

Dated: September 26, 1985.
 Spence Perry,
Acting General Counsel.
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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 69

[CGD83-070]

Revision of Tonnage Measurement Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule clarifies, consolidates, and reorganizes simplified tonnage measurement regulations. Tonnage measurement is necessary to qualify a vessel for documentation, which provides evidence of nationality and qualification for employment in a specified trade, and for regulatory and other purposes. The rule neither changes the present substantive law nor affects any vessel presently documented under the laws of the United States. The revised subpart at 69.01 provides a synopsis of each measurement system, describes when and what vessels are required to be measured, defines the method to appeal adverse measurement decisions, and identifies measurement sources. The new subpart at 69.05 combines two simplified measurement regulations. The rule provides for minor coefficient changes that will have minimal impact on vessel tonnages but may preclude some small pleasure vessels from qualifying for documentation under the simplified method. This rule enables the public to better understand tonnage measurement requirements and provides a uniform simplified measurement system, while preserving the character of the present systems.

EFFECTIVE DATE: This rule is effective October 1, 1985.

FOR FURTHER INFORMATION CONTACT:

Mr. Dennis A. Lamont, Office of Merchant Marine Safety, Tonnage Survey Branch, G-MVI-5, Room 1318, U.S. Coast Guard Headquarters, (202) 428-2192, between 7:00 a.m. and 3:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published on 18 March 1985 (50 FR 10803). In response to this Notice the Coast Guard received thirteen comments which identified perceived negative impacts as

a result of the proposed rule. The Coast Guard seriously considered these comments and feels the concerns raised are the result of a misunderstanding as to the intent of the rule. These comments are discussed in detail in paragraph entitled Discussion of Comments.

Drafting Information

The principal persons involved in drafting this rule are Mr. Dennis A. Lamont, Project Manager, Office of Merchant Marine Safety, and CDR Ronald Zabel, Project Attorney, Office of the Chief Counsel.

Background

Before a vessel may be documented it must first be measured for tonnage. Although pleasure vessels are not required to be documented, many owners request documentation (and hence, measurement). In most cases the document is used to reflect a recorded, perfected lien or mortgage in accordance with the Ship Mortgage Act of 1920. This recordation is a convenience to lenders and frequently a prerequisite to acquiring loans on a vessel.

Because of the large number of pleasure craft that were being documented, and the lack of personnel available to provide measurement services, Congress in 1966 authorized a new system for optional measurement of pleasure vessels. It provides an owner of a pleasure vessel with the option to have a vessel measured under a much-simplified method than that normally employed to determine a vessel's tonnage. Tonnages are determined from owner-supplied information of the vessel's length, breadth, and depth as modified by a coefficient. The formulae take into account variations in vessel construction and the resulting tonnages, so far as practical, reflect the internal volumes of a vessel. The statute does not eliminate a vessel owner's option of requesting formal measurement.

The regulations currently found at 46 CFR Part 69 require the depth of a vessel to be measured to the bottom skin of the hull, excluding the keel unless the keel is covered by the skin. Experience has demonstrated that the definition of this overall depth has often been misinterpreted, resulting in inaccurate tonnages, and many small sailing vessels have qualified for documentation that would not qualify for documentation if they were formally measured.

The use of a 0.75 depth coefficient when the keel is covered by the skin was introduced into regulation in 1982 (based on Pub. L. 96-594) when regulations governing the simplified measurement of commercial vessels

were published. During the past three years this method has proven to reflect a more accurate tonnage when applied to commercial sailing vessels that are designed with keels covered by the "skin" such as in molded fiberglass boats. Therefore, in the combined simplified regulations this depth coefficient is retained for application also to pleasure vessels.

Discussion of Comments

Thirteen commenters questioned the intent to use the 0.75 depth coefficient when calculating the tonnages of pleasure sailing vessels that have keels covered by the skin. They state that this coefficient will result in lower tonnages and will thereby eliminate many vessels from qualifying for documentation. This in turn hampers the ability of lenders to perfect vessel liens under the Ship Mortgage Act. Further, some commenters related the 0.75 depth coefficient directly to vessel length, stating the rule will disqualify all vessels of less than 35 feet in length for documentation. They assert this will seriously impact the availability of retail financing for purchasers of these products and in turn adversely affect sales.

The tonnage requirement for eligibility for documentation is that a vessel measure 5 net tons or greater. Existing law at 46 App. U.S.C. 71 requires that measurement of vessels under the optional simplified system result in gross tonnages that reasonably reflect the relative internal volumes of the vessels, with the resulting net tonnages being in approximately the same ratios to the corresponding tonnages of comparable vessels measured under the formal systems. Vessel length is not in itself the qualifying factor for documentation but is only one of several variables in the formula used for approximating a vessel's internal volume. A review of simplified measurement records indicates that most sailing vessels of 27 feet and larger with molded keels (and many less than 27 feet, depending on the other variables in the formula) will continue to qualify for documentation under this rule.

This rule will not impact the availability of retail financing for any vessel that is qualified for documentation under U.S. law. The commenters' concerns in this area appear to be based on a misconception that the use of the 0.75 coefficient would be mandatory for all sailing vessels. The use of the 0.75 coefficient would only be used when the owner found it impossible or inconvenient to obtain the actual hull depth. Manufacturers of

small sailing vessels can ensure that this coefficient is not applied by including the actual hull depth (less keel) in specifications provided to the owner. Also the rule still provides the flexibility, in cases of disputed tonnage, for the owner to obtain formal measurement to determine a more precise tonnage. The Coast Guard believes that the application of the 0.75 coefficient to sailing vessels, in circumstances where the actual hull depth is not reasonably obtainable, is necessary to carry out the Congressional intent in establishing an effective simplified measurement system.

Because of the apparent confusion reflected by the comments, this final rule has been adjusted to more clearly explain that the overall depth of a sailing vessel should be measured to the bottom of the hull. A depth that includes the keel may be used only when the actual hull depth is not easily obtainable. The 0.75 coefficient is used only in those cases where a depth provided by an owner includes the keel.

Finally, the rule has been altered to reflect a change of mailing address for submitting applications for simplified measurement, and expanded to inform vessel owners of documentation procedures required upon measurement.

Regulatory Evaluation

This final rule is considered to be non-major under Executive 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 28, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. Since the impact of this final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

This rule consolidates the two current informational subparts at 69.01 and 69.05 into one subpart. This subpart is a guide to the measurement process and is located at 69.01. This new subpart reduces the time required to review regulatory requirements, indicates which procedure to follow, and how to apply that procedure. While this rule does not change the intent of the law regarding measurement of vessels, it places the regulations in a logical sequence, makes them more understandable and clearly identifies the various systems and sources. This rule presents no new burden on the public.

This rule also consolidates the two simplified measurement systems now located at 69.17 and 69.19 into a new subpart at 69.05. It eliminates minor coefficient differences between ship-

shaped commercial and pleasure vessels. It eliminates a minor coefficient difference between barge-shaped commercial vessels and barges. It also changes the method for measuring the depth of a pleasure sailing vessel to coincide with the method presently applied to commercial sailing vessels. This latter action may result in precluding an extremely small number of small vessels from documentation.

All vessels presently documented as U.S. vessels will remain unaffected by this rule. The combining of the two simplified systems eases the overall regulatory burden on the public, which is in keeping with this administration's regulatory policy.

Regulatory Flexibility Analysis

The regulations have been evaluated under Pub. L. 96-354 (94 Stat. 1168) and are certified as having no significant economic impact on a substantial number of small entities. As discussed above the regulations will condense those already imposed, while giving the public clearer and more concise directions to the various systems of measurement, resulting in time-savings to the public.

Paperwork Reduction Act

The information collection requirements contained in the amended regulations have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 [Pub. L. 96-511] and have been assigned the control numbers contained in the listing in the proposed amendment to Subpart 69.01 at 69.01-21.

Environmental Statement

The Coast Guard has determined that this action does not constitute a major federal action that significantly affects the quality of the human environment. If it has been determined that this action is categorically excluded from further environmental documentation.

List of Subjects in 46 CFR Part 69

Vessels, Measurement standards.

In consideration of the foregoing the Coast Guard has amended Part 69 of Title 46 Code of Federal Regulations as set forth below.

1. The authority citation to Part 69 is revised to read as follows:

Authority: 46 App. U.S.C. 71, 83h; 49 CFR 1.46(b).

2. In the table of contents for Part 69 of the portion for Subparts 69.01 and 69.05 are revised to read as follows and the portion for Subparts 69.17 and 69.19 are removed.

PART 69—MEASUREMENT OF VESSELS

Subpart 69.01—General Provisions

Sec.

- 69.01-01 Purpose.
- 69.01-03 Applicability.
- 69.01-05 Public vessels.
- 69.01-07 Definitions.
- 69.01-09 Measurement systems.
- 69.01-11 Measurement sources.
- 69.01-13 Applications.
- 69.01-15 Remeasurement and adjustment of tonnage.
- 69.01-17 Appeals.
- 69.01-19 Reimbursable costs or fees.
- 69.01-21 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Subpart 69.05—Optional Simplified Measurement

- 69.05-1 Purpose.
- 69.05-3 Definition of terms.
- 69.05-5 Application for Simplified Measurement.
- 69.05-7 Calculation of Tonnages.
- 69.05-9 Remeasurement.
- 69.05-11 Assignment of like tonnages to like vessels.

3. 46 CFR Subpart 69.01 is revised to read as follows:

Subpart 69.01—General Provisions

§ 69.01-1 Purpose.

(a) Tonnage measurement is the process used to determine vessel tonnages. Tonnages are used, among other things, to document a vessel, to apply commercial vessel safety regulations, to meet various international requirements, and as a base for operational charges. Tonnages are determined by physical measurement of a vessel (formal measurement) or, in most cases, by application of a formula based on vessel's overall dimensions (simplified measurement). This subpart indicates the appropriate measurement system or systems applicable to a vessel, identifies measurement sources and explains appeal processes.

§ 69.01-3 Applicability.

(a) All vessels of five net tons and larger that are to be documented as vessels of the United States and vessels of 79 feet in length and longer that engage on an international voyage between nations party to the International Convention on Tonnage Measurement of Ships, 1969 (1969 Tonnage Convention) are required to be measured.

(b) Vessels that transit the Panama Canal and the Suez Canal may be measured on request.

(c) The Commandant may upon request or at his option measure any vessel to determine its tonnage.

§ 69.01-5 Public vessels.

(a) Public vessels that are to be documented must meet the same measurement requirements as private vessels. Public vessels not intended to be documented may be measured upon request.

(b) Ships of war are not subject to measurement under the provisions of the 1969 Tonnage Convention nor are they assigned Panama Canal tonnages.

§ 69.01-07 Definitions.

(a) "Ton" as calculated under the United States, Panama and Suez Canal rules is equivalent to 100 cubic feet. A "ton" as used in the 1969 Tonnage Convention system varies from vessel to vessel dependent upon a logarithmic function of the vessel's volume.

(b) "Gross tonnage" is intended to reflect a vessel's approximate volume. In U.S., Panama Canal and Suez Canal formal systems it represents the total volume of all enclosed spaces less certain spaces permitted to be exempted from inclusion in gross tonnage. Under the simplified measurement system it is the product of a vessel's length, depth, and breadth as modified by a coefficient. Under the 1969 Tonnage Convention it is based on a modified volume of all enclosed spaces.

(c) "Net tonnage" is intended to be a measure of a vessel's earning capacity. In U.S., Panama Canal and Suez Canal formal measurement systems it is the result of subtracting from gross tonnage the volumes of spaces allotted to crew, propelling power, etc. Under the simplified measurement system it is the result of applying a coefficient to the gross tonnage. Under the 1969 Tonnage Convention it is the result of a formula based on the actual cargo volume and a passenger coefficient.

§ 69.01-09 Measurement systems.

(a) Some vessels may require tonnage assignments under the provisions of more than one measurement system. Listed below are the systems used for determining vessel tonnages.

(1) *Standard System of Measurement* (46 CFR 69.03). This is the basic measurement system that may be applied to all United States vessels.

(2) *Optional Dual-Tonnage Method of Measurement* (46 CFR 69.15). This system allows certain special exemptions and deductions for ships

and may be employed as an option to the Standard System of Measurement.

(3) *Optional Simplified Measurement Method* (46 CFR 69.05). This system may be employed as an option to the Standard System of Measurement. It may be applied in measuring:

(i) Commercial vessels less than 79 feet (24 meters) in overall length that will not engage in international voyages;

(ii) Barges of any length that will not engage in international voyages;

(iii) Pleasure vessels (yachts) of any length, whether or not intended to engage in international voyages.

(4) *International Convention on Tonnage Measurement of Ships, 1969*. This system (1969 Tonnage Convention) applies to vessels, whether or not documented, that measure 79 feet in length or longer and engage on international voyages between nations party to this Convention (NVIC 6-83).

(5) *Panama Canal Rules* (35 CFR Part 135). This system applies to vessels that will transit the Panama Canal.

(6) *Suez Canal Rules* (Rules of Navigation, Part IV). This system applies to vessels that will transit the Suez Canal.

(b) Combining the regulatory provisions of separate and distinct systems is not permitted.

(c) The following chart may be used as a guide to determine tonnage requirements:

Length, type vessel, and operation	Tonnage certificates			
	Required		Optional	
	United States	1969 tonnage convention	Panama Canal	Suez Canal
Under 79 ft				
Commercial self-propelled:				
International	x		x	x
Domestic	x			
Commercial barges:				
International	x		x	x
Domestic	x			
Pleasure vessels (all)				
International	x		x	x
Domestic	x			
79 ft. and longer				
Commercial self-propelled:				
International	x	x	x	x
Domestic	x			
Commercial barges:				
International	x	x	x	x
Domestic	x			
Pleasure vessels (all):				
International	x	x	x	x
Domestic	x			

¹ Certificate required only when owner elects to document vessel.

(d) A vessel of the United States, not measured under the provisions of the 1969 Tonnage Convention, that has exempted passenger spaces and engages on an international voyage will be issued a "Special Appendix to

Certificate of Registry of American Passenger Vessels" (Form CG-1265-A).

§ 69.01-11 Measurement sources.

(a) The Coast Guard and the American Bureau of Shipping (ABS) perform measurement of U.S. vessels. For vessels to be measured by the Coast Guard in the United States, other than for vessels measured under the simplified systems, owners shall apply to the nearest marine inspection or marine safety office. For vessels outside the United States, owners shall apply directly to the Commandant (G-MVI-5), U.S. Coast Guard, 2100 Second St., SW, Washington, D.C. 20593. All applications for simplified measurement shall be directed to Commandant (G-MVI-5/SM) at the above address.

(b) All applications for measurement services performed by ABS shall be directed to that organization.

§ 69.01-13 Applications.

(a) Vessel owners or their agents shall include in their application the vessel particulars, the measurement system(s) requested, ownership information, vessel location, agreement to reimburse, etc. as described separately under the various measurement systems.

(b) Applications for measurement under more than one system may be combined.

(c) Measurement will commence when the vessel is sufficiently advanced in construction, usually when decks are laid, the holds clear or encumbrances, the engine and boilers installed, and accommodations partitioned.

§ 69.01-15 Remeasurement and adjustment of tonnage.

(a) Once measured a vessel retains its tonnage until structural or arrangement changes are made that require a new measurement. The owner shall immediately report these changes to the measurement office nearest the vessel or to ABS. The owner will be advised if remeasurement is necessary.

(b) When there is a perceived error in the application of a regulation or in the calculation of the tonnage, the owner should contact the responsible measurement office. If the claim of error is verified the tonnage will be adjusted. Unaltered spaces or spaces for which no error is claimed need not be remeasured.

(c) After remeasurement or adjustment of tonnage a new tonnage certificate will be issued. If documented, the vessel's Certificate of Documentation shall be surrendered to the appropriate documentation office

with submissions required by Appendix C of Subpart 67.

§ 69.01-17 Appeals.

(a) The Commandant is solely responsible for tonnages assigned and for determining the appropriate application and interpretation of domestic and international measurement regulations as they are applied to U.S. vessels.

(b) Appeals of Coast Guard field decisions must be submitted to the Commandant via the appropriate district commander. Appeals of decisions made by authorized measurement organizations must be submitted directly to the Commandant.

(c) In an appeal the owner or his agent must recite the facts in letter form and include appropriate supporting data. While an appeal is in progress, the initial decision remains in effect. The decision of the Commandant is final.

§ 69.01-19 Reimbursable costs or fees.

(a) When the Coast Guard measures a vessel at a location other than a U.S. port of entry or customs station the owner shall agree in writing to reimburse the Coast Guard for the measurement officer's compensation, travel and subsistence expenses.

(b) Information on fees for measurement services performed by an organization authorized by the Coast Guard should be obtained directly from that source.

§ 69.01-21 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and record keeping requirements in this part by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The Coast Guard intends that this part comply with 44 U.S.C. 3507(f) which requires that agencies display the current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part of section where identified or described	Current OMB control No.
69.01-13	2115-0060 and 2115-0066.
69.01-15	Do.
69.01-17	Do.
69.05-5	2115-0066
69.05-9	Do.
69.15-3	2115-0060
69.15-39	Do.
69.15-41	Do.

4. 46 CFR Subpart 69.05 is revised to read as follows:

Subpart 69.05—Optional Simplified Measurement

§ 69.05-1 Purpose.

(a) This system may be employed as an option to the formal tonnage measurement systems described in Subpart 69.03 (Standard System of Measurement) and Subpart 69.15 (Optional Dual Tonnage Method for Measurement of Vessels). It may be applied only to the following vessels:

(1) Commercial vessels less than 79 feet (24 meters) in overall length that will not engage in international voyages.

(2) Barges of any length that will not engage in international voyages, and

(3) Pleasure vessels (yachts) of any length, whether or not intended to engage in international voyages.

Note.—A commercial vessel must be measured or remeasured under the provisions of Subparts 69.03 or 69.15 if a registry is required.

§ 69.05-3 Definition of terms.

(a) *Overall length, breadth and depth.*

(1) For single hull vessels:

(i) "Overall length" means the horizontal distance between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments).

(ii) "Overall breadth" means the horizontal distance (excluding rub rails) from the outside of the skin (outside planking or plating) on one side to the outside of the skin on the other, taken at the widest part of the hull.

(iii) "Overall depth" means the vertical distance taken at or near midships from a line drawn horizontally through the uppermost edges of the skin at the sides of the hull (excluding the cap rail and trunks, cabins, or deckhouses) to the outboard face of the bottom skin of the hull, excluding the keel. In the case of a vessel designed for sailing having its keel faired to the hull, the distance to the bottom of the keel is included in the overall depth only if the distance to the actual bottom of the hull (less keel) cannot be reasonably determined.

(2) For multi-hulled vessels each hull is separately measured for its overall length, breadth, and depth.

(b) *Register length, breadth, and depth.* (1) For single-hull vessels the register length, breadth, and depth are the vessel's overall length, breadth, and depth.

(2) For multi-hulled vessels the register length is the horizontal distance between the foremost part of the stem of the foremost hull and the aftermost part of the stern of the aftermost hull

(excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments). The register breadth is the horizontal distance taken at the widest part of the complete vessel between the outboard skin of the outboard-most hulls (excluding rub rails). The register depth is the overall depth of the deepest hull as determined under paragraph (a)(1)(iii) of this section.

(c) *Vessel designed for sailing.* The term "vessel designed for sailing" means a vessel, whether or not equipped with an auxiliary motor, which has the fine lines of a sailing craft and is in fact propelled by sail or capable of being propelled by sail (other than a mere steady sail).

§ 69.05-5 Application for Simplified Measurement.

(a) Applications for measurement under this subpart are obtainable from any marine inspection or marine safety office or from the American Bureau of Shipping. They shall be completed by the owner and include the following information:

- (1) Owner's name, address, and phone number;
- (2) Name of vessel;
- (3) Official number, state or Coast Guard number, if any;
- (4) Name of builder;
- (5) Builder's hull number, serial number, or model number;
- (6) Place built;
- (7) Year built;
- (8) Port of documentation;
- (9) Vessel's intended use (pleasure or commercial);
- (10) Dimensions of disproportionate deckhouse (see 69.05-7(a)(4));
- (11) Is vessel designed for sailing;
- (12) Is propelling machinery in hull;
- (13) Shape of hull (ship-shaped or barge-shaped);
- (14) Type of vessel (towboat, barge, trawler, yacht, etc.);
- (15) Overall length, breadth and depth (for multi-hulled vessel indicate number of hulls, overall dimensions of each hull, and the register dimensions of complete vessel); and
- (16) Sketches (not necessarily to scale) showing all required dimensions in plan, profile, and cross-section views.

(b) All lengths and depths must be measured in a vertical plane at centerline and breadths must be measured in a line at right angles to that plane. All dimensions shall be expressed in feet and inches or in feet and tenths of a foot.

(c) Applications must be signed by the owner or agent and contain a statement that all information is correct.

(d) The Coast Guard reserves the right to verify dimensions of vessels measured under this subpart.

Note.—Under the provisions of 18 U.S.C. 1001, any person making a false or fraudulent statement in an application may be fined up to \$10,000 or imprisoned for up to five years, or both.

§ 69.05-7 Calculation of Tonnages.

(a) Gross tonnage. (1) Except as provided in paragraphs (a) (2) and (3) of this section, the gross tonnage of a vessel designed for sailing shall be .50(LBD/100) and the gross tonnage of a vessel not designed for sailing shall be .87(LBD/100). LBD being the product of its overall length, breadth, and depth.

(2) The gross tonnage of a vessel whose hull approximates in shape a rectangular geometric solid (barge-shape) shall be .84(LBD/100).

(3) The gross tonnage of a multi-hulled vessel shall be the sum of all the hulls as calculated under this section.

(4) When the volume of a vessel's principal deck structure is as large or larger than the volume of its hull (disproportionate), as in the case of certain houseboats, the volume of that structure, expressed in tons of 100 cubic feet, shall be added to the tonnage of the hull as previously calculated to establish the vessel's gross tonnage.

(5) In cases where the owner provides an overall depth of a vessel designed for sailing that includes the keel, only 75% of that depth will be used for calculating purposes.

(b) *Net tonnage.* (1) For a vessel having propelling machinery in its hull:

(i) If designed for sailing the net tonnage is 90% of its gross tonnage;

(ii) If not designed for sailing the net tonnage is 80% of its gross tonnage.

(2) For a vessel having no propelling machinery in its hull, the net tonnage is the same as its gross tonnage.

§ 69.05-9 Remeasurement.

(a) A vessel must be remeasured if it is physically altered so that its dimensions or tonnage is changed.

(b) A vessel measured or remeasured under the provisions of this subpart may, upon application, be remeasured under the provisions of Subpart 69.03 or 69.15.

§ 69.05-11 Assignment of like tonnages to like vessels.

(a) Tonnages of vessels measured under this subpart which are representative of a designated class, model or type may be assigned to identical vessels of the same designated class, model or type.

Subparts 69.17 and 69.19 [Removed]

5. Subparts 69.17 and 69.19 consisting of §§ 69.17-1 through 69.17-9 and §§ 69.19-1 through 69.19-17 of Title 46 are removed.

Dated: September 25, 1985.

J. W. Kime,

Commodore, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 85-23282 Filed 9-30-85; 8:45 am]

BILLING CODE 4910-4-M

By the Chief, Mass Media Bureau.

1. In this *Order*, the Commission focuses its attention on the oversight of its radio, TV broadcast and Cable TV rules. Modifications are made herein to update, delete, clarify or correct FCC regulations as described in the following amendment summaries:

(a) When the Broadcast Bureau-CATV Bureau were reorganized into the Mass Media Bureau in December, 1982, references to either of the former Bureau names were removed from the rules. Some few survived, however, and those are corrected in this order to reflect the Mass Media Bureau designation. Four corrections are made here: §§ 0.453(a), 1.1209(g), 1.1227(b) and 78.20(a). (See appendix items 2, 3, 4 and 22).

(b) In § 73.24, Broadcast facilities: showing required, there is an incorrect cross reference in paragraph (j). The second sentence states, in part, "For Class II-C and II-S stations on the 14 frequencies listed in § 73.24(c) . . .". The 14 frequencies are listed in § 73.25(c); correction is made herein. (See appendix item 5).

(c) In Docket 20817, the Radio Operator Licensing Program,¹ the Commission combined the operator requirements found in the separate service subparts (Subparts A-AM, B-FM; C-NCE-FM and E-TV) into three new rules. They were placed in Subpart H, Rules applicable to all Broadcast Stations, and designated § 73.1860 Transmission duty operator requirements, 73.1870, Chief operator requirements and 73.1580 Transmission system inspection requirements. Left behind, in the separate service subparts, were cross references to the three new rules in Subpart H as a finder's aid to rule users.

These cross references, after four years in the service subparts, have achieved their purpose and can now be removed. The "new" combined rules (adopted in 1981) are clearly identified in both the alphabetical index and the table of contents so rule users will have no difficulty in finding them. And removing them from the separate subparts rids the rule book of extraneous information (clutter). Therefore, §§ 73.93, 73.265, 73.565 and 73.661 are removed herein (See Appendix items 6, 7, 11 and 12).

(d) Certain of the FCC rules were amended in 1983 to give licensees greater freedom to choose a method for monitoring aural modulation levels.² The

¹ Report and Order, D. 20817, Radio Operator Licensing Programs. 46 FR 35450, July 8, 1981.

² Report and Order, BC Docket 81-698, Radio Broadcast Services: Amendment of the FCC's Rules

Continued

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 73, 74, 76, and 78

Oversight of the Radio and TV Broadcast Rules

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: This Order amends broadcast station regulations in Parts 0, 1, 73, 74, 76, and 78 of the rules of the FCC. Amendments are made to delete regulations that are no longer necessary, correct inaccurate rule texts, contemporize certain requirements and to execute editorial revisions as needed for purposes of clarity and ease of understanding.

DATE: October 1, 1985.

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

FOR FURTHER INFORMATION CONTACT: Steve Crane, Policy and Rules Division, Mass Media Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 0

Commission organization.

47 CFR Part 1

Practice and procedure.

47 CFR Part 73

Radio broadcast services.

47 CFR Part 74

Experimental, auxiliary and special broadcast services.

47 CFR Part 76

Cable TV service.

47 CFR Part 78

Cable TV relay service.

Order

In the matter of oversight of the radio and TV broadcast rules

Adopted: September 25, 1985.

Released: September 27, 1985.

amendments eliminated "the requirement that aural modulation monitors . . . be type approved," and the requirement that "the operator on duty [has] continuous access to modulation level indications." These rules were no longer considered necessary because licensees must obey the general FCC rules governing modulation levels and must install whatever equipment is necessary to ensure compliance. Thus, greater operational freedom was accorded licensees.

These amendments required many changes in the rules. We failed to make one pertinent revision in § 73.317. Transmission system requirements in paragraph (a)(5) which reads:

"Means should be provided for connection and continuous operation of an approved modulation monitor."

This text is excised herein (See appendix item 8).

(e) Two other such incorrect rule texts relating to modulation monitoring are found in §§ 73.340(c) and 73.540(c), both titled "Use of Automatic transmission systems (ATS)." The offending sentences state, "Continuous operation of the station modulation monitor is not required." This incorrect text was also eliminated in BC Docket 81-698,³ but was inadvertently re-entered into the rules via the editorial corrections (or "Erratum") adopted in BC Docket 82-537 pertaining to the elimination of operating and maintenance log requirements.⁴ This incorrect text is herein removed from §§ 73.340 and 73.540. (See appendix items 9 and 10).

(f) There are four cross references in paragraph (a)(1) of § 73.687. Transmission system requirements, directing the rule user to paragraph (a)(4) of this rule. In the Report and Order in Gen. Docket 83-114, A Re-Examination of Technical Regulations, 49 FR 48305, December 12, 1984, paragraph (a)(4) was redesignated as (a)(2). The failure to modify the rule, redesignating (a)(4) as (a)(2), is corrected here. (See appendix item 13).

(g) When § 73.764, International Broadcast Station Operator Requirements, was revised in General Docket 83-322,⁵ we modified the rule to

³ To Eliminate the Requirement for Type Approval of Aural Modulation Monitors. 48 FR 36459, August 11, 1983.

⁴ Final Rule: Correction (to report and Order in BC Docket 82-537). In the Matter of Operating and Maintenance Logs for Broadcast and Broadcast Auxiliary Stations. 48 FR 44804, September 30, 1983.

⁵ Report and Order, General Docket 83-322. Requirements for Licensed Operators in the Various Radio Services. 48 FR 20658, May 16, 1984.

allow operators holding "a commercial radio operator license (any class . . .)" to be in charge of operating the transmitter apparatus. We did not use the term "operator permit" as used formerly in "operator license or permit" since the terms license and permit are synonymous.

Dropping "permit," as we found in § 73.1860, Transmitter duty operators, and in § 73.1870, Chief operators, caused some of our licensees to assume the non-use of "permit" to mean the elimination of Radiotelephone Operator Permit. It, of course, does not mean this. But since non-use of the term permit, in conjunction with license, is causing confusion, we will add it to the text of § 73.764, paragraph (a), to read "operator license or permit . . ." (as we previously did in §§ 73.1860 and 73.1870). Reducing redundancy has raised some confusion so we revise the rule herein. (See appendix item 14.)

(h) Pursuant to paragraph (c) of § 73.1690, Modification of transmission systems, certain "FM and TV station modifications may be made and operation commenced without prior authorization from the FCC," provided specific, stated requirements are followed. Further, the licensee must file an application for license modification within 10 days after completion of the changes. The FCC, upon approval of the change, issues a modified station authorization. Occasionally, our field inspectors find licensees, having made such changes, are unable to produce copies of the applications containing change descriptions. Usually this happens where the station's chief engineer is absent during the inspection and station personnel are unable to discover the application in the files. This scenario unfolds more frequently with stations using contract engineers as Chief Operators, wherein the files are located at the contract engineers office or are otherwise in his possession.

The FCC field inspector must, of course, have the application in hand to complete his review of station technical operation.

Licensees are clearly required to post the station authorization at the principal control point of the transmitter as required by § 73.1225. This obviously includes the application for a permissive change made pursuant to § 73.1690(c). In order to certify the matter for licensees and also save our field personnel the hours lost while station staffs search for such applications, we will supplement the text of § 73.1225, Station inspections by FCC, stating that a copy of the application must be posted at the control point, along with the station's

current authorization, until the amended authorization is received from the FCC and can be posted. (See appendix item 15.)

(i) The Report and Order in MM Docket 84-110,⁶ revised the section title of § 73.1560 to read "Operating power and mode tolerances." In an Order adopted June 11, 1985,⁷ the title of this section was inadvertently changed to its original form as "Operating power tolerances." It is revised herein to correctly read as stated in the Report and Order of December 1984. (See appendix 16.)

(j) Also, in the Report and Order in Mass Media Docket 84-110, described in Paragraph (i) above, § 73.3548, Applications to operate by remote control, was removed. Two new rules, applicable to AM, FM and TV stations, were added via this Order: Section 73.1400 Remote control authorization and § 73.1410 Remote control operation. A cross reference to the removed § 73.3548 remains in § 73.1690(d)(2). It is corrected herein to cross reference the new remote control authorization and operation rule sections described above. (See appendix item 17.)

(k) With the adoption of the Report and Order in the rule making which revised the Commission's license renewal procedures,⁸ year round announcements requiring licensees to give local public notice of their public interest obligations were removed from the rules. (§ 73.1202.) Requirements to file letters received from the public were retained; the rule was rewritten and retitled "Retention of letters received from the public."

In § 73.3580, Local public notice of filing of broadcast applications, subparagraph (d)(4)(v) reads in part:

" . . . (v) During the period beginning on the first full calendar month . . . the public notice [announcement] requirements under § 73.1202 do not apply."

This reference to "public notice requirements under § 73.1202" is removed from § 73.3580 herein. (See appendix item 18.)

(l) The Report and Order in General Docket 83-322⁹ eliminated or modified rules that required licensed commercial radio operators on duty during broadcast operation. Two such rules

⁶ In the Matter of Remote Control Operation of AM, FM And TV Broadcast Stations. 49 FR 47608, December 6, 1984.

⁷ Order, 50 FR 28567, June 27, 1985.

⁸ Report and Order in BC Docket 80-253, In the Matter of Revision of Applications for Renewal of License of Commercial and Non-commercial AM, FM and TV Licensees. 46 FR 26236, May 11, 1981.

⁹ See n. 5.

were removed in Part 74: In Subpart F, TV Broadcast Auxiliary Stations (§ 74.665), and in Subpart I, Instructional TV Fixed Service (§ 74.966).

Both of these Subparts contain a rule section pertaining to the posting of station and operator licenses. (§§ 74.664 and 74.965 respectively.) The operator license posting was not removed when the operator requirements were eliminated. The posting rules are amended herein to correct this inadvertent reference to posting operator licenses. (See appendix items 19 and 20).

(m) The Notice of Proposed Rule Making in Docket 20561 announced the Commission's intention to review the definition of a cable television system found in § 76.5. In the Report and Order to this proceeding,¹⁰ the Commission stated "The principal change is to delete from the definition the *Note* following it [the CATV definition] which specifies that each community will be treated as having a separate cable system."

Through inadvertence, the note was not deleted from § 76.5, probably due to the manner in which the amendatory language was drafted. It states, "In § 76.5, paragraph (a) is amended . . ." and fails to state that the *Note* following (a) is deleted. After the rule in modified paragraph (a), wherein the newly adopted definition of a Cable Television System was stated, the Order writer followed with the drafting language of five asterisks. This tells the editor that all parts of the rule following remains, and the textually excised *Note* stayed in the rule section. We correct this oversight herein and remove the *Note* following paragraph (a) as directed in the Report and Order. (See appendix item 21.)

(n) Where removal of paragraphs in rule sections takes place via rule makings, the paragraph designation may be allowed to remain and, with the text removed, the paragraph will be denoted "[Reserved]." As shown in the attached appendix, a number of these [Reserved] designations are removed since they serve no purpose and simply clutter the rule volume. Where succeeding paragraphs remain, they will be appropriately redesignated. (See appendix items 23 through 32).

2. In General Docket 85-75¹¹ the Commission gave Notice of the list of its

¹⁰ Report and Order, Docket 20561, Amendment of Part 76 of the Commission's Rules and Regulations with Respect to the Definition of a Cable Television System and the Creation of Classes of Cable Systems, 60 FCC 2d 956, Adopted March 9, 1971.

¹¹ Notice, in General Docket 85-75, 50 FR 13394, April 4, 1985; and Further Notice, in General Docket 85-75, 50 FR 26593, June 27, 1985.

rules to be reviewed in this, the final year of scheduled rules review pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). The review was initiated in 1981 in the Notice in General Docket 81-708, 46 FR 56466, November 17, 1981, to determine if our rules imposed a significant economic impact on a substantial number of small entities. With the finalization of this year's survey of regulations, and actions theron, the Mass Media Bureau completes the regulatory review of all rules' sections in Parts 73, 74, 76, 78 and 100.

3. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

4. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of proposed rule making, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

5. Since a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

6. Therefore, it is ordered, That pursuant to section 4(1), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and section 0.61 and 0.283 of the Commission's Rules, Parts 0, 1, 73, 74, 76 and 78 of the FCC Rules and Regulations are amended as set forth in the attached appendix, effective upon publication in the *Federal Register*.

7. For further information on this Order, contact Steve Crane, (202) 632-5414, Mass Media Bureau.

Federal Communication Commission.

James C. McKinney,
Chief, Mass Media Bureau.

Appendix

47 CFR Parts 0, 1, 73, 74, 76 and 78 are amended as follows:

1. The authority citation for Parts 0, 1, 73, 74, 76 and 78 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 0.453 is amended by revising paragraph (a) introductory text to read as follows:

§ 0.453 Public reference rooms.

(a) The *Mass Media and Dockets Reference Room*. The following documents, files and records are available for inspection at this location.

3. 47 CFR 1.1209 is amended by revising paragraph (g) to read as follows:

§ 1.1209 Decision making Commission personnel (restricted rule making proceedings).

(g) The Chief of the Mass Media Bureau and his staff when participating in proceedings involving service by common carriers to cable televisions systems.

4. 47 CFR 1.1227 is amended by revising paragraph (b) to read as follows:

§ 1.1227 Permissible ex parte communications.

(b) Such ex parte communications initiated by the staff of the Common Carrier Bureau or the Mass Media Bureau as may be necessary for the adduction of record evidence in restricted rulemaking proceedings.

5. 47 CFR 73.24 is amended by revising paragraph (j) to read as follows:

§ 73.24 Broadcast facilities; showing required.

(j) the 5 mV/m contour (or, at night, the interference-free contour, if of a higher field strength) encompasses the entire principal community to be served. For Class II-C and II-S stations on the 14 frequencies listed in § 73.25(c) it is not necessary to demonstrate the ability to provide such coverage during nighttime operation.

§ 73.93 [Removed]

6. 47 CFR 73.93, AM operator requirements, is removed in its entirety.

§ 73.265 [Removed]

7. 47 CFR 73.265, FM operator requirements, is removed in its entirety.

§ 73.317 [Amended]

8. 47 CFR 73.317, Transmission system requirements, is amended by removing paragraph (a)(5) and redesignating paragraphs (a)(6) through (a)(9) as (a)(5) through (a)(8).

9. 47 CFR 73.340 is amended by revising paragraph (c) to read as follows:

§ 73.340 Use of automatic transmission systems (ATC).

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

10. 47 CFR 73.540 is amended by revising paragraphs (c) to read as follows:

§ 73.540 Use of automatic transmission systems (ATC).

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

§ 73.565 [Removed]

11. 47 CFR 73.565, NCE-FM operator requirements, is removed in its entirety.

§ 73.661 [Removed]

12. 47 CFR 73.661, TV operator requirements, is removed in its entirety.

13. 47 CFR 73.687 is amended by revising paragraph (a)(1) to read as follows:

§ 73.687 Transmission system requirements.

(a) *Visual transmitter.* (1) The field strength or voltage of the lower sideband, as radiated or dissipated and measured as described in paragraph (a)(2) of this section, shall not be greater than -20 dB for a modulating frequency of 1.25 MHz or greater and in addition, for color, shall not be greater than -42 dB for a modulating frequency of 3.579545 MHz (the color subcarrier frequency). For both monochrome and color, the field strength or voltage of the upper sideband as radiated or dissipated and measured as described in paragraph (a)(2) of this section shall not be greater than -20 dB for a modulating frequency of 4.75 MHz or greater. For stations operating on channels 15-69 and employing a transmitter delivering maximum peak visual power output of 1 kW or less, the field strength or voltage of the upper and lower sidebands, as radiated or dissipated and measured as described in paragraph (a)(2) of this section, shall depart from the visual amplitude characteristic (Figure 5a of § 73.699) by no more than the following amounts:

-2 dB at 0.5 MHz below visual carrier frequency;

-2 dB at 0.5 MHz above visual carrier frequency;

-2 dB at 1.25 MHz above visual carrier frequency;

-3 dB at 2.0 MHz above visual carrier frequency;

-6 dB at 3.0 MHz above visual carrier frequency;

-12 dB at 3.5 MHz above visual carrier frequency;

-8 dB at 3.58 MHz above visual carrier frequency (for color transmission only).

The field strength or voltage of the upper and lower sidebands, as radiated or dissipated and measured as described in paragraph (a)(2) of this section, shall not exceed a level of -20 dB for a modulating frequency of 4.75 MHz or greater. If interference to the reception of other stations is caused by out-of-channel lower sideband emission, the technical requirements applicable to station operating on Channels 2-13 shall be met.

14. 47 CFR 73.764 is amended by revising paragraph (a) to read as follows:

§ 73.764 International broadcast station operator requirements.

(a) One or more operators holding a commercial radio operator license or permit (any class, unless otherwise endorsed) must be on duty where the transmitting apparatus of each station is located and in actual charge thereof whenever it is being operated.

15. 47 CFR 73.1225 is amended by adding new paragraph (c)(2)(iv) and by adding new paragraph (c)(3)(iii) to read as follows:

§ 73.1225 Station inspections by FCC.

(c) • • •

(2) • • •

(iv) Application for modification of the transmission system made pursuant to § 73.1890(c).

(3) • • •

(iii) Application for modification of the transmission system made pursuant to § 73.1890(c).

16. 47 CFR 73.1560 is amended by revising the section title to read as follows:

§ 73.1560 Operating power and mode tolerances.

17. 47 CFR 73.1960 is amended by revising paragraph (d)(2) to read as follows:

§ 73.1960 Modification of transmission systems.

(d) • • •

(2) Commencement of remote control operation pursuant to §§ 73.1400 and 73.1410.

§ 47.3580 [Amended]

18. 47 CFR 73.3580, Local public notice of filing of broadcast applications, is amended by removing paragraph (d)(4)(v) in its entirety.

19. 47 CFR 74.664 is amended by removing paragraph (b) and the Note which follows it; by revising paragraph (c), and redesignating it paragraph (b); and by revising the section title to read as follows:

§ 74.664 Posting of station license.

(a) • • •

(b) Posting of the station license and any other instruments of authorization shall be done by affixing the license to the wall at the posting location, or by enclosing it in a binder or folder which is retained at the posting location so that the document will be readily available and easily accessible.

20. 47 CFR 74.965 is amended by removing paragraph (d); by revising paragraph (e) and redesignating it paragraph (d); and by revising the section title to read as follows:

§ 74.965 Posting of station license.

(d) Posting of station license and any other instruments of authorization shall be done by affixing the license to the wall at the posting location, or by enclosing it in a binder or folder which is retained at the posting location so that the document will be readily available and easily accessible.

§ 76.5 [Amended]

21. 47 CFR 76.5, Definitions, is amended by removing the Note following paragraph (a) *Cable Television System.*

22. 47 CFR 78.20 is amended by revising paragraph (a) to read as follows:

§ 78.20 Acceptance of applications; public notice.

(a) Applications which are tendered for filing in Washington, D.C., are dated upon receipt and then forwarded to the Mass Media Bureau where an administrative examination is made to ascertain whether the applications are complete. Applications found to be complete, or substantially complete, are accepted for filing and are given a file number. In case of minor defects as to completeness, the applicant will be required to supply the missing information. Applications which are not substantially complete will be returned to the applicant.

§ 73.188 [Amended]

23. 47 CFR 73.188, Location of transmitters, is amended by removing paragraphs (c) and (d) [Reserved] and redesignating paragraphs (e) through (m) as (c) through (k).

§ 73.658 [Amended]

24. 47 CFR 73.658, Affiliations agreements and network program practices; territorial exclusivity in non-network program arrangements, is amended by removing Note 2 [Reserved] following paragraph (m) and redesignating Notes 3, 4 and 5 as Notes 2, 3 and 4.

§ 73.682 [Amended]

25. 47 CFR 73.682, Transmission standards, is amended by removing paragraph (a)(23) [Reserved] and redesignating paragraphs (a)(24), as (a)(23).

§ 73.1210 [Amended]

26. 47 CFR 73.1210, TV/FM dual language broadcasts in Puerto Rico, is amended by removing paragraph (b)(4) [Reserved] and redesignating paragraph (b)(5) as (b)(4).

§ 73.1550 [Amended]

27. 47 CFR 73.1550, Extension meters, is amended by removing paragraph (b)(1)(iii) [Reserved] and redesignating paragraph (b)(1)(iv) as (b)(1)(iii).

§ 73.1800 [Amended]

28. 47 CFR 73.1800, General requirements related to the station log, is amended by removing paragraph (f) [Reserved] and redesignating paragraph (g) as (f).

§ 73.3533 [Amended]

29. 47 CFR 73.3533, Application for construction permit or modification of construction permit, is amended by removing paragraph (a)(4) [Reserved] and redesignating paragraphs (a) (5) through (8) as (a) (4) through (7).

§ 73.3536 [Amended]

30. 47 CFR 73.3536, Application for license to cover construction permit, is amended by removing paragraph (b)(4) [Reserved] and redesignating paragraphs (b) (5) through (8) as (b) (4) through (7).

§ 73.3615 [Amended]

31. 47 CFR 73.3615, Ownership reports, is amended by removing paragraph (d) [Reserved] and redesignating paragraphs (e) through (h) as (d) through (g).

§ 76.501 [Amended]

32. 47 CFR 76.501, Cross ownership, is amended by removing paragraph (a)(3) [Reserved].

[FR Doc. 85-23398 Filed 9-30-85 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 2

[General Docket No. 85-113; FCC 85-517]

Amendment of the Rules To Permit Land Mobile Use of the Band 421-430 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: The Commission has changed Part 2 of its Rules, adding a primary allocation in portions of the 421-430 MHz band to the private land mobile radio services within 50 miles of Detroit, Cleveland and Buffalo. No change was made to the current secondary amateur allocation. This action will help to meet the communications capacity needs of the land mobile service in these areas.

DATE: Allocation is effective November 4, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Don Precure, (202) 653-8170.

SUPPLEMENTARY INFORMATION:**List of Subjects in 47 CFR Part 2**

Frequency allocations, Treaties, Radio.

Report and Order

In the matter of amendment of Part 2 of the Commission's rules to permit land mobile use of the band 421-430 MHz in Detroit, Cleveland and Buffalo; Gen. Docket 85-113, FCC 85-517.

Adopted: September 20, 1985.

Released: September 26, 1985.

By the Commission.

Introduction

1. The purpose of this *Report and Order* is to help satisfy communications capacity needs of the private land mobile radio services in the vicinities of Detroit, Cleveland and Buffalo by allocating portions of the band 421-430 MHz for land mobile use near these cities. This allocation is desirable because it will reduce land mobile channel congestion near these cities and is possible without further disrupting amateur operations beyond that already proposed in other proceedings.

Background

2. Prior to the 1979 World Administrative Radio Conference ("WARC"), the 420-450 MHz band was allocated on a primary basis to the Radiolocation radio service and was shared on a secondary basis by the amateur radio service. The 420-430 and 440-450 MHz bands were reallocated at the WARC for primary use by the Fixed and Mobile radio services, subject to a modification to International Footnote 651 showing continued primary Radiolocation use in the United States of the 420-430 and 440-450 MHz bands and to new Footnote 652, which continued the secondary amateur allocation in the United States on the same bands.

3. An Arrangement¹ was entered into between the United States and Canada by exchange of diplomatic notes on April 7, 1982. Although the Arrangement was developed mainly to permit interference-free operation by both nations of their primary services in the border areas, it also allows non-Government land mobile operations in Detroit, Cleveland and Buffalo ("the cities"). On April 15, 1985, the Commission adopted a *Notice of Proposed Rulemaking* ("Notice")² proposing to allocate portions of the 421-430 MHz band in the cities for land mobile use. Comments and replies supporting the proposed allocation were filed by five private land mobile frequency coordinator groups while three amateur groups filed in opposition.

4. Shared primary use of these bands by both the private land mobile radio services and the Government Radiolocation service is made possible by an agreement reached in discussions between the Commission and NTIA. NTIA has agreed to allow the United States portion of this band to be used for non-Government purposes in these three cities while retaining the primary United States allocation for Radiolocation. It will do this by avoiding use of these frequencies, to the extent possible and except in emergencies, within interference range of the three cities.³

¹ "Arrangement Between the Department of Communications of Canada and the National Telecommunications and Information Administration and the Federal Communications Commission of the United States Concerning the Use of the 406.1 to 430 MHz Band in Canada/United States Border Areas." See footnote 1 of the *Notice*.

² See *Notice of Proposed Rulemaking* in Gen. Docket No. 85-113, FCC 85-188, 50 FR 16109, (adopted April 15, 1985).

³ Although the U.S. Government reserves the right to operate radiolocation stations in the 420-430 MHz band on board fixed-wing aircraft, the government will minimize use of this band on flights within interference range of land mobile operations.