

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the bridge averaged only one vessel opening every three days in 1984 and only one vessel opening every five days in 1985 through October. These few vessels can reasonably give four hours advance notice for a bridge opening, from ashore or afloat, by placing a collect call at any time to the bridge owner at the LDOTD District Office in Lafayette, Louisiana, telephone (318) 233-7404. Mariners requiring the bridge openings are repeat users of the waterway and scheduling their arrival at the bridge at the appointed time should involve little or no additional expense to them. Should the occasion arise to open the bridge on less than four hours notice for an emergency or to operate the bridge on demand for a temporary surge in waterway traffic, the LDOTD has committed to doing so. Since the economic impact of this regulation 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.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.507 is revised to read as follows:

§ 117.507 Tigre Bayou

The draw of the S330 bridge, mile 2.3 near Delcambre, shall open on signal if at least four hours notice is given. The draw shall open on less than four hours notice for an emergency and shall open on signal should a temporary surge in waterway traffic occur.

Dated: December 13, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 85-30510 Filed 12-24-85; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION**38 CFR Part 3****Temporary Programs of Vocational Training**

AGENCY: Veterans Administration.

ACTION: Final rules.

SUMMARY: The Veterans Administration (VA) has amended its adjudication regulations to implement certain provisions of Pub. L. 98-543, the Veterans' Benefits Improvement Act of 1984. These amendments are necessary to define Adjudication Division responsibilities with respect to newly established temporary vocational rehabilitation training programs. The effect of these amendments will be to provide authority for actions to insure participation in temporary vocational rehabilitation training programs.

DATES: These rules are effective February 1, 1985, as provided by law.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits (202) 389-3005.

SUPPLEMENTARY INFORMATION: On pages 36631-33 of the Federal Register of September 9, 1985, the VA published proposed amendments to 38 CFR 3.341 through 3.343. Interested persons were given until September 30, 1985, to submit comments, suggestions or objections to the proposed amendments. Since no comments, suggestions or objections were received, the amendments have been adopted as proposed.

The Administrator hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act 5 U.S.C. 601-612. Therefore, pursuant to 5 U.S.C. 606(b), these regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulations impose no regulatory burdens on small entities, and only claimants for VA benefits will be directly affected. Determined that these regulations are non-major for the following reasons:

(1) They will not have an annual effect on the economy of \$100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans, Veterans Administration.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

Approved: November 27, 1985.

By direction of the Administrator.

Everett Alvarez Jr.,

Deputy Administrator.

PART 3—[AMENDED]

38 CFR Part 3, *Adjudication*, is amended as follows:

1. Section 3.341 is amended by adding paragraph (c) to read as follows:

§ 3.341 Total disability ratings for compensation purposes.

(c) *Temporary program of vocational rehabilitation.* (1) Each time a veteran is rated totally disabled on the basis of individual unemployability during the period beginning on February 1, 1985, and ending on January 31, 1989, the Vocational Rehabilitation and Counseling Division will be notified so that an evaluation may be made, as required by § 21.6513, to determine whether the achievement of a vocational goal by the veteran is reasonably feasible. Upon receipt of notice from the Vocational Rehabilitation and Counseling Division that any such veteran, for reasons other than those beyond the veteran's control, has failed to participate in the evaluation process, the veteran's rating shall be reduced, in accordance with § 3.105(e), to the rating applicable to the veteran's service-connected disabilities without consideration of individual unemployability and shall remain so reduced for the duration of such failure.

(2) Veterans described in paragraph (c)(1) of this section from whom it is determined that the achievement of a vocational goal is reasonably feasible and for whom an individualized written plan of vocational rehabilitation is formulated will be required to pursue the program described in that plan.

Upon receipt of notice from the Vocational Rehabilitation and Counseling Division that any such veteran, for reasons other than those beyond the veteran's control, has failed to pursue (or to continue to pursue) such vocational rehabilitation program in accordance with § 21.6517, the rating board, in a promptly scheduled review of the veteran's rating, shall consider the results of the feasibility evaluation for that veteran together with any other evidence concerning the veteran's eligibility for a total disability rating based on individual unemployability and shall adjust the veteran's rating as necessary.

(38 U.S.C. 363)

2. In § 3.342, paragraph (b)(4) is revised and paragraph (c) is added to read as follows:

§ 3.342 Permanent and total disability ratings for pension purposes.

(b) * * *

(4) The following shall not be considered as evidence of employability:

(i) Employment as a member-employer or similar employment obtained only in competition with disabled persons.

(ii) Participation in, or the receipt of remuneration as a result of participation in, a therapeutic or rehabilitation activity under 38 U.S.C. 618. (But see §§ 3.262 and 3.271 with regard to income for pension purposes.)

(38 U.S.C. 618(f))

(c) *Temporary program of vocational rehabilitation training for certain pension recipients.* (1) When a veteran under age 50 is awarded disability pension during the period beginning on February 1, 1985, and ending on January 31, 1989, the Vocational Rehabilitation and Counseling Division will be notified so that an evaluation may be made, as required by § 21.6050, to determine that veteran's potential for rehabilitation. Upon receipt of notice from the Vocational Rehabilitation and Counseling Division that a veteran, for reasons other than those beyond the veteran's control, has failed to participate in the evaluation process, the veteran's disability pension award shall be suspended effective the date of last payment and shall remain suspended for the duration of such failure.

(2) Veterans age 50 or older who are awarded disability pension during the period beginning on February 1, 1985, and ending on January 31, 1989, are also eligible to apply for participation in vocational rehabilitation training:

however, such participation is strictly voluntary, and the provisions of paragraph (c)(1) of this section do not apply to such veterans. (38 U.S.C. 524)

3. In § 3.343, paragraph (c) is revised to read as follows:

§ 3.343 Continuance of total disability ratings.

(c) *Individual unemployability.* (1) In reducing a rating of 100 percent service-connected disability based on individual unemployability, the provisions of § 3.105(e) are for application but caution must be exercised in such a determination that actual employability is established by clear and convincing evidence. When in such a case the veteran is undergoing vocational rehabilitation, education or training, the rating will not be reduced by reason thereof unless there is received evidence of marked improvement or recovery in physical or mental conditions or of employment progress, income earned, and prospects of economic rehabilitation, which demonstrates affirmatively the veteran's capacity to pursue the vocation or occupation for which the training is intended to qualify him or her, or unless the physical or mental demands of the course are obviously incompatible with total disability. Neither participation in, nor the receipt of remuneration as a result of participation in, a therapeutic or rehabilitation activity under 38 U.S.C. 618 shall be considered evidence of employability. (38 U.S.C. 618(f))

(2) If a veteran with a total disability rating for compensation purposes based on individual unemployability begins to engage in a substantially gainful occupation during the period beginning on February 1, 1985, and ending on January 31, 1989, the veteran's rating may not be reduced solely on the basis of having secured and followed such substantially gainful occupation unless the veteran maintains the occupation for a period of 12 consecutive months. For purposes of this subparagraph, temporary interruptions in employment which are of short duration shall not be considered breaks in otherwise continuous employment.

(38 U.S.C. 363(a))

[FR Doc. 85-30469 Filed 12-24-85; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 421

[FRL-2941-1]

Nonferrous Metals Manufacturing Point Source Category, Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting errors in the preamble and effluent limitations guidelines and pretreatment standards for the nonferrous metals manufacturing point source category which appeared in the Federal Register on September 20, 1985 (50 FR 38276).

FOR FURTHER INFORMATION CONTACT: Mr. Ernst P. Hall at (202) 382-7126.

SUPPLEMENTARY INFORMATION: EPA has promulgated regulations for the nonferrous metals manufacturing point source category in two phases because of the diversity and complexity of the category. Phase I was promulgated on March 8, 1984 (49 FR 8742). Phase II was promulgated on September 20, 1985 (50 FR 38276). The Phase II regulation contained errors which are discussed briefly below and are corrected by this notice.

First, the preamble to the Phase II regulation incorrectly referred to a BAT regulation for the secondary indium and secondary nickel subcategories when no BAT regulations are promulgated for those subcategories. The correct reference is to NSPS. Second, the Phase II regulation erroneously changed the Phase I PSES compliance date to September 20, 1988 for subparts J, K, L, and M. As stated in the March 8, 1984 Phase I final rule, the PSES compliance date for these subparts is March 8, 1987. For subparts N through AE, the PSES compliance date under Phase II is September 20, 1988.

Also, subpart I—Metallurgical Acid Plants Subcategory contained an error. The Preamble to the final Phase II rule clearly explained that EPA was expanding the applicability of the existing BPT requirements to molybdenum metallurgical acid plants. As part of this expanded applicability, the final Phase II preamble discussion explicitly noted that "[t]he pollutants specifically regulated at BPT are arsenic, cadmium, copper, lead, zinc, fluoride, molybdenum, TSS and pH." (emphasis added). (50 FR 38301). However, due to a typographical error in

preparing the final regulations for Federal Register publication, the Agency omitted to include the two pollutants fluoride and molybdenum in the BPT table at 40 CFR 421.92 for the metallurgical acid plant subcategory. Today's notice corrects this error.

Finally, the summary of process wastewater sources in the Primary Zirconium and Hafnium subcategory in Section V(A) of the preamble (50 FR 38282) needs to be corrected to indicate that only 14 of the 18 process wastewater sources with allowances in this category are included in the summary. The remaining four are described in detail in the zirconium and hafnium development document. The final regulations for this category provide allowances for each of the zirconium and hafnium process waste water sources.

Dated: December 11, 1985.

Lawrence J. Jensen,

Assistant Administrator for Water.

The following corrections are made in FRL 2872-1, the Nonferrous Metals Manufacturing Point Source Category; Effluent Limitations Guidelines; Pretreatment Standards and New Source Performance Standards published in the Federal Register on September 20, 1985 (50 FR 38276).

1. The sixth full paragraph in the third column on page 38292 which reads, "The sources of process wastewater receiving an allowance in the primary zirconium and hafnium subcategory are listed below along with the pollutants typically found in each:" is revised to read as follows:

"Fourteen of the remaining 18 sources of process wastewater receiving an allowance in the primary zirconium and hafnium subcategory are listed below, along with the pollutants typically found in each. The other four sources are described in detail in the accompanying development document for this subcategory."

2. On page 38310, second column, line 8, change "BAT" to "NSPS".

3. On page 38310, third column, line 46, change "BAT" to "NSPS".

4. On page 38312, third column, line 14, change "BAT" to "PSES".

5. Section 421.4 on page 38342, column 2, is correctly revised to read as follows:

§ 421.4 Compliance date for pretreatment standards for existing sources (PSES).

The PSES compliance deadline in subparts A through M is March 8, 1987. The PSES compliance deadline for plants in subparts N through AE is September 20, 1988.

§ 421.92 [Corrected]

6. Section 421.92, on page 38343, first column, the table is correctly revised to read as follows:

SUBPART I—METALLURGICAL ACID PLANT

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds of 100% sulfuric acid capacity)	
Cadmium	0.180	0.090
Copper	5.000	2.000
Lead	1.800	0.790
Zinc	3.800	0.900
Fluoride ¹	212.800	121.000
Molybdenum ¹	40.180	20.790
Total suspended solids	304.000	152.000
pH	2	

¹ For Molybdenum Acid Plants Only.

² Within the range of 6.0 to 9.0 at all times.

[FR Doc. 85-30250 Filed 12-24-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-154; RM-4927]

FM Broadcast Station in Mount Pleasant, SC

AGENCY: Federal Communications Commission.

AGENCY: Final rule.

SUMMARY: Action taken herein substitutes Channel 283C2 for Channel 285A at Mount Pleasant, South Carolina, and modifies the license of Station WDXZ to specify operation on the higher powered channel, at the request of Southeast Communications, Inc.

EFFECTIVE DATE: January 27, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio.

The Authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended 1082, as amended; 47 U.S.C. 154, 303. Interpret 47 U.S.C. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the Matter of amendment of § 73.202(b), table of allotments, FM broadcast stations, (Mount Pleasant, South Carolina) [MM Docket No. 85-154, RM-4927]

Adopted: December 16, 1985.

Released: December 19, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 Fed. Reg. 23733, published June 5, 1985, soliciting comments on the proposal to substitute Channel 283C2 for Channel 285A at Mount Pleasant, South Carolina, at the request of Southeast Communications, Inc. ("Southeast"). The *Notice* also proposed to modify the license of Station WDXZ to specify operation on the higher-powered channel. Comments were filed by Southeast and Christ Church Parish Broadcasting, Inc. ("Christ Church") and reply comments were filed by Southeast and Resort Broadcasters of Charleston, Inc. ("Resort").

2. As stated in the *Notice*, the Commission may not modify the license of Station WDXZ if another party expresses an interest in the higher-powered channel unless an additional equivalent channel is allocated. See, *Modification of FM and TV Station Licenses*, 98 F.C.C. 2d 916 (1984). Both Christ Church and Resort have expressed such an interest and no second equivalent channel is available at Mount Pleasant. However, Christ Church has now withdrawn its interest in the new allocation and Resort's interest was not timely filed as comments but were filed as reply comments.¹

3. Channel 283C2 can be allocated to Mount Pleasant in compliance with the Commission's minimum distance separation requirements if the transmitter site is restricted to an area at least 17.0 kilometers (10.6 miles) southwest of the community to avoid short-spacing to Station WNOK, Channel 284 at Columbia, South Carolina, and to ensure placement of the transmitter on land. In view of the foregoing and the stated need for a wide coverage area FM station, the Commission believes that the public interest would be served by the allocation of Channel 283C2 to Mount Pleasant, South Carolina.

In adopting § 1.420(g), the Commission stated that "... its policy of granting modification to stations seeking to upgrade their facilities is not violative of the *Ashbacker* mandate in situations where no other interest in the proposed superior class of channel is expressed in comments." 98 F.C.C. 2d 916, 919 (1984).

As for the late expression of interest filed by Resort in the use of the new channel, we have been provided with no reason for the late filing. Therefore, we find no reason to waive the requirement that such expressions of interest be timely filed. Accordingly, we are herein modifying the license of Station WDXZ to specify operation on Channel 283C2 in lieu of Channel 285A.

PART 73—[AMENDED]

4. In view of the above and pursuant to the authority contained in §§ 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective January 27, 1986 the FM Table of Allotments, § 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below to read as follows:

City	Channel No.
Mount Pleasant, SC	283C2

5. It is further ordered, that pursuant to section 316(a) of the Communications Act of 1934, as amended, the license of Station WDXZ, Mount Pleasant, South Carolina, IS MODIFIED to specify operation of Channel 283C2 subject to the following conditions:

(a) The licensee shall submit to the Commission a minor change application for a construction permit (Form 301);

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of environmental impact statement pursuant to § 1.301 of the Commission's Rules.

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

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission
Charles Schott,
Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 85-30428 Filed 12-24-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73 [FCC 85-647]

Construction of Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action taken by the Commission on its own initiative extends the time period for construction of TV and radio broadcast stations to 24 and 18 months, respectively. Permittees of other broadcast and auxiliary stations also will have 18 months within which to build their facilities. The FCC adopted these modifications to provide realistic time periods for station construction. However, strict criteria for the granting of applications to extend the time to construct broadcast facilities and for granting modifications and assignment/transfers were adopted in order to avoid unwarranted delays and expedite service to the public. These criteria were not imposed on Instructional TV Fixed and International Broadcast stations. Moreover, we are removing the paperwork burdens on TV permittees by eliminating the requirement to file mid-term progress reports on construction.

EFFECTIVE DATE: December 10, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:

Freda Lippert Thyden, Mass Media Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio and Television broadcasting.
Memorandum Opinion and Order

In the matter of amendment of § 73.3598 and associated rules concerning the construction of broadcast stations.

Adopted: December 10, 1985.
Released: December 17, 1985.

By the Commission.

1. The matter before us is the amount of time taken by broadcast permittees to construct their facilities. Currently, Section 73.3598 of the Commission Rules provides that the period for construction of television and radio broadcast stations is 18 and 12 months, respectively. The latter period also applies to other broadcast, auxiliary and Instructional TV Fixed (ITFS) stations.¹ However, the many applications for extension of time (FCC Form 701)

¹ Specifically, this provision [Rule § 73.3598(b)] includes International Broadcast, low power TV, TV translator, FM translator, FM booster and broadcast auxiliary. Though an oversight, § 73.3598 of the Commission's Rules was not amended to reflect an extension of the construction period for

granted makes this period to build much greater and thus precludes activation of new broadcast service to the public. We are seriously concerned about this situation and intend to strictly review applications for extensions. However, in recognition of the substantial changes in the complexity and amount of the equipment needed and the growing multiplicity of business decisions involved in establishing a station, we are extending the initial period to construct.² We will now allow construction periods of 24 months for television stations and 18 months for AM and FM radio and other broadcast and auxiliary stations.³

2. By extending the initial length of time allowed permittees to construct their stations, we have provided an adequate time to build broadcast facilities. Thus, there should be fewer applications to extend time. In any event, permittees would be well advised to note our present determination to limit the grant of extension requests. We are providing strict criteria for the granting of applications to extend time to construct broadcast stations.⁴ Thus, an application for extension of time to construct such facilities will be granted only under one of the following three circumstances:⁵

Instructional TV Fixed stations to 18 months which was adopted by the Commission in the ITFS Report and Order (MM Docket No. 83-823), 49 FR 32590 (August 15, 1984). This oversight is corrected in the instant document.

² Under the Federal Radio Commission, the time period within which to construct broadcast stations was four months, whereas in 1934 the FCC provided an eight month construction time period. In 1970, the construction period was again lengthened, that time to its current amount.

³ A petition for rule making was filed on July 29, 1985, by Mary P. Norman, requesting that International Broadcast stations be allowed a longer initial period within which to construct their facilities. Since this Memorandum Opinion and Order extends the time for construction of broadcast stations in general, including International Broadcast facilities, Ms. Norman's petition is dismissed as moot.

⁴ We are not applying these new stricter standards for granting applications for extension of time to construct to International Broadcast stations and ITFS. In view of the size and complexity of the equipment for International Broadcast stations and their frequent location in obscure areas, strict criteria for extensions of time will not be imposed on this service. ITFS, in light of the specialized nature and the limited funds available for its growth, also will not be subjected to the new stricter extension of time criteria.

⁵ On May 14, 1984, a Public Notice (No. 4177) was released establishing similar guidelines for processing applications for additional time within which to construct AM and FM broadcast stations. This Memorandum Opinion and Order is intended to supersede the May 14, 1984 Public Notice and establish uniform standards or broadcast (not International or ITFS) stations.

a. Construction is complete and testing is underway looking toward prompt filing of a license application.

b. Substantial progress has been made *i.e.*, demonstration that equipment is on order or on hand, site acquired, site cleared and construction proceeding toward completion.

c. No progress has been made for reasons clearly beyond the control of the permittee (such as delays caused by governmental budgetary processes and zoning problems) but the permittee has taken all possible steps to expeditiously resolve the problem and proceed with construction.

3. In order to expedite service to the public, we also are establishing strict criteria for the granting of applications for modifications and assignment/transfers of unbuilt facilities,⁶ and extensions of time relating to them. If a permittee finds it necessary to file either an application to modify its authorized but unbuilt facilities, or an assignment/transfer application, such application shall be filed within the first 9 months of the issuance of the original construction permit for radio and other broadcast and auxiliary stations, or within 12 months of the issuance of the original construction permit for television facilities. Before such an application can be granted, the permittee or assignee must certify that it will immediately begin building after the modification is granted or the assignment is consummated. Modifications and assignment applications filed after the above time periods will not be granted absent a showing that one of the three criteria in paragraph 2, *supra* applies, and a certification by the permittee or the assignee that it immediately will begin building after the modification is granted or the assignment consummated. The seller must make the "one of three criteria" showing in the assignment/transfer application.

Moreover, the burden to meet one of the three criteria increases as the period in the second half of the construction period term continues. If a modification is granted, the time period allowed for construction will be 6 months from the issuance of the authorization to modify or the remainder of the construction period, whichever is longer. Also, in the case of an assignment, the time period allowed for construction will be 12 months from the consummation of the assignment or the remainder of the construction period, whichever is

longer.⁷ The extension will be given subject to the condition that the modification is completed or the assignment is consummated. Failure to modify or consummate within the time allowed will result in cancellation of the construction permit. We will *not* entertain an application for modification or assignment/transfer if filed after the expiration of the initial construction period.

4. We are amending § 73.3598 to provide what, under present circumstances, are more realistic time periods for construction.⁸ Permittees should nevertheless be advised that we expect station construction to commence and be brought to fruition expeditiously. Moreover, applications for extension of time to construct broadcast stations will be carefully scrutinized. Thus, unwarranted delays will be avoided and service to the public expedited. If stations are not constructed within the allowed time, permittees will lose their authorizations.⁹ Others more able to commence operations and provide expeditious service to the public will be given the opportunity to apply for the frequency involved.

5. We believe that providing more time initially for the building of facilities can substantially reduce the volume of requests for extension of time to construct. This will reduce the administrative burdens imposed on Commission personnel, thus allowing scarce staff resources to be better utilized. For this reason and the others expressed in this document, we conclude that the public interest will be served by extending the time periods for construction of broadcast stations and imposing strict criteria for the granting of applications to extend time to construct as well as for granting modifications and assignment/transfers.¹⁰

⁶ We do not contemplate allowing repeated assignments which would each permit 12 months from their consummation for the construction of a facility. Allowing such extended time periods would not be in the public interest as it would delay service to the audience.

⁷ In view of the stricter standards being applied to extension of time requests, we believe the requirement in Rule 73.3598 that TV permittees file a report on the progress of station construction is unnecessary. Therefore, that provision is being eliminated.

⁸ See *P & R Temmer v. FCC*, 743 F.2d 918 (D.C. Cir. 1984), which the U.S. Court of Appeals affirmed the Commission's decision cancelling authorizations of those who failed to comply with channel loading and construction requirements within the required time period.

⁹ Since the Commission already has the requisite information to take this action and the matter is noncontroversial, prior notice and comment proceedings are neither necessary nor required. 5

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to decrease requirements or burdens upon the public. This decrease will be subject to approval by the Office of Management and Budget as prescribed by the Act.

7. Authority for the action taken herein is contained in sections 4(f) and 303 of the Communications Act of 1934, as amended.¹¹

8. Accordingly, it is ordered that the Commission's Rules are amended, effective December 10, 1985,¹² as described above and set forth in the attached Appendix.¹³

9. It is further ordered, that the Petition for Rule Making filed by Mary P. Norman on July 29, 1985, is dismissed as moot.

Federal Communications Commission,
William J. Tricarico,
Secretary.

Appendix

PART 73—[AMENDED]

47 CFR Part 73 is amended as follows:

U.S.C. § 553(b)(3)(B); and Section 1.412(c) of the Commission's Rules.

¹¹ The amendments being adopted include a conforming editorial revision which substitutes the word "declared" for "automatically" in Rule 73.3598 in order to conform our Rules with our long-standing practice of declaring a construction permit forfeited before considering it actually to have lapsed. For court affirmation of this procedure, see *MG-TV Broadcasting Company v. FCC*, 406 F.2d 1257, 1261 (D.C. Cir. 1968); *Mass Communicators, Inc. v. FCC*, 266 F.2d 881 (D.C. Cir. 1959), cert. denied, 361 U.S. 828 (1959); and *United Detroit Theatres Corp. v. FCC*, 176 F.2d 700 (D.C. Cir. 1949).

¹² Since the benefits of these rule changes should be made available to broadcasters and the public immediately, and the matter is noncontroversial, good cause has been found to order this *Memorandum Opinion and Order* effective within less than thirty days from the time it is published in the Federal Register, 5 U.S.C. 553(d)(3) and § 1.427(b) of the Commission's Rules.

¹³ The new policies for granting modification and assignment/transfer applications and applications for extensions of time will apply, as will the new time periods for initial construction (§ 73.3598), to all construction permits granted after the effective date of this *Order*. As to those permittees holding unexpired construction permits granted prior to the effective date of this *Order*, if they wish additional time to construct they must file an application for extension (Form 701). At that time such permittees will automatically receive a first extension of six additional months for a total initial construction period of 24 months for TV stations and 18 months for radio, other broadcast and auxiliary stations. We believe this provides current permittees with fair and just treatment. After an initial construction period of 24 or 18 months has been given to current permittees, however, broadcast permittees (not international or ITFS) will be required to meet the new stricter criteria before an extension of time request or an application for modification or assignment is granted.

⁶ When referring to assignments and transfers, we mean those requiring long form assignments (FCC Form 314) or long form transfer (FCC Form 315).

1. The authority citation for Part 73 continues to read as follows:

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

2. 47 CFR 73.3534 is revised in its entirety to read as follows:

§ 73.3534 Application for extension of construction permit or for construction permit to replace expired construction permit.

(a) Application for extension of time within which to construct a station shall be filed on FCC Form 701, "Application for Extension of Construction Permit or to Replace Expired Construction Permit." The application shall be filed at least 30 days prior to the expiration date of the construction permit if the facts supporting such application for extension are known to the applicant in time to permit such filing. In other cases, an application will be accepted upon a showing satisfactory to the FCC of sufficient reasons for filing within less than 30 days prior to the expiration date.

(b) Applications for extension of time to construct broadcast stations, with the exception of International Broadcast and Instructional TV Fixed stations, will be granted only if one of the following three circumstances have occurred: (1) Construction is complete and testing is underway looking toward prompt filing of a license application; (2) substantial progress has been made *i.e.*, demonstration that equipment is on order or on hand, site acquired, site cleared and construction proceeding toward completion; or (3) no progress has been made for reasons clearly beyond the control of the permittee (such as delays caused by governmental budgetary processes and zoning problems) but the permittee has taken all possible steps to expeditiously resolve the problem and proceed with construction.

(c) Applications for extension of time to construct International Broadcast and Instructional TV Fixed stations will be granted upon a specific and detailed showing that the failure to complete was due to causes not under the control of the permittee, or upon a specific and detailed showing of other sufficient to justify an extension.

(d) If an application for extension of time within which to construct a station is approved, such an extension will be limited to a period of no more than 6 months except when an assignment or transfer has been approved that provides for a longer period up to a maximum of 12 months from the date of consummation.

(e) Application for a construction permit to replace an expired construction permit shall be filed on

FCC Form 701. Such applications must be filed within 30 days of the expiration date of the authorization sought to be replaced. If approved, such authorization shall specify a period of not more than 6 months within which construction shall be completed and application for license filed.

3. New 47 CFR 73.3535 Application to modify authorized but unbuilt facilities, or to assign or transfer control of an unbuilt facility, is added to Subpart H, Part 73, to read as follows:

§ 73.3535 Application to modify authorized but unbuilt facilities, or to assign or transfer control of an unbuilt facility.

(a) If a permittee finds it necessary to file either an application to modify its authorized, but unbuilt facilities, or an assignment/transfer application, such application shall be filed within the first 9 months of the issuance of the original construction permit for radio and other broadcast and auxiliary stations, or within 12 months of the issuance of the original construction permit for television facilities. Before such an application can be granted, the permittee or assignee must certify that it will immediately begin building after the modification is granted or the assignment is consummated.

(b) Modification and assignment applications filed after the time periods stated in paragraph (a) will not be granted absent a showing that one of the following three criteria apply: (1) Construction is complete and testing is underway looking toward prompt filing of a license application; (2) substantial progress has been made *i.e.*, demonstration that equipment is on order or on hand, site acquired, site cleared and construction proceeding toward completion; or (3) no progress has been made for reasons clearly beyond the control of the permittee (such as delays caused by governmental budgetary processes and zoning problems) but the permittee has taken all possible steps to expeditiously resolve the problem and proceed with construction. A certification by the permittee or the assignee that it immediately will begin building after the modification is granted or the assignment is consummated is also necessary. A seller must make the "one of three criteria" showing in an assignment application.

(c) If a modification is granted, the time period allowed for construction will be 6 months from the issuance of the authorization to modify or the remainder of the construction period, whichever is longer. Also, in the case of an assignment, the time period allowed for construction will be 12 months from

the consummation of the assignment or the remainder of the construction period, whichever is longer. The extension will be given subject to the condition that the modification is completed or the assignment is consummated. Failure to modify or consummate within the time allowed will result in cancellation of the construction permit.

(d) We will not entertain an application for modification of an authorized but unbuilt facility or an application for assignment or transfer of control of an unbuilt facility if filed after the expiration of the initial construction period.

4. 47 CFR 73.3598 is revised in its entirety to read as follows:

§ 73.3598 Period of construction.

(a) TV broadcast stations. Each original construction permit for the construction of a new TV broadcast station, or to make changes in an existing station, shall specify a period of no more than 24 months from the date of issuance of the original construction permit within which construction shall be completed and application for license filed.

(b) Other broadcast, auxiliary and Instructional TV Fixed Stations. Each original permit for the construction of a new AM, FM or International Broadcast; low power TV; TV translator; FM translator; FM booster; broadcast auxiliary; or Instructional TV Fixed station, or to make changes in such existing stations, shall specify a period of no more than 18 months from the date of issuance of the original construction permit within which construction shall be completed and application for license be filed.

5. 47 CFR 73.3599 is revised in its entirety to read as follows:

§ 73.3599 Forfeiture of construction permit.

A construction permit shall be declared forfeited if the station is not ready for operation within the time specified therein or within such further time as the FCC may have allowed for completion, and a notation of the forfeiture of any construction permit under this provision will be placed in the records of the FCC as of the expiration date.

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