

can now be issued by Office Directors and their designees in the Commission's name without any Commissioner having ever seen, much less voted on, the orders. These orders are, nonetheless, final pending Commission "rehearing", however long that may take. The safeguards built into our process to ensure that the result is a "Commission" action no longer apply.³ I cannot endorse such a rule.

Nor is it by any means clear that the Commission can lawfully vest staff with the authority to decide cases in its name. The general provisions the Commission invokes "to perform any and all acts and make such rules as are necessary or appropriate to carry out its statutory function" (Preamble at pp. 7-8),⁴ while sufficient to allow for the subdelegation of authority in most cases, cannot be invoked if the subdelegation is inconsistent with the purposes of the statute.⁵

Congress well knows how to craft broad statutory authorizations allowing commissions to delegate their functions to staff.⁶ It did not use such language when it

created the FERC.⁷ Moreover, as the comments point out, the rehearing provisions of the Federal Power, Natural Gas and Natural Gas Policy Acts provide a strong indication that what the Commission does here is inconsistent with its statutory mandates.⁸

The rehearing provisions operate, contrary to the normal rule of administration law, to allow Commission orders to be enforceable without yet being final or subject to judicial review.⁹ Indeed, this rehearing requirement is provided at the expense of efficiency:

"[W]e do not think the purpose of the statute is purely one of administrative exhaustion * * *. We have no basis for assuming that the need for prompt resolution of Commission affairs is any less important a goal than that of permitting the Commission a second chance to modify its decisions."

Boston Gas Company v. FERC, 575 F.2d 975, 979 (1st Cir. 1978). The rule change adopted today is in fundamental conflict with these provisions.

A "second chance" for the Commission to modify "its decisions" necessarily requires that the Commission had a first chance. Stated another way, the necessary predicate for rehearing is that the Commission has heard the matter at least once before. Here, there is no "rehearing", the Commission will review staff action *de novo*. (The majority's response to the comments raising this issue (Preamble at 10) completely ignores this crucial point by begging the question presented.)

I have no quarrel with the majority's desire to speed up our administrative process. Indeed, we share a common dissatisfaction with the length of time required for providing the public with final, enforceable, agency decisions and a common responsibility to promptly act on matters brought before us.¹⁰

ordering, certifying, reporting, or otherwise acting as to any work, business or matter."

⁷ Indeed, in the only provision that I have found where Congress explicitly spoke to the Commission's authority to delegate its functions to staff, Congress limits that authority to designating personnel to "conduct any hearing or other inquiry necessary or appropriate to its functions," section 401(g) of the DOE Act, 42 U.S.C. 7171(g) (1988).

⁸ See section 313 of the Federal Power Act, 16 U.S.C. 825/ (1988); section 19 of the Natural Gas Act, 15 U.S.C. 717r (1988); and section 506(a) of the Natural Gas Policy Act, 15 U.S.C. 3416(a) (1988).

⁹ A mandatory petition-for-rehearing requirement, with or without the additional requirement of raising the very objection urged on appeal, is virtually unheard-of, but both requirements happen to exist in all three of the major statutes administered by FERC * * *. [These operate] quite the opposite of the usual rule, set forth in the Administrative Procedure Act, that "agency action otherwise final is final for the purposes of [judicial review] whether or not there has been presented or determined an application for * * * any form of reconsiderations."

Asarco, Inc. v. FERC, 777 F.2d 764, 774 and 773 (D.C. Cir. 1985) (Scalia, J. for the court) (quoting 5 U.S.C. 704 (1982)).

¹⁰ Nor have I any quarrel with staff's ability to act promptly to decide the matters delegated to it and to do so with the high level of professionalism we and the public too often take for granted.

But, "[c]onvenience and efficiency are not the primary objectives—or the hallmarks—of democratic government," *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919, 944 (1983). We are governed by a process designed by the Congress to ensure public accountability for our decisions. Members of the Commission are the duly appointed policymakers, not the staff. Here, the majority eschews that principal and acts not to delegate but rather to abdicate its decisionmaking responsibilities. In doing so, the majority simply goes too far for me to be comfortable that we, as members of the Commission, are meeting our statutory responsibilities.

Elizabeth Anne Moler,
Commissioner.

[FR Doc. 90-28814 Filed 12-7-90; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. H-033d]

RIN 1218-AA26

Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Extension of partial stay and amendment of final rule.

SUMMARY: The Occupational Safety and Health Administration OSHA is hereby extending the partial administrative stay of the revised final standards for occupational exposure to asbestos, tremolite, anthophyllite and actinolite for general industry (29 CFR 1910.1001) and construction (29 CFR 1926.58), insofar as they apply to occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite. The current partial stay, originally set to expire on April 21, 1987 and extended until November 30, 1990 is being further extended until August 31, 1991 to allow OSHA to complete supplemental rulemaking limited to the issue of whether non-asbestiform tremolite, anthophyllite and actinolite should continue to be regulated in the same standard as asbestos, or should be treated in some other way. OSHA also is making minor conforming amendments to notes to the affected standards.

DATES: The partial stay of 29 CFR 1910.1001 and 1926.58 is extended until August 31, 1991.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director of Information

pass on contested audit reports, 18 CFR 375.303(f) (1990) and for the Director of the Office of Hydropower Licensing or his designee to determine whether the Commission has jurisdiction over an unlicensed project, 18 CFR 375.314(h)(2) (1990).

³ Indeed, several parties including EEL, PG&E and Alabama point up that it is not clear what constitutes official staff action under delegated authority. The majority fails to address this issue in the rule today.

Comments also suggest that, under the earlier delegation-and-appeal scheme, staff's orders could not be lawfully enforced. See, e.g., the comments of Alabama Power Company, pp. 6-7. If true, this adds force to the argument that the Commission today goes too far. If there is a question as to whether a Commission ruling is enforceable, that question should, in my view, be resolved through action of the Commissioners, not through action of the staff.

⁴ More precisely, the FERC is provided the authority, "to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter." Section 16 of the Natural Gas Act, 15 U.S.C. 717o (1988); see also section 309 of the Federal Power Act, 16 U.S.C. 825h (1988) (identical language). The authority of these two provisions originally vested in the Commission's predecessor, the Federal Power Commission, is explicitly vested in the FERC. See section 402(a)(2) of the Department of Energy Organization Act, Pub. L. No. 95-91 (1977), 91 Stat. 584 (1977) (DOE Act), codified at 42 U.S.C. 7172(a)(2) (1988). In addition, similar authority is independently provided the Commission under section 401(f) of the DOE Act (Commission "is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions"), 42 U.S.C. 7171(f) (1988) and under section 501(a) of the Natural Gas Policy Act, 15 U.S.C. 3411(a) (1988).

⁵ *Rodriguez v. Compass Shipping Co.*, 617 F.2d 955, 958 (2nd Cir. 1980), *aff'd on other grounds*, 451 U.S. 596 (1981); see also *Fleming v. Mohawk Wrecking and Lumber Co.*, 331 U.S. 111, 120-122 (1947); *House v. Southern Stevedoring Company*, 703 F.2d 87, 88-89 (4th Cir. 1983); *Exxon Corp. v. FTC*, 665 F.2d 1274, 1279 (D.C. Cir. 1981) (per curiam).

⁶ See, e.g., 15 U.S.C. 78d-1 (1988) which authorizes the Securities and Exchange Commission "to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, an administrative law judge, or an employee or employee board, including functions with respect to hearing, determining,

and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N-3647, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: In June 1986, OSHA issued revised standards governing occupational exposure to asbestos, tremolite, anthophyllite and actinolite for general industry and construction which were to be effective on June 21, 1986. [See 51 FR 22812 *et seq.*, June 20, 1986].

On October 17, 1986, OSHA published a partial stay of the revised standards insofar as they apply to occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite, in order to enable the Agency to review new submissions raising questions about the appropriateness of regulating these minerals in the revised asbestos standards, and to allow sufficient time to reopen the rulemaking record and conduct supplemental rulemaking proceedings limited to this issue (51 FR 37002).

OSHA extended the stay until July 21, 1988 in a notice published on April 30, 1987 (52 FR 15722), until July 21, 1989, in a notice published on July 20, 1988 (53 FR 27345), and again until November 30, 1990, in a notice published on July 21, 1989 (54 FR 30704).

The last extension was issued in order to allow OSHA sufficient time to conclude rulemaking on whether and how to regulate the non-asbestiform minerals at issue.

Subsequently, on February 12, 1990 OSHA published a notice of proposed rulemaking (55 FR 4938) to amend the asbestos standards (29 CFR 1910.1001, 1926.58) to remove non-asbestiform tremolite, anthophyllite and actinolite from their scope.

Public hearings were held in Washington, DC, May 8-14, 1990. At the close of the hearings, the Administrative Law Judge set the following deadlines for participants to send material to OSHA: June 28, 1990 for the submission of additional information and July 23, 1990 for submission of comments, summations and briefs.

After the close of the post-hearing comment periods, the American Thoracic Society (ATS) submitted a report to the record concerning the health risks of non-asbestiform tremolite, actinolite and anthophyllite (Ex. 525). The Agency set an additional period, later extended to December 14, 1990, to enable the public to submit written comments and analyses on all issues raised in the ATS report. (See 55 FR 40677, 55 FR 46958).

At the close of this comment period, the Agency will evaluate the rulemaking record to determine whether it supports the proposal to remove the non-asbestiform minerals from the scope of the asbestos standards.

To date, the record consists of 526 exhibits, 24 comments and transcripts of the five days of rulemaking hearings. OSHA anticipates receiving a significant number of additional submissions relating to the ATS report.

Because of the size of the record and the complexity of the issues, the Agency's review of the rulemaking record and formulation of a final regulatory determination will not be completed until August 31, 1991. Thus, an extension of the stay until August 31, 1991 is necessary to conclude the rulemaking on the regulation of non-asbestiform tremolite, anthophyllite and actinolite.

As was the case with the initial partial stay, the 1972 standard governing occupational exposure to asbestos (redesignated 29 CFR 1910.1101) will remain in effect to the extent of the stay during the period of the extension.

The full text of the stay with respect to these non-asbestiform minerals was published in the October 17, 1988 Federal Register (51 FR 37002).

With respect to the extension of the partial stay, OSHA finds that advance notice and opportunity for comment are impractical and unnecessary within the meaning of 5 U.S.C. 553 in view of the limited duration of the extension and the continued applicability of the 1972 standard (29 CFR 1910.1101) to cover the gaps in coverage created by the partial stay.

The minor amendments to the notes to 29 CFR 1910.1001, 1910.1101, and 1926.58, similarly are made without advance notice and opportunity for comment. OSHA finds such process unnecessary and impracticable in that the changes merely reference the extension of the stay and restate the applicability of the 1972 standard. No evidentiary issues are involved.

List of Subjects in 29 CFR Parts 1910 and 1926

Asbestos, Occupational safety and health.

Authority and Signature

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

It is issued pursuant to sections 4, 6(b), 6(c) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C.

653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), the Longshore and Harbor Workers Compensation Act (33 U.S.C. 941), 29 CFR part 1911, Secretary of Labor's Order No. 1-90 (55 FR 9033), as applicable.

Signed at Washington, DC, this 4th day of December 1990.

Gerard F. Scannell,
Assistant Secretary of Labor.

Amended Standards

Part 1910 of title 29 of the Code of Federal Regulations is hereby amended as follows:

PART 1910—[AMENDED]

1. The authority citation for subpart Z of part 1910 continues to read as follows:

Authority: Sections 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders Nos. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736) or 1-90 (55 FR 9033) as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b), except those substances listed in the Final Rule Limits columns of Table Z-1-A, which have identical limits listed in the Transitional Limits columns of Table Z-1-A, Table Z-2 or Table Z-3. The latter were issued under section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, the Transitional Limits columns of Table Z-1-A, Table Z-2, and Table Z-3 also issued under 5 U.S.C. 553. Section 1910.1000, Tables Z-1-A, Z-2 and Z-3 not issued under 29 CFR part 1911 except for the arsenic, benzene, cotton dust, and formaldehyde listings.

Section 1910.1001 also issued under section 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 653.

Section 1910.1003 through 1910.1018 also issued under 29 CFR part 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1028 also issued under 29 U.S.C. 653.

Section 1910.1043 also issued under 5 U.S.C. 551 *et seq.*

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1048 also issued under 29 U.S.C. 653.

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

§ 1910.1001 [Amended]

2. Section 1910.1001 is hereby amended by revising the note after appendix H to § 1910.1001 to read as follows:

Note: Pursuant to an administrative stay effective July 21, 1986, published on October 17, 1986 (51 FR 37002), extended to July 21, 1988 (52 FR 15722), to July 21, 1989 (53 FR 27345), to November 30, 1990 (54 FR 30704) and to August 31, 1991 (55 FR _____) enforcement of this section is stayed as it applies to non-asbestiform tremolite, anthophyllite and actinolite. During the period and to the extent of this stay, the 1972 standard governing occupational exposure to asbestos (redesignated as 29 CFR 1910.1101) will remain in effect.

3. Section 1910.1101 is hereby amended by revising the note preceding § 1910.1101(a) to read as follows:

§ 1910.1101 Asbestos.

Note: This section applies in lieu of the revised standards governing occupational exposure to asbestos, tremolite, anthophyllite and actinolite (29 CFR 1910.1001; 29 CFR 1926.58), during the period and to the extent that the revised standards have been partially stayed. (See 51 FR 37002, October 17, 1986, 52 FR 15722, April 30, 1987, 53 FR 27345, July 20, 1988, and 54 FR 30704, July 21, 1989, and 55 FR _____, December 10, 1990, for a description of the stay.)

Part 1926 of the Code of Federal Regulations is hereby amended as follows:

PART 1926—[AMENDED]

Subpart D—[Amended]

4. The authority citation for subpart D of part 1926 continues to read as follows:

Authority: Sections 4, 6 and 8, Occupational Safety and Health Act of 1970, (29 U.S.C. 653, 655, 657) Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333, and Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 23059), 9-83 (48 FR 35736) or 1-90 (55 FR 9033), as applicable. Sections 1926.55(c) and 1926.58 also issued under 29 CFR part 1911.

§ 1926.58 [Amended]

5. Section 1926.58 is hereby amended by revising the note after appendix J to § 1926.58 to read as follows:

Note: Pursuant to an administrative stay effective July 21, 1986, published October 17, 1986 (51 FR 37002), extended to July 21, 1988 (at 52 FR 1577, April 30, 1987), to July 21, 1989 (53 FR 27345, July 20, 1988) to November 30, 1990 (54 FR 30704; July 21, 1989), and to August 31, 1991, (55 FR _____, December 10, 1990), enforcement of this section is stayed as it applies to non-asbestiform tremolite, anthophyllite and actinolite. During the period and to the extent of this stay, the 1972 standard governing occupational exposure to asbestos (redesignated as 29 CFR 1910.1101) will remain in effect.

[FR Doc. 90-28835 Filed 12-7-90; 8:45 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPTS-400041A; FRL-3799-1]

Terephthalic Acid; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is delisting terephthalic acid (TA), CAS Registry No. 100-21-0, from the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). By promulgating this rule, EPA is relieving facilities of their obligation to report releases of TA that occurred during the 1990 calendar year, and thereafter. This relief applies only to reporting requirements under section 313 of EPCRA.

DATES: This rule is effective January 9, 1991.

FOR FURTHER INFORMATION CONTACT: Maria Doa, Acting Petition Coordinator, Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Stop OS-120, 401 M St., SW., Washington DC 20460, Toll free: 800-535-0202.

SUPPLEMENTARY INFORMATION:

I. Description of Petition

EPA received a section 313(e) petition to delete Terephthalic acid (TA), CAS No. 100-21-0, from the list of toxic chemicals in 40 CFR 372.65. The petition from the Amoco Corporation was received on July 27, 1989.

After reviewing the petition and additional related information, EPA concluded that TA did not meet the listing criteria under section 313(d)(2) for acute human health effects, chronic health effects or environmental toxicity. While EPA considered data which were suggestive of developmental and systemic toxicity, these data were inadequate to support a conclusion that TA can reasonably be anticipated to cause these effects in humans. It is EPA's determination that the available data do not demonstrate that TA can cause or can reasonably be anticipated to cause significant adverse human health or environmental effects. As a result, EPA issued a proposed rule to delete TA from section 313 reporting

requirements in the Federal Register of February 15, 1990 (55 FR 5472).

The proposed rule contains a detailed summary of EPA's review of the petition to delete TA. The proposed rule also discussed EPA's consideration of proposing a test rule under section 4 of the Toxic Substances Control Act (TSCA) to address potential developmental and systemic toxicity. This proposed test rule will be published in the Federal Register in the near future. The proposal to delete TA indicated that EPA might choose, if it proposed a test rule, to await the results of such testing before promulgating the deletion of TA from section 313 of EPCRA. However, in light of additional information, EPA has decided to promulgate the deletion of TA from the section 313 list.

II. Response to Public Comment

EPA received five comments on the proposed rule. All of the comments received on the proposed rule to delete TA were from industry and industry associations. Comments were submitted by Amoco Corporation, the Chemical Manufacturers Association (CMA), Eastman Kodak Company, E.I. Du Pont De Nemours and Company, and Monsanto Company.

All of the commenters were supportive of EPA's decision to delete TA from section 313 reporting requirements. However, all of the commenters objected to delaying promulgation of the deletion of TA from EPCRA section 313 pending a test rule under section 4 of TSCA stating it would take years to promulgate a rule and complete such testing. Commenters stated that the Administrator should base section 313 petition decisions on readily available data. Furthermore, they stated that section 313 of EPCRA does not provide EPA with the authority to obtain additional toxicity testing for making petition decisions.

EPA acknowledges that additional testing cannot be obtained under EPCRA section 313. However, the indirect use or knowledge of data gathering efforts under other statutory authorities to obtain information to make proper assessments may be warranted under certain circumstances. In reviewing the subject EPCRA section 313 petition, EPA has decided for this particular case, not to delay promulgation of the deletion of TA pending any TSCA section 4 action. EPA will propose testing under TSCA section 4 at a later date in the Federal Register. If testing under TSCA section 4 should provide EPA with evidence that TA does meet the section 313 listing criteria,

Note: Pursuant to an administrative stay effective July 21, 1986, published on October 17, 1986 (51 FR 37002), extended to July 21, 1988 (52 FR 15722), to July 21, 1989 (53 FR 27345), to November 30, 1990 (54 FR 30704) and to August 31, 1991 (55 FR _____) enforcement of this section is stayed as it applies to non-asbestiform tremolite, anthophyllite and actinolite. During the period and to the extent of this stay, the 1972 standard governing occupational exposure to asbestos (redesignated as 29 CFR 1910.1101) will remain in effect.

3. Section 1910.1101 is hereby amended by revising the note preceding § 1910.1101(a) to read as follows:

§ 1910.1101 Asbestos.

Note: This section applies in lieu of the revised standards governing occupational exposure to asbestos, tremolite, anthophyllite and actinolite (29 CFR 1910.1001; 29 CFR 1926.58), during the period and to the extent that the revised standards have been partially stayed. (See 51 FR 37002, October 17, 1986, 52 FR 15722, April 30, 1987, 53 FR 27345, July 20, 1988, and 54 FR 30704, July 21, 1989, and 55 FR _____, December 10, 1990, for a description of the stay.)

Part 1926 of the Code of Federal Regulations is hereby amended as follows:

PART 1926—[AMENDED]

Subpart D—[Amended]

4. The authority citation for subpart D of part 1926 continues to read as follows:

Authority: Sections 4, 6 and 8, Occupational Safety and Health Act of 1970, (29 U.S.C. 653, 655, 657) Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333, and Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 23059), 9-83 (48 FR 35736) or 1-90 (55 FR 9033), as applicable. Sections 1926.55(c) and 1926.58 also issued under 29 CFR part 1911.

§ 1926.58 [Amended]

5. Section 1926.58 is hereby amended by revising the note after appendix J to § 1926.58 to read as follows:

Note: Pursuant to an administrative stay effective July 21, 1986, published October 17, 1986 (51 FR 37002), extended to July 21, 1988 (at 52 FR 1577, April 30, 1987), to July 21, 1989 (53 FR 27345, July 20, 1988) to November 30, 1990 (54 FR 30704; July 21, 1989), and to August 31, 1991, (55 FR _____, December 10, 1990), enforcement of this section is stayed as it applies to non-asbestiform tremolite, anthophyllite and actinolite. During the period and to the extent of this stay, the 1972 standard governing occupational exposure to asbestos (redesignated as 29 CFR 1910.1101) will remain in effect.

[FR Doc. 90-28835 Filed 12-7-90; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPTS-400041A; FRL-3799-1]

Terephthalic Acid; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is delisting terephthalic acid (TA), CAS Registry No. 100-21-0, from the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). By promulgating this rule, EPA is relieving facilities of their obligation to report releases of TA that occurred during the 1990 calendar year, and thereafter. This relief applies only to reporting requirements under section 313 of EPCRA.

DATES: This rule is effective January 9, 1991.

FOR FURTHER INFORMATION CONTACT: Maria Doa, Acting Petition Coordinator, Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Stop OS-120, 401 M St., SW., Washington DC 20460, Toll free: 800-535-0202.

SUPPLEMENTARY INFORMATION:

I. Description of Petition

EPA received a section 313(e) petition to delete Terephthalic acid (TA), CAS No. 100-21-0, from the list of toxic chemicals in 40 CFR 372.65. The petition from the Amoco Corporation was received on July 27, 1989.

After reviewing the petition and additional related information, EPA concluded that TA did not meet the listing criteria under section 313(d)(2) for acute human health effects, chronic health effects or environmental toxicity. While EPA considered data which were suggestive of developmental and systemic toxicity, these data were inadequate to support a conclusion that TA can reasonably be anticipated to cause these effects in humans. It is EPA's determination that the available data do not demonstrate that TA can cause or can reasonably be anticipated to cause significant adverse human health or environmental effects. As a result, EPA issued a proposed rule to delete TA from section 313 reporting

requirements in the Federal Register of February 15, 1990 (55 FR 5472).

The proposed rule contains a detailed summary of EPA's review of the petition to delete TA. The proposed rule also discussed EPA's consideration of proposing a test rule under section 4 of the Toxic Substances Control Act (TSCA) to address potential developmental and systemic toxicity. This proposed test rule will be published in the Federal Register in the near future. The proposal to delete TA indicated that EPA might choose, if it proposed a test rule, to await the results of such testing before promulgating the deletion of TA from section 313 of EPCRA. However, in light of additional information, EPA has decided to promulgate the deletion of TA from the section 313 list.

II. Response to Public Comment

EPA received five comments on the proposed rule. All of the comments received on the proposed rule to delete TA were from industry and industry associations. Comments were submitted by Amoco Corporation, the Chemical Manufacturers Association (CMA), Eastman Kodak Company, E.I. Du Pont De Nemours and Company, and Monsanto Company.

All of the commenters were supportive of EPA's decision to delete TA from section 313 reporting requirements. However, all of the commenters objected to delaying promulgation of the deletion of TA from EPCRA section 313 pending a test rule under section 4 of TSCA stating it would take years to promulgate a rule and complete such testing. Commenters stated that the Administrator should base section 313 petition decisions on readily available data. Furthermore, they stated that section 313 of EPCRA does not provide EPA with the authority to obtain additional toxicity testing for making petition decisions.

EPA acknowledges that additional testing cannot be obtained under EPCRA section 313. However, the indirect use or knowledge of data gathering efforts under other statutory authorities to obtain information to make proper assessments may be warranted under certain circumstances. In reviewing the subject EPCRA section 313 petition, EPA has decided for this particular case, not to delay promulgation of the deletion of TA pending any TSCA section 4 action. EPA will propose testing under TSCA section 4 at a later date in the Federal Register. If testing under TSCA section 4 should provide EPA with evidence that TA does meet the section 313 listing criteria,

time during the premating period. In addition, the male CD rats in the 0.03 percent group exhibited a significant reduction in mean body weight and mean body weight gain at 13 weeks. Eastman Kodak discounted this reduction (as did other commenters) since a statistically significant decrease was not observed in the 0.125 percent group and went on to conclude that this was the No Observable Effect Level (NOEL) (DuPont considered 0.5 percent a NOEL). EPA did not discount the reduction and believes that the poor power of this study makes it inadequate for determining the NOEL for TA. Obviously, this discrepancy could be solved with the inclusion of body weight data for later time periods (i.e. during the mating and postmating periods). It is precisely the lack of such data that makes interpretation difficult, and why the study was viewed as inadequate.

There was also disagreement regarding the dose levels at which postnatal developmental toxicity occurred. EPA concluded that there was evidence suggestive of postnatal developmental toxicity at all doses. Eastman Kodak concluded that toxicity only occurred at 2 and 5 percent TA. At concentrations of 2 and 5 percent TA postnatal survival was reduced. Commenters argued that the reduced postnatal survival was due to decreased care resulting from acute maternal toxicity or to the formation of bladder calculi in the pups at these doses.

One commenter claimed that the number of pups which were denoted as "dead at birth" may be attributed to how soon after birth, the newborn pups were evaluated. However, information on this point was not provided in the study and hence no conclusion may be drawn. Eastman Kodak went into some detail about the finding of bladder calculi in many of the pups that died, presumably to establish that exposure levels that do not result in calculi do not increase the risk of toxic effects due to TA. They pointed out that there were incidence of renal and urinary tract pathology at low doses in both strains of rat used in the CIIT study (Ref. 1) and that the EPA reviewer's statement concerning "no significant increase in lesions" for these doses was inaccurate. EPA did not discount these data and, while poorly phrased, the statement was meant to indicate a lack of statistical significance. The point of this argument concerning the influence of bladder calculi on pup death late in the testing is unclear, as neither Eastman Kodak nor EPA would argue, or did argue, that there was no correlation. The Agency's position on maternal and developmental

toxicity has already been made public. The EPA 1989 Proposed Amendments to the Guidelines for the Health Assessment of Suspect Developmental Toxicants (Ref. 10) state that developmental effects produced only at maternally toxic doses should be examined carefully and should not be discounted as being secondary to maternal toxicity.

In addition, since the publication of the proposed rule for TA, EPA has reviewed a one-generation reproductive dietary toxicity study on rats submitted for the herbicide, Dacthal, under FIFRA on a close analog of TA, dimethyl tetrachloroterephthalate (Ref. 9). The study was not adequate for hazard assessment according to the EPA test guidelines, but it does provide additional support for concern for potential postnatal developmental toxicity. There was a significant reduction in postnatal survival (day 1 to 21 interval) in the high-dose group (1 percent level) and in the low-dose group (0.1 percent - with no clear dose-response relationship). The lack of a clear dose-response in the low-dose group is disturbing, but it provides additional support that additional testing is needed to address postnatal developmental toxicity. Interestingly, there was no evidence of maternal toxicity at either exposure level.

In the CIIT study (Ref.1), pup body weight data were only provided for postnatal days 0, 1, and 21. The treated CD pups exhibited a reduction in mean body weight on day 21; mean body weights were reduced by 14, 5, 10, 22, and 51 percent in the 0.03, 0.125, 0.5, 2.0, and 5.0 percent TA groups, respectively, and the differences were statistically significant for the 5.0 percent group. Eastman Kodak concluded that the difference observed in the 2.0 percent group was biologically significant as well, but the reductions in the 0.03, 0.125, and 0.5 percent groups were not. EPA concluded that in the absence of more complete data, the possibility that the observed reductions were indicative of developmental toxicity should not be discounted. Again, this is simply a disagreement that a properly conducted study of greater power would solve.

IV. Reasons for Issuing Final Rule

EPA has determined that the weight of the evidence supports removal of TA from the section 313 list. EPA has determined that the available data do not demonstrate that TA can cause or reasonably be anticipated to cause significant adverse human health or environmental effects described in section 313 (d) (2). However, in other cases denial of a petition to remove a

chemical may be warranted even if the evidence of toxicity is less than adequate to meet current EPA testing standards. EPA views the weight of the evidence determination as a continuum to be evaluated on a case-by-case basis.

V. References

- (1) Chemical Industry Institute of Toxicology (CIIT). A 90-day study of terephthalic acid-induced urolithiasis and reproductive performance in Wistar and CD rats. CIIT Docket No. 11622. CIIT, Six Davis Drive, P.O. Box 12137, Research Triangle Park, NC 22709. 1982.
- (2) Chun, J., Lucas, F., and Killeen, J. A Teratology Study with Technical DCPA in Rabbits: Proj. ID 87-3204. Unpublished Ricerca Document 1116-87-0067-TX-002 prepared by Bio/dynamics Inc. 775 p. (OPP MRID: 41054820). 1989.
- (3) Ford, W. A Teratology Study in Rats with Technical DCPA. Document No. 712-5TX-85-0039-003: Report SDS-893. Unpublished study prepared by SDS Biotech Corp. in cooperation with Argus Research Laboratories, Inc. 194 p. (OPP MRID: 00180685). 1986.
- (4) Environmental Criteria and Assessment Office, Office of Health and Environmental Assessment, U.S. Environmental Protection Agency. Health and Environmental Effects Profile for Phthalic Acids. EPA 600/X-86/292. 1986.
- (5) Hoshi, A. and Kureitani, K. Metabolism of Terephthalic Acid. III. Absorption of Terephthalic Acid from Gastrointestinal Tract and Detection of its Metabolites. Chem. Pharm. Bull. 15:1979/1984. 1967.
- (6) Hoshi, A. and Kureitani, K. Distribution of Terephthalic Acid in Tissues. Chem. Pharm. Bull. 16:131-135. 1968.
- (7) Mizens, M. A Teratology Study in Rats with Tetrachloroterephthalic Acid: SDS-954: Document No. 687-5TX-84-0035-002. Unpublished study prepared by SDS Biotech Corp. 177 p. (OPP MRID: 00158010). 1985.
- (8) Nagasawa, H. and Fujimoto, M. Inhibition of terephthalic acid of spontaneous mammary tumorigenesis in mice. Experimental 29:89-90. 1973.
- (9) Paynter, O. E. and Kundzin, M. Reproduction Study—Albino Rats. (Unpublished study received Dec 15, 1963 under PPO411; prepared by Hazelton Laboratories, Inc., submitted by Diamond Shamrock Agricultural Chemicals, Cleveland, Ohio; CDL:090443-N). (OPP MRID: 00083578). 1963.
- (10) Proposed Amendments to the Guidelines for the Health Assessment of Suspect Developmental Toxicants. Federal Register 54 FR 9386-9403. March 6, 1989.
- (11) Wolkowski-Tyl, R., Chin, T. Y., and Heck, H. Chemical urolithiasis. III. Pharmacokinetics and transplacental transport of terephthalic acid in Fischer-344 rats. Drug Metab. Dispos. 10:486-490. 1982.

VI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "major rule" because it will not have an effect on the economy of \$100 million or more. This rule will decrease the impact of the section 313 reporting requirements on covered facilities and will result in cost-savings to industry, EPA, and States.

This rule was submitted to the Office of Management and Budget (OMB) under Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, EPA must conduct a small business analysis to determine whether a substantial number of small entities will be significantly affected. Because the rule will result in cost savings to facilities, EPA certifies that small entities will not be significantly affected by this rule.

C. Paperwork Reduction Act

This rule relieves facilities from having to collect information on the use and releases of TA. Therefore, there were no information collection requirements for OMB to review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 372

Chemicals, Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: December 4, 1990.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

Therefore, 40 CFR part 372 is amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. Section 372.65(a) and (b) are amended by removing the entire entry for terephthalic acid under paragraph (a) and removing the entire CAS No. entry for 100-21-0 under paragraph (b).

[FR Doc. 90-28874 Filed 12-7-90; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 73 and 74

[MM Docket No. 88-140; FCC 90-375]

Broadcast Service; Amendment of the Rules Concerning FM Translator Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: FM translators were first authorized in 1970 as stations that receive the signals of FM radio broadcast stations and simultaneously retransmit those signals on another frequency. On November 8, 1990, the Commission adopted amendments to part 74 of the Commission's Rules governing the FM translator service. This action makes the FM translator rules more consistent with the intended purpose of the service in order to ensure that the development of FM radio broadcast stations is not harmed by translator operations. In particular, we revise and clarify the service rules regarding ownership and financial support of translators, methods for selecting among mutually exclusive translator applications, and the definition of a "major change" in translator coverage areas. We also adopt new technical rules to govern the use of commercial FM and auxiliary band frequencies, interference criteria, and maximum power output. The Commission also concludes that the freeze on applications for new commercial FM translators and major changes to existing commercial FM translators will continue for 60 days after the effective date of these new rules and that, within sixty days thereafter, applicants with pending applications should amend their applications to conform with the new rules. Existing stations must comply with the new service rules within three years of their effective date, and we will entertain waiver requests where service to the public would be unduly lost as a result. Since most translators already comply with the new technical rules, we will "grandfather" existing translators until interference problems occur, at which time compliance will be required.

EFFECTIVE DATE: March 1, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jim Coltharp, Mass Media Bureau, Policy and Rules Division, (202) 632-6302; or, Gordon Godfrey, Mass Media

Bureau, Engineering Policy Branch, (202) 632-9660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order (Report) in MM Docket No. 88-140, FCC 90-375, adopted November 8, 1990, and released December 4, 1990. The complete text of this Report is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of Report and Order

1. In this Report, the Commission revises and clarifies several of the FM translator rules. The rulemaking restores the service to its intended role as a secondary service supplementing the development of FM radio broadcast stations where distance and intervening terrain barriers impede the direct reception of the primary station. The following summary describes the principle rule changes regarding the service and technical standards for FM translators as set forth in the Report and Order.

Service Issues

2. The Commission adopts a definition for an FM translator station's "coverage area". Accordingly, the coverage contour of a translator providing fill-in service—i.e., the FM translator's coverage contour is contained within the coverage contour of the primary station—is defined congruent with the coverage (or protected) contour of the primary station for respective station classes. An FM translator's protected contour is defined as 1 mV/m both for protection of authorized FM translator stations and for determining applications that are to be considered mutually exclusive. For "other area" translators, i.e., where the FM translator's coverage contour extends beyond the coverage contour of the primary station, the coverage area is defined by maximum power and permissible coverage distance limitations as detailed below.

3. The Report also adopts changes to the ownership rule. The Commission continues to believe that relaxed restrictions on commercial primary station ownership of translators would be contrary to the public interest, which is best served by maximizing service through FM radio broadcast stations. Consequently, while fill-in translators may be owned by commercial primary

stations or independent parties, ownership of "other area" commercial translators will be restricted to independent parties. Noncommercial educational FM (NCE-FM) translators remain exempt from ownership limitations. In areas beyond the protected contour of any full-time aural service, or "white areas", where a licensee establishes that service is indeed unavailable, the Commission will be favorably disposed toward requests for waivers of the rules to permit commercial primary station ownership of FM translators. Independent parties may establish FM translators to serve any area.

4. With respect to financial support of FM translators by commercial primary stations, the Commission's Notice of Proposed Rule Making, 55 FR 13296 (1990), suggested revisions intended to remove the ambiguities that precipitated the alleged abuses reported by commenting parties. Under the revised rule, commercial primary stations may support fill-in translators both before and after the translator commences operation, but they may not provide direct or indirect financial support beyond technical assistance to FM translators serving other areas. Once again, the Commission will be favorably disposed toward requests for waivers of this financial support restriction upon showing that the translator would serve a "white area". NCE-FM translators remain exempt from financial support restrictions.

5. The Commission retains the existing fundraising and program origination rules that permit translators to originate announcements of only 30 seconds per hour for acknowledging and soliciting financial support, while also permitting emergency warnings of imminent danger. The 30-second announcement may be split during the hour and no local service obligations will be imposed. Under these rules, FM translators will continue to function as a secondary service useful for informing local residents of emergency situations. Several commenters proposed intermediate program origination options, including Gerard A. Turro's request for waiver of § 74.1231 of the Commission's Rules to permit his FM translator to originate local programming for residents in Bergen County, New Jersey. However, the Commission denies Turro's request for a number of reasons, primarily that Bergen County is amply served by stations licensed to nearby communities and New York City, as well as NCE-FM stations licensed in the county.

6. The Report also modifies the rules regarding signal delivery and use of auxiliary frequencies. In order to enhance the quality of signal transmission, commercial translators providing "fill-in" service may use any terrestrial means to receive the primary station signals, with waivers seeking similar permission regarded favorably for "white area" translators. "Other area" commercial translators are restricted to receiving the signal off-air. Commercial "fill-in" translators will also be authorized to use aural intercity relay frequencies on a secondary basis following advance notification of local frequency coordination committees, and waiver requests for translators serving "white areas" will be viewed favorably. The Commission will continue to prohibit use of a translator solely to relay signals of a primary station to more distant facilities, but will permit incidental relays.

7. The Commission clarifies that licensees may operate multiple translators following a showing of "need" on technical grounds as determined by the quality of signal received from the intended primary station or any operating translator. Also, a priority scheme will be used to resolve mutually exclusive applications such that "full-in" translators of the commonly owned primary station will have highest priority; alternative frequencies will be assigned when possible; when alternative frequencies are unavailable, and alternative system using factors considered for FM allotments will be applied. Where mutual exclusivity is unresolved by the above scheme, the Commission will select applications on a first-come-first-served basis.

8. The Report also determines that a "major change" will be defined as any change in output frequency, or any change or increase (but not decrease) in the predicted 1 mV/m coverage area of more than 10 percent of the previously authorized coverage area. The Commission makes this ruling on the grounds that it is appropriate to give licensees some flexibility to make minor facility adjustments without triggering the "major change" process. Finally, rules are retained exempting FM translators from multiple ownership rules and prohibiting rebroadcast of AM signals.

Technical Issues

9. In order to reduce actual interference problems through an expanded range of channels, the Commission will allow all FM translators to operate on any of the 80 non-reserved commercial channels with

the 20 reserved noncommercial educational channels remaining available for NCE-M translator use. With respect to the maximum permissible translator power output, the Report reduces the proposed maximum effective radiated power (ERP) standard of 1 kilowatt to 250 watts at low antenna height (HAAT). The 250 watt maximum ERP limit will be applied to all parts of the country, with the exception that FM translators in the border areas are also subject to the bilateral agreements with Mexico and Canada. Fill-in translators are constrained by the requirement that their coverage contour must not reach beyond the coverage contour of the primary station. Furthermore, the coverage of "other area" translators will also be restricted to power and height combinations that produce a distance to the translator's 1 mV/m coverage contour not exceeding 7 kilometers (km) in Southern California and east of the Mississippi, and 13 km elsewhere. The Commission will also be favorably disposed toward waiving the power rule to permit higher power up to 250 watts at any HAAT if the applicant demonstrates that the service to a greater distance reaches only a "white area". As applied to NCE-FM translator applications, a "white area" will be defined as any area that is not served by a full-service public radio station. All applications requesting greater than 100 watts ERP will be required to determine whether excessive human exposure to RF radiation would result, and, if so, to submit, an environmental assessment.

10. The Report clarifies the standards for antennas by allowing composite, multiple array, and directional antennas, pursuant to the specific standards adapted from § 73.316 of the rules. In addition, the Commission adopts the proposed prohibition of contour overlap to avoid predicted translator interference to FM stations and TV Channel 6 stations. However, the Report finds it inappropriate to introduce explicit standards for determining actual interference, but instead, the Commission modifies its proposed rule to emphasize that FM translator licensees are responsible for resolving all interference complaints by appropriate means. The Commission also makes minor changes to clarify other aspects of the FM translator rules, including conforming some FM booster rules with the revised FM translator rules and simplifying the procedures and requirements for approval of transmission equipment.

11. The Commission seeks to ensure that the revised rules will not withdraw FM translator service from areas

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11. The Commission seeks to ensure that the revised rules will not withdraw FM translator service from areas

coverage contour of their commercial primary FM stations, between FM radio stations and their co-owned FM booster stations, or for such other purposes as authorized in § 74.531 of this part.

24. Section 74.531 is amended by redesignating paragraphs (c) through (g) as (d) through (h) and adding new paragraph (c) to read as follows:

§ 74.531 Permissible service.

(c) An aural broadcast intercity relay station is authorized to transmit aural program material between an FM radio station and an FM translator station operating within the coverage contour of its commercial primary FM station. This use shall not interfere with or otherwise preclude use of these broadcast auxiliary stations transmitting aural programming between the studio and transmitter location of a broadcast station or between broadcast stations as provided in paragraphs (a) and (b) of this section.

25. Section 74.532 is amended by revising paragraph (a) to read as follows:

§ 74.532 Licensing requirements.

(a) An aural broadcast STL or intercity relay station will be licensed only to the licensee or licensees of broadcast stations, other than international broadcast stations, and for use by a broadcast station or an FM booster station owned entirely by or under common control of the licensee or licensees, or for use by an FM translator station operating within the coverage contour of the commercial primary FM station being rebroadcast.

26. Section 74.1201 is amended by adding paragraphs (g), (h) and (i) to read as follows:

§ 74.1201 Definitions.

(g) *Translator coverage contour.* The coverage contour for an FM translator providing "fill-in" service is congruent with its parent station: For a fill-in translator for a commercial Class B station it is the predicted 0.5 mV/m field strength contour; for a fill-in translator for a commercial Class B1 station it is the predicted 0.7 mV/m field strength contour; and for a fill-in translator for all other classes of commercial stations as well as all noncommercial educational stations it is the predicted 1 mV/m field strength contour. A fill-in FM translator's coverage contour must be contained within the primary station's coverage contour. The protected contour

for an FM translator station is its predicted 1 mV/m contour.

(h) *Fill-in area.* The area where the coverage contour of an FM translator or booster station is within the protected contour of the associated primary station (*i.e.*, predicted 0.5 mV/m contour for commercial Class B stations, predicted 0.7 mV/m contour for commercial Class B1 stations, and predicted 1 mV/m contour for all other classes of stations).

(i) *Other area.* The area where the coverage contour of an FM translator station extends beyond the protected contour of the primary station (*i.e.*, predicted 0.5 mV/m contour for commercial Class B stations, predicted 0.7 mV/m contour for commercial Class B1 stations, and predicted 1 mV/m contour for all other classes of stations).

27. Section 74.1202 is amended by revising paragraphs (b) introductory text, (b)(1) and (b)(2); by removing paragraphs (c), (d) and the Note to this section; and by redesignating paragraph (e) as paragraph (c) and revising it to read as follows:

§ 74.1202 Frequency assignment.

(b) Subject to compliance with all the requirements of this subpart, FM broadcast translators may be authorized to operate on the following FM channels, regardless of whether they are assigned for local use in the FM Table of Allotments (§ 73.202(b) of this chapter):

(1) *Commercial FM translators:* Channels 221-300 as identified in § 73.201 of this chapter.

(2) *Noncommercial FM translators:* Channels 201-300 as identified in § 73.201 of this chapter. Use of reserved channels 201-220 is subject to the restrictions specified in § 73.501 of this chapter.

(c) An FM broadcast booster station will be assigned the channel assigned to its primary station.

28. Section 74.1203 is revised to read as follows:

§ 74.1203 Interference.

(a) An authorized FM translator or booster station will not be permitted to continue to operate if it causes any actual interference to:

(1) The transmission of any authorized broadcast station; or

(2) The reception of the input signal of any TV translator, TV booster, FM translator or FM booster station; or

(3) The direct reception by the public of the off-the-air signals of any authorized broadcast station including TV Channel 6 stations, Class D

(secondary) noncommercial educational FM stations, and previously authorized and operating FM translators and FM booster stations. Interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the FM translator or booster station, regardless of the quality of such reception, the strength of the signal so used, or the channel on which the protected signal is transmitted.

(b) If interference cannot be properly eliminated by the application of suitable techniques, operation of the offending FM translator or booster station shall be suspended and shall not be resumed until the interference has been eliminated. Short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures. If a complainant refuses to permit the FM translator or booster licensee to apply remedial techniques which demonstrably will eliminate the interference without impairment to the original reception, the licensee of the FM translator or booster station is absolved of further responsibility for that complaint.

(c) An FM booster station will be exempted from the provisions of paragraphs (a) and (b) of this section to the extent that it may cause limited interference to its primary station's signal, *provided* it does not disrupt the existing service of its primary station or cause such interference within the boundaries of the principal community of its primary station.

(d) A fill-in FM translator operating on the first, second or third adjacent channel to its primary station's channel will be exempt from the provisions of paragraphs (a) and (b) of this section to the extent that it may cause limited interference to its primary station's signal, *provided* it does not disrupt the existing service of its primary station or cause such interference within the boundaries of the principal community of its primary station.

(e) It shall be the responsibility of the licensee of an FM translator station or FM booster station to correct any condition of interference which results from the radiation of radio frequency energy by its equipment on any frequency outside the assigned channel. Upon notice by the Commission to the station licensee or operator that such interference is being caused, the operation of the translator station or booster station shall be immediately suspended and shall not be resumed until the interference has been eliminated or it can be demonstrated that the interference is not due to

spurious emissions by the FM translator station or FM booster station; *provided*, however, That short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.

29. A new § 74.1204 is added to read as follows:

§ 74.1204 Protection of FM broadcast stations and FM translators.

(a) An application for an FM translator station will not be accepted for filing if the proposed operation would involve overlap of predicted field strength contours with any other authorized station, including commercial and noncommercial educational FM broadcast stations, FM translators and Class D (secondary) noncommercial educational FM stations, as set forth below:

(1) Commercial Class B FM Stations (Protected Contour: 0.5 mV/m)

Frequency separation	Interference contour of proposed translator station	Protected contour of commercial Class B station
Co-channel.....	0.05 mV/m (34 dBu)	0.5 mV/m (54 dBu)
200 kHz.....	0.25 mV/m (48 dBu)	0.5 mV/m (54 dBu)
400 kHz.....	5.00 mV/m (74 dBu)	0.5 mV/m (54 dBu)
600 kHz.....	50.0 mV/m (94 dBu)	0.5 mV/m (54 dBu)

(2) Commercial Class B1 FM Stations (Protected Contour: 0.7 mV/m)

Frequency separation	Interference contour of proposed translator station	Protected contour of commercial Class B1 station
Co-channel.....	0.07 mV/m (37 dBu)	0.7 mV/m (57 dBu)
200 kHz.....	0.35 mV/m (51 dBu)	0.7 mV/m (57 dBu)
400 kHz.....	7.00 mV/m (77 dBu)	0.7 mV/m (57 dBu)
600 kHz.....	70.0 mV/m (97 dBu)	0.7 mV/m (57 dBu)

(3) All Other Classes of FM Stations (Protected Contour: 1 mV/m)

Frequency separation	Interference contour of proposed translator station	Protected contour of any other station
Co-channel.....	0.1 mV/m (40 dBu)	1 mV/m (60 dBu)
200 kHz.....	0.5 mV/m (54 dBu)	1 mV/m (60 dBu)
400 kHz.....	10 mV/m (80 dBu)	1 mV/m (60 dBu)
600 kHz.....	100 mV/m (100 dBu)	1 mV/m (60 dBu)

(b) The following standards must be used to compute the distances to the pertinent contours:

(1) The distances to the protected contours are computed using Figure 1 of § 73.333 [F(50,50) curves] of this chapter.

(2) The distances to the interference contours are computed using Figure 1a of § 73.333 [F(50,10) curves] of this chapter. In the event that the distance to the contour is below 16 kilometers (approximately 10 miles), and therefore not covered by Figure 1a, curves in Figure 1 must be used.

(3) The effective radiated power (ERP) to be used is the maximum ERP of the main radiated lobe in the pertinent azimuthal direction. If the transmitting antenna is not horizontally polarized only, either the vertical component or the horizontal component of the ERP should be used, whichever is greater in the pertinent azimuthal direction.

(4) The antenna height to be used is the height of the radiation center above the average terrain along each pertinent radial, determined in accordance with § 73.313(d) of this chapter.

(c) An application for a change (other than a change in channel) in the authorized facilities of an FM translator station will be accepted even though overlap of field strength contours would occur with another station in an area where such overlap does not already exist, if:

(1) The total area of overlap with that station would not be increased;

(2) The area of overlap with any other station would not increase;

(3) The area of overlap does not move significantly closer to the station receiving the overlap; and,

(4) No area of overlap would be created with any station with which the overlap does not now exist.

(d) The provisions of this section concerning prohibited overlap will not apply where the area of such overlap lies entirely over water. In addition, an application otherwise precluded by this section will be accepted if it can be demonstrated that no actual interference will occur due to intervening terrain, lack of population or such other factors as may be applicable.

(e) The provisions of this section will not apply to overlap between a proposed fill-in FM translator station and its primary station operating on a first, second or third adjacent channel, *provided* That such operation may not result in interference to the primary station within its principal community.

(f) An application for an FM translator station will not be accepted for filing even though the proposed operation would not involve overlap of field

strength contours with any other station, as set forth in paragraph (a) of this section, if the predicted 1 mV/m field strength contour of the FM translator station will overlap a populated area already receiving a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station, including Class D (secondary) noncommercial educational FM stations and grant of the authorization will result in interference to the reception of such signal.

(g) An application for an FM translator station specifying a channel that is separated by 53 or 54 channels from the channel of an FM radio broadcast station will not be accepted for filing if it fails to meet the required separation distance set out in § 73.207 of this chapter. For purposes of determining compliance with § 73.207 of this chapter, translator stations will be treated as Class A stations; *provided*, however, that translator stations operating with 10 watts or less ERP will be treated as Class D stations and will not be subject to intermediate frequency separation requirements.

(h) An application for an FM translator station will not be accepted for filing if it specifies a location within 320 kilometers (approximately 199 miles) of either the Canadian or Mexican borders and it does not comply with § 74.1235(d) of this part.

(i) FM booster stations shall be subject to the requirement that the signal of any first adjacent channel station must exceed the signal of the booster station by 6 dB at all points within the protected contour of any first adjacent channel station, except that in the case of FM stations on adjacent channels at spacings that do not meet the minimum distance separations specified in § 73.207 of this chapter, the signal of any first adjacent channel station must exceed the signal of the booster by 6 dB at any point within the predicted interference free contour of the adjacent channel station.

(j) FM translator stations authorized prior to March 1, 1991 with facilities that do not comply with the predicted interference protection provisions of this section, may continue to operate, *provided* That operation is in conformance in § 74.1203 of this part regarding actual interference. Applications to modify such FM translator stations must specify facilities that comply with the provisions of this section.

30. A new § 74.1205 is added to read as follows:

§ 74.1205 Protection of channel 6 TV broadcast stations.

(a) An application for a construction permit for new or modified facilities for a noncommercial educational FM translator station operating on Channels 201-220 must include a showing that demonstrates compliance with paragraph (b), (c) or (d) of this section if it is within the following distances of a TV broadcast station which is authorized to operate on Channel 6.

FM Channel	Distance (kilometers)
201	148
202	146
203	143
204	141
205	140
206	137
207	135
208	135
209	135
210	135
211	135
212	135
213	135
214	134
215	134
216	133
217	133
218	132
219	132
220	131

(b) *Collocated stations.* An application for a noncommercial educational FM translator station operating on Channels 201-220 and located at 0.4 kilometer (approximately 0.25 mile) or less from a TV Channel 6 station will be accepted if it includes a certification that the applicant has coordinated its antenna with the affected TV station.

(c) *Contour overlap.* Except as provided in paragraph (b) of this section, an application for a noncommercial educational FM translator station operating on Channels 201-220 will not be accepted if the proposed operation would involve overlap of its interference field strength contour with any TV Channel 6 station's Grade B contour, as set forth below.

(1) The distances to the TV Channel 6 station Grade B (47 dBu) field strength contour will be predicted according to the procedures specified in § 73.684 of this chapter, using the F(50,50) curves in § 73.699, Figure 9 of this chapter.

(2) The distances to the applicable noncommercial educational FM translator interference contour will be predicted according to the procedures specified in § 74.1204(b) of this part.

(3) The applicable noncommercial educational FM translator interference contours are as follows:

FM channel	Interference Contour F(50,10) curves (dBu)
201	54
202	56
203	59
204	62
205	64
206	69
207	73
208	73
209	73
210	73
211	73
212	74
213	75
214	77
215	78
216	80
217	81
218	85
219	88
220	90

(d) FM translator stations authorized prior to March 1, 1991 with facilities that do not comply with the predicted interference protection provisions of this section, may continue to operate, *provided* That operation is in conformance with § 74.1203 of this part regarding actual interference. Applications to modify such FM translator stations must specify facilities that comply with the provisions of this section.

31. Section 74.1231 is amended by revising paragraph (b) and adding an accompanying Note to (b), revising paragraphs (c), (e), (g), and (h), and an accompanying Note to (h), and removing paragraph (i) to read as follows:

§ 74.1231 Purpose and permissible service.

(b) An FM translator may be used for the purpose of retransmitting the signals of a primary FM radio broadcast station or another translator station which have been received directly through space, converted, and suitably amplified. However, a commercial FM translator providing fill-in service may use any terrestrial facilities to receive the signal that is being rebroadcast. An FM booster station or a noncommercial educational FM translator station operating on a reserved channel (Channel 201-220) 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 terrestrial microwave facilities. *Provided, however,* That an applicant for a noncommercial educational FM translator station operating on a reserved channel (Channel 201-220) and owned and

operated by the licensee of the primary noncommercial educational FM station it rebroadcasts complies with either paragraph (b)(1) or (b)(2) of this section:

- (1) The applicant demonstrates that:
 - (i) The transmitter site of the proposed FM translator station is within 80 kilometers of 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) of this section; 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.

Note: For paragraphs 74.1231(b) and 74.1231(h) of this section, auxiliary intercity relay station frequencies may be used to deliver signals to FM translator and booster stations on a secondary basis only. Such use shall not interfere with or otherwise preclude use of these frequencies for transmitting aural programming between the studio and transmitter location of a broadcast station, or between broadcast stations, as provided in paragraphs 74.531 (a) and (b) of this part. Prior to filing an application for an auxiliary intercity relay microwave frequency, the applicant shall notify the local frequency coordination committee, or, in the absence of a local frequency coordination committee, any licensees assigned the use of the proposed operating frequency in the intended location or area of operation.

(c) The transmissions of each FM translator or booster station shall be intended only for direct reception by the general public. An FM translator or booster shall not be operated solely for the purpose of relaying signals to one or more fixed received points for

retransmission, distribution, or further relaying in order to establish a point-to-point FM radio relay system.

(e) An FM translator shall not deliberately retransmit the signals of any station other than the station it is authorized to retransmit. Precautions shall be taken to avoid unintentional retransmission of such other signals.

(g) The aural material transmitted as permitted in paragraph (f) of this section shall be limited to emergency warnings of imminent danger and to seeking or acknowledging financial support deemed necessary to the continued operation of the translator. Originations concerning financial support are limited to a total of 30 seconds an hour. Within this limitation the length of any particular announcement will be left to the discretion of the translator station licensee. Solicitations of contributions shall be limited to the defrayal of the costs of installation, operation and maintenance of the translator or acknowledgements of financial support for those purposes. Such acknowledgements may include identification of the contributors, the size or nature of the contributions and advertising messages of contributors. Emergency transmissions shall be no longer or more frequent than necessary to protect life and property.

(h) FM broadcast booster stations provide a means whereby the licensee of an FM broadcast station may provide service to areas in any region within the primary station's predicted, authorized service contours. An FM broadcast booster station is authorized to retransmit only the signals of its primary station which have been received directly through space and suitably amplified, or received by alternative signal delivery means including, but not limited to, satellite and terrestrial microwave facilities. The FM booster station shall not retransmit the signals of any other station nor make independent transmissions, except that locally generated signals may be used to excite the booster apparatus for the purpose of conducting tests and measurements essential to the proper installation and maintenance of the apparatus.

Note: In the case of an FM broadcast station authorized with facilities in excess of those specified by § 73.211 of this chapter, an FM booster station will only be authorized within the protected contour of the class of station being rebroadcast as predicted on the basis of the maximum powers and heights set forth in that section for the applicable class of FM broadcast station concerned.

32. Section 74.1232 is amended by revising paragraph (b) and adding a Note to (b), by revising paragraph (d), removing the notes following paragraph (d), by redesignating paragraphs (e) through (g) as paragraphs (f) through (h), revising redesignated paragraphs (f) through (h), and adding new paragraph (e) to read as follows:

§ 74.1232 Eligibility and licensing requirements.

(b) More than one FM translator may be licensed to the same applicant, whether or not such translators serve substantially the same area, upon an appropriate showing of technical need for such additional stations. FM translators are not counted as FM stations for the purpose of § 73.3555 of this chapter concerning multiple ownership.

Note: As used in this section need refers to the quality of the signal received and not to the programming content, format, or transmission needs of an area.

(d) An authorization for an FM translator whose coverage contour extends beyond the protected contour of the commercial primary station will not be granted to the licensee or permittee of a commercial FM radio broadcast station. Similarly, such authorization will not be granted to any person or entity having any interest whatsoever, or any connection with a primary FM station. Interested and connected parties extend to group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members and business associates. For the purposes of this paragraph, the protected contour of the primary station shall be defined as follows: the predicted 0.5mV/m contour for commercial Class B stations, the predicted 0.7 mV/m contour for commercial Class B1 stations and the predicted 1 mV/m field strength contour for all other FM radio broadcast stations. The contours shall be as predicted in accordance with § 73.313(a) through (d) of this chapter. In the case of an FM radio broadcast station authorized with facilities in excess of those specified by § 73.211 of this chapter, a co-owned commercial FM translator will only be authorized within the protected contour of the class of station being rebroadcast, as predicted on the basis of the maximum powers and heights set forth in that section for the applicable class of FM broadcast station concerned. An FM translator station in operation prior to March 1, 1991, which is owned by a commercial

FM (primary) station and whose coverage contour extends beyond the protected contour of the primary station, may continue to be owned by such primary station until March 1, 1994. Thereafter, any such FM translator station must be owned by independent parties.

(e) An FM translator station whose coverage contour goes beyond the protected contour of the commercial primary station shall not receive any support, before or after construction, either directly or indirectly, from the commercial primary FM radio broadcast station. Such support also may not be received from any person or entity having any interest whatsoever, or any connection with the primary FM station. Interested and connected parties extend to group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members and business associates. Such an FM translator station may, however, receive technical assistance from the primary station to the extent of installing or repairing equipment or making adjustments to equipment to assure compliance with the terms of the translator station's construction permit and license. FM translator stations in operation prior to March 1, 1991 may continue to receive contributions or support from the commercial primary station for the operation and maintenance of the translator station until March 1, 1994. Thereafter, any such FM translator station shall be subject to the prohibitions on support contained in this section.

(f) An FM broadcast booster station will be authorized only to the licensee or permittee of the FM radio broadcast station whose signals the booster station will retransmit, to serve areas within the protected contour of the primary station, subject to Note, § 74.1231(h) of this part.

(g) No numerical limit is placed upon the number of FM booster stations which may be licensed to a single licensee. A separate application is required for each FM booster station. FM broadcast booster stations are not counted as FM broadcast stations for the purposes of § 73.5555 of this chapter concerning multiple ownership.

(h) Any authorization for an FM translator station issued to an applicant described in paragraphs (d) and (e) of this section will be issued subject to the condition that it may be terminated at any time, upon not less than sixty (60) days written notice, where the circumstances in the community or area served are so altered as to have prohibited grant of the application had

such circumstances existed at the time of its filing.

33. A new § 74.1233 is added to read as follows:

§ 74.1233 Processing FM translator and booster station applications.

(a) Applications for FM translator and booster stations are divided into two groups:

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. In the case of FM translator stations, a major change is any change in frequency (output channel), or change (only the gain should be included in determining amount of change) or increase (but not decrease) in area to be served greater than ten percent of the previously authorized 1 mV/m contour. All other changes will be considered minor. All major changes are subject to the provisions of §§ 73.3580 and 1.1104 of this chapter pertaining to major changes.

(2) In the second group are applications for licenses and all other changes in the facilities of the authorized station.

(b) Applications for FM translator and booster stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the FCC will periodically release a Public Notice listing applications which have been accepted for filing and announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications and/or petitions to deny the listed applications must be filed.

(c) In the case of an application for an instrument of authorization, other than a license pursuant to a construction permit, grant will be based on the application, the pleadings filed, and such other matters that may be officially noticed. Before a grant can be made it must be determined that:

(1) There is not pending a mutually exclusive application filed in accordance with paragraph (b) of this section.

(2) The applicant is legally, technically, financially and otherwise qualified;

(3) The applicant is not in violation of any provisions of law, the FCC rules, or established policies of the FCC; and

(4) A grant of the application would otherwise serve the public interest, convenience and necessity.

(d) Applications for FM translator stations proposing to provide fill-in service (within the primary station's protected contour) of the commonly owned primary station will be given priority over all other applications.

(e) Where applications for FM translator stations are mutually exclusive and do not involve a proposal to provide fill-in service of a commonly owned primary station, the FCC may stipulate different frequencies as necessary for the applicants.

(f) Where there are no available frequencies to substitute for a mutually exclusive application, the FCC will base its decision on the following priorities:

(1) First full-time aural services; (2) second full-time aural services; and (3) other public interest matters including, but not limited to the number of aural services received in the proposed service area, the need for or lack of public radio service, and other matters such as the relative size of the proposed communities and their growth rate.

(g) Where the procedures in paragraph (d), (e) and (f) of this section fail to resolve the mutual exclusivity, the applications will be processed on a first-come-first-served basis.

34. Section 74.1235 is revised to read as follows:

§ 74.1235 Power limitations and antenna systems.

(a) An application for an FM translator station filed by the licensee or permittee of the primary station to provide fill-in service within the primary station's coverage area will not be accepted for filing if it specifies an effective radiated power (ERP) which exceeds 250 watts.

(b) An application for an FM translator station, other than one for fill-in service which is covered in paragraph (a) of this section, will not be accepted for filing if it specifies an effective radiated power (ERP) which exceeds the maximum ERP (MERP) value determined in accordance with this paragraph. The antenna height above average terrain (HAAT) shall be determined in accordance with § 73.313(d) of this chapter for each of 12 distinct radials, with each radial spaced 30 degrees apart and with the bearing of the first radial bearing true north. Each radial HAAT value shall be rounded to the nearest meter. For each of the 12 radial directions, the MERP is the value corresponding to the calculated HAAT in the following tables that is appropriate for the location of the translator. For an application specifying

a nondirectional transmitting antenna, the specified ERP must not exceed the smallest of the 12 MERP's. For an application specifying a directional transmitting antenna, the ERP in each azimuthal direction must not exceed the MERP for the closest of the 12 radial directions.

(1) For FM translators located east of the Mississippi River or in Zone I-A as described in § 73.205(b) of this chapter:

Radial HAAT (meters)	Maximum ERP (MERP in watts)
Less than or equal to 32	250
33 to 39	170
40 to 47	120
48 to 57	80
58 to 68	55
69 to 82	38
83 to 96	27
97 to 115	19
116 to 140	13
Greater than or equal to 141	10

(2) For FM translators located in all other areas:

Radial HAAT (meters)	Maximum ERP (MERP in watts)
Less than or equal to 107	250
108 to 118	205
119 to 130	170
131 to 144	140
145 to 157	115
158 to 173	92
174 to 192	75
193 to 212	62
213 to 235	50
236 to 260	41
261 to 285	34
286 to 310	28
311 to 345	23
346 to 380	19
381 to 425	15.5
426 to 480	13
481 to 540	11
Greater than or equal to 541	10

(c) The effective radiated power of FM booster stations shall be limited such that the predicted service contour of such stations computed in accordance with § 73.313, paragraphs (a) through (d) of this chapter, may not extend beyond the area covered by the predicted service contour of the primary station that they rebroadcast and that such FM booster effective radiated power may not exceed 20 percent of the maximum allowable effective radiated power for the primary station's class.

(d) Applications for FM translator stations located within 320 km of the Canadian border will not be accepted if they specify more than 50 watts effective radiated power in any direction or have a 34 dBu interference contour, calculated in accordance with

§ 74.1204 of this part, that exceeds 32 km. FM translator stations located within 320 kilometers of the Mexican border must be separated from Mexican allotments and assignments in accordance with § 73.207(b)(3) of this chapter and are limited to a transmitter power output of 10 watts or less. For purposes of compliance with that section, FM translators will be considered as Class D FM stations.

(e) In no event shall a station authorized under this subpart be operated with a transmitter power output (TPO) in excess of the transmitter type-accepted rating. A station authorized under this subpart for a TPO that is less than its transmitter type-accepted rating shall determine its TPO in accordance with § 73.267 of this chapter and its TPO shall not be more than 105 percent of the authorized TPO.

(f) Composite antennas and antenna arrays may be used where the total ERP does not exceed the maximum determined in accordance with paragraphs (a), (b) or (c) of this section.

(g) Either horizontal, vertical, circular or elliptical polarization may be used provided that the supplemental vertically polarized ERP required for circular or elliptical polarization does not exceed the ERP otherwise authorized. Either clockwise or counterclockwise rotation may be used. Separate transmitting antennas are permitted if both horizontal and vertical polarization is to be provided.

(h) All applications must comply with § 73.316, paragraphs (d) through (h) of this chapter.

(i) An application that specifies use of a directional antenna must comply with § 73.316, paragraphs (c)(1) through (c)(3) of this chapter. Prior to issuance of a license, the applicant must: (1) Certify that the antenna is mounted in accordance with the specific instructions provided by the antenna manufacturer; and (2) certify that the antenna is mounted in the proper orientation. In instances where a directional antenna is proposed for the purpose of providing protection to another facility, a condition may be included in the construction permit requiring that before program tests are authorized, a permittee: (1) Must submit the results of a complete proof-of-performance to establish the horizontal plane radiation patterns for both the horizontally and vertically polarized radiation components; and, (2) must certify that the relative field strength of neither the measured horizontally nor vertically polarized radiation component shall exceed at any azimuth the value

indicated on the composite radiation pattern authorized by the construction permit.

(j) FM translator stations authorized prior to March 1, 1991, with facilities that do not comply with the ERP limitation of paragraph (a) or (b) of this section, as appropriate, may continue to operate, *provided* That operation is in conformance in § 74.1203 of this part regarding interference. Applications to modify such FM translator stations must specify facilities that comply with paragraph (a) or (b) of this section, as appropriate.

35. Section 74.1236 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 74.1236 Emission and bandwidth.

(a) The license of a station authorized under this subpart allows the transmission of either F3 or other types of frequency modulation (see § 2.201 of this chapter) upon a showing of need, as long as the emission complies with the following:

* * * * *

36. Section 74.1237 is amended by revising paragraph (d) to read as follows:

§ 74.1237 Antenna location.

* * * * *

(d) The transmitting antenna of a commonly owned FM translator or booster station shall be located within the protected contour of its FM station, subject to Note, § 74.1231(h) of this part.

37. Section 74.1250 is revised to read as follows:

§ 74.1250 Transmitters and associated equipment.

(a) FM translator and booster transmitting apparatus, and exciters employed to provide a locally generated and modulated input signal to translator and booster equipment, used by stations authorized under the provisions of this subpart must be type accepted or notified upon the request of any manufacturer of transmitters in accordance with this section and subpart J of part 2 of this chapter. If acceptable, the apparatus will be included in the FCC's "Radio Equipment List, Equipment Acceptable for Licensing." In addition, FM translator and booster stations may use FM broadcast transmitting apparatus notified or type accepted under the provisions of part 73 of this chapter.

(b) Transmitting antennas, antennas used to receive signals to be rebroadcast, and transmission lines are

not subject to the requirement for type acceptance.

(c) The following requirements must be met before translator, booster or exciter equipment will be notified or type accepted in accordance with this section:

(1) Radio frequency harmonics and spurious emissions must conform with the specifications of § 74.1236 of this part.

(2) The local oscillator or oscillators, including those in an exciter employed to provide a locally generated and modulated input signal to a translator or booster, when subjected to variations in ambient temperature between minus 30 degrees and plus 50 degrees centigrade, and in primary supply voltage between 85 percent and 115 percent of the rated value, shall be sufficiently stable to maintain the output center frequency within plus or minus 0.005 percent of the operating frequency and to enable conformance with the specifications of § 74.1261 of this part.

(3) The apparatus shall contain automatic circuits to maintain the power output in conformance with § 74.1235(e) of this part. If provision is included for adjusting the power output, then the normal operating constants shall be specified for operation at both the rated power output and the minimum power output at which the apparatus is designed to operate. The apparatus shall be equipped with suitable meters or meter jacks so that the operating constants can be measured while the apparatus is in operation.

(4) Apparatus rated for transmitter power output of more than 1 watt shall be equipped with automatic circuits to place it in a nonradiating condition when no input signal is being received in conformance with § 74.1263(b) of this part and to transmit the call sign in conformance with § 74.1283(c)(2) of this part.

(5) For exciters, automatic means shall be provided for limiting the level of the audio frequency voltage applied to the modulator to ensure that a frequency swing in excess of 75 kHz will not occur under any condition of the modulation.

38. Section 74.1251 is amended by revising the section heading, revising paragraphs (b) introductory text, (b)(7), (b)(8), removing paragraph (b)(9), and adding paragraph (c) to read as follows:

§ 74.1251 Technical and equipment modifications.

* * * * *

(b) Formal application on FCC Form

349 is required of all permittees and licensees for any of the following changes:

(7) Any change of authorized effective radiated power.

(8) Any change in area being served.

(c) Changes in the primary FM station being retransmitted must be submitted to the FCC in writing.

39. Section 74.1261 is revised to read as follows:

§ 74.1261 Frequency tolerance.

(a) The licensee of an FM translator or booster station with an authorized transmitter power output of 10 watts or less shall maintain the center frequency at the output of the translator within 0.01 percent of its assigned frequency.

(b) The licensee of an FM translator or booster station with an authorized transmitter power output greater than 10 watts shall maintain the center frequency at the output of the translator or booster station in compliance with the requirement of § 73.1545(b)(1) of this chapter.

40. Section 74.1263 is revised to read as follows:

§ 74.1263 Time of operation.

(a) The licensee of an FM translator or booster station is not required to adhere to any regular schedule of operation. However, the licensee of an FM translator or booster station is expected to provide a dependable service to the extent that such is within its control and to avoid unwarranted interruptions to the service provided.

(b) An FM translator or booster station rebroadcasting the signal of a primary station shall not be permitted to radiate during extended periods when signals of the primary station are not being retransmitted.

(c) The licensee of an FM translator or booster station must notify the Commission of its intent to discontinue operations for 30 or more consecutive days. Notification must be made within 10 days of the time the station first discontinues operation and Commission approval must be obtained for such discontinued operation to continue beyond 30 days. The notification shall specify the causes of the discontinued operation and a projected date for the station's return to operation, substantiated by supporting documentation. If the projected date for the station's return to operation cannot be met, another notification and further request for discontinued operations

must be submitted in conformance with the requirements of this section. Within 48 hours of the station's return to operation, the licensee must notify the Commission of such fact. All notification must be in writing.

(d) The licensee of an FM translator or booster station must notify the Commission of its intent to permanently discontinue operations at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, DC for cancellation.

(e) Failure of an FM translator or booster station to operate for a period of 30 or more consecutive days, except for causes beyond the control of the licensee or as authorized pursuant to paragraph (c) of this section, shall be deemed evidence of permanent discontinuance of operation and the license of the station may be canceled at the discretion of the Commission.

41. Section 74.1269 is revised to read as follows:

§ 74.1269 Copies of rules.

The licensee or permittee of a station authorized under this subpart shall have a current copy of Volumes I (parts 0, 1, 2 and 17) and III (parts 73 & 74) of the Commission's Rules and shall make the same available for use by the operator in charge. Each such licensee or permittee shall be familiar with those rules relating to stations authorized under this subpart. Copies of the Commission's Rules may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

42. Section 74.1283 is revised to read as follows:

§ 74.1283 Station identification.

(a) The call sign of an FM broadcast translator station will consist of the initial letter K or W followed by the channel number assigned to the translator and two letters. The use of the initial letter will generally conform to the pattern used in the broadcast service. The two letter combinations following the channel number will be assigned in order and requests for the assignment of particular combinations of letters will not be considered.

(b) The call sign of an FM booster station will consist of the call sign of the primary station followed by the letters "FM" and the number of the booster station being authorized, e.g., WFCCFM-1.

(c) A translator station authorized

under this subpart shall be identified by one of the following methods.

(1) By arranging for the primary station whose station is being rebroadcast to identify the translator station by call sign and location. Three such identifications shall be made during each day: once between 7 a.m. and 9 a.m., once between 12:55 p.m. and 1:05 p.m. and once between 4 p.m. and 6 p.m. Stations which do not begin their broadcast before 9 a.m. shall make their first identification at the beginning of their broadcast days. The licensee of an FM translator whose station identification is made by the primary station must arrange for the primary station licensee to keep in its file, and to make available to FCC personnel, the translator's call letters and location, giving the name, address and telephone number of the licensee or his service representative to be contacted in the event of malfunction of the translator. It shall be the responsibility of the translator licensee to furnish current information to the primary station licensee for this purpose.

(2) By transmitting the call sign in International Morse Code at least once each hour. Transmitters of FM broadcast translator stations of more than 1 watt transmitter output power must be equipped with an automatic keying device that will transmit the call sign at least once each hour, unless there is in effect a firm agreement with the translator's primary station as provided in § 74.1283(c)(1) of this section. Transmission of the call sign can be accomplished by:

(i) Frequency shifting key; the carrier shift shall not be less than 5 kHz nor greater than 25 kHz.

(ii) Amplitude modulation of the FM carrier of at least 30 percent modulation. The audio frequency tone use shall not be within 200 hertz of the Emergency Broadcast System Attention signal alerting frequencies.

(d) FM broadcast booster stations shall be identified by their primary stations, by the broadcasting of the primary station's call signs and location, in accordance with the provisions of § 73.1201 of this chapter.

(e) The Commission may, in its discretion, specify other methods of identification.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

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