mining operation; (2) the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; (3) whether the permittee was negligent; and (4) the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation. In its civil penalty program, DER has developed a system for considering the four mandated criteria plus other criteria desired by the State. The State has given categories of violations and ranges of civil penalty amounts for such categories. Each violation will be evaluated on its own merit and assessed in a manner consistent with that merit. It is not feasible for the State to specify every conceivable violation complete with the specific conditions surrounding that violation for a specific penalty amount, nor did OSM go into this level of specificity when promulgating civil penalty regulations. The State's proposed civil penalty program includes the criteria mandated by SMCRA and appears to include procedural requirements similar to those adopted by OSM. The civil penalty program will be evaluated through oversight to determine if, as implemented, it consists of the same or similar procedural requirements providing no less stringent enforcement sanctions than those envisioned by SMCRA.

V. Secretary's Decision

Accordingly, condition (j)(2) is hereby removed and the policy statements submitted January 17, 1984, are hereby approved pursuant to 30 CFR 732.17.

30 CFR Part 938.11 is amended to indicate approval of the program amendment and removal of condition (j)(2).

VI. Additional Findings

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 13, 1984

Garrey E. Carruthers,
Assistant Secretary for Land and Minerals Management.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

PART 938—PENNSYLVANIA

§ 938.11 [Amended]

1. 30 CFR 938.11 is amended by removing and reserving paragraph (j)(2).

2. 30 CFR 938.15 is amended by adding paragraph (c).

§ 938.15 Approval of Amendments to State Regulatory Program.

* * * * *

(c) The following amendment is approved effective on March 20, 1984, Pennsylvania policy statement submitted to OSM January 17, 1984, titled: 1) Citizen Complaint Procedures, 2) Department of Environmental Resources Inspection and Enforcement Policy for Mining Operations and 3) Civil Penalty Program.

[FR Doc. 84-7465 Filed 3-19-84; 8:45 am]
BILLING CODE 4310-05-M

POSTAL SERVICE

39 CFR Part 601

Procurement of Property and Services, Amendments to Postal Contracting Manual

AGENCY: Postal Service.

ACTION: Amendments to Postal Contracting Manual.

SUMMARY: The Postal Service announces that it is revising the Postal Contracting Manual to modify the timeliness standards so that some protests previously considered untimely will be considered timely under these provisions. This action is in response to requests from postal contracting officers for clarification of existing protest regulations.

EFFECTIVE DATE: April 3, 1984.

FOR FURTHER INFORMATION CONTACT: Eugene A. Keller, (202) 245-4818.

SUPPLEMENTARY INFORMATION: The Postal Contracting Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 601.100), has been amended by the issue of PCM Circular 84-1, dated March 7, 1984.

In accordance with 39 CFR 601.105, notice of these changes is hereby published in the Federal Register and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers to the basic manual will receive these amendments from the Postal Service. (For other availability of the Postal Contracting Manual, see 39 CFR 601.104.)

List of Subjects in 39 CFR Part 601

Government procurement, Postal Service, Incorporation by reference.

Explanation of Changes

Explanation of these amendments to the Postal Contracting Manual follows:

2-407.8a is expanded to make it clear that these procedures are also applicable to negotiated contracts and contract types specifically covered in other portions of the manual.

2-407.8b(1) is expanded to conform to current practice.

2-407.8b(2) adds definitions of "offer" and "offeror" to avoid the need to use dual terms such as "bid or offer" and "bidder or offeror" in the text.

2-407.8b(3) defines the term "working days," which is used throughout the text in place of "days" to make it clear that calendar days are not intended.

2-407.8d(1) removes the "5 days before" time-of-receipt requirement on protests against the terms of a solicitation.

2-407.8d(2), addressing negotiated procurements, specifies that protests against the terms of the solicitation after the receipt of initial proposals must be received no later than the next closing date for the receipt of proposals.

2-407.8d(3) changes time frames for all other protests from 5 and 10 days to 10 and 15 working days, respectively.

2-407.8d(4) indicates explicitly, for the first time, that the General Counsel will consider a protest previously denied by the contracting officer.

2-407.8e is revised to reserve concurrence by the Head of Procuring Activity and counsel for cases in which a protest is obviously without merit, and also to revise the procedure for obtaining counsel's concurrence in such a case.

2–407.8f(2) removes the requirement that the submission of offerors' opinions and relevant information on the protest must be furnished within 5 days of the advice of the intent to make a submission.

2–407.8f(3) expands the discussion of the contracting officer's statement to deal specifically with frequently-identified problems.

2–407.8f(4) reflects the current practice of allowing a reasonable time for comment and rebuttal.

2–407.8f(5) makes clear the contracting officer's continuing obligation to furnish copies of his statements on protests to the interested parties.

2–407.8f(6) deletes references to conferences with the contracting officer on protests directed to the contracting officer and extends the time for requesting a protest conference with the General Counsel.

2–407.8f(8) establishes a goal of 15 working days after receipt of all information for the General Counsel to issue a decision on a protest.

2–407.8f(10) allows contracting officers to request the General Counsel to reconsider a decision.

2–407.8f(1) is a revision of the former (m) provision, revised to eliminate the General Counsel's concurrence as a requisite to contract award when a protest has been filed. Concurrence of the cognizant Assistant Postmaster General or Regional Postmaster General is substituted.

(5 U.S.C. 552(a), 39 U.S.C. 401, 404, 410, 411)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84-7373 Filed 3-19-84; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A 9-FRL 2543-1]

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: On May 31, 1983 EPA proposed to take action on two revisions to the regulations of the Clark County Health District which were submitted to EPA by the State of Nevada for incorporation into their State Implementation Plan (SIP). The revisions concern cutback asphalt and malfunction. EPA is today taking final action to approve the cutback asphalt regulation and to disapprove the malfunction regulation. The malfunction regulation is inconsistent with EPA policy because it allows for a finding of no violation for certain periods of excess emissions.

EFFECTIVE DATE: April 19, 1984.

FOR FURTHER INFORMATION CONTACT: David P. Howekamp, Director, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Attn: Douglas Grano, (415) 974-7640, FTS 454-7640.

SUPPLEMENTARY INFORMATION: The State of Nevada submitted to EPA the following Clark County Health District regulations on November 17, 1981:

Subsection 60.4.2, "Evaporation Leakage" (Cutback Asphalt); Section 25, "Upset/Breakdown, Scheduled Maintenance, Malfunctions."

On May 31, 1983 EPA proposed action on the above regulations and provided a thirty day public comment period. No public comments were received.

The submitted revision to subsection 60.4.2 reduces the geographic area where the regulation applies from all of Clark County to only that portion of the Las Vegas Valley which lies within Clark County. Since the smaller area is consistent with the ozone nonattainment area designation, regulation 60.4.2 is approved.

Today's notice also takes final action on Section 25. The regulation is deficient because it allows, if certain conditions are met, for a finding of no violation for excess emissions which result from the malfunction or scheduled maintenance of air pollution control and process equipment. EPA policy requires "malfunction" regulations to consider any period of excess emissions a violation. Enforcement action on a violation is then taken unless the excess emissions are proven to have been truly beyond the control of the source.

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any response are available for public inspection at the EPA Region IX office (see address above).

Note.—Incorporation by reference of the State Implementation Plan for the State of Nevada was approved by the Director of the Federal Register on July 1, 1982.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozon, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by reference.

Authority: Sections 110, 171 to 178 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7410, 7501 to 7508 and 7601(a)).

Dated: March 6, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Subpart DD of Part 52 of Chapter I, Title 40 of the *Code of Federal Regulations* is amended as follows:

Subpart DD—Nevada

1. Section 52.1470 is amended by adding paragraph (c)(24)(vi) as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(24) * * *

(vi) Amendment to the Clark County District Board of Health Air Pollution Control Regulations: Section 60, Rule 60.4.2.

* * * * *

2. Section 52.1483 is amended by revising paragraph (a)(1)(i) as follows:

§ 52.1483 Malfunction regulations.

(a) The following regulations are disapproved because they would permit the exemption of sources from applicable emission limitations under certain situations and therefore they do not satisfy the enforcement imperatives of Section 110 of the Clean Air Act.

(1) Clark County District Board of Health

(i) Section 25, Rules 25.1–25.1.4.

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§ 52.1478 [Reserved]

3. Section 52.1478 *Rules and regulations* is removed and reserved.

[FR Doc. 84-6517 Filed 3-19-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 80-90; RM-2587; RM-3226; RM-3367; FCC 84-65]

Modification of the Commission's Rules To Increase the Availability of Commercial FM Broadcast Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission generally has denied requests for reconsideration of its actions in BC Docket No. 80-90. In the 80-90 *Report and Order*, the Commission modified the FM broadcast station rules to increase the availability of commercial FM broadcast allotments. The adopted rules: (a) allow stations with Class A facilities to operate on the 60 Class B/C channels; (b) increase the number of station classes from three to six; (c) require existing Class B and C stations to meet or exceed minimum facility requirements within three years or be reclassified based on their actual operating facilities; (d) adopt a minimum antenna height requirement of 300 meters (984 feet) for Class C stations; and (e) convert the technical FM rules to the metric system of units.

The petitions for reconsideration asked the Commission to grant existing Class B and Class C stations special considerations under the new rules. Some also asked the Commission to use a different implementation procedure. The Commission denied all requests but one. It did agree to provide existing Class C assignments with increased protection from new FM stations for a three-year period. This will provide these stations an opportunity to move to a new site if necessary.

DATE: Effective April 19, 1984.

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

FOR FURTHER INFORMATION CONTACT: John A. Karousos, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Memorandum Opinion and Order

In the matter of modification of FM broadcast station rules to increase the availability of commercial FM broadcast assignments, BC Docket No. 80-90, RM-2587, RM 3226, RM-3367.

Adopted: March 1, 1984.
Released: March 13, 1984.

By the Commission: Commissioner Quello concurring and issuing a statement; Commissioner Patrick not participating.

Introduction

1. The Commission has under consideration requests for reconsidertion of its *Report and Order* in the above-entitled proceeding adopted May 26, 1983 (48 FR 29486; published June 27, 1983). That document made several changes to the FM allotment structure to increase the availability of FM stations. It would:

(a) allow stations with Class A facilities to operate on the 60 Class B/C channels;

(b) increase the number of station classes, from three to six;

(c) require existing Class B and C stations to meet or exceed minimum facility requirements within three years or be reclassified based on their actual operating facilities; and

(d) convert the technical FM rules to the metric system of units.

2. Interest in these rule changes, or more accurately, in the new stations represented by these changes, was so great that the Commission decided to postone their effective date until it had acquired additional staff resources. It also opted to temporarily abondon the traditional "petition" method used to amend the FM Table of Allotments in § 73.202(b) of the rules. Instead, it decided to made 684 new allotments on its own motion, in a so-called "omnibus" proceeding, using a list of communities complied previously.[1]

3. The Commission received six petitions for reconsideration of its action. These were filed by Richard Culpepper, Barry Chaiken, the National Association of Broadcasters ("NRAB"), Cox Communications Inc. ("Cox"), the National Radio Broadcasters Association ("NAB"), and a group of FM station licensees ("Licensees").[2] Comments in response to these petitions were filed by the Association for Broadcast Engineering Standards, Inc. ("ABES"), NRBA, Atlantic Broadcasting Corporation ("Atlantic"), and Brown Broadcasting Service, Inc. ("Brown"). The Commission also received an application for review filed by Knott County Broadcasting Corporation ("Knott").

Discussion

4. Richard Culpepper urges the Commission to permit the filing of applications on a demand basis, without reference to a table of allotments or in the alternative, to accept petitions to amend the present table immediately rather than after the omnibus proceeding. We must deny both requests. This proceeding did not seek to modify the allotment procedure represented by the Table.[3] Furthermore, to accept individual petitions under the new rules would result in the submission of a flood of FM petitions, a strain of staff resources and creation of unmanageable backlogs. To avoid this situation, the *Report and Order* stated that the Commission would propose the initial allotments under the new rules and, through a winnowing process, reduce demand to a more manageable level. Mr. Culpepper does not indicate errors in the reasoning process that led to the adoption of this approach and we see no reason to abandon it.

5. Barry Chaiken and Culpepper request the inclusion of communities in which they are the licensees of daytime only AM stations in the new table of allotments. Similarly, Knott requests the allotment of Channel 297C2 to Hindman, Kentucky. Consistent with our attempt to manage workload, the Commission determined that we would not accept recommendations for communities to be included in the omnibus rule making. We continue to believe that the most orderly and expeditious method of handling the increased channel availability resulting from the *Report and Order* in this proceeding is the omnibus rule making in which proposals are initiated by the Commission with the opportunity for comments and counterproposals by the public. Petitioners have presented no facts or arguments to alter that determination. Moreover, with specific regard to daytime only AM stations, the omnibus rule making will consider the allotment of FM channels to communities with daytime only stations. Indeed, communities with daytime only stations comprise a significant portion of the

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[1] The communities are to be selected from the station requirements list adopted by the Second Session of the Administrative Conference on AM Broadcasting in Region 2. See Appendix B, footnote 1 of the *Report and Order*.

[2] "Licensees" refers to the petition filed by Forward Communications Corporation, Group One Broadcasting Company, Guaranty Broadcasting Corporation, Infinity Broadcasting Corporation, Lake Huron Broadcasting Corporation, Park Broadcasting, Inc., Shamrock Broadcasting Company, Inc., Sumit Radio Corporation, Tri-Cities Broadcasting Company, WAHR, Inc., and WKRG-TV Inc.

[3] In the *Notice of Proposed Rule Making* (45 FR 17602; March 19, 1980) at paragraph 8, the Commisson stated that ". . . we have decided to focus our attention on those proposals dealing with changes within the present allocations framwork." This though was referenced in paragraph 7 of the *Report and Order*: "Central to the *Notice's* proposals was the retention of the Table of Assignments framework. It did not propose to modify the allotment structure represented by the Table."

station requirements list referred to in footnote 1, *Supra*.

6. The remaining petitions argue for various protections for Class B and C stations from the reclassification provisions of the *Report and Order*. We therein noted that a significant number of Class B and C stations were operating with facilities that were substantially below those permitted by the rules. Nevertheless, the Commission's spacing requirements protected those stations to the same extent as a full facility licensee. The result of protecting all Class B and C stations at the maximum facility level was the preclusion of new, otherwise permissible services. We therefore determined that existing stations would be given three years from the effective date of the new rules within which to file an application for facilities which achieved certain munimum values for each class. Stations that failed to file such an application within the specified period would be reclassified to an appropriate class that more accurately approximated their actual facilities.

7. NRBA and NAB request that the Commission grandfather existing Class B and C stations rather than reclassify them. Brown supports this request. These parties state that existing stations have been providing reliable service outside their recognized contours for a number of years. If the stations are unable to maintain their present classification, those listeners would be deprived of their services. If the Commission nontheless wishes to pursue its reclassification goal, NAB and NRBA suggest several measures be taken to provide a greater opportunity for licensees to increase facilities.

8. These suggestions concern the time period allowed for upgrading facilities and the means of protecting existing stations from new allotments made during the omnibus proceeding. NAB and NRBA ask the Commission to provide more than three years in which to meet the new minimums. NAB (and Cox) suggest 10 years; NRBA suggests waivers of the period be liberally granted. NAB, along with Cox and Licensees, requests the adoption of a "more realistic" power and tower height minimum for Class C stations. Their proposed values are based on contentions regarding the amount of land necessary to construct a 300 meter tower and the scarcity of such large parcels in many urbanized areas. Finally, NRBA and NAB along with Cox and Licensees, urge the Commission not to make interim FM allotments that might impair the ability of existing stations to upgrade. These parties propose a protective zone of a radius of 15 miles be provided Class B and Class C stations to enable them to have sufficient area within which to relocate if necessary to upgrade their facilities.[4] "Licensees" urge the Commission "not to reclassify any Class C stations operating below the minimum antenna height, which during the three year period indicates an intention to relocate, but is unreasonably denied access to a 'unique site' in its market for which minimum height could be achieved."

9. In adopting the reclassification requirement in the *Report and Order* we were aware of the fact that for a variety of reasons, many Class B and C FM stations operate with substantially lesser facilities than those permitted by our rules. The licensee's decision to do so may be based on many factors, including: the facilities necessary to serve the licensee's community; financial considerations; real estate availabilities; local zoning restrictions; or air hazard determinations by the Federal Aviation Administration. Whatever the cause, these stations have received the mileage protection granted to a full facility station of the same class, but that separation provided far greater protection than that required to protect the station's primary service contours as defined by the Commission. In this proceeding, we found that such protection also precludes the potential for new service in other communities. Thus, it was determined that after a grace period for upgrading, stations would be reclassified according to their actual facilities. A reclassified licensee would continue to receive adequate protection albeit from reduced separation standards, and new service would become possible. Nothing presented in reconsideration has caused us to depart from this basic premise. The grandfathering of existing Class B and C stations would merely preserve waste of valuable spectrum resources which could be used to provide much needed service at another community.

10. At the same time, it is not our intention to overly restrict a licensee's ability to improve its facilities during the three year grace period. We agree with the petitioners who suggest that allotments made during the interim period could limit a licensee's ability to upgrade. In this regard, the *Report and Order* indicated that new allotments would be made based upon the present location of existing stations. Thus, new allotments could confine existing stations to upgrading at their present sites. However, land availability, local zoning restrictions or FAA considerations could preclude an improvement of facilities at that location. Accordingly, we have concluded that a "buffer zone" should be provided to permit some additional freedom of movement for existing Class C stations currently operating with antenna heights above average terrain (HAAT) of less than 300 meters, seeking to upgrade their facilities within the three year period.[5] However, Class B stations—unlike Class C stations—are not restricted to any antenna height minimums. In order to avoid reclassification an existing Class B station now operating below minimum facilities would only have to increase its power to minimum level required under the new rules for its class of station. This does not require any major tower construction or change in transmitter location. Accordingly, no "buffer zone" would be permitted to Class B stations.

11. The Commission's technical staff conducted a limited study to determine the effect of a buffer on 189 communities chosen from the needs list and located in the southeastern part of the United States.[6] With no buffer and using the distance separations adopted in the *Report and Order*, allotments could be made to 107 of those communities. The study then recomputed the communities with potential allotments after adding different buffers to the mileage protection for Class C stations.[7] The results of our studies are set forth in the following table.

Buffer zone (miles)	Estimated maximum area for potential new site (square miles)	Communities with potential allotments	Percent reduction (107 base)
0	0	107	0
5	78	89	17
7	154	77	28
10	314	73	32
15	707	54	50

[4] On the other hand, Atlantic Broadcasting Corporation supports the Commission's decision to reclassify existing stations, and it cites instances in which existing FM stations would prefer to voluntarily reclassify themselves from Class C to Class C-1. Such reclassification would enable a licensee to change transmitter sites to locations where they feel they will be able to better serve the public interest.

[5] The provided "buffer zone" does not give the existing Class C stations the right to short-space or increase the short-spacing with existing assignments. However, it would allow existing Class C stations to move freely within the confines of the "buffer zone" provided it is possible to do so.

[6] The first 200 communities in that region were selected for the study, but eleven of those were found to be repeats. Thus, the remaining 189 made up the study.

[7] The study added protection only to those Class C stations whose antenna heights were less than 300 meters and therefore subject to reclassification. Some additional preclusion would result from protecting all Class C stations, including those operating with near maximum facilities.

12. We selected the southeast for our study because that section of the country provides one of the more fertile areas for new allotments under the criteria established in the *Report and Order*. However, this fact also led the staff to believe that the preclusion in the southeast, although significant for decision making purposes, may be substantially greater than the preclusive effect of a buffer zone on a nationwide basis. To test this hypothesis, the staff conducted further computer studies applying buffer zones of five, seven, ten and fifteen miles to a nationwide list of 1401 communities.[8] The results of that study are as follows:

Buffer zone (miles)	Communities with potential allotments	Percent reduction (828 base)
0	828	0
5	759	8
7	729	12
10	686	17
15	619	25

13. Based on these findings, we cannot support an increase in the separation standards to yield the fifteen mile buffer sought by petitioners. That amount of protection would substantially vitiate many of the benefits to be derived from the *Report and Order*. Rather, we believe that a 16 kilometer (10-mile) buffer can provide for a reasonable "protected area" within which stations may select new sites and at the same time it restricts the potential numbers of new allotments less harshly. In any other context the Commission cannot envision a set of circumstances that could persuade it to temporarily foreclose the allotment of one third of the new channels in any particular region of the country, as noted in paragraph II, *supra*. On a national basis we consider 17% temporary foreclosure of channels to be the maximum we permit. However, we fully intended to provide existing stations with the within the three year period. We now recognize that existing licensees will have reduced flexibility as the three year period passes, and, as new allotments are made, the buffer zone could become the only area in which an existing licensee could relocate to upgrade its facilities. Short of grandfathering all Class C stations, which we do not feel is warranted, a buffer becomes an acceptable means of protecting existing service so that stations may improve their facilities.[9] We acknowledge the magnitude of the short-term "cost" of a 16 kilometer buffer. Yet we also recognize that its impact will be temporary. It will dissolve at the end of the up-grade period. It is therefore possible that communities precluded by it will be eligible for an allotment when it is eliminated and existing stations undergo appropriate reclassification.

14. To summarize, the Commission will provide a 16 kilometer buffer, in addition to the normal distance separation requirements, to existing Class C stations current operating with an HAAT of less than 300 meters. In the event that a station decides to move to a new location within the specified period, the buffer zone will be dropped and the new site will no longer receive protection in excess of that provided by the distance separations. We shall provide the buffer only during the period designated for stations to pursue upgrading options and shall not extend it.[10]

15. With regard to the remaining requests for modifications in the reclassification procedure, we find no reason to change our conclusions. The filing of an application to modify facilities is a more appropriate event with which to "toll" the grace period than the filing of a letter of intent as suggested by petitioners. If a licensee is denied access to a "unique site" within that period, we have no basis to assume that it would ever have access to that site.[11] Similarly, the suggestion that the grace period be extended to 10 years would unreasonably delay the use of a valuable resource by either the existing station that upgrades or new station(s) that would be precluded by the extended grace period.

16. We also do not believe that any change is warranted in the power and antenna height minima for Class C stations. In establishing the intermediate Classes of stations (B1, C1 and C2) we sought to create a rational mix of potential stations with progressively increasing service areas and appropriate distance separation protections. Petitioners have failed to support their contention that their proposal is superior to the one adopted by the Commission.[12] In order to aviod reclassification a licensee would have 813 square kilometers in his/her buffer zone area to find a new site, construct a tower and upgrade to minimum facilities required under the new rules for its class of station. Additionally, no licensee would be required to downgrade existing facilities so present service would be relatively unaffected. Accordingly, modification of our class standards is nor warranted.[13]

17. In its comments, ABES requests clarification of § 73.211 of the Commission's Rule that governs the maxima and minima height above average terrain, and power requirements, of existing Class B and C stations. It states that it believes the rules do not adequately define how existing stations will be classified after the three-year period passes. By way of explanation, stations may not operate with power in excess of the maxima stated in the rules but they may use antenna heights greater than the maxima if transmitter output power is reduced. Reductions are based upon the

[8] The 1401 communities studied represent those locations on the station requirements list which: have no local station; have only a daytime station; were indicated as requiring an additional minority owned station; and/or were indicated as requiring an additional public (noncommercial) station.

[9] Stations operating with larger facilities are more "efficient," from an engineering standpoint, than stations operating with inferior facilities. (See footnote 9 in the *Notice*). Thus, Class C licensees serve the public interest and their own when they improve their facilities. The Commission's interest in providing a buffer area for licensees recognizes the dual benefit obtained.

[9] Stations operating with larger facilities are more "efficient," from an engineering standpoint, than stations operating with inferior facilities. (See footnote 9 in the *Notice*). Thus, Class C licensees serve the public interest and their own when they improve their facilities. The Commission's interest in providing a buffer area for licensees recognizes the dual benefit obtained.

[10] As is clear from the foregoing discussion, the Commission intends to protect only Class C stations. Therefore the request of NRBA to protect existing Class A stations with a five mile buffer is denied. Petitioner did not support the request in any manner and we can find no basis to grant it.

[11] If the "unique site" is in the possession of another broadcaster, Section 73.239 of our rules would preclude unreasonable denial of access. Moreover, if the "unique site" becomes available after reclassification, it is possible that the station could seek reinstatement of its higher class at that time.

[12] WNVC, for example, proposed the construction of a guyed tower 335 meters (1100 feet) above ground on a 10.9 acre site. Due to FAA objections, the proposal was amended to a 213 meter (698 feet) tower. Thus, towers exceeding the Class C minimum can be erected on less than eleven acres.

[13] Similarly NAB expressed its concern that the new mileage separations will negatively affect the quality of FM stereophonic reception. In the *Report and Order* the Commission stated that protecting stereophonic transmissions (rather than monophonic) would significantly increase the distance by which stations must be separated and thereby substantially decrease the potential for new stations. Increased protection was rejected based on the need to provide for a sufficient number of necessary allotments and because stereophonic broadcast is considered to be an optional enhancement of a station's entertainment programming. No new information has been provided to warrant a re-examination of this issue. Accordingly, we shall not revisit the protection question.

distance to a station's 1mV/m contour (60 dBu). Existing stations with antenna heights in excess of those specified in § 73.211 of the Commission's Rules will be classified or reclassified upon the same basis, *i.e.*, the distance to the 1 mV/m contour. The new rules simply state this requirement and the curves formerly contained in figure 3 of § 73.333 have been deleted.

18. Several other matters have come to the Commission's attention that require discussion and clarification. A question has been raised concerning the use of beam tilt by FM stations and whether main lobe power or maximum power in the horizontal plane will be used when stations are reclassified. Existing stations using beam tilt will be classified according to their HAAT and power in the main lobe. This is consistent with Commission requirements that a broadcast station employing a beam tilt can change its antenna by filing an application for license (FCC form 302), provided that the existing HAAT and ERP remain unchanged. The Commission's FM engineering data base, which will be used for reclassification, does contain the main lobe power as well as power in the horizontal plane. Therefore we anticipate no difficulty in classifying or reclassifying existing stations. Nonetheless, if a station feels it has been incorrectly classified it should notify the Commission.

19. In other areas, questions have been raised about the applicability of § 73.213 of the Commission's Rules to short-spaced stations. This rule section only applies to stations that were short-spaced prior to November 16, 1964. Other existing stations that do not meet the *increased* second and third adjacent channel spacings will be grandfathered at their existing sites. If they request a new site, our policy will be to waive the second and third adjacent channel separations to the "old" required spacings (*e.g.* 15, 40 or 65 miles) for the duration of the 3 year period. Applications for unoccupied allotments, however, will have to meet the new spacing requirements.

20. Also, inquiries have been received from existing Class C stations wishing to voluntarily reclassify their stations to a lower class in order to move their transmitter site to a location that would not be available with their present station class. The Commission believes that these stations should not be required to go through rule making if they will voluntarily accept the lower classification. Therefore when a license is granted to such licensees, the Table will automatically be revised to the appropriate class of station.

Miscellaneous Matters Remaining From the "80–90" Report and Order

21. As indicated in the *Report and Order*, we shall convert the technical FM broadcast service rules to the International System of Units to conform to the Commission's program for conversion of all its rules. (See Public Notice, FCC 73–737, July 28, 1976.) Until such time as the application form can be revised to reflect this change, applicants may continue to tender applications that use the English system of units. The Commission's technical staff will convert the data on the application to the metric system to ensure compliance with the rules.

22. As noted in paragraph 2, *supra*, the Commission did not set a date for the rules adopted in the *Report and Order* to be effective. It instead chose to delay the implementation of the new rules until it had sufficient staff resources to handle the number of petitions and applications anticipated. Those resources have been obtained in the interim and the Commission will now set the effective date of the "80–90" rules to be the date of adoption of the omnibus "Notice."

23. One of the petitions that stimulated this proceeding was filed by the National Telecommunications Information Administration (RM–3367). It sought changes in the FM rules to allow "FM drop-ins," based on the use of terrain shielding and directional antennas. In the *Notice* in this proceeding the Commission indicated its intention to consider these requests in a future proceeding. We now believe that there is no reason to plan to examine the rule changes sought by NTIA within the forseeable future. A number of new stations will result from the other rule changes adopted that shall provide significant opportunities for new media outlets. We see no reason to pursue changes in the rules to allow still more stations before the potential afforded by the most recent changes are exhausted. We prefer to see if the present demand for new stations could perhaps be sated by the opportunities now available. Therefore we shall deny the NTIA petition without prejudice.

24. In the *Report and Order* we indicated that applications filed by existing Classes B and C stations requesting authority to increase antenna height and/or power in order to meet or exceed minimum facility requirements within the three year period, will be treated as minor changes. Similarly, we will consider as a minor modification any site move within the 16 Kilometers buffer zone area by an existing Class C station presently operating with an antenna height of less than 300 meters above average terrain, for the duration of the grace period. Furthermore, we indicated in the *Report and Order* that the maximum antenna height and power requirements for a Class C1 station (100 kilowatts and 300 meters HAAT) are also the established minimum requirements for a Class C station. To clarify this issue an existing station or a future proposal requesting 100 kilowatts of power and 300 meters of HAAT, will be treated as a Class C station. Section 73.211(b) is corrected to show that the maximum antenna height for Class C1 stations will be 299 meters (981 feet) to resolve any classification ambiguity.

25. Accordingly, it is ordered, that the the "Petition for Partial Reconsideration" filed in this proceeding by Richard Culpepper, is denied.

26. Accordingly, it is ordered, that the "Petition for Reconsideration" filed in this proceeding by Barry Chaiken, is denied.

27. Accordingly, it is ordered, that the "Petition for Partial Reconsideration" filed in this proceeding by The National Radio Broadcasters Association, is granted in part and denied in part.

28. Accordingly, it is ordered, that the "Petition for Partial Reconsideration" filed in this proceeding by the "Licensees" is granted in part and denied in part.

29. Accordingly, it is ordered, that the "Petition for Partial Reconsideration" filed in this proceeding by "Cox," is granted in part and denied in part.

30. Accordingly, it is ordered, that the "Petition for Reconsideration" filed in this proceeding by The National Association of Broadcasters, is granted in part and denied in part.

31. Accordingly, it is ordered, that the "Application for Review" filed in this proceeding by Knott County Broadcasting Corporation, is denied.

32. Accordingly, it is ordered, that the "petition for Rule Making" filed by the National Telecommunications Information Administration, is denied.

33. Accordingly, it is ordered, that Part 73 of the Commission's Rules, 47 CFR 73 is amended, as set forth in the attached Appendix, effective April 19, 1984.

34. It is further ordered that this proceeding is terminated.

35. Authority for this action is contained in Sections 4(i), 303(g) and 303(r) of the Communications Act of 1834, as amended.

36. For further information on this proceeding, contact John Karousos, Mass Media Bureau, (202) 632-9660.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 73—[AMENDED]

1. Section 73.204 is added to read as follows:

§ 73.204 International agreements and other restrictions on use of channels.

See §§ 73.207, 73.220 and 73.1650.

2. Section 73.207 is amended by revising Tables A and C to read as follows:

§ 73.207 Minimum distance separations between stations.

* * * * *

TABLE A.—MINIMUM DISTANCE SEPARATION REQUIREMENTS

[In kilometers (miles)]

Relation	Co-channel	200 kHz	400/600 kHz	10.6/10.8 MHz
A to A	105 (65)	64 (40)	27 (17)	8 (5)
A to B1	138 (86)	88 (55)	48 (30)	16 (10)
A to B	163 (101)	105 (65)	69 (43)	16 (10)
A to C2	163 (101)	105 (65)	55 (34)	16 (10)
A to C1	196 (122)	129 (80)	74 (46)	32 (20)
A to C	222 (138)	169 (105)	105 (65)	32 (20)
B1 to B1	175 (109)	114 (71)	50 (31)	24 (15)
B1 to B	211 (131)	145 (90)	71 (44)	24 (15)
B1 to C2	200 (124)	134 (83)	56 (35)	24 (15)
B1 to C1	233 (145)	161 (100)	77 (48)	40 (25)
B1 to C	259 (161)	193 (120)	105 (65)	40 (25)
B to B	241 (105)	169 (105)	74 (46)	24 (15)
B to C2	241 (150)	169 (105)	74 (46)	24 (15)
B to C1	270 (168)	195 (121)	79 (49)	40 (25)
B to C	274 (170)	217 (135)	105 (65)	40 (25)
C2 to C2	190 (118)	130 (81)	58 (36)	24 (15)
C2 to C1	224 (139)	158 (98)	79 (49)	40 (25)
C2 to C	249 (155)	188 (117)	105 (65)	40 (25)
C1 to C1	245 (152)	177 (110)	82 (51)	48 (30)
C1 to C	270 (168)	209 (130)	105 (65)	48 (30)
C to C	290 (180)	241 (150)	105 (65)	48 (30)

* * * * *

TABLE C.—MINIMUM DISTANCE SEPARATION REQUIREMENTS

[In kilometers (miles)]

Relation	Co-channel	200 kHz	400/600 kHz	10.6/10.8 MHz
A to A	105 (65)	65 (40)	25 (15)	8 (5)
A to B	175 (110)	105 (65)	65 (40)	16 (10)
A to C	210 (130)	170 (105)	105 (65)	32 (20)
A to D	95 (60)	50 (30)	25 (15)	8 (5)
B to B	240 (150)	170 (105)	65 (40)	25 (15)
B to C	270 (170)	215 (135)	105 (65)	40 (25)
B to D	170 (105)	95 (60)	65 (40)	16 (10)
C to C	290 (180)	240 (150)	105 (65)	48 (30)
C to D	200 (125)	155 (95)	105 (65)	25 (15)
D to D	18 (11)	10 (6)	5 (3)	3 (2)

3. Section 73.506 is amended by revising the headnote and paragraphs (a)(3) and (b), to read as follows:

§ 73.506 Classes of Noncommercial Educational FM stations and channels.

(a) * * *

(3) Noncommercial educational stations with more than 0.01 kW transmitter power output are classified Class A, B1, B, C2, C1, or C, depending on the effective radiated power, antenna height above terrain, and the zone in which the station's transmitter is located, on the same basis as provided for in §§ 73.205, 73.206, and 73.211 for stations on the non-reserved FM channels.

(b) Any noncommercial educational station except Class D may be assigned to any of the channels listed in § 73.501. Class D noncommercial educational FM stations applied for or authorized prior to June 1, 1980, may continue to operate on their authorized channels subject to the provisions of § 73.512.

4. Section 73.507 is amended by revising paragraph (c) to read as follows:

§ 73.507 Minimum distance separation between stations.

* * * * *

(c)(1) Stations separated in frequency by 10.6 or 10.8 MHz (53 or 54 channels) from allotments or assignments on non-reserved channels will not be authorized unless they conform to the separations in Table A given in § 93.207.

(2) Under the United States-Mexican FM Broadcasting Agreement, for stations and assignments differing in frequency by 10.6 to 10.8 MHz (53 or 54 channels), U.S. noncommercial educational FM allotments and assignments must meet the separations given in Table C of § 73.207 to Mexican allotments or assignments in the border area.

5. Section 73.211 is amended by substituting the values "299 (981)" for the values "300 (984)" given as entry five in the third column of the table in paragraph (b).

6. Also footnote 36 of the *Report and Order* (published at 48 FR 29498, June 27, 1983) should change to read as follows:

* * * * *

Meters = .3048 × feet
kilometers = 1.609 × miles
Square Kilometers = 1/.386 × square miles

Concurring Statement of FCC Commissioner James H. Quello

March 1, 1984.

In re: Reconsideration of the Report & Order Modifying FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments, BC Docket No. 80-90.

While this is not the course I would have chosen,[1] it does appear that significantly increased opportunities for local FM service may result from this decision. Since the item does recognize legitimate concerns of existing FM licensees as they seek to conform to the new policies, I concur in the result.

[FR Doc. 84-7198 Filed 3-19-84; 8:45 am]
BILLING CODE 6712-01-M

[1] *See* Dissenting Statement of Commissioner James H. Quello, *Report & Order* in *BC Docket 80-90*, 48 FR 29486, June 27, 1983.

Proposed Rules

Federal Register
Vol. 49, No. 55
Tuesday, March 20, 1984

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

Agricultural Marketing Service

7 CFR Part 29

Tobacco Inspection Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Dairy and Tobacco Adjustment Act of 1983 (Pub. L. 98–180) enacted November 29, 1983, requires the Secretary to establish grade and quality standards for the purpose of inspecting all tobacco offered for importation into the United States, except cigar and oriental tobacco, that are, insofar as practicable, the same as those applicable to tobacco marketed through a warehouse in the United States.

Therefore, the Department proposes to amend 7 CFR Part 29 to establish Official Standard Grades to adequately describe all tobacco, except cigar and oriental, imported into the United States.

In addition to amending 7 CFR Part 29 to establish grades for foreign-grown types of tobacco, this proposal will add 9 new grades to the Official Standard Grades for Flue-Cured Tobacco which will be applicable to U.S. Types 11–14 and Foreign-Grown Type 92.

DATE: Written comments must be received by April 4, 1984.

ADDRESS: Send written comments to Lioniel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Room 502 Annex Building, Washington, D.C. 20250.

Comments will be available for public inspection at this location during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lioniel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department proposes to establish Official Standard Grades for all tobacco, except cigar and oriental, imported into the United States, pursuant to the authority contained in the Tobacco Inspection Act of 1935 (49 Stat. 731; 7 U.S.C. 511 *et seq.*).

This proposal will amend the regulations (7 CFR Part 29, Subpart C—Standards) to describe imported flue-cured, dark fire-cured, Burley, Maryland Broadleaf, and dark air-cured tobacco by type, grade, and quality.

The Official Standard Grades currently contained in Subpart C—Standards (7 CFR Part 29) are applicable only to tobacco grown in the United States and Puerto Rico. These Official Standards cover Flue-cured tobacco (Types 11–14), Dark Fire-cured tobacco (Types 21–23), Burley (Type 31), Maryland Broadleaf (Type 32), Dark Air-cured tobacco (Types 35–37), Cigar-filler tobacco (Types 41–44, 46), Cigar-binder tobacco (Types 51–55), and Cigar-Wrapper tobacco (Types 61 and 62).

In order to comply with the Act which provides The Secretary of Agriculture shall "establish grade and quality standards . . . that are, insofar as practicable, the same as those applicable to tobacco marketed through a warehouse in the United States", this proposal would modify and add terminology and rules to existing U.S. Standards for flue-cured, dark fire-cured, Burley, Maryland Broadleaf, and dark air-cured tobacco thereby, making these Official Standard Grades applicable to both U.S. and imported (foreign-grown) types of tobacco.

The basis for modifying the existing U.S. Standards to describe foreign-grown tobacco is to accommodate the form of preparation in which the tobacco will enter the United States. The current official standards only describe tobacco in the whole leaf form whereas foreign-grown tobacco will be in whole leaf as well as strip form. Tobacco in strip form has undergone a mechanical process that reduces the leaf to smaller units. These proposed standards would be applicable to tobacco in the strip form as well as whole leaf form and further distinguish strip form from whole leaf form by placing a special factor "S" (Strip) preceding the grademark. Consequently, the elements of quality "length" and "width", and "size", a length designation in fire-cured and dark air-cured types, would be disregarded when grading tobacco in the strip form; all references to "leaf" in the definitions and rules would apply to the portions of leaf or lamina's in strip form.

Additionally, this proposal would add 7 new Mixed grades to the official standards for flue-cured tobacco to describe lots of tobacco which have 3 or more groups (stalk positions) or 2 distinctly different groups mixed together in various combinations. Grades M4F, M5F, M4KR, M4KM, M5KM, M4GK, and M5GK will be established primarily to describe Foreign-grown flue-cured tobacco but will also be applicable to U.S. types. Also, the department proposes to add to the official standards for flue-cured tobacco grade B3KD to describe third quality variegated dark red (KD) colored Leaf and grade C3KM to describe third quality variegated mixed (KM) colored Cutters. These two new grades are proposed as a result of the color and quality combinations which have become more distinct in recent years.

Furthermore, this proposal will utilize type number designations established under the Tobacco Stocks and Standards regulations (45 Stat. 1079; 7 U.S.C. 502; 7 CFR 30 *et seq.*), which designates Type 92 as Foreign-Grown Flue-Cured Tobacco and Type 93 as Foreign-Grown Burley Tobacco, to identify these respective types under The Tobacco Inspection Act. In addition, the following new type number designations will be established to identify foreign-grown Maryland Broadleaf, Dark Air-Cured, and Dark Fire-Cured tobacco: Type 94—Foreign-grown Maryland Broadleaf, Type 95—Foreign grown Dark Air-cured, and Type 96—Foreign-grown Dark Fire-cured.

This proposed rule has been reviewed under USDA procedures established to implement Executive Order 12291 and the Secretary's Memorandum 1512–1 and has been determined to be a "nonmajor" rule because it does not meet any of the criteria established for major rules under the executive order. Initial reviews of the regulations contained in 7 CFR Part 29, for need, currency, clarity, and effectiveness has been completed.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). The Deputy Administrator has also determined that this proposed rule would not have an effect on normal competition in the marketplace. Standards established for the inspection of tobacco to determine grade and quality must be uniform regardless of the size of the entities involved in tobacco transactions.

Lionel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, has determined that an emergency situation exists which warrants less than a 60-day comment period on this proposal. The shorter comment period will provide sufficient lead time to train inspection personnel on the application of grade standards prior to implementation of the import inspection program and will allow the Commodity Credit Corporation to announce the flue-cured price supports by grade prior to planting of the 1984 crop which will affect the producer's planting and production intentions. Also, the early announcement of price supports by grade are necessary for buying companies to make purchasing plans for foreign and domestic customers. Therefore, a 15-day comment period will be provided on this proposal.

List of Subjects in 7 CFR Part 29.

Administrative practices and procedures, Tobacco.

PART 29—TOBACCO INSPECTION

Accordingly, the Department hereby proposes to amend the regulations under the Tobacco Inspection Act contained in 7 CFR Part 29, Subpart C, as follows:

1. Amend the title "Official Standard Grades for Flue-Cured Tobacco (U.S. Types 11, 12, 13 and 14)", prior to § 29.1001, to read as follows:

Official Standard Grades for Flue-Cured Tobacco (U.S. Types 11, 12, 13, 14 and Foreign Type 92)

§ 29.1015 [Amended]

2. Section 29.1015 is amended to add the words "and Foreign Type 92" after the words "Types 11–14".

§ 29.1025 [Amended]

3a. Section 29.1025 is amended to add the words "Mixed (M)" following the words "Primings (P)".

b. Section 29.1025 is further amended to add the words "and Foreign Type 92" after the words "Types 11–14".

§ 29.1030 [Amended]

4. Section 29.1030 is amended to add to the end thereof the sentence "Length, as an element of quality, does not apply to tobacco in strip form."

§§ 29.1027 through 29.1033 [Redesignated as §§ 29.1028 through 29.1034]

5. Sections 29.1027 through 29.1033 are redesignated as §§ 29.1028 through 29.1034, respectively, to maintain alphabetical sequence.

6. Section 29.1027 is added to read as follows:

§ 29.1027 Leaf.

Whole, unstemmed leaf. Leaf, when applied to tobacco in strip form, shall describe the divided unit of a whole leaf.

§ 29.1034 [Amended]

7. Former § 29.1034 is amended to add the words "Types 11–14" after the words "Any lot of" in the first sentence.

§ 29.1037 [Amended]

8. Section 29.1037 is amended to add the words "Types 11–14" after the word "of".

§ 29.1039 [Amended]

9. Section 29.1039 is amended to add the words "or Foreign Type 92" after the words "Types 11–14".

§ 29.1055 [Amended]

10. Section 29.1055 is amended by removing the words "and 26" following the number "22" in parenthesis and add in the place thereof the words "26, and 28".

§ 29.1062 [Amended]

11a. Section 29.1062 is revised to read as follows:

§ 29.1062 Symbol (S)

As applied to Flue-cured tobacco the symbol (S) when used (a) as the third factor of a grademark, denotes slick, unripe tobacco in lemon or orange color, and (b) when used preceding a grademark, denotes tobacco in strip form. (See rules 17 and 28)

§ 29.1063 [Amended]

12. Section 29.1063 is amended to add the word "threshing" following the word "stemming".

§§ 29.1034 through 29.1069 [Redesignated as §§ 29.1036 through 29.1071]

13. Former §§ 29.1034 through 29.1069 are redesignated as §§ 29.1036 through 29.1071, respectively, to maintain alphabetical sequence.

14. Section 29.1035 is added to read as follows:

§ 29.1035 Mixed Group (M).

This group consists of tobacco from three or more groups or two distinctly different groups which are mixed together in various combinations.

§ 29.1080 [Amended]

15. Section 29.1080 is amended to add the sentence "Width, as an element of quality, does not apply to tobacco in strip form." after the word "length".

§§ 29.1070 through 29.1080 [Redesignated as §§ 29.1073 through 29.1083]

16. Former §§ 29.1070 and 29.1071 through § 29.1080 are redesignated as §§ 29.1073 through 29.1083, respectively, to maintain alphabetical sequence.

17. Section 29.1072 is added to read as follows:

§ 29.1072 Type 92.

That type of flue-cured tobacco commonly known as Foreign-grown Flue-cured, produced in countries other than the United States.

§ 29.1116 [Amended]

18. Section 29.1116 is amended by removing the words "after a grademark" following the word "used".

§ 29.1133 [Amended]

19. Section 29.1133 is amended to add the words "in Types 11–14" after the word "Tobacco".

20. Section 29.1134 is added to read as follows:

§ 29.1134 Rule 28.

Tobacco in strip form which otherwise meets the specifications of a grade shall be treated as a special factor grade by placing the special factor "S" preceding the grademark.

§§ 29.1161, 29.1162, 29.1163, 29.1164, 29.1165, 29.1166, and 29.1168 [Amended]

21. The following sections are amended to remove the abbreviation "U.S." from the heading *"U.S. Grades, Grade Names, Minimum Specifications, and Tolerances":*

1. Section 29.1161
2. Section 29.1162
3. Section 29.1163
4. Section 29.1164
5. Section 29.1165
6. Section 29.1166
7. Section 29.1168

§ 29.1162 [Amended]

22. Section 29.1162 is further amended to add a new grade following the paragraph under the heading "B6KF—Poor Quality Variegated Orange Leaf" to read as follows:

B3KD—Good Quality Variegated Dark Red Leaf [New]

Unripe, close leaf structure, heavy, normal width, 16 inches (40.6 cm) or over in length. Uniformity, 80 percent; injury tolerance 15 percent.

§ 29.1164 [Amended]

23. Section 29.1164 is further amended to add a new grade following the pararaph under the heading "C4KF—Fair Qualtiy Variegated Orange Cutters" to read as follows:

C3KM—Good Quality Variegated Mixed Cutters [New]

Unripe, close leaf structure, medium body, spready, 18 inches (45.7 cm) or over in length. Uniformity, 80 percent; injury tolerance, 15 percent.

24. Section 29.1167 is added to read as follows:

§ 29.1167 Mixed (M Group).

This group consists of tobacco from three or more groups or two distinctly different groups which are mixed together in various combinations.

Grades, Grade Names, Minimum Specifications and Tolerances

M4F—Fair Quality Mixed Groups

Ripe, firm leaf structure, heavy, lean in oil. Injury tolerance 30 percent, of which not over 10 percent may be waste.

M5F—Low Quality Mixed Groups

Ripe, firm leaf structure, heavy, lean in oil. Injury tolerance 40 percent, of which not over 20 percent may be waste.

M4KR—Fair Quality Variegated Red or Scorched Mixed Groups

Ripe, firm leaf structure, fleshy, lean in oil. Injury tolerance 30 percent, of which not over 10 percent may be waste.

M4KM—Fair Quality Variegated Mixed Groups

Unripe, close leaf structure, heavy. Injury tolerance 30 percent, of which not over 10 percent may be waste.

M5KM—Low Quality Variegated Mixed Groups

Unripe, tight leaf structure, heavy. Injury tolerance 40 percent, of which not over 20 percent may be waste.

M4GK—Fair Quality Green Variegated Mixed Groups

Immature, close leaf structure, heavy. Injury tolerance 30 percent, of which not over 10 percent may be waste.

M5GK—Low Quality Green Variegated Mixed Groups

Immature, tight leaf structure, heavy. Injury tolerance 40 percent, of which not over 20 percent may be waste.

§ 29.1169 [Amended]

25. Section 29.1169 is amended to remove the abbreviation "U.S." from the heading "U.S. Grade, Grade Name and Specifications".

§ 29.1181 [Amended]

Section 29.1181 is amended as follows:

a. Revise the heading "19 Grades of Variegated" to read as follows: "20 Grades of Variegated".

b. Paragraph under the new heading "20 Grades of Variegated": add the new grade "B3KD" above grade "B4KD".

c. Following the paragraph under the new heading "20 Grades of Variegated": and a new category of mixed grades to read as follows:

7 MIXED GRADES

M4F	M4KR	M4KM	M4GK
M5F		M5KM	M5GK

d. Revise the heading "7 Grades of Variegated Mixed" to read as follows: "8 Grades of Variegated Mixed".

e. Paragraph under the new heading "8 Grades of Variegated Mixed": add the new grade "C3KM" above the grade "C4KM".

f. In the paragraph at end of § 29.1181: add the words ", and "S" (Strip)" after the words " "W" (doubtful-keeping order)".

§ 29.1225 [Amended]

27a. Seciton 29.1225 is amended, under the heading "Groups", by adding the words "M—Mixed Group" following the words "P—Primings".

b. Section 29.1225 is further amended, under the heading "Color Symbols", by adding the words "LL—Whitish-lemon" following the words "L—Lemon".

28. Revise the title "Official Standard Grades for Kentucky and Tennessee Fire-Cured tobacco (U.S. Types 22 and 23)", prior to § 29.2501, to read as follows:

Official Standard Grades for Kentucky and Tennessee Fire-Cured and Foreign-Grown Fire-Cured Tobacco (U.S. Types 22, 23, and Foreign Type 96)

§ 29.2534 [Amended]

29. Section 29.2534 is amended to add the words "lot of Types 22 and 23" after the word "Any".

§ 29.2536 [Amended]

30. Section 29.2536 is amended by removing the words "or 23" following the words "Type 22" and add in the place thereof the words "23 or Foreign Type 96".

§ 29.2544 [Amended]

31. Section 29.2544 is amended to add the words "Types 22 and 23" after the words "Any lot of".

§ 29.2547 [Amended]

32. Section 29.2547 is amended to add the sentence "Size does not apply to tobacco in strip form." after the word "leaves".

§ 29.2558 [Amended]

33. Section 29.2558 is amended to add the word "threshing" following the word "stemming".

§§ 29.2528 through 29.2562 [Redesignated as §§ 29.2529 through 29.2563]

34. Sections 29.2528 through 29.2562 are redesignated as §§ 29.2529 through 29.2563, respectively.

35. Section 29.2528 is added to read as follows:

§ 29.2528 Leaf.

Whole, unstemmed leaf. Leaf, when applied to tobacco in strip form, shall describe the divided unit of a whole leaf.

§ 29.2568 [Amended]

36. Section 29.2568 is amended to add the sentence "Width, as an element of quality, does not apply to tobacco in strip form." after the word "length".

§§ 29.2563 through 29.2568 [Redesignated as §§ 29.2565 through 29.2570]

37. Former § 29.2563 through § 29.2568 are redesignated as §§ 29.2565 through 29.2570, respectively.

38. Section 29.2564 is added to read as follows:

§ 29.2564 Type 96.

That type of fire-cured tobacco known as Foreign-grown Fire-cured produced in countries other than the United States.

§ 29.2606 [Amended]

39. Section 29.2606 is amended to remove the abbreviation "U.S." from the heading "U.S. Standard 4-inch Sizes".

§ 29.2616 [Amended]

40. Section 29.2616 is amended to remove the referenced section number "29.2638" and, as a result of adding a new rule in a following section, add in the place thereof the section number "29.2639".

§ 29.2626 [Amended]

41. Section 29.2626 is amended to remove the words "after a grademark" following the word "used".

§ 29.2629 [Amended]

42a. Section 29.2629 is amended to add the words ", except strip grades," after the words "C groups".

b. Section 29.2629 is further amended to remove the abbreviation "U.S." following the words "series of".

43. Section 29.2639 is added to read as follows:

§ 29.2639 Rule 23.

Tobacco in strip form which otherwise meets the specifications of a grade shall be treated as a subgrade by placing the special factor "S" preceding the grademark.

§§ 29.2661, 29.2662, 29.2663, 29.2664, 29.2665, and 29.2666 [Amended]

44. The following sections are amended to remove the abbreviation "U.S." from the heading "U.S. Grades, Grade Names and Specifications":

1. Section 29.2661
2. Section 29.2662
3. Section 29.2663
4. Section 29.2664
5. Section 29.2665
6. Section 29.2666

§ 29.2686 [Amended]

45a. Section 29.2686 is amended to add the letter "S" after the letter "W".

b. Section 29.2686 is further amended to remove the abbreviation "U.S." from the heading "U.S. Standard Sizes Applicable".

46. Revise the title "Official Standard Grades for Burley Tobacco" (U.S. Type 31), prior to § 29.3001, to read as follows:

Official Standard Grades for Burley Tobacco (U.S. Type 31 and Foreign Type 93)

§ 29.3019 [Amended]

47. Section 29.3019 is amendd by removing the words "Type 31" following the word "Burley" and adding in the place thereof the words "Types 31 and 93".

§ 29.3030 [Amended]

48. Section 29.3030 is amended by removing the words "Type 31" after the word "Burley" and adding in the place thereof the words "Types 31 and 93".

§§ 29.3006 through 29.3031 [Redesignated as §§29.3007 through 29.3032]

49. Sections 29.3006 through 29.3031 are redesignated as §§ 29.3007 through 29.3032, respectively.

50. Section 29.3006 is added to read as follows:

§ 29.3006 Burley, Type 93.

That type of air-cured tobacco commonly known as Foreign-grown Burley, produced in countries other than the United States.

§ 29.3035 [Amended]

51. Section 29.3035 is amended to add the sentence "Length, as an element of quality, does not apply to tobacco in strip form" following the word "tip".

§ 29.3039 [Amended]

52. Section 29.3039 is amended to add the words "Type 31" after the words "Any lot of" in the first sentence of the first paragraph.

§ 29.3041 [Amended]

53. Section 29.3041 is amended to add the words "Type 31" after the word "of".

§ 29.3042 [Amended]

54. Section 29.3042 is amended to remove the words 'Type 31" after the word "Burley" and add in the place thereof the words "Types 31 or 93".

§ 29.3044 [Amended]

55. Section 29.3044 is amended to add the words "Type 31" after the words "Applied to".

§ 29.3051 [Amended]

56. Section 29.3051 is amended to add the words "Type 31" after the words "Any lot of" in the first sentence of the first paragraph.

§ 29.3066 [Amended]

57. Section 29.3066 is amended to add the word "threshing" following the word "stemming".

§ 29.3075 [Amended]

58. Section 29.3075 is amended to add the sentence "Width as an element of quality, does not apply to tobacco in strip form." after the word "length".

§§ 29.3032 through 29.3075

[Redesignated as §§ 29.3034 through 29.3077]

59. Sections 29.3032 through 29.3075 are redesignated as §§29.3034 through 29.3077, respectively.

60. Section 29.3033 is added to read as follows:

§ 29.3033 Leaf.

Whole, unstemmed leaf. Leaf, when applied to tobacco in strip form, shall describe the divided unit of a whole leaf.

§ 29.3106 [Amended]

61. Section 29.3106 is amended to remove from therein the words, "of not less than six hands".

§ 29.3112 [Amended]

62. Section 29.3112 is amended to remove the words "Consumer and" following the words "Division of the" and add in the place thereof the word "Agricultural".

b. Section 29.3112 is further amended to remove the words "after a grademark" following the word "used".

§ 29.3115 [Amended]

63. Section 29.3115 is revised to read as follows:

§ 29.3115 Rule 12.

Any lot, except strip form, of Leaf (B Group) tobacco in which 20 percent or more of its leaves are under 16 inches in length shall be designated as Tips (T Group).

§ 29.3127 [Amended]

64. Section 29.3127 is amended by adding the words "in Type 31" following the word "Tobacco".

65. Section 29.3128 is added to read as follows:

§ 29.3128 Rule 25.

Tobacco in strip form which otherwise meets the specifications of a grade shall be treated as a subgrade by placing the special factor "S" preceding the grademark.

§§ 29.3151, 29.3152, 29.3153, 29.3154, 29.3155, 29.3156, and 29.3157 [Amended]

66. The following sections are amended to remove the abbreviation "U.S." from the heading "U.S. Grades, Grade Names and Specifications":

1. Section 29.3151
2. Section 29.3152
3. Section 29.3153
4. Section 29.3154
5. Section 29.3155
6. Section 29.3156
7. Section 29.3157

§ 29.3181 [Amended]

67. Section 29.3181 is amended by removing the words "and "W" " following the words "factors "u" " and adding the place thereof the words " "W" and "S" ".

68. Revise the title "Official Standard Grades for Maryland Broadleaf Tobacco (U.S. Type 32)", prior to § 29.3251, to read as follows:

Official Standard Grades for Maryland Broadleaf Tobacco (U.S. Type 32 and Foreign Type 94)

§ 29.3263 [Amended]

69. Section 29.3263 is amended by removing the words "Type 32" after the word "Broadleaf" and add in the place thereof the words "Types 32 and 94".

§ 29.3271 [Amended]

70. Section 29.3271 is amended by removing the words "type 32" after the word "Broadleaf" and add in the place thereof the words "Types 32 and 94".

§ 29.3275 [Amended]

71. Section 29.3275 is amended to add the sentence "Length, as an element of quality, does not apply to tobacco in strip form." after the word "tip".

§§ 29.3273 through 29.3277 [Redesignated as §§ 29.3274 through 29.3278]

72. Sections 29.3273 through 29.3277 are redesignated as §§ 29.3274 through 29.3278, respectively.

73. Section 29.3273 is added to read as follows:

§ 29.3273 Leaf.

Whole, unstemmed leaf. Leaf, when applied to tobacco in strip form, shall describe the divded unit of a whole leaf.

§ 29.3278 [Amended]

74. Former § 29.3278 is amended to remove the words "Type 32" after the word "in" in paragraph "(a)" and add in the place thereof the words "Types 32 and 94".

§ 29.3279 [Amended]

75. Section 29.3279 is amended to add the words "lot of Type 32" after the word "Any" in the first sentence.

§ 29.3281 [Amended]

76. Section 29.3281 is amended to remove the words "Type 32" after the word "Broadleaf" and add in the place thereof the words "Types 32 and 94."

§ 29.3287 [Amended]

77. Section 29.3287 is amended to add the words "Type 32" after the words "lot of".

§ 29.3291 [Amended]

78. Section 29.3291 is amended to add the reference rule number and applicable section number "23, § 29.3354" to the end of the sentence in parenthesis.

§ 29.3298 [Amended]

79. Section 29.3298 is amended to add the word "threshing" following the word "stemming".

§§ 29.3278 through 29.3301 [Redesignated as §§ 29.3280 through 29.3303]

80. Former § 29.3278 through § 29.3301 are redesignated as §§ 29.3280 through 29.3303, respectively.

81. Section 29.3279 is added to read as follows:

§ 29.3279 Maryland Broadleaf, Type 94.

That type of air-cured tobacco known as Foreign-grown Maryland Broadleaf produced in countries other than the United States.

§ 29.3309 [Amended]

82. Section 29.3309 is amendd to add the sentence "Width, as an element of quality, does not apply to tobacco in strip form." after the word "length".

§§ 29.3302 through 29.3309 [Redesignated as §§ 29.3305 through 29.3312]

83. Sections 29.3302 and 29.3303 through § 29.3309 are redesignated as §§ 29.3305 through 29.3312, respectively.

84. Section 29.3304 is added to read as follows

§ 29.3304 Type 94.

That type of air-cured tobacco known as Foreign-grown Maryland Broadleaf tobacco produced in countries other than the United States

§ 29.3334 [Amended]

85. Section 29.3334 is amended to remove from therein the words, "of not less than six hands".

§ 29.3344 [Amended]

86. Section 29.3344 is amended to add the words ", except strip form," after the first two words "Any lot".

87. Section 29.3354 is added to read as follows:

§ 29.3354 Rule 23.

Tobacco in strip form which otherwise meets the specifications of a grade shall be treated as a special factor grade by placing the special factor "S" preceding the grademark.

§§ 29.3385, 29.3386, 29.3387, 29.3388, 29.3389, and 29.3390 [Amended]

88. The following sections are amended to remove the abbreviation "U.S." from the heading "U.S. Grades, Grade Names and Specifications":

1. Section 29.3385.
2. Section 29.3386.
3. Section 29.3387.
4. Section 29.3388.
5. Section 29.3389.
6. Section 29.3390.

§ 29.3395 [Amended]

89. Section 29.3395 is amended to add the letter "S" after the letter "W".

90. Revise the title "Official Standard Grades for Dark Air-Cured Tobacco (U.S. Types 35, 36, and 37)", prior to § 29.3501, to read as follows: "Official Standard Grades for Dark Air-Cured Tobacco (U.S. Types 35, 36, 37 and Foreign Type 95)".

§ 29.3528 [Amended]

91. Section 29.3528 is amended to remove the abbreviation "U.S." after the word "See" in parenthesis.

§ 29.3532 [Amended]

92. Section 29.3532 is amended to add the words "lot of Types 35, 36, and 37" after the word "Any" in the first sentence of the first paragraph.

§ 29.3534 [Amended]

93. Section 29.3534 is amended to remove the words "or 37" after the words "Type 35, 36" and add in the place thereof the words "37, or Foreign Type 95".

§ 29.3541 [Amended]

94. Section 29.3541 is amended to add the words "Types 35, 36, and 37" after the words "Any lot of" in the first sentence of the first paragraph.

§ 29.3544 [Amended]

95a. Section 29.3544 is amended to add the sentence "Size does not apply to tobacco in strip form." after the word "leaves".

b. Section 29.3544 is further amended by removing the abbreviation "U.S." after the word "See".

§ 29.3554 [Amended]

96. Section 29.3554 is amended to add the word "threshing" following the word "stemming".

§§ 29.3525 through 29.3559 [Redesignated as §§ 29.3526 through 29.3560]

97. Sections 29.3525 through 29.3559 are redesignated as §§ 29.3526 through 29.3560, respectively.

98. Section 29.3525 is added to read as follows:

§ 29.3525 Leaf.

Whole, unstemmed leaf. Leaf, when applied to tobacco in strip form, shall describe the divided unit of a whole leaf.

§ 29.3566 [Amended]

99. Section 29.3566 is amended to add the sentence "Width, as an element of quality, does not apply to tobacco in strip form." after the word "length".

§§ 29.3560 through 29.3566 [Redesignated §§ 29.3562 through 29.3568]

100. Former § 29.3560 through § 29.3566 are redesignated as §§ 29.3562 through 29.3568, respectively.

101. Section 29.3561 is added to read as follows:

§ 29.3561 Type 95.

That type of air-cured tobacco commonly known as Foreign-grown Dark Air-cured produced in countries other than the United States.

§ 29.3591 [Amended]

102. Section 29.3591 is amended to remove the abbreviation "U.S." from the heading, the chart immediately thereunder, and from the paragraph under footnote 1 after the words "represented to be of'.

§ 29.3604 [Amended]

103. Section 29.3604 is amended to remove from therein the words, "of not less than six hands".

§ 29.3611 [Amended]

104a. Section 29.3611 is amended to remove the words "Consumer and" following the word "Division" and add in the place thereof the word "Agricultural".

b. Section 29.3611 is further amended to remove the words "after a grademark" following the words "may be used".

§ 29.3614 [Amended]

105a. Section 29.3614 is amended to add the words ", except strip grades," after the words "C groups".

b. Section 29.3614 is further amended to remove the abbreviation "U.S." after the words "4-inch series of " in the second sentence, and after the word "Applicable" in parenthesis.

106. Section 29.3626 is added to read as follows:

§ 29.3626 Rule 25.

Tobacco in strip form which otherwise meets the specifications of a grade shall be treated as a subgrade by placing the special factor "S" preceding the grademark.

§§ 29.3646, 29.3647, 29.3648, 29.3649, 29.3650, and 29.3651 [Amended]

107. The following sections are amended to remove the abbreviation "U.S." from the heading "U.S. Grades, Grade Names, Minimum Specifications, and Tolerances":

1. Section 29.3646.
2. Section 29.3647.
3. Section 29.3648.
4. Section 29.3649.
5. Section 29.3650.
6. Section 29.3651.

§ 29.3652 [Amended]

108. Section 29.3652 is amended to remove the abbreviation "U.S." from the heading "U.S. Grades, Grade Name and Specifications".

§ 29.3676 [Amended]

109. Section 29.3676 is amended to remove the words "and "W"" following the words "factors "U"" and add in the place thereof the words ""W" and "S"".

110. Revise the title "Applicable U.S. Standard Sizes", prior to § 29.3681 to read as follows:

Applicable Standard Sizes

§ 29.3681 [Amended]

111a. Section 29.3681 is amended to remove the abbreviation "U.S." following the word "Applicable".

b. Section 29.3681 is further amended to remove the words "and 36" following the words "Types 35" and add in the place thereof the words "36 and 95".

(Sec. 213, Pub. L. 98-180, 97 Stat. 1149 (7 U.S.C. 1421); 49 Stat. 731; (7 U.S.C. 511 *et seq.*))

Dated: March 12, 1984.

Eddie F. Kimbrell,

Deputy Administrator, Commodity Services.

[FR Doc. 84-7040 Filed 3-19-84; 8:46 am]

BILLING CODE 3410-02-M

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7 CFR Parts 916 and 917

[Nectarine Reg. 14, Amdt. 4; Peach Reg. 14, Amdt. 4]

Nectarines Grown in California; Fresh Pears, Plums, and Peaches Grown in California; Proposed Amendment of Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice proposes amending regulations currently in effect for shipments of fresh nectarines and peaches by establishing minimum size requirements for the Desert Dawn variety of nectarines, and the Morning Sun variety of peaches, effective April 23, 1984. These proposed requirements are designed to promote the marketing of fresh fruit of suitable sizes in the interest of producers and consumers.

DATE: Comments due by April 4, 1984.

ADDRESS: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The proposed rule is issued under the marketing agreement, as amended, and Order No. 916, as amended (7 CFR Part 916), regulating the handling of nectarines grown in California; and the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917), regulating the handling of fresh pears, plums and peaches grown in California. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). Shipments of California nectarines and peaches are currently regulated by grade and size under § 916.356 Nectarine Regulation 14, as amended, and § 917.459 Peach Regulation 14, as amended, both initially issued in July 1981. Because these regulations change infrequently from season to season they were issued on a continuing basis subject to amendment, modification, or suspension of regulations as may be recommended by the committees and approved by the Secretary.

The proposed requirements would establish a minimum size requirement of 108 nectarines per No. 22D standard lug box for the Desert Dawn variety of nectarines, and 84 peaches per No. 22D standard lug box for the Morning Sun variety of peaches. Such action would be consistent with the practice of establishing minimum size requirements for a particular variety when shipments exceed 10,000 packages during the prior season. The proposed requirements are based upon the recommendations and information submitted by the Nectarine Administrative Committee and the Peach Commodity Committee, and upon other available information. It is hereby found that this proposed rule would tend to effectuate the declared policy of the Act.

The proposed requirements are designed to prevent the shipment of Desert Dawn variety nectarines and Morning Sun variety peaches not meeting the specified minimum size requirements, and they need to become effective April 23, 1984, to cover all 1984 season shipments. The proposed requirements are designed to provide ample supplies of good quality fruit in the interest of producers and consumers pursuant to the declared policy of the Act.

This proposed rule provides a 15-day comment period. A longer comment period would be contrary to the public interest, as any comments on the rule need to be received within 15 days, so that the final rule, if issued, can be made effective April 23, 1984, to ensure the orderly marketing of California nectarines and peaches. All comments received will be considered prior to issuance of any final rule.

List of Subjects

7 CFR Part 916

Marketing Agreements and Orders, Nectarines, California.

7 CFR Part 917

Marketing Agreements and Orders, Pears, Plums, Peaches, California.

PART 916—[AMENDED]

The proposed rule would amend § 916.356 (7 CFR Part 916; 48 FR 24653) by revising the introductory text of paragraph (a) and paragraph (a)(2), and amend § 917.459 (7 CFR Part 917; 48 FR 16877) by revising the introductory text of paragraph (a) and paragraph (a)(3), to read as follows:

§ 916.356 Nectarine Regulation 14.

(a) On and after April 23, 1984, no handler shall handle: * * *

(2) Any package or container of Aurelio Grand, Desert Dawn, Mayfair, Maybelle, or Royal Delight variety nectarines unless: * * *

PART 917—[AMENDED]

§ 917.459 Peach Regulation 14

(a) On and after April 23, 1984, no handler shall handle: * * *

(3) Any package or container of any type of Morning Sun or Springold variety peaches unless: * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: March 15, 1984.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-7493 Filed 3-19-84; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 821 0099]

National Association of School Music Dealers, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Comission approval, would require a trade association comprised of dealers specializing in the sale and servicing of school band instruments, to cease taking any action or encouraging its members to take any action which would interfere with how, or to whom a manufacturer distributes its products.

DATE: Comments must be received on or before May 21, 1984.

ADDRESS: Comments should be directed to FTC/S, Office of the Secretary, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/CS-3, Thomas Keary, Washington, D.C. 20580, (202) 724-1278.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Musical instruments, Trade practices.

Before the Federal Trade Commission

[File No. 821-0099]

Agreement Containing Consent Order To Cease and Desist

In the matter of National Association of School Music Dealers, Inc., a non-profit corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the National Association of School Music Dealers, Inc. ("NASMD"), a non-profit corporation, and it now appearing the NASMD, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between NASMD, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. NASMD is a non-profit corporation, incorporated pursuant to the laws of the State of West Virginia, with its principal office located at 1212 5th Street, Coralville, Iowa 52241.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event the Commission will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that NASMD, its officers, directors, representatives, agents, employees, successors and assigns, and any subsidiary, committee, division or other device shall cease and desist from:

A. Taking any action, directly or indirectly, on behalf oif its members, including but not limited to any actual or threatened boycott or refusal to deal, which has the purpose or effect of interfering with any musical instrument manufacturer's decision as to how or to whom it distributes its product(s).

B. Requesting, urging, recommending or suggesting that NASMD members take any action, directly or indirectly, including but not limited to any actual or threatened boycott or refusal to deal, which has the purpose or effect of interfering with any musical instrument manufacturer's decision as to how or to whom it distributes its product(s).

II

It is further ordered that this Order shall not be construed to prevent NASMD from merely providing information or its members' views to musical instrument manufacturers concerning the effects on NASMD members of the ways in which the manufacturers distribute their products, so long as the information or views are not provided in a manner constituting an actual or threatened boycott or refusal to deal.

III

It is further ordered that:

A. NASMD shall mail to each of its members and to each person to whom it sent written notification of the NASMD resolution of February 9, 1982, a copy of the Commission's Order in this matter and a letter in the form shown as "Appendix A" to this Order.

B. For a period of two (2) years after the date of service of this Order, NASMD shall also provide each new NASMD member with a copy of this Order at the time the member is accepted into membership.

IV

It is further ordered that, for a period of three (3) years following the effective date of the Order, NASMD shall maintain in its files a copy of the minutes of each meeting of its membership and of each meeting of its board of directors and a copy of all correspondence received from, or sent to, any mail order dealer, any manufacturer of musical instruments or any association representing manufacturers of musical instruments and that such copies of minutes and correspondence be made available for inspection by representatives of the Federal Trade Commission upon written request.

V

It is further ordered that, within sixty (60) days after service of this Order, respondent shall file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order. Thereafter, additional reports shall be filed at such other times as the Commission may, by written notice to respondent, require.

VI

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to any proposed change in it, such as dissolution, assignment, or sale resulting in the emergency of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this Order.

Appendix "A"

(Respondent's Letterhead)

Dear

As you may be aware, the Federal Trade Commission (FTC) has been investigating certain activities of the National Association of School Music Dealers (NASMD) and NASMD has voluntarily entered into an agreement with the FTC which resulted in the issuance by the Commission on (date) of a complaint and the entry of a consent order. The order requires that you be sent a copy of the order and this letter.

In accordance with the terms of the FTC's order, you are hereby notified that NASMD will cease and desist from taking any action on behalf of its members, such as an actual or threatened boycott or refusal to deal, which has the purpose or effect of interfering with any musical instrument manufacturer's decision as to how or to whom it distributes its products. Further, NASMD will not urge, recommend or suggest that its members take such action.

A copy of the order is enclosed.

Sincerely,

____

President.

Enclosures

Analysis of Proposed Consent Order To Aid in Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the National Association of School Music Dealers, Inc. (NASMD).

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

The complaint prepared for issuance by the Commission along with the proposed order alleges that NASMD has combined or conspired with its retail dealer members to interfere with manufacturers' decisions concerning how they distribute their instruments, thereby restraining competition in the retail sale of musical instruments to school systems and others, in several respects.

NASMD and its members threatened to boycott musical instrument manufacturers who shipped directly from the factory to the retail dealers' customers. This practice is often called "direct shipping" or "drop shipping". The elimination of direct or drop shipping, it is claimed, would impede the ability of retail dealers who sell by mail from competing with local dealers by raising the transportation and handling costs of the mail order dealer relative to the same costs for the local dealer.

According to the complaint, NASMD adopted a resolution at its annual convention on February 9, 1982 urging manufacturers of musical instruments to "immediately eliminate all 'send direct' shipments. . . ." While retailers are not prohibited by the antitrust laws from informing a manufacturer of competitive hardships imposed upon them by the manufacturers' practices or from suggesting that manufacturers adopt a different practice, NASMD did more. It attempted to force manufacturers to stop direct or drop shipping by threatening that NASMD's retail dealer members would refuse to deal with those manufacturers who did not comply with its resolution. In so doing, NASMD violated Section 5 of the Federal Trade Commission Act.

It is also alleged that NASMD and its members acted to restrain manufacturers of musical instruments from selling at retail in competition with retail dealers. This was accomplished by requiring that manufacturers agree, as a condition of associate membership, that they would not engage in direct competition with retail dealers. The complaint states that this practice also constitutes a violation of Section 5 of the Federal Trade Commission Act.

According to the complaint, NASMD is a non-profit trade association comprised of approximately 200 full service retail dealers who specialize in the sale and servicing of band instruments, such as brass and woodwind instruments, to schools and student musicians. NASMD's retail dealer members generally concentrate their selling and service efforts in their local areas. They compete with other retail dealers some of whom do business in a much broader area as mail order dealers. NASMD also has a class of non-voting, associate members comprised of nearly all of the major manufacturers of musical instruments and related equipment.

The complaint alleges several anticompetitive effects from NASMD's threatened boycott of manufacturers to force them to eliminate drop shipping. First, retail dealers who wish to compete in markets distant from their place of business have been impeded from doing so. Second, customers, such as school systems, have been restrained from receiving direct shipments from manufacturers. This increases their cost of musical instruments. Third, manufacturers have been restrained from providing the lowest cost method of delivery, thereby increasing the cost of musical instruments. Finally, the restriction on associate membership in NASMD has restrained manufacturers from engaging in direct competition with retail dealers.

The Proposed Order

The proposed order is intended to prevent NASMD from restraining competition in the retail sale of musical instruments by interfering with manufacturers' distribution practices. Thus, the order would prohibit NASMD from engaging in, or urging that its members engage in, a boycott of, or a concerted refusal to deal with, manufacturers to force them, for example, to stop "drop shipping" or to prevent them from selling to discounters. The order would bar other forms of collective interference as well. It would prevent NASMD from requiring as a condition of membership that manufacturers agree not to directly compete with retailers.

The order recognizes, however, that manufacturers' distribution practices have a substantial effect on retailers and that retailers should be free to communicate these effects to manufacturers through their association. The mere providing of information, if not accompanied by threats, is not interference under this order and is therefore not prohibited. Nevertheless, to insure that communication between NASMD and manufacturers continues unhindered, a specific proviso is contained in the order permitting such conduct. Similarly, the order does not prevent manufacturers from responding to those communications and changing their methods of distribution.

The order is also designed to dissipate any remaining effects of NASMD's threatened boycott against manufacturers. The order would, therefore, require that NASMD mail a copy of the order and the letter contained in the appendix of the order to each of its members and to each person to whom NASMD sent written notification of the resolution passed on February 9, 1982 at its convention. For a period of three years, new members must also be given a copy of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. This analysis is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,
Secretary.

[FR Doc. 84-7397 Filed 3-19-84; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-226 (Colorado-38)]

High-Cost Gas Produced From Tight Formations;

March 15, 1984

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301–3432 (1982), to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of Colorado that the Niobrara Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on April 30, 1984.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on March 30, 1984.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NW., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8511, or Victor Zabel, (202) 357-8616.

SUPPLEMENTARY INFORMATION:

I. Background

On February 24, 1984, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.703 (1983)), that the Niobrara Formation located in Larimer and Weld Counties, Colorado, be designated as a tight formation. This Notice of Proposed Rulemaking is issued under § 271.703(c)(4) to determine whether Colorado's recommendation that the Niobrara Formation be designated a tight formation should be adopted. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The Niobrara Formation is located in Weld Country, Colorado, in Township 4 North, Range 68 West, Sections 4 through 6; and in Larimer County, Colorado, in Township 4 North, Range 69 West, Sections 1 through 10, 15 through 22; Township 5 North, Range 68 West, Sections 19 through 21, 28 through 33; and Township 5 North, Range 69 West, Sections 25 through 36, 6th P.M. No federal acreage is included in the recommended area and the area contains approximately 42 square miles.

The Niobrara Formation underlies the Pierre Shale and overlies the Codell Formation. Shales, mudstones, limestones, and dolomites comprise the Niobrara Formation. The top of the Niobrara Formation varies in depth from zero to 7,000 feet and averages 3,000 feet. The Niobrara Formation averages 300 feet in thickness and the formation is of Cretaceous age.

III. Discussion of Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG–43 convened by Colorado on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Colorado further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, [Reg. Preambles 1977–1981] FERC Stats. and Regs. ¶ 30,180 (1980), the Director gives notice of the proposal submitted by Colorado that the Niobrara Formation as described and delineated in Colorado's recommendation as filed with the Commission, be designated as a tight formation under § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before April 30, 1984. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–226 (Colorado–38), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any person wishing to present testimony, view, data, or otherwise participate at a public hearing should notify the Commission in writing that they want to make an oral presentation and so request a public hearing. The person shall specify the amount of time requested at the hearing, and should file the request with the Secretary of the Commission no later than March 30, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

Accordingly, the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, will be amended as set forth below, in the event the Commission adopts Colorado's recommendation.

Kenneth A. Williams,
Director, Office of Pipeline and Producer Regulations.

PART 271—[AMENDED]

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by adding paragraph (d)(201) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(201) *Niobrara Formation in Colorado.* RM79–76–226 (Colorado–38).

(i) *Delineation of formation.* The Niobrara Formation is located in Weld County, Colorado, in Township 4 North, Range 68 West, Sections 4 through 6; and in Larimer County, Colorado, in Township 4 North, Range 69 West, Sections 1 through 10, 15 through 22; Township 5 North, Range 68 West, Sections 19 through 21, 28 through 33; Township 5 North, Range 69 West, Sections 25 through 36, 6th P.M.

(ii) *Depth.* The average depth to the top of the Niobrara Formation is 3,000 feet. The Niobrara Formation averages 300 feet in thickness.

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BILLING CODE 6717–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Proposed Rescheduling of Sufentanil From Schedule I to Schedule II of the Controlled Substances Act

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administrator of the Drug Enforcement Administration (DEA) proposes to reschedule the Schedule I narcotic drug, sufentanil, to Schedule II of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). This action is initiated upon DEA's receipt of a letter from the Assistant Secretary for Health, Department of Health and Human Services (DHHS), recommending that sufentanil be rescheduled from Schedule I to Schedule II. According to the Food and Drug Administration, sufentanil is a narcotic drug with a high potential for abuse and a New Drug Application for sufentanil will be approved in the near future. DEA's final decision concerning the relative abuse potential of sufentanil will take account of the Assistant Secretary's recommendation and any information received in response to this proposal. The effects of this rule would be to require that the manufacture, distribution, dispensing, security, registration, recordkeeping, inventory, exportation and importation of this drug be subject to controls for Schedule II narcotic substances.

DATE: Comments and objections must be received on or before April 19, 1984.

ADDRESS: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION:

List of Subjects on 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

By **Federal Register** final rule (45 FR 64571; September 30, 1980), sufentanil was controlled under Schedule I of the CSA, effective December 1, 1980. On February 22, 1984, the Assistant Secretary for Health, on behalf of the