for a waiver to drive an interstate passenger-carrying vehicle.

Another driver drove a bus for twenty-three years, then in 1980 had his left foot amputated due to a hunting accident. This driver still works for his bus company and on occasion moves buses (both automatic and manual shift) in the company yard. He enclosed two letters of support in his comments. His doctor, an orthopedic surgeon says the following of him:

It is my opinion:

1. This man is qualified to drive a commercial bus under any and all circumstances. He does not represent an increased risk in this activity.

2. He is qualified to make roadside repairs or perform rescue activities in a normal manner.

3. No specific adaptive devices [vehicle modifications] are required.

The owner of the bus company where this driver works gave him a performance test. The owner had the driver first walk up and down three flights of steps, then walked a mile. Next, he had him drive a bus with a manual transmission. He states the driver had not driven this type of vehicle before nor had he driven with its type of transmission. The bus company owner had him drive for one-half hour on residential streets with cars parked on

both sides, meeting traffic with no room to pass, and making short double corners. He then had the driver park in the bus yard, backing in between two other buses. Finally, they rewalked the mile to the office. They walked each mile in 11 minutes. The bus company owner says he will definitely rehire the man as a bus driver if the proposed change takes place.

A trucker who lost his right hand at the wrist would have a job with a particular carrier, we are told, but for the fact that on the backhaul the possibility exists that the load may contain HMC.

The Metro Independent Living Center, in support of the proposal, states, "Therefore, any change in your regulations that are safe but yet open up more jobs for people with disabilities will be a means whereby more people with disabilities can be self-sufficient and not a drain on our social system."

The Crouse Cartage Company stated they have a driver with a waiver and judge him to be one of their safest drivers. He was recently given a life rescuing award.

North American Van Lines, Inc. (NAVL) services include the transportation of HMC. The company persently employees five drivers who have been issued waivers. NAVL believes that, "the Waiver Program's Skill Performance Evaluation would disqualify any applicant who because of the unique nature of his or her impairment could not demonstrate proficiency in handling the necessary equipment and paraphernalia associated with HML vehicles." NAVL finds the present restriction unnecessary and inequitable in the face of the arguments presented in the NPRM. Finally, they state the service inflexibility (no backhaul if HMC involved), is costly and inefficient for the carrier and for the driver, particularly if the driver is compensated only for loaded or revenue producing miles. They find the coapplicant requirements a paperwork burden to the motor carrier and say it delays the time a driver can commence work.

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America States its support for the entire proposal. It believes the rescission of the coapplicant requirement will remove "a stumbling block for otherwise qualified handicapped drivers seeking a waiver."

The American Trucking Associations, Inc. (ATA) through its Council of Safety Supervisors supports the NPRM in part. It supports individual case-by-case determinations of the proficiency of handicapped drivers to transport HMC who can operate at the same level of safety and proficiency as nonhandicapped driver. However, the ATA does not support the rescission of the coapplicant requirement and thinks the rule should be made preemptive in nature (i.e., supersede all States laws.)

The ATA believes the information provided by the coapplicant motor carrier is an essential factor in the continued success of the Waiver Program. It believes information such as operating terrain, equipment specifications, and job requirements are a necessity in the evaluation of the proficiency of a handicapped driver. The ATA adds that its support of that portion of the NPRM permitting handicapped drivers to transport HMC is contingent on the coapplicant requirement remaining as an integral part of the Waiver Program.

**Discussion of Comments**

The final disposition of this NPRM by the FHWA rests on the comments to the docket, the evaluation of the risk analysis studies, the evaluation of the ability of the modified Skill Performance Evaluation to discern performance of handicapped individuals in HML or passenger-carrying vehicles, and its responsibility under the RA of 1973, as amended in 1978.

Comments of the A.I.A., the A.B.A., and Greyhound Lines, Inc. took issue with a past FHWA study and a second on-going study of the accident rate of its Waiver Program participants. They contend the 1974 study was too small and the usage of the results of the ongoing study is premature.

The 1974 study developed accident rate data for Waiver Program participants and found the rate equivalent to that for all interstate or foreign commercial drivers. In 1979, the FHWA initiated a second study which is to cover five years. A five-year time period was chosen because one objective of the study was to gather sufficient data to make program decisions on whether it is feasible to grant lifetime waivers in certain cases, such as, a left foot amputee or a left leg below the knee amputee. Prior to 1979, the FHWA had some oral reports from RWPS that they would not have known the applicant had a disability other than the fact that the person applied for a waiver.

Another objective of the study was to gather year to year accident rate data on Waiver Program participants. The number of study participants (N) per year was: 1979, N=52; 1980, N=71; 1981, N=67; 1982, N=90. The total N equals 280, approximately four times the number of study participants as in the 1974 study. More importantly, the accident rate per million miles for these years is: 1979, 0.7; 1980, 0.6; 1981, 0.9; 1982, 0.8, while in the same period, the 1978 rate (A Report to Congress on Large-Truck Accident Causation, 1982) for all combination trucks was 5.94 accidents per million miles. In 1981, National Accident Sampling System of the National Highway Traffic Safety Administration developed a rate of 3.84 accidents per million miles for all drivers driving articulated vehicles. Over ninety percent of Waiver Program participants drive articulated vehicles.

The FHWA's BMCS also collects accident and exposure data on all "reportable accidents." "Reportable Accidents" are accidents involving: (1) The death of a human being, (2) bodily injury to a person who, as a result, received medical treatment away from the scene of the accident, or (3) total aggregate accident cost of $2,000 or more. The BMCS rates per million miles for all interstate and foreign commerce drivers in the years 1979 through 1982 are: 1979, 1.016; 1980, 1.459; 1981, 1.628; and 1982 (partial figure), 1.489. A comparison of the rates for the Waiver Program with figures for all BMCS "reportable accidents" shows that the Waiver Programs "reportable accidents" rates are at least as good as the overall BMCS "reportable accident" rates. It is believed that this evaluation study of the Waiver Program shows that limb-handicapped drivers when evaluated and monitored under the FHWA's Waiver Program are at least as safe as nonhandicapped commercial drivers.

It is believed the foregoing discussion responds to any questions concerning the comparison of accident rates between limb-handicapped drivers in the Waiver Program and nonhandicapped commercial drivers. The studies, as a whole, prove the success of the Skill Performance Evaluation to discern those applicants who have adequately compensated for their handicaps.

The success of the Skill Performance Evaluation in the present Waiver Program in discerning those limb-handicapped applicants who have successfully compensated for their handicap leads to a second major group of comments of those opposing the proposal. Three commenters (i.e., the PTC, Austin Power Company, and the NLPGA) all express the belief that handicapped individuals cannot adequately handle the driving and nondriving safety-related duties of (principally nondriving duties) an HMC driver, although the PTC does recognize that handicapped drivers may drive as

well as someone who is not impaired, considering training and cab alterations available today. These commenters as well as others identified critical nondriving tasks they believe the BMCS cannot reasonably evaluate in its Skill Performance Evaluation.

Essential new job tasks that would have to be evaluated by the Skill Performance Evaluation for HMC tanker operations are: manhole cover operations and security, hose operations and security, the grounding of a vehicle, opening and closing of valves, operating the emergency shut-off controls, the ability to change a tire, the ability to handle the larger size extinguisher (two-handed type) used by certain HMC motor carriers, and an assessment of the driver's potential for response in a hypothetical emergency to either warn the public or close a valve.

The FHWA does not believe all handicapped driver waiver candidates can adequately perform all the driving and nondriving safety-related tasks of HMC drivers. The FHWA appreciates that certain HMC operations have unique features. In particular, we recognize the variety of trailer types found among the thousands of different HMC carriers. The FHWA also appreciates the importance of nondriving safety-related job tasks associated with passenger-carrying operations, in particular, those tasks associated with passenger evacuation.

The FHWA is persuaded in part by the comments to the docket that it may not be feasible to modify the Skill Performance Evaluation to ensure that every driver with a waiver is evaluated with respect to every conceivable nondriving safety-related job task on the thousands of different HMC trailer types and buses. Therefore, the FHWA has modified the Skill Performance Evaluation so that the assessment by the Regional Waiver Program Specialist is for of the operation of the power unit (tractor) only, along with certain pre-trip and post-trip inspection functions. Since pre-trip and post-trip inspection evaluation require a trailer and because the driving function is significantly influenced by the size and weight of the trailer, the Skill Performance Evaluation will continue to require a loaded trailer. However, the waiver, if granted, will state it covers the power unit (tractor) only, not the trailer type. It will be the responsibility of the employing motor carrier to evaluate a driver possessing a waiver on the type of trailer(s) that the driver will utilize as well as any other nondriving job tasks unique to the motor carrier's operations.

A Waiver Program operational problem identified in the comments involved the rescinding of the coapplicant requirement. If no coapplicant were part of the waiver, in many instances, no vehicle would be available for the Skill Performance Evaluation. Even if the applicant were able to rent a tractor semi-trailer, it would not be loaded. The consequences in many cases would be that the rule change could actually reduce opportunities for some applicants to be granted waivers.

The FHWA believes the merit of rescinding the coapplicant requirement is still warranted; however, it also does not want to restrict that segment of the limb-handicapped commercial driver population who do not own or who cannot acquire a vehicle and have it available for the Skill Performance Evaluation. Therefore, the FHWA will retain the coapplicant feature of the Waiver Program but will grant exceptions in certain instances. A driver may apply for a waiver unilaterally if s/he is ready to provide a vehicle with a loaded trailer for the Skill Performance Evaluation and assume all responsibility for certifying and establishing that the s/he is otherwise qualified with respect to all qualifications under Part 391. The unilateral applicant shall certify s/he is otherwise qualified as well as provide specific information about medical examinations and special medical evaluation, motor carrier employment history, State Motor Vehicle Driving Record, a certification of road test, and a copy of a State waiver (if applicable).

One major passenger carrier's comment that it would be forced to modify its entire fleet if a handicapped driver required a vehicle modification is without merit. Historically, the FHWA's BMCS has taken the position that it would impose an undue hardship on the conduct of a motor carrier's business for the motor carrier to modify its fleet for a limb-handicapped driver. We think this position is supported by final rules published by the Department of Labor, Office of Federal Contract Compliance Programs on October 20, 1978, in the **Federal Register** (43 FR 49278). In 41 CFR Section 60–741.6(d) it states, "Accommodation to physical and mental limitations of employees. A contractor must make reasonable accommodation to the physical and mental limitations of an employee or applicant unless the contractor can demonstrate that such an accommodation would impose undue hardship on the conduct of the contractor's business. In determining the extent of a contractor's accommodation obligations, the following factors among others may be considered: (1) Business necessity and (2) financial cost and expenses.

In the NPRM, the FHWA cited 49 CFR 391.1 which states that rules in Part 391 do not prohibit a motor carrier from imposing more stringent or additional qualifications, requirements, examinations, or certificates than are required by the rules in Part 391. The ABA commented that a passenger-carrying motor carrier may only need to state or have a written policy stating that it has more stringent requirements which prohibit the hiring of a limb-handicapped driver in order to circumvent the revised § 391.49. The ABA cannot use § 391.1 to circumvent § 391.49. The FHWA cited § 391.1 in the NPRM to allay some motor carrier fears that limb-handicapped drivers who have been granted waivers would be forced on a motor carrier even though the motor carrier might have some nondriving safety-related job tasks associated with the type of trailer used or some other job tasks unique to its operations that the BMCS' RWPS has not evaluated. The rules, as amended, would eliminate this fear since the employing motor carrier is held responsible for evaluating safety-related job tasks associated with the trailer and any other job tasks unique to its operations. It is not believed that this imposes any additional requirements on a motor carrier since all motor carriers assess and assure themselves that any newly hired driver can perform the above tasks whether that driver be limb-handicapped or not.

The ATA comment that any new Waiver Program regulation should preempt State regulations is unnecessary. Historically, States may promulgate rules that are similar in nature to the FMCSR. They may be more stringent as long as they do not conflict with the FMCSR. Therefore, there is no need to make this rule preemptive.

The comments of those in support of the proposal, rely, for the most part, on the results of the FHWA's risk analysis studies of the Waiver Program. There is no doubt in the mind of those supporting the proposal that individual case-by-case determinations of ability to adequately compensate for a limb-handicap is feasible and warranted.

Several commenters, though obviously advocates for the handicapped, expressed their support for the Waiver Program to continue to assure, through evaluation and monitoring, the safety of all motorists and the general public

**Conclusion**

The FHWA is revising § 391.49, Waiver of certain physical defects, to

expand the Waiver Program to include operations of HML and passenger-carrying vehicles. Concerns of those in opposition that limb-handicapped drivers are a safety risk on the highway and that the FHWA cannot adequately evaluate the nondriving safety-related job tasks HMC and bus operations have not been substantiated. Two risk analysis studies depicted the particpants of the Waiver Program to have the same or less risk of accidents as nonhandicapped commercial drivers. Further, the FHWA has removed itself from the evaluation of nondriving safety-related job tasks associated with types of trailers and any other nondriving job task unique to a particular motor carrier operation.

The FHWA is also revising § 391.49 with respect to the coapplicant requirement. In the NPRM, the FHWA proposed to rescind this requirement in its entirety. It was pointed out that instead of eliminating an employment stumbling block for drivers by this amendment, the change could create one. Many limb-handicapped driver applicants do not own their own vehicles or would find it both expensive and extremely difficult to rent a power unit and have a loaded trailer for use during the Skill Performance Evaluation. With the coapplicant requirement, the motor carrier provides the power unit and trailer for use during the Skill Performance Evaluation. The FHWA appreciates the concerns of the limb-handicapped drivers and the employing motor carriers to eliminate the time difference between hiring a handicapped and nonhandicapped driver. At the same time, the change should not restrict the limb-handicapped driver's capability to acquire a waiver for lack of a vehicle. The FHWA will retain the coapplicant requirement but incorporate an exception to the general rule. The exception will allow a limb-handicapped driver to unilaterally apply for a waiver provided the applicant certifies (s)he is otherwise qualified under the driver qualifications found in Part 391 of the FMCSR and assumes responsibility for providing the power unit (tractor) and a loaded trailer for the Skill Performance Evaluation. Besides the certification of being otherwise qualified under 391, the driver applicant will have to provide all the information required for the waiver application, such as motor carrier employment history, State motor vehicle driving record, certification of road test, a copy of the State waiver (if applicable), physical examination findings and medical certificate, and a physiatrist's or orthopedic surgeon's summary report on the affected limb(s).

Previously, when all waivers had coapplicants, the coapplicant agreed to ensure that the driver complied with all conditions (i.e., only drive with an automatic transmission or provide a dimmer switch be relocated on dash). The coapplicant also agreed to inform the Regional Federal Highway Administrator in instances when the driver with a waiver had an accident, a moving traffic citation, or license restriction or withdrawal. These responsibilities will still be those of any motor carrier whether the motor carrier is the regular employing motor carrier, a motor carrier employing the driver for a single trip, or on intermittent, casual, or occassional basis.

Since the FHWA will be evaluating only the applicant's ability to operate a tractor (power unit) during the Skill Performance Evaluation, it will be the responsibility of whatever motor carrier employs a driver with a waiver to evaluate that driver with respect to nondriving safety-related job tasks associated with the type of trailer(s) the driver will use or any job tasks unique to its operation. A waiver authorizes the driver to drive for any motor carrier in the type of power unit stated on the waiver whether the waiver has a coapplicant motor carrier or was issued unilaterally. The driver shall give a copy of the waiver to each motor carrier who employs him/her whether it be the regular employing motor carrier, a motor carrier for a single trip, or a motor carrier on an intermittent, casual, or occasional basis. Drivers with unilaterally issued waivers are responsible for the waiver renewal application biennially. Drivers with unilateral waivers must state in their renewal application the name and address of their regular employing motor carrier (if any; if unemployed, so state).

A regulatory evaluation/regulatory flexibility analysis has been prepared and is available for review in the public docket. A copy may be obtained by contacting Mr. Neill Thomas at the address provided above under the heading **FOR FURTHER INFORMATION CONTACT.**

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The economic impact if any, anticipate as a result of this action is minimal. Under the criteria of the Regulatory Flexibility Act, it is certified that this rulemaking does not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing, the FHWA is rescinding the exception prohibiting drivers with waivers to operate HML or passenger-carrying vehicles and permitting unilateral waiver applications to the Waiver Program.

Because this amendment relieves a restriction, it may be made effective in fewer than 30 days after publication in the **Federal Register.**

**List of Subjects in 49 CFR Part 391**

Highways and roads, Motor carriers—driver qualifications, Motor carriers—handicapped driver waiver, Reporting and recordkeeping requirements.

(49 U.S.C. 3102 and CFR 1.48)

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

Issued on: August 17, 1983.

**Kenneth L. Pierson,**

*Director, Bureau of Motor Carrier Safety.*

In consideration of the foregoing, the FHWA is revising 49 CFR 391.49 to read as follows:

**§ 391.49 Waiver of certain physical defects.**

(a) A person who is not physically qualified to drive under § 391.41(b) (1) or (2) and who is otherwise qualified to drive a motor vehicle, may drive a motor vehicle, if the Regional Federal Highway Administrator has granted a waiver to that person.

(b) A letter of application for a waiver may be submitted jointly by the person who seeks a waiver of the physical disqualification (driver applicant) and by the motor carrier that will employ the driver applicant if the application is granted. The application must be addressed to the Regional Federal Highway Administrator for the region in which the coapplicant motor carrier's principal place of business is located. The address for each regional office is listed in § 390.40 of this subchapter. *Exception.* A letter of application for a waiver may be submitted unilaterally by a driver applicant. The application must be addressed to the Regional Federal Highway Administrator for the region in which the driver has legal residence. The address of each regional office is listed in § 390.40 of this subchapter. The driver applicant must comply with all the requirements of paragraph (c) of this section except (c)(1) (i) and (iii). The driver applicant shall respond to the requirements of paragraph (c)(2) (i) to (v) of this section, if the information is known.

(c) A letter of application for a waiver shall contain—

(1) Identification of the applicant(s):

(i) Name and complete address of the motor carrier coapplicant;

(ii) Name and complete address of the driver applicant;

(iii) The Federal Highway Administration Motor Carrier Identification Number, if known; and

(iv) A description of the driver applicant's limb impairment for which waiver is requested.

(2) Description of the type of operation the driver will be employed to perform:

(i) State(s) in which the driver will operate for the motor carrier coapplicant (if more than 10 States, designate general geographic area only);

(ii) Average period of time the driver will be driving and/or on duty, per day;

(iii) Type of commodities or cargo to be transported;

(iv) Type of driver operation (i.e. sleeper-team, relay, owner operator, etc.); and

(v) Number of years experience operating the type of vehicle(s) requested in the letter of application and total years of experience operating all types of motor vehicles.

(3) Description of the vehicle(s) driver applicant intends to drive:

(i) Truck or truck-tractor make, model, and year (if known);

(ii) Drive train;

(A) Transmission type (automatic or manual—if manual, designate number of forward speeds);

(B) Auxiliary transmission (if any) and number of forward speeds; and

(C) Rear axle (designate single speed, 2-speed, or 3-speed).

(iii) Type of brake system;

(iv) Steering, manual or power assisted;

(v) Description of type of trailer(s) (i.e. such as, van, flatbed, cargo tank, drop frame, lowboy, or pole);

(vi) Number of semitrailers or full trailers to be towed at one time; and

(vii) Description of any vehicle modification(s) made for the driver applicant; attach photograph(s) where applicable.

(4) Otherwise qualified:

(i) The coapplicant motor carrier must certify that the driver applicant is otherwise qualified under the regulations of this part;

(ii) In the case of a unilateral application, the driver applicant must certify that (s)he is otherwise qualified under the regulations of this part.

(5) Signature of applicant(s):

(i) Driver applicant's signature and date signed;

(ii) Motor carrier official's signature (if application has a coapplicant), title, and date signed. Dependent upon the motor carrier's organizational structure (corporation, partnership, or proprietorship), this signer of the application shall be an officer, partner, or the proprietor.

(d) The letter of application for a waiver shall be accompanied by:

(1) A copy of the results of the medical examination performed pursuant to § 391.43;

(2) A copy of the medical certificate completed pursuant to § 391.43(e);

(3) A medical evaluation summary completed by either a board qualified or board certified physiatrist (doctor of physical medicine) or orthopedic surgeon;

Note.—The coapplicant motor carrier or the driver applicant shall provide the physiatrist or orthopedic surgeon with a description of the job tasks the driver applicant will be required to perform;

(i) If the medical evaluation summary applies to a driver applicant disqualified under § 391.41(b)(1), the summary shall include an assessment of the driver's functional capabilities as they relate to the driver's ability to perform normal tasks associated with operating a motor vehicle; or

(ii) If the medical evaluation summary applies to a driver applicant disqualified under § 391.41(b)(2), the summary shall include an explanation as to how and why the impaired area interferes with the driver's ability to perform normal tasks associated with operating a motor vehicle. The summary shall also contain an assessment of whether the condition will likely remain medically stable over the driver applicant's lifetime.

(4) A description of the driver applicant's prosthetic or orthotic device worn, if any, by the driver applicant;

(5) Road test:

(i) A copy of the driver applicant's road test administered by the motor carrier coapplicant and the certificate issued pursuant to § 391.31 (b) through (g); or

(ii) A unilateral applicant shall be responsible for having a road test administered by a motor carrier or a person who is competent to administer the test and evaluate its results.

(6) Application for employment:

(i) A copy of the driver applicant's application for employment completed pursuant to § 391.21; or

(ii) A unilateral applicant shall be responsible for submitting a copy of the last commercial driving position's employment application s/he held. If not previously employed as a commercial driver, so state.

(7) A copy of the driver applicant's waiver of certain physical defects issued by the individual State(s), where applicable; and

(8) A copy of the driver applicant's State Motor Vehicle Driving Record for the past 3 years from each State in which a motor vehicle driver's license or permit has been obtained.

(e) Agreement. A motor carrier that employs a driver with a waiver agrees to:

(1) File promptly (within 30 days) with the Regional Federal Highway Administrator such documents and information as may be required about driving activities, accidents, arrests, license suspensions, revocations, or withdrawals, and convictions which involve the driver applicant. This applies whether the driver's waiver is a unilateral one or has a coapplicant motor carrier;

(i) A motor carrier who is a coapplicant must file the required documents with the Regional Federal Highway Administrator for the region in which the carrrier's principal place of business is located; or

(ii) A motor carrier who employs a driver who has been issued a unilateral waiver must file the required documents with the Regional Federal Highway Administrator for the region in which the driver has legal residence.

(2) Evaluate the driver who has been granted a waiver for those nondriving safety-related job tasks associated with whatever type of trailer(s) will be used and any other nondriving safety-related or job-related tasks unique to the operations of the employing motor carrier; and

(3) Use the driver to operate the type of motor vehicle defined in the waiver only when the driver is in compliance with the conditions of the waiver.

(f) The driver shall supply each employing motor carrier with a copy of the waiver.

(g) The Regional Federal Highway Administrator, may require the driver applicant to demonstrate the driver's ability to safely operate the motor vehicle(s) s/he intends to drive. The demonstration will evaluate pre-trip and post-trip inspection abilities and driving performance. No evaluation of nondriving safety-related tasks or other nondriving tasks unique to the type of trailer(s) or other motor carrier operations will be performed during Skill Performance Evaluation.

(h) The Regional Federal Highway Administrator may deny the application for waiver or may grant it totally or in part and issue the waiver subject to such terms, conditions, and limitations

as deemed consistent with the public interest. A waiver is valid for a period not to exceed 2 years from date of issue, and may be renewed 30 days prior to the expiration date.

(i) The waiver renewal application shall be submitted to the Regional Federal Highway Administrator for the region in which the driver has legal residence, if the waiver was issued unilaterally. If the waiver has a coapplicant, then the renewal application is submitted to the Regional Federal Highway Administrator for the region in which the coapplicant motor carrier's principal place of business is located. The waiver renewal application shall contain the following:

(1) Name and complete address of motor carrier currently employing the applicant;

(2) Name and complete address of the driver;

(3) Effective date of the current waiver;

(4) Expiration date of the current waiver;

(5) Total miles driven under the current waiver;

(6) Number of accidents incurred while driving under the current waiver, including date of the accident(s), number of fatalities, number of injuries, and the estimated dollar amount of property damage;

(7) A current medical examination report;

(8) A medical evaluation summary pursuant to paragraph (d)(3) of this section if an unstable medical condition exists. All handicapped conditions classified under § 391.41(b)(1) are considered unstable.

Note.—Refer to paragraph (c)(3)(iii) for conditions under § 391.41(b)(2) which may be considered medically stable;

(9) A copy of driver's current State motor vehicle driving record for the period of time the current waiver has been in effect;

(10) Notification of any change in the type of tractor the driver will operate;

(11) Driver's signature and date signed; and

(12) Motor carrier coapplicant's signature and date signed.

(j) Upon granting a waiver, the Regional Federal Highway Administrator will notify the driver applicant and coapplicant motor carrier (if applicable) by letter. The terms, conditions, and limitations of the waiver will be set forth. A motor carrier shall maintain a copy of the waiver in its driver qualification file. A copy of the waiver shall be retained in the motor carrier's file for a period of 3 years after the driver's employment is terminated. The driver applicant shall have the waiver (or a legible copy) in his/her possession whenever on duty.

(k) The Regional Federal Highway Administrator may revoke a waiver after the person to whom it was issued is given notice of the proposed revocation and has been allowed a reasonable opportunity to appeal.

(l) Falsifying information in the letter of application, the renewal application, or falsifying information required by this section by either the applicant or motor carrier is prohibited.

Approved by the Office of Management and Budget under Control Number, 2125–0080.

[FR Doc. 83–23000 Filed 8–23–83; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 658

**[Docket No. 30818–169]**

### Shrimp Fishery of the Gulf of Mexico

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

**ACTION:** Rule-related notice.

**SUMMARY:** NOAA issues notice that no geographic adjustment to the Tortugas Shrimp Sanctuary off South Florida will be made for the 1983–84 season. This action is taken according to regulations implementing the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico. The intended effect of this action is to maintain the Sanctuary without change until a study of shrimp migration patterns through the Sanctuary is completed in August, 1984.

**FOR FURTHER INFORMATION CONTACT:** Edward E. Burgess, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702, telephone number: 813–893–3721.

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) was approved May 29, 1980, under authority of the Magnuson Fishery Conservation and Management Act. Final regulations implementing the FMP were published in the **Federal Register** on May 20, 1981, at 46 FR 27489. Amendment 1 to the FMP, prepared by the Gulf of Mexico Fishery Management Council (Council), provides for modification of the boundaries of two closed areas identified in the FMP. This amendment was approved on April 6, 1983 (47 FR 20310). Regulations were not proposed at that time; instead, whenever a closure modification is considered necessary, it will be implemented by regulatory amendment published in the **Federal Register.**

The FMP as amended provides that the Assistant Administrator for Fisheries, NOAA, in August consider geographic modification of the closed area identified as the Tortugas Shrimp Sanctuary (Sanctuary) in 50 CFR 658.22. The amendment requires that an annual analysis of the effects of the closure be prepared by the National Marine Fisheries Service (NMFS) and submitted to the Council. After reviewing this analysis and consulting with the Council, NOAA may modify the geographic scope of the Sanctuary through an amendment to the regulations implementing the FMP.

The geographic scope of the Sanctuary was modified for the period April 15, 1983, through August 14, 1984 (48 FR 17098), to allow for an intensive data collection effort to determine shrimp migration patterns through the Sanctuary. This study is underway and preliminary analyses have been submitted to the Council. After consulting with the Council, NOAA has determined that no modification to the geographic scope of the Sanctuary should be made until August 14, 1984, which is the end of the study period.

(16 U.S.C. 1801 *et seq.*)

Dated: August 19, 1983.

**Carmen J. Blondin,**

*Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.*

[FR Doc. 83–23224 Filed 8–23–83; 8:45 am]

BILLING CODE 3510–22–M

# Proposed Rules

Federal Register
Vol. 48, No. 165
Wednesday, August 24, 1983

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

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

### 9 CFR Parts 307, 350, 351, 354, 355, 362, and 381

[Docket No. 82-017P]

### Fee Increase for Inspection Services

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry products inspection regulations to increase fees charged by FSIS to provide overtime inspection, identification, or certification services to meat and poultry establishments. The proposed fees reflect the increased costs of providing these services in fiscal year 1984.

**DATES:** Comments must be received on or before September 23, 1983.

**ADDRESSES:** Written comments to Regulations Office, ATTN: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Washington, DC 20250. Oral comments as provided under the Poultry Products Inspection Act should be directed to Ms. June Blair (202) 382-0072. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

**FOR FURTHER INFORMATION CONTACT:** June P. Blair, Director, Finance Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 382-0072.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12291

This proposed rule is issued in conformance with Executive Order 12291, and has been determined to be not a "major rule." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because the fees provided for in this document are not new but merely reflect a minimal increase in the costs currently borne by those entities which elect to utilize certain inspection services.

#### Comments

Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Regulations Office and should bear a reference to the docket number located in the heading of this document. Any person desiring opportunity for an oral presentation of views should make such request to Ms. Blair so that arrangements may be made for the presentation. A transcript shall be made of all comments presented orally. Comments submitted pursuant to this document will be made available for public inspection in the Regulations Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

#### Background

Each fiscal year, the fees for certain services rendered to operators of official meat and poultry establishments, importers, or exporters by the Food Safety and Inspection Service (FSIS) are reviewed and a cost analysis is performed to determine if such fees are adequate to recover the cost of providing the services.[1] The analysis relates to fees charged in connection with overtime and holiday inspection, identification, certification, or laboratory services. The fees to be charged for these services are determined by an analysis of data on the current cost of these services coupled with the increase in that cost due to the increase for salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970.

Based on the Agency's analysis of the costs incurred in providing these services, the fees related to such services would be amended to reflect increased costs associated therewith in the upcoming fiscal year.

Mandatory inspection by U.S. Government inspectors of meat and poultry slaughtered and/or processed at official establishments is provided for under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*). Such inspection is required to ensure the safety, wholesomeness, and proper labeling of meat and poultry products and the ordinary costs of providing for it are borne by the U.S. Government. However, other than ordinary costs for these inspection services may be incurred to accommodate the business needs of particular establishments. These costs are recoverable by the Government.

Currently, § 307.5 (9 CFR 307.5) of the meat inspection regulations provides that FSIS shall be reimbursed for the cost of meat inspection on holidays or on an overtime basis at the rate of $19.40 per inspector hour. Similarly, § 381.38 (9 CFR 381.38) of the poultry products inspection regulations provides that FSIS will be reimbursed at the rate of $19.40 per inspector hour for overtime and holiday poultry inspection services. These fees would be increased to $19.76 per inspector hour.

FSIS also provides a range of voluntary inspection and certification services, the costs of which are totally recoverable by the Government. These services, provided under Subchapter B—Voluntary Inspection and Certification Service of Meat and Poultry, are provided under various statutes to assist in the orderly marketing of various animal products and byproducts not covered under the Federal Meat Inspection Act or the Poultry Products Inspection Act.

The basic hourly rate for providing such certification and inspection services is currently $16.68 per inspector hour (§§ 350.7, 351.8, 351.9, 354.101, 355.12, and 362.5). The overtime and holiday hourly rate is currently $19.40. The hourly rates for these services would be increased to $17.12 and $19.76.

[1] The cost analysis is on file with the FSIS Hearing Clerk. Copies may be requested from that office.

respectively. The rate for laboratory services would remain at $31.00 per hour.

These proposed fee increases do not include the increase resulting from a pay raise for Federal employees. Although the pay raise is normally effective at the beginning of each fiscal year and calculated into the fee increases, this fiscal year Congress is contemplating a delay in the pay increase. If Congress allocates the pay increase, FSIS will amend the regulations to reflect that increase in costs as well.

**List of Subjects**

*9 CFR Part 307*

Meat inspection, Fee charges.

*9 CFR Part 350*

Meat inspection, Fee charges.

*9 CFR Part 351*

Meat inspection, Fee charges.

*9 CFR Part 354*

Meat inspection, Fee charges.

*9 CFR Part 355*

Animal foods, Fee charges.

*9 CFR Part 362*

Poultry and poultry products, Fee charges.

*9 CFR Part 381*

Poultry products inspection, Fee charges.

**PART 307—[AMENDED]**

The proposed amendments to the Federal meat and poultry products inspection regulations are as follows:

1. The authority citation for Part 307 reads as follows:

**Authority:** 41 Stat. 241, 7 U.S.C. 394; 34 Stat. 1264, as amended; 21 U.S.C. 621; 62 Stat. 334; 21 U.S.C. 695, 7 CFR 2.15(a), 2.92.

2. Section 307.5(a) would be revised to read as follows:

**§ 307.5 Overtime and holiday inspection service.**

(a) The management of an official establishment, an importer, or an exporter shall pay the Food Safety and Inspection Service $19.76 per hour per Program employee to reimburse the Program for the cost of the inspection service furnished on any holiday as specified in paragraph (b) of this section; or for more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday.

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**PART 350—[AMENDED]**

3. The authority citation for Part 350 reads as follows:

**Authority:** 41 Stat. 241, 7 U.S.C. 394; 60 Stat. 1087, as amended, 7 U.S.C. 1622; 60 Stat. 1090, as amended, 7 U.S.C. 1624; 34 Stat. 1264, as amended, 21 U.S.C. 621; 62 Stat. 334, 21 U.S.C. 695; 7 CFR 2.15(a), 2.92.

4. Section 350.7(c) would be revised to read as follows:

**§ 350.7 Fees and charges.**

* * * * *

(c) The fees to be charged and collected for service under the regulations in this part shall be at the rate of $17.12 per hour for base time, $19.76 per hour for overtime including Saturdays, Sundays, and holidays, and $31.00 per hour for laboratory service, to cover the costs of the service and shall be charged for the time required to render such service. Where appropriate, this time will include, but will not be limited to, the time required for travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

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**PART 351—[AMENDED]**

5. The authority citation for Part 351 reads as follows:

**Authority:** 60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a), 2.92.

6. Section 351.8 would be revised to read as follows:

**§ 351.8 Charges for surveys for plants.**

Applicants for the certification service shall pay the Department for salary costs at the rate of $17.12 per hour for base time, $19.76 per hour for overtime, travel and per diem allowances at rates currently allowed by the Government Travel Regulations, and other expenses incidental to the initial survey of rendering plants or storage facilities for which certification service is requested.

7. Section 351.9(a) would be revised to read as follows:

**§ 351.9 Charges for examinations.**

(a) The fees to be charged and collected by the Administrator for examination shall be $17.12 per hour for base time and $19.76 per hour for overtime including Saturdays, Sundays, and holidays, as provided for in § 351.14 and $31.00 per hour for any laboratory service required to determine the eligibility of any technical animal fat for certification under the regulations in this Part. Such fees shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith.

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**PART 354—[AMENDED]**

8. The authority citation for Part 354 reads as follows:

**Authority:** 60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a), 2.92.

9. Section 354.101(b) would be revised to read as follows:

**§ 354.101 On a fee basis.**

* * * * *

(b) The charges for inspection service will be based on the time required to perform such services. The hourly rate shall be $17.12 for base time and $19.76 for overtime or holiday work.

* * * * *

**PART 355—[AMENDED]**

10. The authority citation for Part 355 reads as follows:

**Authority:** 60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a), 2.92.

11. Section 355.12 would be revised to read as follows:

**§ 355.12 Charge for service.**

The fees to be charged and collected by the Administrator shall be $17.12 per hour for base time, $19.76 per hour for overtime, including Saturdays, Sundays, and holidays, and $31.00 per hour for laboratory services to reimburse the Department for the cost of the inspection service furnished.

**PART 362—[AMENDED]**

12. The authority citation for Part 362 reads as follows:

**Authority:** 60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a), 2.92.

13. Section 362.5(c) would be revised to read as follows:

**§ 362.5 Fees and charges.**

* * * * *

(c) The fees to be charged and collected for service under the regulations in this part shall be at the rate of $17.12 per hour for base time, $19.76 per hour overtime including Saturdays, Sundays, and holidays, and $31.00 per hour for laboratory service to cover the costs of the service and shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith during the

regularly scheduled adminstrative workweek.

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**PART 381—[AMENDED]**

14. The authority citation for Part 381 reads as follows:

**Authority:** 71 Stat. 447, 448, as amended, 21 U.S.C. 463, 468; 7 CFR 2.15(a), 2.92.

15. Section 381.38(a) would be revised to read as follows:

**§ 381.38 Overtime and holiday inspection service.**

(a) The management of an official establishment, an importer, or an exporter shall pay the Food Safety and Inspection Service $19.76 per hour per Program employee to reimburse the Program for the cost of the inspection service furnished on any holiday specified in paragraph (b) of this section; or for more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday.

* * * * *

Done at Washington, DC, on August 5, 1983.

**Donald L. Houston,**

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 83-23394 Filed 8-23-83; 8:45 am]

**BILLING CODE 3410-DM-M**

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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 154**

**[Docket No. RM83-52-000]**

## Revisions Filing Requirements for Changes in a Tariff, Executed Service Agreement or Part Thereof

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** By this notice, the Federal Energy Regulatory Commission (Commission) proposes to revise § 154.63 of its regulations, "Changes in a tariff, executed service agreement or part thereof." This section contains the filing requirements of any change in a tariff or service agreement of a natural gas company. These revisions are made as part of the Commission's ongoing program to review all of its reporting requirements to eliminate those requirements that are not necessary to the performance of the Commission's responsibility. Also, in order to expedite the review process required for changes to a tariff, the Commission proposes to add certain filing requirements which it obtains through time-consuming supplemental data requests. Furthermore, the Commission proposes to make minor updating revisions.

In addition to general comments, the Commission is requesting specific comments on the cost and burden hours associated with the proposed amendments and on its proposal to require a natural gas company to submit a lead-lag study in support of the cash working capital allowance it claims in its rate filing. However, the Commission is requesting comments on alternatives to a lead-lag study as support for claimed cash working allowance.

**DATES:** Comments due on October 17, 1983.

**ADDRESS:** Comments must be filed with the Office of the Secretary, 825 N. Capitol Street, NE., Washington, D.C. 20426.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Stosser, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

**SUPPLEMENTARY INFORMATION:**

Issued: August 17, 1983.

### I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to revise section 154.63 of the Commission's regulations under the Natural Gas Act (15 U.S.C. 717-717w (1976 and Supp. IV 1980)), *Changes in a tariff, executed service agreement or part thereof*, 18 CFR 154.63 (1982). This section contains the filing requirements of any change in a tariff or service agreement of a natural gas company. The information submitted is used to analyze a pipeline's rate design and to set a just and reasonable rate for that pipeline's service.

This rulemaking proceeding has been initiated as part of the Commission's ongoing program reviewing the Commission's filing requirements, eliminating the reporting of information that is not used for decisionmaking in the regulatory process, and reducing unnecessary reporting burdens. As a result of this review, the Commission proposes to revise its filing requirements by deleting certain information. The Commission is also proposing to add to the filing requirements certain information necessary for the Commission to review a change in the rate or tariff. Presently, that information is routinely obtained through supplemental data requests. The collection of this information in the application stage will reduce the burden on applicants. In addition, the Commission proposes to make minor updating revisions and corrections.

### II. Background

The Natural gas Act requires that any rate charged by a natural gas pipeline be "just and reasonable." Section 4(a), 15 U.S.C. 717c(a) (1976). In order to aid the Commission in establishing such a rate, the Act requires that a natural gas pipeline company, subject to the jurisdiction of the Commission, file with the Commisson sixty days prior to becoming effective, any initial rates that it charges, section 4(c), 15 U.S.C. 717c(c) (1976); and that it file with the Commisson thirty days prior to becoming effective, any changes in these filed rates. Section 4(d), 15 U.S.C. 717c(d) (1976). The Commission may suspend both the initial rate and any changes in that rate for up to five months. *See* Interpretation of Authority to Suspend Initial Rate Schedules, 48 FR 24,358 (June 1, 1983) (to be codified at 18 CFR 2.3(d)). Also it may order a hearing to determine the lawfulness of the rates. Section 4(e), 15 U.S.C. 717c(e) (1976).

The Commission's regulations promulgated to implement the Act distinguish between filing requirements for an initial rate schedule, 18 CFR 154.62 (1982), and the filing requirements for a change in rate schedule, 18 CFR 154.63 (1982). In general 154.63 distinguishes between major and minor increases, decreases, and other types of changes, and establishes filing requirements appropriate to these characterizations.

### III. Summary of Proposed Changes

#### *A. Elimination of Unnecessary Information Collection*

The Commission proposes to delete certain information which is no longer required by the Commission in its review process. Some of this information is outdated, whereas other information is available to the Commission from other filings or proceedings. Therefore, this action is in accordance with the Commission's effort to minimize the reporting burden on regulated entities. The following is a brief summary of the amendments designed to delete certain information no longer necessary at the Commission.

(1) Amend Schedule C-1 by deleting the requirements to show, as of the beginning of the 12 months of actual experience, the book additions and reductions, transfer and reclassification and to show, instead, only the Ending