

Allotments which were filed prior to October 2, 1989, may be authorized in accordance with paragraph (c)(1) or (c)(2) of this section. No other stations will be authorized pursuant to these paragraphs.

(1) *Applications for authorization under requirements equivalent to those of prior rules.* Each application for authority to operate a Class A station with no more than 3000 watts ERP and 100 meters antenna HAAT (or equivalent lower ERP and higher

antenna HAAT based on a class contour distance of 24 km) must specify a transmitter site that meets the minimum distance separation requirements in this paragraph. Each application for authority to operate a Class A station with more than 3000 watts ERP (up to a maximum of 5800 watts), but with an antenna HAAT lower than 100 meters such that the distance to the predicted 0.05 mV/m (34 dBμV/m) F(50,10) field strength contour does not exceed 98 km must specify a transmitter site that

meets the minimum distance separation requirements in this paragraph. Each application for authority to operate an FM station of any class other than Class A must specify a transmitter site that meets the minimum distance separation requirements in this paragraph with respect to Class A stations operating pursuant to this paragraph or paragraph (c)(2) of this section, and that meets the minimum distance separation requirements of § 73.207 with respect to all other stations.

#### MINIMUM DISTANCE SEPARATION REQUIREMENTS IN KILOMETERS (MILES)

| Relation     | Co-channel | 200 kHz   | 400/600 kHz | 10.6/10.8 MHz |
|--------------|------------|-----------|-------------|---------------|
| A to A.....  | 105 (65)   | 64 (40)   | 27 (17)     | 8 (5)         |
| A to B1..... | 138 (86)   | 88 (55)   | 48 (30)     | 11 (6)        |
| A to B.....  | 163 (101)  | 105 (65)  | 69 (43)     | 14 (9)        |
| A to C3..... | 138 (86)   | 84 (52)   | 42 (26)     | 11 (6)        |
| A to C2..... | 163 (101)  | 105 (65)  | 55 (34)     | 14 (9)        |
| A to C1..... | 196 (122)  | 129 (80)  | 74 (46)     | 21 (13)       |
| A to C.....  | 222 (138)  | 161 (100) | 94 (58)     | 28 (17)       |

(2) *Applications for authorization of Class A facilities greater than 3000 watts ERP and 100 meters HAAT.* Each application to operate a Class A station with an ERP and HAAT such that the reference distance would exceed 24 kilometers must contain an exhibit demonstrating the consent of the licensee of each co-channel, first, second or third adjacent channel station (for which the requirements of § 73.207 are not met) to a grant of that application. Each such application must specify a transmitter site that meets the applicable IF-related channel distance separation requirements of § 73.207. Applications that specify a transmitter site which is short-spaced to an FM station other than another Class A station which is seeking a mutual increase in facilities may be granted only if no alternative fully-spaced site or less short-spaced site is available. Licensees of Class A stations seeking mutual increases in facilities need not show that a fully spaced site or less short spaced site is available. Applications submitted pursuant to the provisions of this paragraph may be granted only if such action is consistent with the public interest.

#### § 73.215 [Amended]

6. 47 CFR 73.215 is amended by removing the NOTE that follows paragraph (b)(2)(ii).

7. 47 CFR 73.610 is amended by revising the introductory text of paragraph (f) and the first row of numbers in the table in paragraph (f) 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) from 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.....   | 17        | 22                |

\* \* \* \* \*

8. 47 CFR 73.1690 is amended by revising paragraph (b)(2) and adding a new paragraph (c)(4) and a NOTE following that new paragraph, to read as follows:

#### § 73.1690 Modification of transmission systems.

\* \* \* \* \*

(b) \* \* \*

(2) Change in the operating power from that specified on the station authorization, except as provided in paragraph (c)(4) of this section.

\* \* \* \* \*

(c) \* \* \*

(4) On or after December 1, 1989, increase in the effective radiated power of eligible Class A FM stations pursuant to MM Docket 88-375, when such increase is effected by:

(i) Replacement of a non-directional antenna with another non-directional antenna having higher gain, provided that the height above ground of the center of radiation is within ±2 meters of that specified in the station authorization; and/or

(ii) Increase in the power input to the antenna, as a result of adjustment of the transmitter output power, change in the type or length of the transmission line, and/or installation of filters or diplexers.

Note: Class A stations eligible for a power increase pursuant to paragraph (c)(4) are those which appear on a list issued by the Commission in November 1989.

\* \* \* \* \*

[FR Doc. 89-20060 Filed 8-24-89; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 74

[MM Docket 86-112, FCC 89-276]

#### Satellite and Terrestrial Microwave Feeds to Noncommercial Educational FM Translators

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The action taken herein amends the Commission's rules regarding applications for

noncommercial FM translators assigned to reserved channels (channels 200-220), owned and operated by their primary stations and proposing to use alternate signal delivery. Certain applicants may be required to make a special showing that an alternative noncommercial FM frequency remains available. The rule modified herein strikes a balance between the public interest embodied in ensuring the development and expansion of local public radio service and increasing noncommercial FM service to unserved and underserved areas.

**EFFECTIVE DATE:** October 2, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Scott Roberts, Mass Media Bureau, (202) 632-6302.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order in MM Docket No. 86-112, adopted August 4, 1989, and released August 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street Northwest, Suite 140, Washington, DC 20037.

#### Summary of the Memorandum Opinion and Order

1. On October 31, 1985, the Moody Bible Institute petitioned the Commission to permit noncommercial educational FM (NCE-FM) translators to rebroadcast signals delivered via satellite and terrestrial microwave facilities. Moody further proposed that such signal delivery be limited to NCE-FM translators on reserved channels (200-220) and owned and operated by the primary station to be rebroadcast. The Commission initiated a rule making proceeding in response to the Moody petition, culminating in a Report and Order deleting the requirement that NCE-FM translators assigned to reserved channels and owned and operated by their primary stations receive signals from their primary stations, or another translator, directly over-the-air. The revised rules permit use of signal delivery means that include, but are not limited to, satellite and terrestrial microwave facilities.

2. As a consequence of that action, the Commission received petitions for reconsideration. Petitioners uniformly opposed the rule change adopted in the

Report and Order, arguing that the new rule undermines the concept of localism, increases interference problems, and thwarts the growth of fullpower FM service to the public. In general, petitioners asked that the Commission vacate or substantially modify the alternative signal delivery rule.

3. Subsequent to the reconsideration period, several of these petitioners submitted a Joint Proposal intended to resolve the issues raised in the docket. The Joint Proposal proposes to allow use of alternative signal delivery to NCE-FM translators which are owned and operated by the licensee of the primary station to be rebroadcast if these translators comply with a series of conditions that are designed, according to these parties, to assure continued interference-free radio service in the NCE-FM band and to allow expansion of service through the use of NCE-FM translators.

4. Upon consideration of the commenters' concerns on this issue expressed in the Joint Proposal, the Commission concluded that the rules adopted in the Report and Order, permitting unrestricted use of alternative signal delivery for licensee owned and operated NCE-FM translators, should be amended to incorporate certain provisions of the Joint Proposal. Thus, the amended rules provide that an applicant for an NCE-FM translator seeking authorization to use alternative signal delivery will have to make a showing that at least one alternative NCE-FM frequency that provides comparable signal coverage to the same area encompassed by the applicant's proposed 1 mV/m contour remains available. Applicants will be required to make such a showing during a transitional period that will extend until October 1, 1992. Applicants need not make such a showing if the proposed NCE-FM translator is within 80 kilometers of the 1 mV/m contour of the primary station to be rebroadcast or is greater than 160 kilometers from any NCE-FM radio station.

5. In justifying its decision, the Commission stated that the limitations imposed on unrestricted alternative signal delivery authority will have minimal effect in most cases. While NCE-FM translator applicants proposing to locate more than 80 kilometers outside of the 1 mV/m contour of the primary station, or within 160 kilometers from any NCE-FM radio station must establish the availability of at least one other frequency for an additional translator, the Commission does not anticipate that in most rural areas this requirement will be difficult to show or represent a significant

constraint. This is because there are likely to be many unused frequencies in such areas. It is only in densely populated urban areas that it may be relatively difficult to demonstrate that there would be an additional channel available for another translator. However, in urban areas there is also likely to already exist a number of full-service noncommercial and commercial stations. Hence, in such areas the benefits from authorizing a translator to rebroadcast the signal of a distant FM station should be less than in rural areas, because listeners are likely to already be exposed to a variety of local FM stations.

6. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens on the public. Implementation of these new or modified requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

7. The Secretary shall cause a copy of this Memorandum Opinion and Order to be sent to the Chief Counsel for Advocacy of the Small Business Administration.

8. Accordingly, *it is ordered*, That under the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, part 74 of the Commission's rules and regulations is amended as set forth below effective October 2, 1989. *It is further ordered*, That the Petitions for Reconsideration filed by the Association of Maximum Service Telecasters, Inc.; the National Association of Broadcasters; Salem Broadcasting Services; and, a joint petition for reconsideration filed by National Public Radio, the National Federation of Community Broadcasters, the Intercollegiate Broadcasting Systems, Inc., the Office of Communication of the United Church of Christ, and the People For the American Way are granted to the extent adopted herein and denied in all other aspects. Finally, the petition for rule making filed by the Association of Maximum Service Telecasters is denied.

9. *It is further ordered*, That this proceeding is terminated.

#### List of Subjects in 47 CFR Part 74

FM broadcast translator stations, FM broadcast booster stations.

Part 74 of title 47 of the Code of Federal Regulations is amended as follows:

**PART 74—[AMENDED]**

1. The authority citation for part 74 continues to read as follows:

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

2. Section 74.1231 is amended by revising paragraph (b) to read as follows:

**§ 74.1231 Purpose and permissible service.**

(b) Except as provided in paragraphs (f) and (g) of this section, an FM translator may be used only for the purpose of retransmitting the signals of an FM broadcast station or another FM translator station which have been received directly through space, converted, and suitably amplified. However, a noncommercial educational FM translator operating on a reserved channel (Channels 200–220) and owned and operated by the licensee of the primary noncommercial educational FM station it rebroadcasts may use alternative signal delivery means including, but not limited to, satellite and microwave facilities, if the applicant complies with either paragraph (b)(1) or (2) of this section:

(1) The applicant demonstrates that:

(i) The transmitter site of the proposed FM translator station is within 80 kilometers from the predicted 1 mV/m contour of the primary station to be rebroadcast; or,

(ii) The transmitter site of the proposed FM translator station is more than 160 kilometers from the transmitter site of any authorized full service noncommercial educational FM station;

or,

(iii) The application is mutually exclusive with an application containing the showing as required by § 74.1231(b) (2)(i) or (ii); or,

(iv) The application is filed after October 1, 1992.

(2) If the transmitter site of the proposed FM translator station is more than 80 kilometers from the predicted 1 mV/m contour of the primary station to be rebroadcast or is within 160 kilometers of the transmitter site of any authorized full service noncommercial educational FM station the applicant must show that:

(i) An alternative frequency can be used at the same site as the proposed FM translator's transmitter location and can provide signal coverage to the same area encompassed by the applicant's proposed 1 mV/m contour; or,

(ii) An alternative frequency can be used at a different site and can provide signal coverage to the same area

encompassed by the applicant's proposed 1 mV/m contour.

Federal Communications Commission,

Donna R. Searcy,

Secretary.

[FR Doc. 89-20061 Filed 8-24-89; 8:45 am]

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**INTERSTATE COMMERCE COMMISSION**

**49 CFR Parts 1003, 1011, 1181, 1182, 1183, 1186, 1187, and 1188**

[Ex Parte No. MC-179]

**Purchase, Merger, and Control of Motor Passenger and Water Carriers**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commission is adopting final regulations, as set forth below, governing: (1) Applications under 49 U.S.C. 11343–11344 to purchase, merge, or acquire control of motor passenger and water carriers; and (2) requests for temporary authority under 49 U.S.C. 11349 during the pendency of: (a) Applications to transfer operating rights of motor and water carriers under 49 U.S.C. 10926; and (b) applications and petitions for exemption to purchase, merge, or acquire control of motor and water carriers under 49 U.S.C. 11343–11344. Application Forms OP-F-44 and OP-F-45, now used for motor passenger finance transactions, are discontinued, and temporary authority Form OP-F-46 is revised. More general application requirements keyed to the applicable statutory burden of proof have been adopted in lieu of Forms OP-F-44 and OP-F-45, and safety fitness has been incorporated as an issue in passenger finance applications. To assist applicants in determining whether their finance applications are within the jurisdictional scope of 49 U.S.C. 11343, the rules for identifying applicable gross operating revenues have been consolidated in a new Part 1188. Temporary authority procedures have been consolidated in a new part 1187. Additionally, we have codified authority for rendering initial decisions in motor passenger and water carrier finance proceedings under 49 U.S.C. 11343–11344 to the Motor Carrier Board. The final rules in the above areas are the same as those proposed, with only minor modifications.

Finally, we have codified in parts 1181, 1182, and 1186 (which cumulatively cover all motor finance transactions) the

longstanding requirement that the party to whom motor carrier operating rights are being transferred certify that it is not domiciled in Mexico nor owned or controlled by persons of Mexico. The proposed rules were published on March 24, 1989 at 54 FR 12252.

**EFFECTIVE DATE:** September 24, 1989.

**FOR FURTHER INFORMATION CONTACT:**

Richard B. Felder, (202) 275-7691

or

James L. Brown, (202) 275-7898.

[TDD for hearing impaired: (202) 275-1721.]

**SUPPLEMENTARY INFORMATION:**

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 275-1721.]

**Environmental and Energy Considerations**

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

**Regulatory Flexibility Analysis**

We affirm our prior certification. The rules we are adopting will have an indirect and positive but not significant impact on a substantial number of small entities. With one minor exception concerning the certification of safety ratings by motor passenger applicants, the rules will not impose additional reporting, recordkeeping, or compliance requirements on applicants. Conversely, the total information requirements for all applicants have been reduced appreciably, and the revised rules will not duplicate, overlap, or conflict with any existing Federal rule.

**Paperwork Reduction Analysis**

We estimate that an average of 25 burden hours per response are required to complete the collection of information involved with the proposed revised temporary authority form OP-F-46. This represents no change from the estimate applicable to the current form, inasmuch as we propose no significant changes to that form. However, whereas OMB's current approval is based on an estimate of 300 responses per year, only 175 such responses were collected during the 1988 fiscal year. In view of program changes already reflected in *Transfer Rules*, *supra*, we estimate a further dramatic reduction in the number of temporary

authority applications filed in connection with small carrier transfers since such transactions now may be consummated 10 days after filing the application. Therefore, we now estimate that only 125 annual responses will be collected, thus reducing the total estimated annual reporting hours to 3,125.

It is estimated that an average of 60 burden hours per response are required to complete the collection of information involved with finance applications submitted in lieu of current forms OP-F-44 and OP-F-45, proposed to be discontinued. The present OMB approval of form OP-F-44 estimates 14 annual responses, with an average reporting burden of 80 hours per response; the approval of form OP-F-45 estimates 11 annual responses with an average reporting burden of 120 hours per response. We estimate that the total number of annual responses in these areas will remain unchanged at 25, which tends to be confirmed by the statistic that a total of 20 such applications were filed during the 1988 fiscal year. However, our proposed simplification and streamlining of these matters through elimination of the forms and the needlessly detailed data they require would, we estimate, reduce the average burden per response to only 60 hours. Accordingly, the total estimated annual reporting hours would be reduced to 1,500.

These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the section of Administrative Services, Interstate Commerce Commission, and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 3120-0079), Washington, DC 20503.

#### List of Subjects

##### 49 CFR Part 1003

Brokers, Freight forwarders, Insurance, Maritime carriers, Motor carriers, Securities, Surety bonds.

##### 49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and function (Government agencies).

##### 49 CFR Part 1181

Administrative practice and procedure, Brokers, Freight forwarders, Maritime carriers, Motor carriers.

##### 49 CFR Part 1182

Administrative practice and procedure, Motor carriers, Maritime carriers.

##### 49 CFR Part 1183

Administrative practice and procedure, Motor carriers.

##### 49 CFR Part 1186

Administrative practice and procedure, Freight forwarders, Motor carriers.

##### 49 CFR Part 1187

Administrative practice and procedure, Motor carriers, Maritime carriers.

##### 49 CFR Part 1188

Administrative practice and procedure, Motor carriers.

Authority: 5 U.S.C. 551 and 553; 31 U.S.C. 9701; and 49 U.S.C. 10301, 10302, 10304, 10305, 10321, 10922, 10926, 10322, 11321, 11343, 11344, 11345a, and 11349.

Decided: August 18, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioner André, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X of the Code of Federal Regulations is amended as follows:

#### PART 1003—LIST OF FORMS

1. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 551(a), 5 U.S.C. 553(1)(c) and 49 U.S.C. 10321.

2. The Forms OP-F-44 and OP-F-45 are removed from § 1003.2.

3. The entry for OP-F-46 in § 1003.2 is revised to read as follows:

§ 1003.2 Motor and water carrier, broker, and household goods freight forwarder forms.

\* \* \* \* \*

##### OP-F-46

Application for approval, under 49 U.S.C. 11349, of the temporary operation of motor carrier or water carrier properties.

Cross Reference: 49 CFR part 1187.

\* \* \* \* \*

#### PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF

4. The authority citation for part 1011 continues to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, and 10321; 31 U.S.C. 9701; and 5 U.S.C. 553.

5. Section 1011.6(i)(2) is revised to read as follows:

##### § 1011.6 Employee boards.

\* \* \* \* \*

(i) \* \* \*

(2) Motor passenger carrier (except applications by carrier with less than satisfactory safety ratings from DOT), water carrier finance applications under 49 U.S.C. 11343-11344, and small carrier transfer applications under 49 U.S.C. 10926.

\* \* \* \* \*

#### PART 1181—TRANSFERS OF OPERATING RIGHTS UNDER 49 U.S.C. 10926

6. The authority citation for part 1181 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10926; 5 U.S.C. 553.

7. In § 1181.2(b)(1), a new paragraph (ix) is added to read as follows:

##### § 1181.2 Applications.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ix) If motor carrier operating rights are being transferred, certification by the transferee that it is not domiciled in Mexico nor owned or controlled by persons of that country.

\* \* \* \* \*

8. Part 1182 is revised to read as follows:

#### PART 1182—PURCHASE, MERGER, AND CONTROL OF MOTOR PASSENGER CARRIERS AND WATER CARRIERS

\* \* \* \* \*

##### Subpart A—Applications

Sec.

1182.1 Applications covered by these rules.

1182.2 Starting the application process.

1182.3 Content of applications.

1182.4 Directly related applications.

1182.5 Filing the application.

1182.6 Commission review of the application.

##### Subpart B—Protests

1182.7 Protests.

1182.8 Notice.

1182.9 Contents of a protest.

1182.10 Filing a protest.

1182.11 Withdrawing a protest.

##### Subpart C—General Requirements

1182.12 Amendments.

1182.13 Replies.

1182.14 Withdrawing an application.

1182.15 Copies.

1182.16 Certificate of service.

1182.17 Verification of statements.

1182.18 Statutory findings.

Authority: 5 U.S.C. 559 and 49 U.S.C. 10321, 11321, 11341, 11343, 11344, and 11345a.

## Subpart A—Applications

### § 1182.1 Applications covered by these rules.

These rules govern applications for authority under 49 U.S.C. 11343–11344 to consolidate, merge, purchase, or lease operating rights and properties of a motor carrier of passengers or a water carrier, or to acquire control of one or more motor carriers of passengers or water carriers through ownership of stock or otherwise.

### § 1182.2 Starting the application process.

There is no application form for these proceedings. Applicants for authority under 49 U.S.C. 11343–11344 to consolidate, merge, purchase, or lease operating rights and properties of a motor carrier of passengers or a water carrier, or to acquire control of one or more motor carriers of passengers or water carriers, through ownership of stock, or otherwise, shall file a pleading containing the information described in 49 CFR 1182.3. See 49 CFR 1002.2(f)(21) for filing fees.

### § 1182.3 Content of applications.

(a) The application must contain the following information:

- (1) Full name, address, and signature of each of the parties to the transaction.
- (2) Copies or descriptions of the pertinent operating authorities of the parties.
- (3) A description of the proposed transaction.
- (4) Identification of any ICC-regulated carriers affiliated with the parties, a brief description of their operations, and a summary of the intercorporate structure of the corporate family from top to bottom.
- (5) If applicants are motor carriers, a jurisdictional statement that the aggregate gross operating revenues from interstate operations conducted by them and their motor carrier affiliates, if any, exceeded \$2 million for a period of 12 consecutive months, ending not more than six months preceding the date of the parties' agreement covering the transaction. See 49 CFR part 1188.
- (6) A statement indicating whether the transaction will or will not significantly affect the quality of the human environment and the conservation of energy resources.
- (7) Information to demonstrate that the proposed transaction is consistent with the national transportation policy and the public interest, including particularly:

(i) The effect of the proposed transaction on competition within the involved transportation markets;

(ii) The effect of the proposed transaction on accommodating significant transportation needs; and

(iii) If the proceeding involves a motor passenger or rail carrier, the effect of the proposed transaction on the adequacy of transportation to the public; the effect on the public interest of including, or failing to include, other carriers in the area involved in the proposed transaction (if applicable); the total fixed charges that result from the proposed transaction; and the interest of carrier employees affected by the proposed transaction. See 49 U.S.C. 111344(b)(2).

(8) Certification of the U.S. Department of Transportation safety fitness rating of each motor passenger carrier involved in the transaction, whether that carrier is a party to the transaction or is affiliated with a party to the transaction.

(9) If motor passenger carriers are involved in the transaction, certification by the party acquiring any operating rights through the transaction that it has sufficient insurance coverage under 49 U.S.C. 10927 for the service it intends to provide.

(10) If water carriers are involved in the transaction, information to show that the acquiring party is fit, willing, and able properly to perform the service authorized by the certificate or permit involved and to conform to the applicable statutory and administrative requirements.

(11) If motor passenger carriers are involved in a purchase of assets or merger transaction, certification by the party acquiring any operating rights through the transaction that it is not domiciled in Mexico nor owned or controlled by persons of that country.

(b) The application shall contain applicants' entire case unless: (1) The Commission finds, on its own motion or that of a party to the proceeding, that additional evidentiary submissions are required to resolve the issues in a particular case; or (2) the application contains an impediment. (See 49 CFR 1182.12.)

(c) Any statements submitted on behalf of an applicant supporting the transaction shall be verified. Pleadings consisting strictly of legal argument, however, need not be verified.

(d) If an application or supplemental pleading contains false or misleading information, the granted application is void *ab initio*.

### § 1182.4 Directly related applications.

(a) Directly related applications shall be filed along with the proposed acquisition transaction in a single submission. Such applications are those filed under other provisions of title 49, subtitle IV, U.S. Code, "Transportation," that either directly affect or are directly affected by the application filed under 49 U.S.C. 11343–11344. Typically, they include requests to obtain new operating authority, or to modify or convert existing operating authority. Whenever an application is filed under these rules and a directly related application also is filed, each application shall make reference to the other.

(b) Whenever possible, the Commission will decide directly related applications in a consolidated proceeding. In such cases, the statutory time frames governing the lead proceeding under 49 U.S.C. 11343–11344 will be applied.

### § 1182.5 Filing the application.

(a) Each application shall be filed with the Commission as provided at 49 CFR 1182.15. In addition, one copy shall be delivered to the Commission's Regional Office for the region in which each party's headquarters is located. Upon written request of a State, one copy shall be delivered, by first-class mail.

(b) In their application, the parties shall certify that they have delivered copies of the application as provided in paragraph (a) of this section.

### § 1182.6 Commission review of the application.

(a) All applications will be reviewed for correctness and completeness. Minor errors will be corrected with notification to the applicants. Incomplete applications may be rejected.

(b) A summary of the application will be published in the *ICC Register* to give notice to the public. The summary for an application involving motor carriers also will be published in the *Federal Register*. It will be published in the form of a tentative grant of authority. (See also 49 CFR 1182.12, regarding applications published with impediments.)

(c) If the published notice does not properly describe the authority sought, applicants shall inform the Commission within 10 days after the publication date.

## Subpart B—Protests

### § 1182.7 Protests.

(a) Protests to an application shall be filed (received at the Commission)

within 45 days after the date the application is published.

(b) Failure to file a timely protest waives further participation in the proceeding. If no one opposes the application, the published tentative grant of authority will automatically become effective at the close of the comment period.

#### § 1182.8 Notice.

A copy of the application will be available for inspection at the Commission's offices in Washington, DC, or at the Regional Office for each applicant's domicile. Interested persons may request a copy of the application by writing to the Commission-designated contract agent (as identified in the *ICC Register*), Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, and including a check or money order for \$10 made payable to such contract agent; or, by contacting the contract agent at (202) 289-4357/4359 [TDD for hearing impaired (202) 275-1721] and arranging billing acceptable to the agent.

#### § 1182.9 Contents of a protest.

(a) Protests shall be verified.  
 (b) The protest shall contain all information upon which the protestant plans to rely, including the grounds for the protest and the protestant's interest in the proceeding.  
 (c) A protest may include a request that the Commission allow:  
 (1) Additional evidentiary submissions from the parties to a proceeding; or  
 (2) Further procedural steps to develop the evidentiary record (e.g., discovery).  
 The request must demonstrate that this procedure is necessary to resolve the specific issues giving rise to the request. If the Commission finds, whether on its own motion or that of a party, that the record requires supplementation, a decision will be issued indicating the additional information required and the time frames within such information must be submitted.

#### § 1182.10 Filing a protest.

(a) The protest is to be sent to the Commission with the docket number of the proceeding conspicuously placed on the top of the first page of the protest.  
 (b) A copy of the protest shall be served on applicant's representative(s).

#### § 1182.11 Withdrawing a protest.

A protestant wishing to withdraw from a proceeding shall concurrently inform the Commission and the applicants in writing.

### Subpart C—General Requirements

#### § 1182.12 Amendments.

(a) After notice of an application is published, applicants may not amend their proposal unless specifically required to do so by the Commission because of an "impediment" in the application (e.g., a jurisdictional problem, unresolved fitness issue, or question concerning possible unlawful control). Any such impediment will be indicated in the published notice.

(b) If an impediment is noted, applicants file a pleading suggesting a "cure" to the impediment and/or containing legal argument, within 20 days after the date the notice is published. Applicants must subsequently serve any protestant(s) with a copy of their pleading. Failure to comply with these provisions may result in dismissal of the application.

(c) Protestants wishing to file a reply to the applicants' pleading must do so within 20 days after the date applicants' pleading is filed.

(d) If replies to applicants' pleading are filed, applicants may file a rebuttal within 15 days after the date the replies were due. This optional pleading will be in addition to any evidence previously submitted by applicants in the application or the reply to protests.

#### § 1182.13 Replies.

(a) If the application is opposed, applicants may file a reply to the protest(s). This reply statement is due at the Commission within 60 days after the date of publication of the application.

(b) The reply statement may not contain new evidence. It shall only rebut or further explain matters previously raised.

(c) The reply statement shall be verified unless it consists strictly of legal argument. A copy of the reply statement shall be served on protestants.

#### § 1182.14 Withdrawing an application.

If applicants wish to withdraw an application, they shall jointly request dismissal in writing as provided at 49 CFR 1182.15.

#### § 1182.15 Copies.

An original and one copy of all applications filed under this part and all other pleadings and material relating to such applications must be filed with the Commission in Washington, DC, and, if mailed, addressed to "Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423."

#### § 1182.16 Certificate of service.

(a) Where the rules require service of a pleading on another party, that

pleading shall be mailed or delivered by hand concurrently with its service on the Commission.

(b) The pleading shall contain a statement (certificate of service) that the pleading has been mailed or hand delivered in accordance with paragraph (a) of this section.

(c) All motions and replies shall be served on all parties.

#### § 1182.17 Verification of statements.

(a) All applications and related pleadings (except motions to strike, replies thereto, and other pleadings that consist only of legal argument) must be verified by the person offering the statement.

(b) The manner of verification must be as follows:

I, \_\_\_\_\_, verify  
 (name and title of witness)  
 under penalty of perjury, under the laws of the United States of America, that all information supplied in connection with this application is true and correct. Further, I certify that I am qualified and authorized to file this application or pleading. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

(Signature and Date)

#### § 1182.18 Statutory findings.

The following findings are made for applications to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor passenger carriers or water carriers under 49 U.S.C. 11343-11344:

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, or questions involving possible unlawful control) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11321, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated. This finding shall not be deemed to exist where the application is opposed. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

### PART 1183—CONTROL OR CONSOLIDATION OF MOTOR CARRIERS OF PASSENGERS OR THEIR PROPERTIES [REMOVED]

9. Part 1183 is removed.

## PART 1186—EXEMPTION OF CERTAIN TRANSACTIONS UNDER 49 U.S.C. 11343

10. The authority citation for part 1186 continues to read as follows:

Authority: 49 U.S.C. 10321 and 11343(e) and 5 U.S.C. 553.

11. In § 1186.2, a new paragraph (e) is added to read as follows:

### § 1186.2 Notice of exemption.

\* \* \* \* \*

(e) In purchase of assets or merger transactions, certification by the party acquiring any motor carrier operating rights through the transaction that it is not domiciled in Mexico nor owned or controlled by persons of that country.

12. Section 1186.4 is revised to read as follows:

### § 1186.4 Temporary authority.

Parties may simultaneously request temporary authority during the pendency of the exemption proceeding by submitting Form OP-F-46 in accordance with the regulations at 49 CFR part 1187.

13. Part 1187 is added to read as follows:

## PART 1187—TEMPORARY AUTHORITY IN MOTOR AND WATER CARRIER FINANCE PROCEEDINGS

Sec.

- 1187.1 Applications governed by these rules.
- 1187.2 Procedures used generally.
- 1187.3 Applications.
- 1187.4 Commission action.
- 1187.5 Protests.

Authority: 5 U.S.C. 559 and 49 U.S.C. 10321, 10926, 11341, 11343, 11344, and 11349.

### § 1187.1 Applications governed by these rules.

These rules govern the handling of applications filed for temporary authority to operate motor property carrier, motor passenger carrier, and water carrier properties sought to be acquired in separately filed applications or petitions for exemption under:

- (a) 49 U.S.C. 11343–11344 (for authority to consolidate, purchase, merge, or lease operating rights and properties of, or to acquire control of, motor property carriers, motor passenger carriers, and water carriers); or
- (b) 49 U.S.C. 10926 (for the transfer of certificates and permits of motor property carriers, motor passenger carriers, and water carriers).

### § 1187.2 Procedure used generally.

Since the basis for filing applications for temporary authority under these rules is to prevent destruction of or

injury to motor carrier or water carrier properties sought to be acquired under 49 U.S.C. 11343–11344 or 10926, these rules are designed to permit the Commission to decide expeditiously temporary authority applications. The Commission has no obligation to give public notice of applications filed under these rules for temporary authority. Cases are decided without hearing or other formal proceeding. However, the rules do permit the Commission, when feasible, to publish notice of temporary authority applications, and such applications may be opposed.

### § 1187.3 Applications.

(a) *Starting the application process.* Persons seeking temporary authority under this section shall complete application form OP-F-46. (See 49 CFR part 1003 and § 1002.2(f)(24) regarding forms and filing fees.) An application for temporary authority may only be filed concurrently with or after the filing of a related application or petition for exemption under 49 U.S.C. 11343–11344 or 10926.

(b) *Information to be submitted by applicants.* The application form constitutes applicants' entire case and shall contain all of the information on which applicants intend to rely.

(c) *Where the application is sent.* The original and one copy of the application shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, along with the application fee. In addition, one copy of the application shall be sent by applicants to each of the persons and State officials specified on the application form. When an application for temporary authority is filed after the filing and publication of notice of the related acquisition transaction (under 49 U.S.C. 11343–11344 or 10926), applicants also shall serve a copy of the temporary authority application on all parties of record in the related transaction as of the date of the filing.

### § 1187.4 Commission action.

(a) Where an application for temporary authority is filed concurrently with the related acquisition application or petition for exemption, notice of filing of the temporary authority application will appear in the published notice of the corresponding permanent application or petition.

(b) The temporary authority application (and protests, if any) will be submitted to an appropriate decisional body for disposition as soon as possible after filing. These rules do not provide for any specific time period for the filing of opposition to concurrently filed

temporary authority applications. A temporary authority request may be acted upon before the publication of the related permanent application or petition for exemption.

### § 1187.5 Protests.

(a) *Who can oppose an application.* A protest to an application for temporary authority filed under these rules may be filed only by persons who oppose or intend to oppose the related permanent application or petition for exemption filed under 49 U.S.C. 11343–11344 or 10926.

(b) *Contents of a protest.* A protest to an application for temporary authority shall be in writing. The protest shall state the protestant's interest in the proceeding and the specific grounds on which protestant relies in opposing the temporary authority application. The protest also shall indicate that a copy has been served on applicants' representative(s).

(c) *To whom the protest is sent.* The original and one copy of the protest shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423. A copy of the protest shall be served on applicants' representative(s).

14. Part 1188 is added to read as follows:

## PART 1188—GROSS OPERATING REVENUES OF CARRIERS INVOLVED IN FINANCE PROCEEDINGS

Sec.

- 1188.1 Computation of gross operating revenues of carriers involved in unifications.
- 1188.2 Deduction of revenues from sources other than regulated transportation.

Authority: 5 U.S.C. 559 and 49 U.S.C. 10321, 11341, 11343, 11344, and 11345a.

### § 1188.1 Computation of gross operating revenues of carriers involved in unifications.

In proceedings involving consolidation, merger, or acquisition of control of motor carriers under 49 U.S.C. 11343, the aggregate gross operating revenues of carriers attributable to transportation from the use of their respective operating rights subject to subchapter II of chapter 105 of the Act shall be deemed to have exceeded \$2 million for the period of 12 consecutive months ending not more than six months preceding the date of the agreement of the parties covering the transaction, within the meaning of 49 U.S.C. 11343(d)(1), unless otherwise shown, under each of the following circumstances:

(a) At the end of the preceding calendar year the carriers involved in the transaction filed reports with the Commission, as required by 49 U.S.C. 11145, showing annual gross operating revenues from motor carrier operations totaling more than \$2 million, and none of the carriers has sold or otherwise disposed of any portion of its operating rights subsequent to the end of the preceding calendar year;

(b) A carrier involved in the transaction filed a quarterly report or reports for subsequent quarters, and a reasonable estimate of its annual gross operating revenues and the reported annual gross operating revenues of the other carriers involved in the transaction for the preceding calendar year aggregates more than \$2 million; or

(c) A reasonable estimate of: (1) The annual gross operating revenues of any carrier which sold or otherwise disposed

of any portion of its operating rights or which began new operations or extended existing operations subsequent to the end of the preceding calendar year; and (2) the reported annual gross operating revenues of the other carriers involved in the transaction for the preceding calendar year aggregates more than \$2 million.

**§ 1188.2 Deduction of revenues from sources other than regulated transportation.**

(a) In determining whether a proposed transaction is subject to the provisions of 49 U.S.C. 11343, applicant motor carriers and their affiliate motor carriers must select the same 12-month period and indicate the 12-month period selected, as provided in § 1188.1, and must disclose the gross revenues received by each such carrier during the critical period selected and the revenues derived from sources other than

transportation subject to subchapter II of chapter 105 of the Act. Such latter revenues may be deducted from the gross revenues for the purpose of determining jurisdiction.

(b) Applicants shall show the amounts which they claim should be deducted, the sources from which the revenues were derived, and the circumstances under which transportation performed is claimed not to have been subject to subchapter II of chapter 105 of the Act, in transfer proceedings under 49 CFR part 1181 or in support of a motion for dismissal of proceedings under 49 CFR part 1182 or 1186.

(c) Applicants shall not be required to show that the revenues computed under § 1188.1 were derived from transportation subject to subchapter II of chapter 105 of the Act.

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