In this regard, the Commission expects that NASDAQ market makers will provide exchange members fair and efficient access to the OTC market; if the Commission becomes aware of any limitation on such access, it will take prompt remedial action.

The Commission does not believe that a more sophisticated intermarket trading linkage, accompanied by trade-through rules,[90] need be in place during the initial stages of trading OTC/UTP securities. The Commission, however, encourages the NASD and exchanges to forge promptly their own initiatives in facilitating computerized intermarket trading linkages and trade-through rules for these securities. Indeed, as many commentators noted, the existing ITS/CAES interface might be a cost-effective linkage for trading OTC/UTP securities. In addition to industry initiatives in this area, the Commission, as part of its monitoring of the initial grant of OTC/UTP, will be separately considering whether linkages and trade-through rules should apply to OTC securities and will consider whether or not the existence of linkages and trade-through rules for this market are necessary prior to further grants of UTP on NMS Securities.[91] During the monitoring period, the Commission also will be examining whether any other facilities and rules are necessary to ensure that the competition among OTC and exchange market makers is fair. In this connection, the Commission notes that the NASD and certain OTC market makers have expressed concern that their inability to immediately execute against the exchange quotations substantially reduces the efficiency of ITS and competitively disadvantages CAES market makers.[92] The Commission believes that the relevant exchanges and the NASD should consider providing an automatic execution capability for all markets trading in OTC/UTP securities.[93]

4. Short Sale Regulation

As commentators indicated, the Commission's short sale rule, Rule 10a-1,[94] would apply in its present form to both exchange and OTC markets once NMS Securities are traded by exchanges on a UTP basis.[95] Because the Commission is uncertain of the impact of the short sale rule on NMS Securities, which historically have not been subject to the rule, the Commission previously has issued a release seeking comment on the general issue of extending the short sale rule to the OTC market.[96] The Commission today has issued a release proposing amendments to Rule 10a-1 to exempt exchange and OTC market makers from short sale prohibitions with respect to NMS Securities.[97] If adopted, the amendments will assure that all market participants are subject to equal regulation and will provide time for the Commission to consider the longer-range applicability of uniform short-sale regulation with respect to NMS Securities.

IV. Conclusion

In summary, the Commission announces its policy to extend UTP to applicant exchanges in certain OTC securities subject to the following terms and conditions. First, each applicant exchange may be granted UTP on up to 25 NMS Securities. Second, a grant of OTC/UTP is conditioned on the Commission approving a plan agreed upon by the NASD and applicant exchanges consolidating OTC and exchange quotations and transaction reports in OTC/UTP securities through NASD facilities. Such a plan must be submitted by December 1, 1985 so that it can be implemented by January 1, 1986. Third, a grant of OTC/UTP is further conditioned on applicant exchanges not applying their off-board trading restrictions to OTC/UTP securities.[98] A final condition to a grant of OTC/UTP is that exchange and NASDAQ market makers provide comparable telephonic access to each other's market.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Authority: Secs. 6, 11A, 12(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78f, 78k, 78l).

Dated: September 16, 1985.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-22698 Filed 9-23-85; 8:45 am]

BILLING CODE 8010-01

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[90] Despite the absence of a formal linkage, the Commission would note that exchange specialists and OTC market makers are still subject to fiduciary obligations to seek best execution for their customers' orders and to comply with the Firm Quotation Rule. Although that rule provides for voluntary quotation dissemination, those who disseminate quotations are subject to the rule's mandatory provisions.

[91] In a separate but related matter, the Commission has issued a release soliciting comment on whether NMS Securities should be included in further NMS initiatives and whether exchange listed securities should be designated as NMS Securities. *See* Securities Exchange Act Release No. 22127 (June 21, 1985), 50 FR 26584 ("NMS Concept Release").

[92] The Commission recognizes the technical difficulties in operating a linkage between exchange and OTC markets. For example, coordinated openings would be difficult to accomplish due to the large number of OTC market makers and the fact that most are currently unlinked except for phone access.

[93] The Commission will monitor the respective market shares received by exchange and OTC markets in the initial group of OTC/UTP securities and evaluate whether any inappropriate impediments create an order flow diversion. To remove any inappropriate impediments found, the Commission will consider whether any structural changes should be implemented such as an introduction of a neutral order routing system.

[94] 17 CFR 240.10a-1.

[95] Specifically, paragraph (a)(1) of the short sale rule applies short sale prohibitions to any person effecting "a short sale of any security registered on, or admitted to unlisted trading privileges on, a national securities exchange, if trades in such security are reported pursuant to an effective transaction reporting plan."

[96] *See* NMS Concepts Release, *supra* note 91, 50 FR at 26586-87.

[97] 1985 Rule 10a-1 Proposal Reslease, *supra* note 2.

[98] Off-board trading restrictions generally will not apply to OTC/UTP securities because they are Rule 19c-3 securities.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

[T.D. 85-160]

Tariff Classification of Certain Imported Continuous Cast Iron Bars; Decision on Domestic Interested Party Petition

AGENCY: Customs Service, Treasury.

ACTION: Decision concerning a domestic interested party petition.

SUMMARY: Customs has completed review of a petition filed by a domestic interested party seeking reclassification of certain imported continuous cast-iron bars. The bars are currently classified under a duty-free tariff provision for cast-iron articles which are not alloyed, not malleable, and not specially provided for elsewhere in the tariff schedules. The petitioner seeks reclassification under the dutiable provision for iron blooms and billets. Following review of the petition, consideration of the comments received in response to notice of receipt of the petition, and further study of the matter, Customs has concluded that the iron bars are properly classified in a dutiable provision for articles of iron or steel which are not provided for specially.

DATE: This document will be effective with respect to merchandise entered, or withdrawn from warehouse, for consumption on or after 30 days from the date of publication in the *Customs*

Bulletin, published on October 2, 1985. Accordingly, the change is effective November 1, 1985.

FOR FURTHER INFORMATION CONTACT: James C. Hill, Classification & Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229, (202) 566-8181.

SUPPLEMENTARY INFORMATION:

Background

On July 17, 1984, a notice was published in the Federal Regiser (49 FR 28884), advising the public that Customs had received a petition from a domestic interested party filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), requesting that imported continuous cast iron bars be reclassified under item 606.67, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), the provision for iron blooms and billets. Merchandise classified under this provision is dutiable at the 1985 column 1 rate of 4.8 percent ad valorem. Such merchandise does not qualify under the Generalized System of Preferences (GSP), a program established by statute whereby certain specified merchandise arriving from certain named countries may be entered free of Customs duties. See 19 U.S.C. 2641-2465 and §§ 10.171-10.178, Customs Regulations (19 CFR 10.171-10-178).

The merchandise consists of metal products which are circular and rectangular in cross section, which meet the dimensional criteria for "blooms and billets" as defined in Headnote 3(b), Subpart B, Part 2, Schedule 6, TSUS, which are not made of malleable iron and, which, therefore, do not meet the definition for steel in Headnote 2(g) of that same TSUS subpart. The merchandise is described in exhibits submitted with the petition as cast on horizontal machines on which the cross-sectional shapes are formed by a water cooled graphite die mounted on the side of a holding crucible. The bar is drawn from the die by short pulls with intermediate delays. Static pressure is exerted from the crucible bath, and after the outer shell leaves the die in solid form it is reheated by its internal molten core thereby becoming self-annealed. The resulting product is fine grained with good machining characteristics. The petitioner questioned whether iron products which are made by a continuous casting method and meet the dimensional requirements for blooms or billets may be properly regarded as semifinished articles.

Analysis of Comment and Discussion of Issues

The only submission received in response to the July 17, 1984, notice was filed on behalf of an importer of continuous cast iron products from the GSP qualifying country. The submission, which expressed oppositon to the petition, states that continuous cast iron products are not semifinished, and, therefore, not within the definition for blooms and billets in Headnote 3(b), Subpart B, Part 2, Schedule 6, TSUS, because they emerge from the continuous casting process in which they are formed without the need for further forming operations or heat treatments. It is also stated that the term "semifinished" as used in the TSUS means that further rolling, working, forging or heat treatments are required on semifinished articles in their condition as imported, that this concept of what semifinished meant at the time of enactment of the TSUS reflected trade practices, and that the farmers of the TSUS intended to incorporate trade practices in TSUS definitions. Authorities cited were the *Tariff Classification Study, Explanatory Materials*, C.I.E. 1/64, Vol. 2, p. 419, and the *Metallurgical Dictionary*, by J. G. Henderson (1953), pp. 311 and 313. Also cited was the *Explanatory Notes to the Brussels Nomenclature*, Vol. 2, p. 997 (1966 ed.).

We have examined the cited sources and have determined that the concept of what is semifinished under the TSUS requires consideration of what must be done to merchandise after importation. It also requires consideration of what was done to merchandise before importation, between the time of casting and the processing after importation which will produce the article or material in finished form. See the definition in Headnote 2(b), Subpart A, Part 2, Schedule 6, in which the TSUS, while not defining "semifinished," defines the similar term "semimanufactured" in terms of merchandise which has been worked before importation. See also *United States v. Kanthal Corporation*, 64 CCPA 89, C.A.D. 1188 (1977), cited in the submission opposing the petition.

We find that the foregoing authorities are not only persuasive of the argument that semifinished products only encompass "primary mill products" which must be subjected to further processing, as stated in the submission opposing the petition. They also indicate that unworked castings are excluded. The merchandise in question fails to meet both considerations by its lack of working or treatment after the casting-extrusion forming process before as well as after importation.

The petitioner counters this conclusion by citing legal note 1(ij), chapter 72, of the draft *Conversion of the Tariff Schedules of the United States Annotated into the Nonmenclature Structure of the Harmonized System* in which "continuous cast products are included under the heading for "Semi-finished products." This reference, however, is to steel products, as well as iron products, and presupposes that some of them will undergo further processing even though formed by continuous casting. In this connection, while *The Making, Shaping and Treating of Steel*, United States Steel Corporation (9th ed., 1971), p. 706, and the *Summaries of Trade and Tariff Information*, Schedule 6, Vol. 4, p. 78 (1967), are cited in the comment opposing the petition for the purpose of showing that the continuous casting of steel eliminates the ingot and primary-mill stages of production, that advantage of continuous casting is only shown as a "possibility." In any case, the *Harmonized System* is not legislative history for the TSUS nor otherwise recognized as a valid extrinsic aid for TSUS construction.

The issue has been raised as to the extent rules of construction relating to the tariff classification of products invented or developed subsequent to the enactment of the TSUS may be applicable in this matter. The petition and opposing comment indicate the continuous casting process was developed subsequent to enactment of the TSUS. Authorities more or less contemporaneous with enactment of the TSUS show no indication that the concept of casting in any way involved a process like what is now called continuous casting, a process more like an extrusion than casting. For example, the *Metallurgical Dictionary, supra*, at p. 60, while defining "casting" in terms of several different processes, including die casting and pressure casting, nevertheless shows that even those forms of casting form articles in molds and not by an extrusion through dies. The chapter on casting in the earlier 8th edition (1964) of United States Steel Corporation's *The Making, Shaping and Treating of Steel*, pp. 1006 through 1026, also contains no indication that the casting of iron or steel involved a process in which molten metal is extruded through dies.

Aside from the fact that new articles cannot be brought within the meaning of tariff terms as they may have been expanded after enactment, new articles may only come within preexisting tariff

terms if they have the same name and uses of predecessor products. *Polaroid Corp., v. United States*, 66 Cust. Ct. 116, C.D. 4179 (1971), or if they meet the essential resemblance test. *Borneo Sumatra Trading Co. v. United States*, 64 Cust. Ct. 185, C.D. 3980 (1970). While continuous cast iron products may have metallurgical characteristics similar to ordinary cast-iron products, this resemblance does not carry through in appearance, where the latter are shaped by molding on all surfaces, while the former are always shaped by cutting on at least two surfaces.

With respect to the question of whether continuous cast iron has the same name as predecessor cast-iron products, it is well established that merchandise must be excluded from a tariff term if it can only be designated by that term by the use of a qualifier. *United States v. Sandoz Chemical Works, Inc.*, 46 CCPA 115, C.A.D. 711 (1959); *Floral Arts Studios v. United States*, 49 Cust. Ct. 43, C.D. 2359 (1962), *app'l dismissed* 50 CCPA 97 (1963). Accordingly, if *continuous* cast iron is distinguishable from cast iron, it is not encompassed under tariff provisions for cast iron.

Whether the two terms are to be distinguished, that is, the one with the qualifier and the one without, depends, in part, upon whether the term "cast iron" denotes iron of a particular type, such as grey iron, nodular iron, etc., or whether it denotes iron formed by a specific casting process using molds. Previously, there was no distinction to be made since certain types of iron were always formed by casting in molds. The same types of iron can now be produced both by casting in molds as well as by continuous casting, although it is not shown that the same quality of iron was ever produced by casting in molds without a subsequent heat treatment.

The view that, in order to have cast iron, as opposed to continuous cast iron, both specific types of iron metallurgically and iron formed by "casting in molds" are required, is suggested by the definition of "cast iron" in *Webster's Third New International Dictionary* (unabridged ed., 1971). While it may be argued that Schedule 6, TSUS, questions are controlled by trade practices rather than dictionary definitions, which only reflect common meanings, in practice, "common and commercial meanings * * * are presumed to be the same." *Merry Mary Fabrics, Inc., v. United States*, 1 CIT 13, 17 (1980). Further, while the exhibits submitted in support of the petition suggest that the terms "cast iron" and "continuous cast iron" are used interchangeably, it is not shown that there are no commercial distinctions between to two. But in the final analysis, we find that the answer to the question as to whether a distinction must be made between the two lies in the TSUS itself rather than in extraneous considerations. The merchandise under consideration is excluded from the specific dutiable provision for iron bars because that provision is limited to wrought products. The merchandise under consideration, like the cast-iron products which the submission opposing the petition claims is similar, is typically unwrought. However, the TSUS, in its definition of "unwrought" in Headnote 3(a), Part 2, Schedule 6, specifically excludes extruded products.

Decision on Petition

For the foregoing reasons, we find that continuous cast iron bars constitute subsequently developed products not within the meaning of the terms describing blooms and billets in item 606.67, TSUS, or cast-iron articles in item 657.09, TSUS, as understood at the time of enactment of the TSUS, and that they are, therefore, properly classifiable under the provision for other articles of iron or steel, not specially provided for, in item 657.25, TSUS, with duty at the 1985 rate of 6.7 percent ad valorem. Accordingly, the petition is allowed to the extent it claims there was error in the previous duty-free rate for and classification of continuous cast iron bars under item 657.09, TSUS. Our ruling letter of September 14, 1982 (File No. 803624), in which classification under item 657.09, TSUS, was established, is hereby modified. The petition is also allowed to the extent it is claimed such products produced in other than GSP beneficiary developing countries are dutiable.

The petition is denied as it relates to the claim that continuous cast iron bars are classifiable and dutiable under the provision for blooms and billets in item 606.67, TSUS, and as it relates to the prevention of duty-free treatment under such claimed classification for products of beneficiary developing countries. The petitioner may further prosecute its disagreement with the duty-free rate status of continuous cast iron products produced in beneficiary developing countries under the GSP by filing a notice of intention to contest that duty-free status, as provided for in § 175.23, Customs Regulations (19 CFR 175.23), following notice of this decision. Importers adversely affected by the change in the tariff classification of continuous cast iron bars in the document must prosecute disagreements with the change under the protest procedures in Part 174, Customs Regulations (19 CFR Part 174).

Authority

This notice is published under the authority of § 516(b), Tariff Act of 1930, as amended (19 U.S.C. 1516(b)), Tariff Act of 1930, and § 175.22(a), Customs Regulations (19 CFR 175.22(a)).

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: August 28, 1985.

David D. Queen,

Acting Assistant Secretary of the Treasury.

[FR Doc. 85-22686 Filed 9-23-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

Permanent State Regulatory Program of West Virginia

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the Director's decision to extend the deadline for the State of West Virginia to submit a required amendment to its permanent regulatory program (hereinafter referred to as the West Virginia program), which the Secretary of the Interior conditionally approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). On April 23, 1985, OSM amended 30 CFR 948.16 to require that, no later than June 24, 1985, West Virginia amend its program to require that all persons responsible for the use of explosives be certified (50 FR 15889-15891). By letter dated June 24, 1985, West Virginia notified OSM that, instead of obtaining an Attorney General's opinion on the validity of a policy statement, the State would begin formal rulemaking within 60 days to provide that all surface blasting (including those operations using less than five pounds and those involving surface disturbance at underground mines) must be done in accordance with section 4C of the West

Virginia surface mining regulations which requires that all such persons be certified (Administrative Record No. WV 661). Therefore, OSM is extending the deadline for submission of the required amendment until November 26, 1985. The Federal rules at 30 CFR Part 948 codifying decisions concerning the West Virginia program are being amended to implement this action.

EFFECTIVE DATE: September 24, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background

On March 3, 1980, West Virginia submitted its proposed permanent regulatory program to the Secretary of the Interior. On October 22, 1980, following a review of the proposed program in accordance with 30 CFR Part 732, the Secretary approved it in part and disapproved it in part (45 FR 69249-69271).

West Virginia resubmitted its proposed program on December 19, 1980, which the Secretary conditionally approved on January 21, 1981. Information concerning the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and an explanation of the initial conditions of approval of the West Virginia program, can be found in the January 21, 1981 **Federal Register** (46 FR 5915-5956).

Since then the program has been amended several times, including a September 20, 1984 amendment containing West Virginia's blaster training, examination and certification program. In approving this amendment, the Director required correction of three minor deficiencies (49 FR 36837-36840). On November 20, 1984, West Virginia submitted proposed regulations and a policy statement to resolve these deficiencies. The Director approved this amendment on April 23, 1985, but required the State, no later than June 24, 1985, to submit an Attorney General's opinion that the policy statement involved could legally override a conflicting regulation, or otherwise amend its program to achieve the same effect (50 FR 15889-15891).

By letter dated June 24, 1985, West Virginia notified OSM that it had decided to resolve the conflict by formal rulemaking through the legislative process instead of seeking the Attorney General's opinion (Administrative Record No. WV 661). The letter committed the State to begin the rulemaking process within 60 days.

The issue involves section 4C.01 of the State's approved surface mining regulations which inappropriately relates blasting plan requirements only to blasts using more than five pounds of explosives. Since section 3.01(A) of the State's blasting regulations requires certification only of blasting personnel who use explosives in accordance with the blasting plan, certain blasting operations would be exempt from the requirement of section 4C.01 that a certified blaster be responsible for all blasting operations. In addition, since section 4C.02 provides that only surface mining operations need to prepare blasting plans, surface blasting at underground mines would not be covered. Both of these provisions are less effective than the Federal regulations at 30 CFR 816.61(c) and 817.61(c), which require that all surface blasting operations be conducted under the direction of a certified blaster.

II. Public Comment

The Director solicited public comment on the proposed extension in the July 29, 1985 **Federal Register** (50 FR 30724-30725). Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were also solicited from various Federal agencies.

No comments were received during the public comment period, which closed August 28, 1985.

III. Director's Determination

The Director has determined that an extension of the deadline to submit the amendment required by 30 CFR 948.16(a) is warranted because of the change in nature of the State's planned submission and because the State has promised to promptly submit the proposed regulation changes. Therefore, to allow West Virginia sufficient time to draft the proposed regulatory changes and complete the initial procedural stages of formal rulemaking, the Director is extending the amendment submission deadline until November 26, 1985.

IV. Additional Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSM is exempt from the requirement to prepare a Regulatory Impact Analysis, and this action does not require regulatory review by OMB.

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

3. Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 948

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

Dated: September 16, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

PART 948—WEST VIRGINIA

30 CFR Part 948 is amended as follows:

1. The authority citation for Part 948 continues to read as follows:

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

2. 30 CFR 948.16 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 948.16 Required program amendments.

Pursuant to 30 CFR 732.17, West Virginia is required to submit the following proposed program amendments by the dates specified:

(a) By November 26, 1985, West Virginia must submit copies of proposed regulations or otherwise propose to amend its program to provide that all surface blasting operations (including those using less than five pounds and those involving surface activities at underground mining operations) shall be

conducted under the direction of a certified blaster.

* * * * *

[FR Doc. 85-22725 Filed 9-23-85; 8:45 am]
BILLING CODE 4310-05-M

VETERANS ADMINISTRATION

38 CFR Part 19

Appeals Regulations; Rules of Practice

AGENCY: Veterans Administration.

ACTION: Final regulatory amendments; correction.

SUMMARY: This document corrects typographical errors in the rules of practice regulations which were published in the **Federal Register** of September 11, 1985, on pages 36992–36994.

EFFECTIVE DATE: October 11, 1985.

FOR FURTHER INFORMATION CONTACT: Celia Fasone, Paperwork Management and Regulations Service, (202) 389-2340.

Dated: September 18, 1985.

Nancy C. McCoy,
Chief, Directives Management Division.

§ 19.187 [Corrected]

1. On page 36993 of the **Federal Register** of September 11, 1985, third column, § 19.187, in paragraph (b) the phrase "additional evidence as it is required," should be corrected by removing the word "it".

§ 19.201 [Corrected]

2. On page 36994 of the subject issue, § 19.201, in paragraph (b) the phrase "respect to the issues or issues to which," should be corrected by making the first "issues" singular.

[FR Doc. 85-22760 Filed 9-23-85; 8:45 am]
BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[General Docket No. 79-144; FCC 85-467]

Consideration of Biological Effects of Radiofrequency Radiation and the Potential Effects of a Reduction in the Allowable Level of Radiofrequency Radiation; Postponement of Effective Date

AGENCY: Federal Communications Commission.

SUMMARY: This Memorandum Opinion and Order postpones until January 1, 1986, the effective date of an amendment to § 1.1305 of the Commission's Rules implementing the National Environmental Policy Act of 1969 (NEPA). Under NEPA the Commission is required to consider whether its actions have a significant effect on the quality of the human environment. The amendment satisfies that requirement with respect to radiofrequency electromagnetic radiation.

EFFECTIVE DATE: The effective date of § 1.1305(d), as published at 50 FR 11151, March 20, 1985 is postponed until January 1, 1986.

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

FOR FURTHER INFORMATION CONTACT:
Dr. Robert Cleveland, Office of Science and Technology, Federal Communications Commission, Washington, DC 20554, (202) 632-7040
Mr. Stephen Klitzman, Office of Congressional and Public Affairs, Federal Communications Commission, Washington, DC 20554.

Memorandum Opinion and Order

In the matter of Responsibility of the Federal Communications Commission to consider biological effects of radiofrequency radiation when authorizing the use of radiofrequency devices. Potential effects of a reduction in the allowable level of radiofrequency radiation of FCC authorized communications services and equipment. Gen. Docket No. 79-144.

Adopted: August 12, 1985.
Released: August 22, 1985.
By the Commission.

1. Before us are petitions for partial or limited reconsideration and clarification of the *Report and Order* that amended our environmental rules to provide for evaluation of human exposure to radiofrequency (RF) radiation emitted by certain Commission regulated facilities. Petitioners, National Association of Broadcasters (NAB) and TV Broadcasters All Industry Committee (the Committee) are generally supportive of the thrust of that decision, but they seek reconsideration or clarification with respect to public participation in the preparation of a technical bulletin, the content of the bulletin, the treatment of broadcasters at multiple transmitter sites, and the effective date of the rule change.[1] They also seek a Commission policy statement regarding preemption of certain nonfederal actions. This order grants reconsideration in part by changing the effective date to January 1, 1986.

Background

2. After several years of study, we concluded that our environmental processing rules implementing the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.* (1976) (NEPA), should be amended to add a new category of major action covering RF radiation.[2] We adopted as a processing guideline for evaluating environmental impact the "Radio Frequency Protection Guides" adopted by the American National Standards Institute (ANSI) in 1982.[3] In doing so, we concluded that we could indeed recognize and use as a guideline a technically sound standard put forth by a reputable and competent standard-setting organization, although we do not have the jurisdiction or the expertise to develop a standard ourselves. Based upon the record before us, we selected the ANSI standard and made it applicable as a processing guideline to several services. The new guideline will apply to radio and television broadcast stations licensed or authorized under Part 73, experimental broadcast stations and low power TV stations authorized under Subparts A & G, of Part 74, transmitting satellite earth stations authorized under Part 25, and experimental radio stations authorized under part 5.

3. Because we are relying on guidelines developed and defined by a standard-setting organization, we did not believe we should rewrite or modify those guidelines. We selected the ANSI standard in part because it does not require interpretation as to its applicability, and because the standard itself incorporates certain measurement guidelines. We then placed responsibility for demonstrating compliance with the standard on the applicant.

4. However, we recognized that the ANSI standard did not answer all

[1] Comments generally supporting the NAB petition were filed by Corporation for Public Broadcasting (CPB), GTE Corporation (GTE), and KONG-TV, Inc. Comments supporting both the NAB and the Committee's petition were filed by the Electromagnetic Energy Policy Alliance (EEPA).

[2] *Notice of Inquiry*, General Docket No. 79-144, 72 FCC 2d 482 (1979); *Notice of Proposed Rule Making*, General Docket No. 79-144, 89 FCC 2d 214 (1982); *Report and Order*, General Docket No. 79-144, 50 FR 11151 (1985).

[3] ANSI C95.1-1982 (revision of ANSI C95.1-1974). Copyright 1982 by the Institute of Electrical and Electronics Engineers, Inc., New York, NY 10017. Copies of the ANSI recommendations are available from the American National Standards Institute, 1430 Broadway, New York, NY 10018, or from Standard Sales—IEEE, 445 Hoes Lane, Piscataway, NJ 08854.