notice that amended the list of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act by increasing "high-cost" mortgage limits for eleven areas; and by adding "high-cost" mortgage limits for seven areas. The limits for Broward County, Florida were incorrect.

Accordingly, the following corrections are made to FR Doc. 89-8303 in the **Federal Register** issue dated April 7, 1989 (54 FR 14075), as follows:

On page 14076, in the table for Region IV, the limits for Broward County, Florida should be corrected as they appear below.

REGION IV.—HUD FIELD OFFICE—CORAL GABLES OFFICE

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Ft. Lauderdale-Hollywood-Pompano Beach, FL MSA Broward County	$95,000	$107,000	$130,000	$150,000

Dated: April 18, 1989.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 89-9776 Filed 4-21-89; 8:45 am]

BILLING CODE 4210-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3557-1]

Minnesota: Final Authorization of Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Final authorization of Hazardous Waste Management Program.

SUMMARY: Minnesota has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Minnesota's 1987 and 1988 applications and has reached a decision, subject to public review and comment, that Minnesota's hazardous waste program revisions satisfy all the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to Minnesota to operate its expanded program, subject to authority retained by EPA under the Hazardous and Solid Waste Amendments of 1984.

DATES: *Effective date.* Final authorization for Minnesota's application shall be effective June 23, 1989 unless EPA publishes a prior **Federal Register** action withdrawing this final authorization. All comments on Minnesota's final authorization must be received by 4:30 p.m. on May 24, 1989.

ADDRESSES: Copies of Minnesota's final authorization applications are available during the hours 9:00 a.m. to 4:00 p.m. at the following addresses for inspection and copying: Ms. Carol Nankivel, Minnesota Pollution Control Agency, 520 Lafayette Road, St. Paul, Minnesota 55155, Phone 612/296-7260; U.S. EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC 20460, Phone 202/382-5926; Ms. Christine Klemme, U.S. EPA, Region V, 230 S. Dearborn, 13th Floor, Chicago, Illinois 60604, Phone 312/886-3715. Written comments should be sent to Ms. Christine Klemme, Waste Management Division, Office of RCRA, 230 S. Dearborn, 5HR-JCK-13, Chicago, Illinois 60604, Phone 312/886-3715.

FOR FURTHER INFORMATION CONTACT: Christine Klemme, Minnesota Regulatory Specialist, U.S. Environmental Protection Agency, Region V, Waste Management Division, Office of RCRA, Program Management Branch, Regulatory Development Section, 5HR-JCK-13, 230 South Dearborn, Chicago, Illinois 60604, (312) 886-3715 FTS 8 886-3715).

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter HSWA) allow States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. A State exercising this option receives "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later applies for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessary because of changes to EPA's regulations in 40 CFR Parts 124, 260-268 and 270.

B. Minnesota

Minnesota initially received final authorization for the base RCRA program on February 11, 1985. On June 30, 1986, Minnesota submitted a revision application for additional program approvals. On July 20, 1987, EPA published a proposal to approve Minnesota's program revision application in accordance with 40 CFR 271.21(b)(4). On September 18, 1987, that proposal became effective.

On January 29, 1988, and November 18, 1988, Minnesota submitted additional revision applications.

EPA has reviewed Minnesota's applications and has made a final decision that Minnesota's hazardous waste program revisions satisfy all the requirements necessary to qualify for final authorization. Consequently, EPA is granting final authorization for the additional program modifications to Minnesota.

Minnesota will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which are analogous to the Federal program as listed below:

Federal Requirement	State Authority
Amendments to Part B Information Requirements for Disposal Facilities, June 22, 1987, 52 FR 23447-23450.	Rule 7001.0640(2).
List (Phase I) of Hazardous Constituents for Groundwater Monitoring, July 9, 1987, 52 FR 25946-25953.	Rule 7045.0484 (12) and (13); 7045.0143; 7001.0640.
Liability Coverage, November 18, 1987, 52 FR 44314-44321.	Rule 7045.0518(7); 7045.0524(8); 7045.0620(6).

Federal Requirement	State Authority
Standards for Hazardous Waste Storage and Treatment Tank Systems, July 14, 1986, 51 FR 25470–25486 and *August 15, 1986, 51 FR 29430–29431.	Rule 7045.0020; 7045.0120; 7045.0219; 7045.0292; 7045.0452; 7045.0478; 7045.0490; 7045.0498; 7045.0528; 7045.0075; 7045.0556; 7045.0564; 7045.0584; 7045.0600; 7045.0608; 7045.0628; 7045.0075; 7045.0629; 7001.0560; 7001.0580; 7001.0650.
*Hazardous Waste Exports July 15, 1985, 50 FR 28702–28755.	Rule 7045.0302(5).
*Exports of Hazardous Wastes; August 8, 1986, 50 FR 28664–28686.	Rule 7045.0219(5); 7045.0125(12); 7045.0296; 7045.0302; 7045.0020; 7045.0302; 7045.0304; 7045.0375; 7045.0381.
*Listing of EDBC, October 24, 1986, 51 FR 37725–37729.	Rule 7045.0135; 7045.0065; 7045.0139.
Financial Responsibility: Settlement Agreement May 2, 1986, FR 16443–16459.	Rule 7045.0020; 7045.0486; 7045.0488; 7045.0490; 7045.0492; 7045.0494; 7045.0496; 7045.0498; 7045.0502; 7045.0504; 7045.0506; 7045.0508; 7045.0518; 7045.0524; 7045.0594; 7045.0596; 7045.0600; 7045.0602; 7045.0604; 7045.0606; 7045.0608; 7045.0610; 7045.0612; 7045.0614; 7045.0616; 7045.0620; 7045.0628; 7045.0630; 7001.0560; 7001.0190; 7001.0650; 7045.0670.
Listing of Spent Pickle Liquor, May 28, 1986, and amended September 22, 1986, 51 FR 19320/51 FR 33612.	Rule 7045.0135(3).
*Availability of Information —3006(f) 42 U.S.C. 6921.	Statute 13.03; 13.08; 13.37; 15.17; 15.171; 116.075; Rule 7045.0080.
*Direct Action Against Insurers —3004(t).	Statute 116.14.
*Sharing of Information with ATSDR–3019(b).	Statute 13.05(9).
Liability Coverage –July 11, 1986, 51 FR 25350–25356.	Rule 7045.0518; 7045.0524; 7045.0620.
Corrections to Listing of Commercial Chemical Products and Appendix VIII Constituents, August 6, 1986, 51 FR 28296–28310.	Rule 7045.0135(4); 7045.0141.
Closure/Post-Closure Care for Interim Status Surface Impoundments, March 19, 1987, 52 FR 8704–8709.	Rule 7045.0630(6).
*Permit Life, July 15, 1985, 50 FR 28702–28755.	Rule 7001.0140; 7001.0720(1); 7001.0150(1).
*Omnibus Provision, July 15, 1985, 50 FR 28702–28755.	Rule 7001.0150(2).
*Interim Status, July 15, 1985, 50 FR 28702–28755.	Rule 7001.0150(2); 7001.0650.(1) and (7); 7001.0530(2A).
*Research and Development Permits, July 15, 1985, 50 FR 28702–28755.	Rule 7001.0712.
*Exposure Information, July 15, 1985, 50 FR 28702–28755.	Rule 7001.0590
*Listing of TDI, DNT, TDA Waste, October 23, 1985, 50 FR 42936–42943.	Rule 7045.0135 (3) and (4); 7045.0075(2); 7045.0139; 7045.0141.
*Listing of Spent Solvents, December 31, 1985 50 FR 53315–53320.	Rule 7045.0135(2).
*Listing of EDB Wastes February 13, 1986, 51 FR 5327–5331.	Rule 7045.0135(3); 7045.0075(2); 7045.0139.
*Listing of Four Spent Solvents, February 25, 1986, 51 FR 6537–6541.	Rule 7045.0135 (2) and (4); 7045.0075(2); 7045.0139; 7045.0141.
*Generators of 100–1000 kg Hazardous Waste, March 24, 1986, 51 FR 10174–10176.	Rule 7045.0219(1), (4)–(6); 7045.0381(5); 7001.0520(2).
Radioactive Mixed Wastes, July 3, 1986, 51 FR 24504–24505.	Statute 116.06(13)
*Paint Filter Test, April 30, 1985, 50 FR 18370–18375.	Rule 7045.0458(2F); 7045.0478(3E); 7045.0538(10C); 7045.0564(2F); 7045.0584(3E); 7045.0638(7B).
*Small Quantity Generators, July 15, 1985, 50 FR 28702–28755.	Rule 7045.0219.
*Delisting, July 15, 1985, 50 FR 28702–28755.	Rule 7045.0075(2).
*Waste Minimization July 15, 1985, 50 FR 28702–28755.	Rule 7045.0296 (2F–H); 7045.0478 (1) and (3K); 7045.0482(2G); 7001.0150(2C); 7001.0650(1).
*Location Standards for Salt Domes, Beds, Underground Mines and Caves, July 15, 1985, 50 FR 28702–28755.	Rule 7045.0460(3); 7045.0556(7).
*Liquids in Landfills, July 15, 1985, 50 FR 28702–28755.	Rule 7045.0538(10); 7045.0638(7); 7001.0620.
*Groundwater Monitoring, July 15, 1985, 50 FR 28702–28755.	Rule 7045.0484(1); 7045.0484(12); 7045.0532(5); 7045.0532(7); 7034.0534, (4), (5), and (6); 7045.0538 (5) and (7).
*Cement Kilns, July 15, 1985 50 FR 28702–28755.	Rule 7045.0125; 7045.0135(4).
*Corrective Action July 15, 1985, 50 FR 28702–28755.	Rule 7045.0484(1); 7045.0485 (1) and (2); 7001.0520(3).

(the * indicates HSWA rules)

Any RCRA hazardous waste permits, or portions of permits, issued by EPA under the RCRA provisions for which Minnesota is receiving final authorization shall be administered by EPA. EPA will suspend issuance of any further permits under these provisions on the effective date of Minnesota's authorization.

The public may submit written comments on EPA's final decision up until May 24, 1989. Copies of Minnesota's application for program revision are available for inspection and copying at the location indicated in the "Addresses" section of this notice.

Approval of Minnesota's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish a withdrawal of the final decision or a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Minnesota is not authorized to operate the Federal program on Indian lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Effect of HSWA on Minnesota's Authorization

Before the Hazardous and Solid Waste Amendments to RCRA, a State with final authorization administered its hazardous waste program instead of, or entirely in lieu of, the Federal program. Except for enforcement provisions not applicable here, EPA no longer directly applied the Federal requirements in the authorized State and EPA did not issue permits for any facilities the State was authorized to permit. When new, more stringent, Federal requirements were promulgated or enacted, the State was obligated to obtain equivalent authority within specified time frames. New Federal requirements usually did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new HSWA requirements and prohibitions take effect in authorized States at the same time they take effect in non-authorized States. EPA carries out those requirements and prohibitions directly in authorized and non-authorized States, including the issuance of full or partial HSWA permits, until EPA grants the State authorization to do so. States must still, at one point, adopt HSWA-related provisions as State law to retain final authorization.

As a result of the HSWA, there is a dual State/Federal regulatory program in Minnesota. To the extent HSWA does not affect the authorized State program, the State program will operate in lieu of

the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce those HSWA requirements in Minnesota until the State is authorized for them. Among other things, this will entail the issuance of Federal RCRA permits for those HSWA requirements for which the State is not yet authorized in addition to the State permits.

Once EPA authorizes Minnesota to carry out a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision or prohibition. Until that time, the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

Today's rulemaking includes authorization of Minnesota's program for several requirements implementing the HSWA. Those requirements implementing the HSWA are specified above. Any effective State requirement that is more stringent or broader in scope than a Federal HSWA provision will continue to remain in effect.

EPA published a Federal Register notice explaining in detail the HSWA and its affect on authorized States (50 FR 28702–28755, July 15, 1985).

D. Decision

I conclude that Minnesota's applications for program revisions meet all the RCRA statutory and regulatory requirements. Accordingly, EPA grants Minnesota final authorization to operate its hazardous waste program as revised. Minnesota now has primary responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program. This responsibility is subject to the limitations of its program revision applications and previously approved authorities. Minnesota also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

E. Codification

Codification of the Minnesota program will be completed at a later date.

Compliance with Executive Order 12291: The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act: Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Minnesota's program thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act: Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a) 3006, and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926 and 6974(b).

Dated: April 14, 1989.

Frank M. Covington,

Deputy Regional Administrator.

[FR Doc. 89–9652 Filed 4–21–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

[MM Docket No. 88–375; FCC 89–107]

FM Broadcast Service; Amendment of the Rules To Provide for an Additional FM Station Class (Class C3) and To Increase the Maximum Transmitting Power for Class A FM Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its rules to establish an additional class of FM broadcast stations, designated "Class C3", to be assigned throughout most of the United States. Creation of this new station classification will provide upgrade opportunities for some existing Class A FM broadcast stations. Upgrading from Class A to the new Class C3 will result in greatly expanded signal coverage for these stations, thereby enabling them to better serve their radio audiences. Also, the availability of another intermediate class of FM facility in sparsely populated areas may make additional new FM broadcast stations economically feasible.

EFFECTIVE DATE: May 24, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: B.C. "Jay" Jackson, Jr., Mass Media Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to vary from 72 hours 30 minutes to 302 hours 15 minutes per response with an average of 110 hours 13 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of the Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060–0027), Washington, DC 20503.

Following is a summary of Commission's *First Report and Order* in MM Docket No. 88–375, adopted March 30, 1989 and released April 17, 1989. The full text of this action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this action may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of the First Report and Order

1. On July 20, 1988, the Commission adopted a *Notice of Proposed Rule Making* ("*Notice*") (53 FR 38743, October 3, 1988) setting forth for public comment various proposed rule amendments that would potentially permit improvements in the facilities of the majority of Class A FM broadcast stations in the United States. Specifically, the Commission proposed the creation of a new intermediate class of FM broadcast stations in Zone II, and a general increase in the maximum permitted transmitting power for Class A FM broadcast stations from 3000 to 6000 Watts.

2. In response to the *Notice*, the Commission received 98 formal comments, 16 reply comments, and

several hundred informal letters and inquiries. Most of these comments and letters address issues related to the Class A power increase proposal, and some of them address the matter of the proposed new C3 station class as well. It is apparent from an initial review of these pleadings that there is sharp disagreement among the parties as to how any increase in transmitting power for Class A stations should be implemented, and that further study of the positions advocated in the comments, consideration of administrative details, and additional technical analysis is necessary.

3. By contrast, the majority of comments addressing the new C3 station class agree in favoring the rules proposed to provide for such a station class. The commenters confirm the Commission's tentative conclusion that the creation of this new station class will improve spectrum utilization and afford opportunities for some Class A stations in Zone II to expand coverage, thereby allowing these stations to provide improved service to their audiences. Because the technical and administrative issues associated with the Class C3 proposal are comparatively simple, and there is among the commenting parties a nearly universal consensus in support of the proposed rules, it appears that prompt consideration of the Class C3 rules, separate from action on the proposed Class A power increase, is appropriate.

4. In the *Notice*, the Commission proposed Class C3 to be an intermediate class between Class A and Class C2, with a maximum effective radiated power (ERP) of 25 kilowatts and a reference antenna height above average terrain (HAAT) of 100 meters (328 feet). Noting that this proposed ERP/HAAT combination would produce coverage midway between that of existing Classes A and C2, the Commission nonetheless invited comments as to whether some other combination might be more appropriate.

5. Additionally, it was proposed to revise the table of minimum distance separation requirements for domestic FM commercial broadcast stations by adding appropriate distances for the new Class C3. The distances proposed, except for the intermediate frequency ("IF") distances, were calculated by assuming a primary service area for Class C3 facilities bounded by the 1 mV/m (60 dBμ) F(50,50) field strength contour. Consistent rules proposed in MM Docket 86–144 (53 FR 10259, March 30, 1988), the IF distances proposed for Class C3 were calculated to prevent overlap of the predicted 36 mV/m (91 dBμ) contours of IF-related stations.

6. The Commission restated in the *Notice* the desire to assign FM broadcast stations in a manner that provides adequate protection to existing service but does not preclude additional allotments or assignments by protecting vast areas not actually served. Accordingly, the Commission proposed to reclassify, after a specific time period, existing stations continuing to operate with facilities that result in less predicted coverage than is normally expected for the pertinent station class.

7. Of the 98 formal comments filed in response to the *Notice*, 43 addressed the Class C3 proposal. All but one favored the proposal without major changes. Also, 3 of the 16 reply comments addressed the Class C3 proposal. All three reiterated support for it. Supporting commenters state that addition of the C3 Class would increase the efficiency and flexibility of the Commission's FM station classification scheme, that the proposed Class C3 is sensible from an economic standpoint, and that it would provide improvement of FM service in sparsely populated areas of the nation.

8. On the other hand, one party opposes the Class C3 proposal because it believes that the growth potential for public radio stations operating in the reserved portion of the FM band would be adversely affected by improvement of Class A commercial facilities. Most affected, according to this party, would be public radio stations operating on FM Channels 218, 219 and 220, channels that are particularly important for reserved band public radio service in areas where TV Channel 6 is also assigned.

9. Commenters favoring creation of Class C3 unanimously support the maximum ERP (25 kilowatts) and reference HAAT (100 meters) proposed for the new Class C3. All but one also concur with the proposed distance separation requirements, which were calculated on the basis of a primary service area bounded by the 1 mV/m (60 dBμ) contour. The reasons most often cited by the commenters for basing the distances on the 1 mV/m contour are: (1) that more C3 allotments could be made than if the Class B1 distances were to be used, and (2) that using the 1 mV/m contour would be consistent with the existing practice for all other FM stations in Zone II.

10. No commenters oppose, and several support, the proposal to reclassify, after a specified time period, existing stations continuing to operate with facilities that result in less predicted coverage than is normally expected for the pertinent station class. Greater Media supports the use of a three year period, noting that this policy was successful when applied to Class C stations in BC Docket 80–90. However, several other commenters suggest that a three year period is not warranted and that a shorter period would be more appropriate.

11. *Decision.* After consideration of the record developed in this proceeding with regard to the Class C3 proposal, the Commission concludes that the adoption of rules providing for such a class is in the public interest. The Commission finds that the potential benefits of the additional intermediate FM station class are significant and outweigh the administrative costs of its implementation.

12. Although the Class C3 rules will potentially help only ten to fifteen percent of Class A stations, those stations will be able to provide much better service with, in many cases, a relatively modest expenditure. Class C3 stations, with their greater power, will have much better coverage than Class A stations and will thus promote better spectrum utilization. Moreover, the Commission expects that some new Class C3 stations may be established in Zone II areas where a Class C2 allotment is not possible because of spacing requirements, and a Class A facility has been considered to be economically infeasible.

13. However, the assignment of Class C3 facilities may in some cases have a restrictive effect on possible future relocations and changes in facilities for non-commercial educational FM stations, particularly in markets where a Channel 6 TV station operates. To ensure the continued availability of adequate non-commercial educational FM radio service in such markets, the Commission will continue to apply the "heavy burden" policy developed in the *First Report and Order* in MM Docket 86–144 (52 FR 8259, March 17, 1987) to Class A upgrades on Channel 221, in order to lessen any possible hardship on non-commercial educational FM stations.

14. The Commission finds that the proposed maximum ERP of 25 kW and reference antenna HAAT of 100 meters are appropriate for the new class. These facilities will provide a predicted coverage area approximately midway between those of Class A and Class C2 stations. The Commission also finds that the proposed minimum distance separation requirements are appropriate. The co-channel, and the first, second and third adjacent channel distances are based on a Class C3

primary service area bounded by the F(50,50) 1 mV/m (60 dBμ) field strength contour. The distances calculated in this way are technically consistent with those currently applicable to all other station classes in Zone II, and will allow more Class C3 allotments to be made than if the existing Class B1 separations were applied. Concerning the IF distance separation requirements for the new Class C3, the Commission is adopting the proposed distances, which conform to the uniform 36 mV/m protection level established in MM Docket 86-144. (*Third Report and Order* in MM Docket 86-144, FCC 89-62, FR cite not yet available.)

15. The record in this proceeding supports the Commission's proposal to employ reclassification procedures to ensure that FM station classifications are commensurate with the size of the area actually served, and to prevent stations that do not meet minimum service requirements from receiving excessive protection, thereby precluding other operations. In the *Notice*, a three year period was proposed for licensees of stations facing reclassification to file for modification to meet the minimum requirements for their class. However, the Commission now believes that three years may be unnecessarily long and that a two year period is sufficient to allow for these filings. Accordingly, the Commission is establishing a date two years from the effective date of this order by which parties subject to reclassification must apply for at least the minimum facilities for their current class as set forth in 47 CFR 73.211 as amended, or be reclassified, with the new class to be determined in accordance with 47 CFR 73.210 and 47 CFR 73.211. The Commission will issue a Public Notice listing these parties based on their status on the effective date of this order.

16. In processing applications from parties seeking to avoid reclassification pursuant to this order, the Commission believes that the public interest will be best served if the following procedures are used. Specifically, for each application filed prior to the deadline and not reached for processing until after the deadline, the Commission will afford the applicant one opportunity to correct all deficiencies in the application. Upon finding a deficiency in a timely filed application, the staff on its own motion will waive the "hard look" FM processing rules, (*Report and Order* in MM Docket 84-750, 50 FR 19936, May 13, 1985) and notify the applicant of the deficiency, rather than returning the application. The applicant will then have 30 days within which to correct the noted deficiency and any other deficiencies in the application. If after the 30 day period the application still contains one or more deficiencies, it will be returned and the allotment reclassified. Thereafter, the allotment could be returned to its prior classification only through filing and subsequent grant of a petition for rulemaking to amend the Table of FM Allotments (47 CFR 73.202).

17. For purposes of compliance with the provisions of the Canada-United States FM Broadcast Agreement (and Working Arrangement), Class C3 allotments and assignments within 320 kilometers of the border will be considered to be Class B1. Similarly, for the purposes of compliance with the provisions of the Mexico-United States FM Broadcasting Agreement, Class C3 allotments and assignments within 320 kilometers of the border will be considered to be Class B. This procedure is necessary until agreements incorporating the new C3 station class can be negotiated with these countries.

18. The Commission's Mass Media Bureau has identified approximately 150 existing Class A stations that apparently can be upgraded to Class C3 at their current locations and on their currently assigned channels, without precluding any other Class A to Class C3 upgrades. Rather than to require individual petitions for rulemaking from licensees and permittees of these stations who desire to upgrade their stations to Class C3, the Bureau intends to issue an omnibus notice of proposed rulemaking proposing the upgrade of these allotments. This omnibus proceeding will not preclude any other parties from filing timely petitions for rulemaking to amend the Table of FM Allotments in accordance with our existing procedures. This approach is intended to spare these licensees and permittees some effort and expense and will also conserve FCC staff resources.

19. The Commission believes that the potential public benefit of the new intermediate class of FM stations (Class C3) warrants its incorporation into the existing regulatory structure. Appropriate technical criteria that will enable the new station class to provide opportunities for significantly expanded FM service as well as some new service, while fully protecting all existing service. The Commission is also continuing its "heavy burden" policy to ensure that the upgraded service resulting from the creation of Class C3 does not unduly restrict non-commercial educational radio stations operating in the vicinity of Channel 6 TV stations. Finally, the Commission is providing for reclassification of stations operating with less than the expected minimum facilities for their class. These actions will contribute to the Commission's policy goal of ensuring that the FM broadcast spectrum is effectively utilized.

Final Regulatory Flexibility Analysis

I. Need and Purpose of this Action

The Commission is adding an additional station class to its existing FM broadcast station classification system. The principal purpose of this action is to provide additional opportunities for improvement of the facilities of existing Class A FM broadcast stations. The need for such improvement was outlined in the *Notice* and confirmed by the majority of the commenting parties. An additional purpose of this action is to provide additional opportunities for new service in areas where Class A operation is economically unfeasible and Class C2 operation is technically unfeasible.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

No commenters addressed the Initial Regulatory Flexibility Analysis.

III. Significant Alternatives Considered and Rejected

There are no alternatives to the action herein that would accomplish the stated purpose. Another proposal in the *Notice*, to increase the maximum transmitting power for Class A stations from 3000 to 6000 Watts, remains under consideration at this time. Final action on that proposal will be taken in a future order. Although also intended to provide for improvement of Class A FM station facilities, that proposal is being considered as an addition, rather than an alternative, to the action taken herein.

20. Accordingly, *It is ordered* That pursuant to the authority contained in Sections 4 and 303 of the Communications Act of 1934, as amended, 47 CFR Part 73 is *amended* as set forth below. *It is further ordered* That authority is delegated to the Chief, Mass Media Bureau to issue a Public Notice listing the parties subject to reclassification pursuant to this order, and to initially waive 47 CFR 73.3566 (as discussed *supra*, in connection with the "hard look" processing procedures) for applications submitted by these parties.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

List of Subjects

47 CFR Part 1

Procedures, Table of FM Allotments.

47 CFR Part 73

Radio broadcasting, FM Broadcast stations, Class C3.

For the reasons set forth in the preamble, 47 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

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

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

2. 47 CFR 1.420 is amended by revising the Note following paragraph (h) to read as follows:

§ 1.420 Additional procedures in proceedings for amendment of the FM, TV or Air-Ground Table of Allotments.

* * * * *

(h) * * *

Note: Licensees and permittees operating Class A FM stations who seek to upgrade their facilities to Class B1, B, C3, C2, C1, or C on Channel 221, and whose proposed 1 mV/m signal contours would overlap the Grade B contour of a television station operating on Channel 6 must meet a particularly heavy burden by demonstrating that grants of their upgrade requests are in the public interest. In this regard, the Commission will examine the record in rule making proceedings to determine the availability of existing and potential non-commercial education service.

For the reasons set forth in the preamble, 47 CFR Part 73 is amended as follows:

PART 73—[AMENDED]

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

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

2. 47 CFR 73.207 is amended by revising paragraph (a), the introductory text to paragraph (b) and the text of paragraphs (b)(2), (b)(3), and (c), as follows:

§ 73.207 Minimum distance separation between stations.

(a) Except for assignments made pursuant to §§ 73.213 or 73.215, FM allotments and assignments must be separated from other allotments and assignments on the same channel (co-channel) and five pairs of adjacent channels by not less than the minimum distances specified in paragraphs (b) and (c) of this section. The Commission will not accept petitions to amend the Table of Allotments, applications for new stations, or applications to change the channel or location of existing assignments unless transmitter sites meet the minimum distance separation requirements of this section, or such applications conform to the requirements of §§ 73.213 or 73.215. However, applications to modify the facilities of stations with short-spaced antenna locations authorized pursuant to prior waivers of the distance separation requirements may be accepted, provided that such applications propose to maintain or improve that particular spacing deficiency. Class D (secondary) assignments are subject only to the distance separation requirements contained in paragraph (b)(3) of this section. (*See* § 73.512 for rules governing the channel and location of Class D (secondary) assignments.)

(b) The distances listed in Tables A, B, and C apply to allotments and assignments on the same channel and each of five pairs of adjacent channels. The five pairs of adjacent channels are the first (200 kHz above and 200 kHz below the channel under consideration), the second (400 kHz above and below), the third (600 kHz above and below), the fifty-third (10.6 MHz above and below), and the fifty-fourth (10.8 MHz above and below). The distances in the Tables apply regardless of whether the proposed station class appears first or second in the "Relation" column of the table.

* * * * *

(2) Under the Canada-United States FM Broadcasting Agreement, domestic U.S. allotments and assignments within 320 kilometers (199 miles) of the common border must be separated from Canadian allotments and assignments by not less than the distances given in Table B, which follows. When applying Table B, U.S. Class C2 allotments and assignments are considered to be Class B; also, U.S. Class C3 allotments and assignments are considered to be Class B1.

(3) Under the Mexico-United States FM Broadcasting Agreement, domestic U.S. allotments and assignments within 320 kilometers (199 miles) of the common border must be separated from Mexican allotments and assignments by not less than the distances given in Table C, which follows. When applying Table C, U.S. Class C2, C3 and B1 allotments and assignments are considered to be Class B; U.S. Class C1 allotments and assignments are considered to be Class C.

* * * * *

(c) The distances listed below apply only to allotments and assignments on Channel 253 (98.5 MHz). The Commission will not accept petitions to amend the Table of Allotments, applications for new stations, or applications to change the channel or location of existing assignments where the following minimum distances (between transmitter sites, in kilometers) from any TV Channel 6 allotment or assignment are not met:

MINIMUM DISTANCE SEPARATION FROM TV CHANNEL 6 (82–88 MHz)

FM Class	TV Zone I	TV Zones II & III
A	16	20
B1	19	23
B	22	26
C3	19	23
C2	22	26
C1	29	33
C	36	41

3. 47 CFR 73.207 is further amended by revising the introductory text in paragraph (b)(1); by adding, in TABLE A in paragraph (b)(1), a new row for relation "A to C3" to be inserted after the existing row for relation "A to B", a new row for relation "B1 to C3" to be inserted after the existing row for relation "B1 to B", a new row for relation "B to C3" to be inserted after the existing row for relation "B to B", and four new rows, for relations "C3 to C3", "C3 to C2", "C3 to C1" and "C3 to C", to be inserted, in that order, after the existing row for relation "B to C", as follows:

§ 73.207 Minimum distance separation between stations.

* * * * *

(b) * * *

(1) Domestic allotments and assignments must be separated from each other by not less than the distances in Table A which follows:

TABLE A—MINIMUM DISTANCE SEPARATION REQUIREMENTS IN KILOMETERS (MILES)

Regulation	Co-channel	200 kHz	400/600 kHz	10.6/10.8 MHz
* * * * * * *				
A to C3	138 (86)	84 (52)	42 (26)	12 (8)
* * * * * * *				
B1 to C3	175 (109)	114 (71)	50 (31)	14 (9)
* * * * * * *				
B to C3	211 (131)	145 (90)	71 (44)	17 (11)
* * * * * * *				
C3 to C3	153 (95)	99 (62)	43 (27)	14 (9)
C3 to C2	177 (110)	117 (73)	56 (35)	17 (11)
C3 to C1	211 (131)	144 (90)	76 (47)	24 (15)
C3 to C	237 (147)	176 (109)	96 (60)	31 (19)
* * * * * * *				

4. 47 CFR 73.210 is amended by revising paragraph (a) republishing the introductory text of paragraph (b), and revising paragraphs (b) (1), (2), and (3) to read as follows:

§ 73.210 Station classes.

(a) The rules applicable to a particular station, including minimum and maximum facilities requirements, are determined by its class. Possible class designations depend upon the zone in which the station's transmitter is located, or proposed to be located. The zones are defined in § 73.205. Allotted station classes are indicated in the Table of Allotments, § 73.202. Class A, B1 and B stations may be authorized in Zones I and I–A, Class A, C3, C2, C1, and C stations may be authorized in Zone II.

(b) The power and antenna height requirements for each class are set forth in § 73.211. If a station has an ERP and an antenna HAAT such that it cannot be classified using the maximum limits and minimum requirements in § 73.211, its class shall be determined using the following procedure:

(1) Determine the reference distance of the station using the procedure in paragraph (b)(1)(i) of § 73.211. If this distance is less than or equal to 24 km, the station is Class A; otherwise,

(2) For a station in Zone I or Zone I–A, except for Puerto Rico and the Virgin Islands:

(i) If this distance is greater than 24 km and less than or equal to 39 km, the station is Class B1.

(ii) If this distance is greater than 39 km and less than or equal to 52 km, the station is Class B.

(3) For a station in Zone II:

(i) If this distance is greater than 24 km and less than or equal to 39 km, the station is Class C3.

(ii) If this distance is greater than 39 km and less than or equal to 52 km, the station is Class C2.

(iii) If this distance is greater than 52 km and less than or equal to 72 km, the station is Class C1.

(iv) If this distance is greater than 72 km and less than or equal to 92 km, the station is Class C.

* * * * *

5. 47 CFR 73.211 is amended by revising paragraphs (a)(1), (a)(2), the table in the introductory text of paragraph (b)(1) (the introductory text of paragraph (b)(1) is republished), and revising paragraph (b)(3), to read as follows:

§ 73.211 Power and antenna height requirements.

(a) *Minimum requirements.* (1) Except as provided in paragraphs (a)(3) and (b)(2) of this section, FM stations must operate with a minimum effective radiated power (ERP) as follows:

(i) The minimum ERP for Class A stations is 0.1 kW.

(ii) The ERP for Class B1 stations must exceed 3 kW.

(iii) The ERP for Class B stations must exceed 25 kW.

(iv) The ERP for Class C3 stations must exceed 3 kW.

(v) The ERP for Class C2 stations must exceed 25 kW.

(vi) The ERP for Class C1 stations must exceed 50 kW.

(vii) The minimum ERP for Class C stations is 100 kW.

(2) Class C stations must have an antenna height above average terrain (HAAT) of at least 300 meters (984 feet). No minimum HAAT is specified for Classes A, B1, B, C3, C2, or C1 stations.

* * * * *

(b) *Maximum limits.* (1) Except for stations located in Puerto Rico or the Virgin Islands, the maximum ERP in any direction, reference HAAT, and distance to the class contour for each FM station class are listed below:

Station class	Maximum ERP	Reference HAAT in meters (ft)	Class contour distance in kilometers
A	3kW (4.8 dBk)	100 (328)	24
B1	25kW (14.0 dBk)	100 (328)	39
B	50kW (17.0 dBk)	150 (492)	52
C3	25kW (14.0 dBk)	100 (328)	39
C2	50kW (17.0 dBk)	150 (492)	52
C1	100kW (20.0 dBk)	299 (981)	72
C	100kW (20.0 dBk)	600 (1968)	92

* * * * *

(3) For stations located in Puerto Rico or the Virgin Islands, the maximum ERP in any direction, reference HAAT, and distance to the class contour for each FM station class are listed below:

Station class	Maximum ERP	Reference HAAT in meters (ft)	Class contour distance in kilometers
A	3kW (4.8 dBk)	335 (1100)	42
B1	25kW (14.0 dBk)	150 (492)	46
B	50kW (17.0 dBk)	472 (1549)	78

* * * * *

6. 47 CFR 73.506 is amended by revising paragraph (a)(3) to read as follows:

§ 73.506 Classes of noncommercial educational FM stations and channels.

(a) * * *

(3) Noncommercial educational FM (NCE–FM) stations with more than 10 watts transmitter power output are classified as Class A, B1, B C3, C2, C1, or C depending on the station's effective radiated power and antenna height above average terrain, and on the zone

in which the station's transmitter is located, on the same basis as set forth in §§ 73.210 and 73.211 for commercial stations.

* * * * *

7. 47 CFR 73.610 is amended by revising paragraph (f) to read as follows:

§ 73.610 Minimum distance separations between stations.

* * * * *

(f) The distances listed below apply only to allotments and assignments on Channel 6 (82–88 MHz). The Commission will not accept petitions to amend the Table of Allotments, applications for new stations, or applications to change the channel or location of existing assignments where the following minimum distances (between transmitter sites, in kilometers) for any FM Channel 253 allotment or assignment are not met:

MINIMUM DISTANCE SEPARATION FROM FM CHANNEL 253 (98.5 MHz)

Fm Class	TV Zone I	TV Zones II & III
A	16	20
B1	19	23
B	22	26
C3	19	23
C2	22	26
C1	29	33
C	36	41

[FR Doc. 89–9659 Filed 4–21–89; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1001

[Ex Parte No. 55 (Sub-66)]

Freedom of Information Act; Predisclosure Notification Procedures for Confidential Commercial Information

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts a final rule implementing Executive Order No. 12600, issued on June 23, 1987, which requires the Commission to revise its Freedom of Information Act regulations by promulgating predisclosure notification procedures for confidential commercial information.

EFFECTIVE DATE: The rule is effective on May 24, 1989.

FOR FURTHER INFORMATION CONTACT: S. Arnold Smith, (202) 275–7076 (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: On March 1, 1988, the Commission published for public comment in the **Federal Register** at 53 FR 6155 an interim rule revising its Freedom of Information (FOIA) regulations by promulgating predisclosure notification procedures for confidential commercial information, in accordance with Executive Order No. 12,600 (EO), issued on June 23, 1987.

Comments were received from the Association of American Railroads (AAR), The Reporters Committee for Freedom of the Press (Committee) and the Washington Legal Foundation (WLF). The Commission has carefully considered these submissions and has made several minor revisions to clarify and strengthen its rule.

First, AAR and WLF objected to the notice limitations contained in § 1001.5(c): Ten years for records submitted prior to January 1, 1988; six years for records submitted thereafter. The Commission recognizes that in some cases the necessity for confidentiality could remain for longer periods. Therefore, it has changed this provision so that notice will be provided to submitters whenever: (1) The Commission has reason to believe that information may be protected under Exemption 4; or (2) the information has been designated as confidential commercial information by the submitter (and regardless of submission date).

Second, WLF and the Committee disagreed with § 1001.5(d)(1) that would have permitted ten work days for a submitter to object to disclosure. The Committee noted that an additional ten work days might preclude the Commission from meeting the FOIA's overall ten day processing deadline. WLF, on the other hand, argued that a twenty day period for objections was more reasonable.

The Commission routinely processes FOIA requests, including those for proprietary data, within ten days as required by statute. In order, therefore, to make it clear that the Commission will continue to do so, even when the new predisclosure requirements are activated, the rule has been modified as follows:

(1) A caveat, "to the extent permitted by law," has been added to § 1001.5(b);

(2) Submitters shall have "a reasonable period of time," rather than a specified number of days, to provide disclosure objections under § 1001.5(d)(1); and

(3) The Commission's intent to disclose will be communicated to submitters "a reasonable number of days" prior to the disclosure date, under § 1001.5 (e)(3) and (g)(6), instead of the ten work days now provided.

Each of the aforesaid revisions comports with the EO.

This decision will not significantly affect either the quality of the human environment or energy conservation. This decision also will not have a significant impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1001

Freedom of Information.

Decided: April 17, 1989.

By the Commission: Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

For the reasons set out in the preamble, Part 1001 of Title 49 of the Code of Federal Regulations is amended as follows:

PART 1001—INSPECTION OF RECORDS

1. The authority citation for Part 1001 is revised to read as follows:

Authority: 5 U.S.C. 552 and 49 U.S.C. 10301 and 10321.

2. Section 1001.5 is revised to read as follows:

§ 1001.5 Predisclosure notification procedures for confidential commercial information.

(a) *In general.* Confidential commercial information provided to the Commission shall not be disclosed pursuant to a Freedom of Information Act (FOIA) request except in accordance with this section. For such purposes, the following definitions apply:

(1) "Confidential commercial information" means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) "Submitter" means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

(b) *Notice to submitters.* The Commission, to the extent permitted by law, shall provide a submitter with prompt written notice of receipt of a FOIA request encompassing its submissions in accordance with paragraph (c) of this section, and except as provided in paragraph (g) of this