of Agriculture, Soil Conservation Service and Forest Service, the U.S. Department of Labor and the U.S. Environmental Protection Agency (EPA) responded, but provided no substantial comments on the proposed amendment.

V. Director's Decision

Based on the above findings, the Director is approving the proposed program amendment submitted by Virginia on June 29, 1990, with revisions and clarifications dated October 18, 1990, and November 29, 1990. The Federal regulations at 30 CFR part 946 codifying decisions concerning the Virginia program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, the Federal regulations at 30 CFR 732.17(a) require that any alteration of an approved State program be submitted to OSM as a program amendment. Thus, any changes to the program are not enforceable by the State until approved by OSM. The Federal regulations at 30 CFR 732.17(g) also clearly prohibit any unilateral changes to approved State program. In its oversight of the Virginia program, OSM will recognize only those statutes, regulations or other program directives approved in 30 CFR 946.15, and will require the enforcement of only such approved provisions by the State.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 720(d) of SMCRA (30 U.S.C. 1291(d)), no environmental impact statement need be prepared on this ruling.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements, rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental regulations, Surface mining, Underground mining.

Dated: December 21, 1990.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 946—VIRGINIA

1. The authority citation for part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 946.15, a new paragraph (dd) is added to read as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(dd) The amendment submitted to OSM on June 29, 1990, and revised on October 18, 1990, and November 29, 1990, is approved effective January 4, 1991. The amendment consists of the following modifications to the Virginia regulations (VR 480–03–19):

700.5 Definitions.
773.15 Review of Permit Applications.
773.17 Permit Conditions.
773.20 Improvidently Issued Permits: Rescission Procedures.
773.21 Improvidently Issued Permits: Pattern of Violations.
778.13 Identification of Interests.
778.14 Violation Information.
843.11 Cessation Orders.
843.13 Suspension or Revocation of Permits—Pattern of Violations

The modifications made to Virginia Regulations (VR 480–03–19) 773.15 and 773.20 have been clarified by the State in a policy statement dated October 18, 1990 (Administrative Record No. VA–776).

3. In § 946.16, paragraph (a) is removed and reserved to read as follows:

§ 946.16 Required regulatory program amendments.

* * * * *

(a) [Reserved]

* * * * *

[FR Doc. 91–81 Filed 1–3–91; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 589

Compliance With Court Orders by Personnel and Command Sponsored Family Members

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army announces an amendment to 32 CFR part 589 previously published in the **Federal Register**, 55 FR 47042, on 8 November 1990. These changes are directed by the Department of Defense, Office of the General Counsel and are intended to correct spelling and/or word changes and to clarify policy.

EFFECTIVE DATE: January 4, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Librado Rivas, Office of the Deputy Chief of Staff for Personnel, ATTN: DAPE–MPE–DR, Washington, DC 20310–0300, telephone: (703) 697–1012/2403.

SUPPLEMENTARY INFORMATION: This part will appear as chapter 11 of the consolidated Army Regulation 614–XX (number to be determined at a later date), and implements Department of Defense Directive 5525.9, Compliance of DOD Members, Employees, and Family Members Outside the United States With Court Orders. Consolidated AR 614–XX prescribes policies pertaining to permanent change of station (PCS) moves, overseas tour lengths, unit

deployment, volunteers, deletions and deferment from overseas assignment instructions, curtailments, extensions, consecutive overseas tours, eligibility for overseas service, and stabilization of tour lengths for military personnel.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as nonmajor. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1990 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 589

Army, Court, Personnel.

Accordingly, 32 CFR part 589 is amended as follows:

PART 589—COMPLIANCE WITH COURT ORDERS BY PERSONNEL AND COMMAND SPONSORED FAMILY MEMBERS

1. The authority for part 589 is continues to read as follows:

Authority: Public Law 100.456 and 10 U.S.C. 814.

2. Section 589.4 is amended by revising paragraphs (a)(1), (b)(4), (b)(5) (f) and (g) and adding paragraph (b)(6) to read as follows:

§ 589.4 General.

(a) * * *

(1) For soldiers and members or their family, to the soldier's unit commander of Office, Deputy Chief of Staff for Personnel (ODCSPER), ATTN: DAPE–MP (703–695–2497); and

* * * * *

(b) * * *

* * * * * *

(4) If one, the matter cannot be resolved, and two, it appears that noncompliance with the request to return the soldier, or to take other action involving a family member or DA or NAF employee is warranted by all the facts and circumstances of the particular case, and three, the court order does not pertain to any felony or to a contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of the court or the custody of a parent or another person awarded custody by court order, the matter will be forwarded, for soldiers or their family members to the soldier's general court martial convening authority or, for army civilian or NAF employees or their family members, to the first general officer or civilian equivalent in the employee's chain of command, for a determination as to whether the request should be complied with. In those cases in which it is determined that noncompliance with the request is warranted, copies of that determination will be forwarded directly to the appropriate office noted in § 589.3(3) and to HQDA, DAJA–CL, pursuant to Chapter 6, AR 190–9.

(5) If one, the matter cannot be resolved, and two, it appears that noncompliance with the request to return the soldier, or to take other action involving a family member of DA or NAF employee, is warranted by all the facts and circumstances of the particular case, and three, the court order pertains to any felony or to a contempt involving the unlawful or contemptuous removal of a child from the jurisidiction of a court or the custody of a parent or another person awarded custody by court order, a request for exception to policy will be forwarded directly to the appropriate office listed in § 589.3(b)(3) with an information copy to HQDA, DAJA–AL, within 30 days unless a delay has been approved by ASA(M&RA). The offices listed in § 589.3(b)(3) must forward the request for an exception promptly through ASA(M&RA) to ASD(FM&P) for decision, copy furnished to General Counsel, DOD.

(6) All actions, whether to invoke the DOD Directive or not, must be reported promptly to ASD(FM&P) and General Counsel, Department of Defense. See also DOD Directive 5525.9, paragraph E.3.c.

* * * * *

(f) If the request is based upon a valid court order pertaining to a family member of a soldier or Army civilian or NAF employee, the family member will be strongly encouraged to comply with the court order if denial of the request as outlined in this part is not warranted. Unless the family member can show legitimate cause for non-compliance with the order, considering all of the facts and circumstances, failure to comply may be basis for withdrawal of command sponsorship.

(g) Failure of the requesting party to provide travel expenses for military personnel as specified in this section, is grounds to be recommended denial of the request for assistance. The request must still be forwarded through DAPE–MP and ASA(M&RA) to ASD(FM&P) for decision, copy furnished to General Counsel, Department of Defense.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 91–112 Filed 1–3–91; 8:45 am]

BILLING CODE 3710–08–M

Department of the Air Force

32 CFR Part 953

Fraud and Violations of Public Trust in Contract, Acquisition, and Other Matters

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending Title 32, chapter VII of the CFR by removing part 953, Fraud and Violations of Public Trust in Contract, Acquisition, and Other Matters. This rule is removed since the source document, AFR 124–8, was rescinded because it contained information contained in other Air Force regulations.

EFFECTIVE DATE: January 4, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Patsy J. Conner, Air Force Federal Register Liaison Officer, SAF/AAIA, Pentagon, Washington, DC 20330–1000, telephone (202–614–3431).

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 953

Fraud, Government procurement, Investigations.

Authority: 10 U.S.C. 8013.

PART 953—[REMOVED]

Accordingly, 32 CFR chapter VII, is amended by removing part 953.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–110 Filed 1–3–91; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

Temporary Subsistence Management Regulations for Public Lands in Alaska

CFR Correction

In title 36 of the Code of Federal Regulations, part 200 to End, revised as of July 1, 1990, § 242.24(f)(10)(xii) through (f)(11)(xiv) was inadvertently duplicated. The text of paragraph (f)(10)(xii) in the second column, on page 230, and ending with paragraph (f)(10)(xiv), column one, on page 232, should be removed.

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[Gen. Docket No. 87-389; FCC 90-404]

Revision of Rules Regarding the Operation of Radio Frequency Devices Without an Individual License; LPB et al. Joint Petition for Partial Reconsideration

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In response to petitions filed by LPB Inc., LocRad Inc., Burden Associates, and the Intercollegiate Broadcasting System, Inc., the Commission is amending its rules to relax the radio frequency (RF) field strength emission limits for low power AM communications systems, *e.g.* carrier current and "leaky cable" radio systems operating int he AM radio band. The rules originally adopted in this proceeding effectively decreased the field strength limits that apply to the use of the lower AM broadcast frequencies by these systems. The changes adopted herein will relax the limits to the former levels, thereby allowing the continued operation of economical low power AM communications systems. The Commission finds that this change will not pose a significant threat of interference to authorized communications users.

EFFECTIVE DATE: February 14, 1991.

FOR FURTHER INFORMATION CONTACT: George Harenberg, Technical Standards Branch, Office of Engineering and Technology (202) 653-7314.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum, Opinion and Order (MO&O)* in Gen. Docket No. 87-389, FCC 90-404, adopted on November 26, 1990 and released on December 28, 1990.

The full text of this *MO&O* is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Summary of Notice

1. In the *First Report and Order (R&O)* in GEN Docket No. 87-389, 54 FR 17710, April 25, 1989, the Commission applied new, and in some areas slightly more stringent, field strength limits for three types of low power communications systems that operate on frequencies in the AM band: (1) Carrier current systems; (2) leaky cable systems; and (3) campus radio stations. These systems allow low power, one-way communications using standard AM radio receivers. Campus radio stations have operated successfully for years using carrier current systems, and motorist advisory stations, such as those serving amusement parks, are now using leaky cable systems.

2. LPB Inc., LocRad Inc., Burden Associates, and the Intercollegiate Broadcasting System, Inc., (herein "joint petitioners"). The joint petitioners market and operate low carrier current and "leaky cable" systems that transmit one-way messages and programming for reception on standard AM broadcast band receivers. They are concerned that the new emission limits for AM carrier current systems are more stringent for lower frequencies in the AM band than the former limits. The joint petitioners argue that the new, lower limits are unnecessarily restrictive and request that the previous emission limits be reinstituted for these systems.

3. Carrier current and leaky cable systems operate on a different physical principle than other wireless radio frequency communication systems. Such systems rely on the induction (or magnetic) field, which is present only in the immediate vicinity of a transmission line or cable carrying RF energy, to provide communications to receivers. Induction fields rapidly decrease in strength as distance from the transmission line is increased. Radiation fields, which are more typically used for radio communications, decrease much more slowly. Although induction fields are stronger than radiation fields at locations very near carrier current and leaky cable systems, radiation fields are stronger, and therefore more likely to cause interference, at greater distances.

4. Under the Commission's previous rules, carrier current systems were measured at approximately the distance at which the radiation field begins to exceed the induction field. Under the new field strength limits, measurements of carrier current systems operating on the lower frequencies of the AM band were required to be made at substantially shorter distances; *i.e.*, distances where the induction field is stronger than the radiation field. This effectively decreased the allowable field strength at lower frequencies. While the Commission did increase the field strength limits to compensate for the shorter measurement distance, it apparently did not sufficiently allow for the higher field strength of the induction field in areas very near to carrier current systems. The new field strength limits adopted in the *R&O*, therefore, significantly restricted the use of new carrier current systems. However, carrier current systems have been operated for decades under the former field strength limits without causing interference problems for AM broadcasters. Those levels were sufficient to avoid interference in the past and the Commission believes they remain appropriate for future use. Accordingly, the Commission will allow carrier current systems operating in the AM band to comply with either the new limits or those which were contained in the former rules, respecified in the International Systems of Units. While this change will lessen the uniformity of part 15 emissions standards, the Commission believes the benefits of applying the former standards in this case outweigh the advantages of uniformity.

5. The Commission previously treated leaky cable systems in a manner similar to typical radio transmitters because, like radio transmitters, leaky cable systems operators could control where their antennas (leaky cables) were placed. However, because leaky cable systems operate more like carrier current systems, relying primarily on the induction field, the Commission is granting the request to subject leaky cable systems operating in the AM broadcast band to the same field strength limits and equipment authorization requirements as carrier current systems.

6. The rule changes will also resolve the difficulties that campus radio stations operating on lower band AM frequencies face in providing service beyond the boundaries of the institution under the new rules. In general, the rules

adopted in the *R&O* were intended to permit campus radio stations greater flexibility and freedom in designing their operations. Consistent with this intent, campus radio stations will now be able to use both carrier current and leaky cable systems at the signal levels specified for carrier current systems under the previous rules to serve off-campus locations such as privately-owned residence halls.

7. In accordance with the above discussion and pursuant to the authority contained in sections 4(i), 301, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, *it is ordered*, That the Joint Petition filed by LPB Inc., LocRad Inc., Burden Associates, and the Intercollegiate Broadcasting System, Inc., is granted to the extent indicated herein. In addition, *it is further ordered*, That part 15 of the Commission's Rules and Regulations is amended as set forth in appendix B below. These rules and regulations are effective February 14, 1991.

List of Subjects in 47 CFR Part 15

Communications equipment, Radio.

Rule Changes

Title 47 of the Code of Federal Regulations, part 15, is amended as follows:

PART 15—[AMENDED]

1. The authority citation for part 15 continues to read as follows:

Authority: Sec. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, 304, and 307.

2. Section 15.109 is amended by revising paragraph (e) to read as follows:

§ 15.109 Radiated emission limits.

* * * * *

(e) Carrier current systems used as unintentional radiators or other unintentional radiators that are designed to conduct their radio frequency emissions via connecting wires or cables and that operate in the frequency range of 9 kHz to 30 MHz, including devices that deliver the radio frequency energy to transducers, such as ultrasonic devices not covered under part 18 of this Chapter, shall comply with the radiated emission limits for intentional radiators provided in § 15.209 for the frequency range of 9 kHz to 30 MHz. As an alternative, carrier current systems used as unintentional radiators and operating in the frequency range of 525 kHz to 1705 kHz may comply with the radiated emission limits provided in § 15.221(a). At frequencies above 30 MHz, the provisions of paragraph (a) of this section apply.

* * * * *

3. Section 15.207 is amended by revising paragraph (b) to read as follows:

§ 15.207 Conducted limits.

* * * * *

(b) The limit in paragraph (a) shall not apply to intentional radiators operated as carrier current systems in the frequency range of 450 kHz to 30 MHz. Such systems are subject to radiated emission limits as provided in § 15.205 and §§ 15.209, 15.221, 15.223, 15.225 or § 15.227, as appropriate.

* * * * *

4. Section 15.221 is revised to read as follows:

§ 15.221 Operation in the band 525–1705 kHz.

(a) Carrier current systems and transmitters employing a leaky coaxial cable as the radiating antenna may operate in the band 525–1705 kHz provided the field strength levels of the radiated emissions do not exceed 15 uV/m, as measured at a distance of 47,715 (frequency in kHz) meters (equivalent to Lambda/2Pi) from the electric power line or the coaxial cable, respectively. The field strength levels of emissions outside this band shall not exceed the general radiated emission limits in § 15.209.

(b) As an alternative to the provisions in paragraph (a) of this section, intentional radiators used for the operation of an AM broadcast station on a college or university campus or on the campus of any other education institution may comply with the following:

(1) On the campus, the field strength of emissions appearing outside of this frequency band shall not exceed the general radiated emission limits shown in § 15.209 as measured from the radiating source. There is no limit on the field strength of emissions appearing within this frequency band, except that the provisions of § 15.5 continue to comply.

(2) At the perimeter of the campus, the field strength of any emissions, including those within the frequency band 525–1705 kHz, shall not exceed the general radiated emission in § 15.209.

(3) The conducted limits specified in § 15.207 apply to the radio frequency voltage on the public utility power lines outside of the campus. Due to the large number of radio frequency devices which may be used on the campus, contributing to the conducted emissions, as an alternative to measuring conducted emissions outside of the campus, it is acceptable to demonstrate compliance with this provision by measuring each individual intentional radiator employed in the system at the point where it connects to the AC power lines.

(c) A grant of equipment authorization is not required for intentional radiators operated under the provisions of this Section. In lieu thereof, the intentional radiator shall be verified for compliance with the regulations in accordance with subpart J of Part 2 of this chapter. This data shall be kept on file at the location of the studio, office or control room associated with the transmitting equipment. In some cases, this may correspond to the location of the transmitting equipment.

(d) For the band 535–1705 kHz, the frequency of operation shall be chosen such that operation is not within the protected field strength contours of licensed AM stations.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91–67 Filed 1–3–91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90–263, FCC 90–411]

Broadcast Service; Abuse of the Commission's Licensing Processes

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, through this *Report and Order (Report)*, adopts rules which limit payments that may be received by competing applicants for construction permits for new broadcast stations or modifications to facilities of existing stations (hereinafter comparative new proceedings). The Commission limits such payments to legitimate and prudent out-of-pocket expenses up until the first day of the trial phase of the hearing and prohibits any payments at all thereafter. This action is needed to eliminate abuse of the Commission's processes and to expedite new broadcast service to the public.

EFFECTIVE DATE: March 21, 1991.

FOR FURTHER INFORMATION CONTACT: Gina Harrison, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

SUPPLEMENTARY INFORMATION: Public reporting burden for the collection of information in § 73.3525(a) of the Commission's Rules, 47 CFR 73.3525(a)

is estimated to average 8 hours per response. The burden for § 73.3525(b) is estimated to average 1 hour per response. Each of these estimates includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management of Budget, Paperwork Reduction Project, Washington, DC 20503.

This is a synopsis of the Commission's "Report and Order" in MM Docket No. 90–263, adopted December 13, 1990, and released December 21, 1991.

The complete text of this "Report and Order" 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 Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Synopsis of Report and Order

1. Through this decision, the Commission adopts rules limiting payments that may be received by competing applicants in comparative new cases, to legitimate and prudent out-of-pocket expenses up until the first day of the trial phase of the hearing. These rules prohibit any payments at all thereafter. This action is taken as part of the Commission's continuing effort to eliminate abuse of the Commission's licensing processes.

2. The Notice of Proposed Rule Making (Notice) in this proceeding (55 FR 28918, July 16, 1990) invited comment on whether to limit the payments that can be made to settle cases involving competing applicants in the comparative new context, thus eliminating profit motivation as a factor in such proceedings, and minimizing the potential for abuse of the licensing process. The Commission now finds that limiting settlement payments will serve to discourage sham applications, reduce or eliminate "profiteering" on Commission processes and expedite hearings by reducing the number of non-*bona fide* applicants. Moreover, forbidding payments once the trial stage of a case has begun will encourage earlier settlements, accelerating the resolution of proceedings and easing the burden on litigants. Finally, the disclosure requirements adopted in this decision will enable the Commission to enforce compliance with payment limitations.

3. The Commission decides that applicants settling before the trial phase of the hearing commences may recover their legitimate and prudent out-of-pocket expenses. This policy will encourage *bona fide* applicants to apply, as they will be able to recoup expenses up until the point at which they can make a realistic assessment of their probabilities of success. Once discovery is complete, the parties possess enough factual information to make a reasoned judgment on the probable outcome of applications. Moreover, it is at this post-discovery point that the new voluntary settlement conference procedure provided for in the "Report and Order" in General Docket No. 90–264 (FCC 90–410, adopted December 13, 1990, released December 21, 1990) will become available to the competing parties. The settlement conference will provide a means for applicants to obtain an impartial assessment of their relative chances of prevailing over their competitors. Based on this information, applicants should be able to make an informed decision either to settle for expenses, or to continue with the comparative process.

4. In the interest of expediting the delivery of new service to the public, the Commission wishes to encourage settlement as soon as possible after this point. Prohibiting payments made in exchange for dismissing applications will accomplish this result. The Commission further finds that the start of the trial phase of the hearing is the logical point for such a prohibition to apply, because this is a date certain of which all the parties have notice, and because this is the stage where applicants begin to incur significant additional expenses in the litigation of a case. Thus, parties traditionally attempt to settle at this point. Therefore, the Commission will prohibit all payments to settling parties after the trial phase of the hearing commences.

5. The Commission also considered whether to reduce the amount of permissible recovery (to, for example, 50 percent) as of the date certain in the proceeding. It found, however, that precluding settlement payments altogether after a point certain in the process will provide the greatest incentive toward early settlements, and will therefore expedite the overall hearing process.

6. Another option considered but rejected, would limit settlement payments to out-of-pocket expenses throughout the comparative new process. However, the Commission concludes that prohibiting all recovery after the trial phase starts will more effectively deter frivolous filings and encourage early settlements. The Commission also does not adopt proposals to ban nearly or completely any payments at any stage in a comparative new case, out of concern that such a proposal might deter good faith applicants. Finally, the Commission considered allowing recovery above expenses, but found that such a policy might encourage abuse and discourage less wealthy, yet *bona fide* applicants.

7. Contrary to the decision in "Texas Television, Inc." (FCC 83.95, Mimeo 95003, March 9, 1983), which the Commission hereby reverses, the Commission now finds that section 311(c) of the Communications Act, as amended, 47 U.S.C. 311(c) permits limits on settlement payments in comparative new proceedings.

8. Because it is important to implement these reform measures promptly, the Commission elects not to apply the new rules both to new and pending applicants. At the same time, some accommodation must be made for existing applicants who have relied on our previous policies. The Paperwork Reduction Act requires a delay in the effective date of the new rules to obtain approval of the Office of Management and Budget. This brief grace period should provide reasonable protection to parties that relied on existing rules, while not interfering with the goals of encouraging early settlements and prompt implementation of reform measures. Accordingly, the new rules will become effective on March 21, 1991.

9. The Commission amends § 73.3525 of the Rules, to add a requirement that parties seeking approval of the settlement prior to the commencement of the trial phase of the comparative new proceeding also submit: (1) Certifications that they have not received or will not receive any money or other consideration in excess of their legitimate and prudent expenses; (2) the exact nature and amount of any consideration paid or promised; (3) an itemized accounting of the expenses for which they seek reimbursement; and (4) the terms of any oral agreement relating to the dismissal or amendment of the application in question. Any applicant seeking to dismiss or withdraw after the commencement of the trial phase must certify that it has received no consideration in exchange for such dismissal or withdrawal. The time periods for oppositions to proposed settlements will remain the same as

under the former rules. This factor, together with the manner in which the Commission intends to implement these procedures should ensure expeditious approval of settlements that are in the public interest.

10. Because of the intervening change in the language of section 311, the Commission does not adopt wholesale the administrative interpretation of reimbursable expenses used prior to the 1982 amendment to that statute. For example, the Commission finds that expenses incurred in preparing and negotiating a settlement are recoverable. The Commission also believes that it will be beneficial to provide some additional guidance to the staff and interested parties in three areas. First, the Commission clarifies that itemizations of professional expenses may be submitted in statement form. Second, as a general matter, principals of applicants are not entitled to reimbursement for services performed on behalf of the applicant. Third, settling parties are required either to submit any ancillary agreements they have made, such as consulting agreements, or to certify that these do not exist.

Final Regulatory Analysis Statement

I. Need and Purpose of This Action

11. This action is taken as part of the Commission's continuing effort to eliminate abuse of its processes. It is additionally intended to expedite the comparative licensing process by reducing the volume of applications filed and by removing profit as a factor in settlement agreements, and to facilitate the provision of new service to the public.

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

12. No comments were received relating to the Initial Regulatory Flexibility Analysis.

III. Significant Alternatives Considered and Rejected

13. The Commission considered prohibiting all or nearly all settlement payments at any stage in a comparative new case. However, such a stringent restriction might deter good faith applicants.

14. A second option considered would have permitted recovery of expenses up to a point certain in the proceeding and thereafter recover only a portion (e.g., 50 percent) of expenses. The Commission found that precluding all settlement payments after a point certain in the proceeding would provide the greatest incentive toward early settlement and would therefore expedite the overall hearing process.

15. A third option considered and rejected would have allowed the recovery of expenses throughout a comparative new proceeding. The Commission decided that prohibiting all recovery after the trial phase starts will more effectively deter frivolous filings, encourage early settlements, and conserve applicants' and Commission resources.

16. Finally, the Commission considered allowing settlement payments to reimburse some set figure above expenses. This option would not sufficiently deter sham applications and might prevent *bona fide* applicants with limited financial resources from filing.

17. The Secretary shall send a copy of this "Report and Order", including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981)).

18. Accordingly, *it is ordered*, That pursuant to the authority contained in sections 4, 303, and 311 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303, and 311, part 73 of the Commission's Rules, 47 U.S.C. Part 73, is amended as set forth below, effective March 21, 1991, subject to Office of Management and Budget approval.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Amendatory Text

Part 73 of the title 47 of the Code of Federal Regulations is amended to read as follows:

PART 73—[AMENDED]

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

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

2. Section 73.3525 is amended by revising introductory paragraph (a), removing the final word "and" in paragraph (a)(1), substituting a semicolon for the period at the end of paragraph (a)(2), adding new paragraphs (a)(3), (a)(4), (a)(5), (a)(6), redesignating existing paragraphs (b) through (h) as paragraphs (c) through (i), adding new paragraph (b), and adding new paragraphs (j), (k), and (l) to read as follows:

§ 73.3525 Agreements for removing application conflicts.

(a) Except as provided in § 73.2523 regarding dismissal of applications in comparative renewal proceedings, whenever applicants for a construction permit for a broadcast station, prior to the commencement of the trial phase of the proceeding, enter into an agreement to procure the removal of a conflict among applications pending before the FCC by withdrawal or amendment of an application or by its dismissal pursuant to § 73.3568, all parties thereto shall, within 5 days after entering into the agreement, file with the FCC a joint request for approval of such agreement. The joint request shall be accompanied by a copy of the agreement, including any ancillary agreements, and an affidavit of each party to the agreement setting forth:

(1) The reasons why it is considered that such agreement is in the public interest;

(2) A statement that its application was not filed for the purpose of reaching or carrying out such agreement;

(3) A certification that neither the applicant nor its principals has received any money or other consideration in excess of the legitimate and prudent expenses of the applicant;

(4) The exact nature and amount of any consideration paid or promised;

(5) An itemized accounting of the expenses for which it seeks reimbursement; and

(6) The terms of any oral agreement relating to the dismissal or withdrawal of its application.

(b) If a competing applicant seeks to dismiss or withdraw its application after commencement of the trial phase of the proceeding, it must submit to the Commission a request for approval of the dismissal or withdrawal of its application, a copy of any written agreement related to the dismissal or withdrawal of its application, and an affidavit setting forth:

(1) A certification that neither the applicant nor its principals has received or will receive any money or other consideration in exchange for dismissing or withdrawing its application;

(2) A statement that its application was not filed for the purpose of reaching or carrying out an agreement with any other applicant regarding the dismissal or withdrawal of its application; and

(3) The terms of any oral agreement relating to the dismissal or withdrawal of its application. In addition, within 5 days of the applicant's request for approval, each remaining competing applicant must submit an affidavit setting forth:

(4) A certification that neither the remaining applicant nor its principals has paid or will pay any money or other consideration to the withdrawing applicant in exchange for the dismissal or withdrawal of the application; and

(5) The terms of any oral agreement relating to the dismissal or withdrawal of the application.

* * * * *

(j) For purposes of this section, "legitimate and prudent expenses" are those expenses reasonably incurred by a petitioner in preparing, filing, prosecuting, and settling its petition and for which reimbursement is being sought.

(k) For purposes of this section, "other consideration" consists of financial concessions, including, but not limited to the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

(l) For purposes of this section, an "ancillary agreement" means any agreement relating to the dismissal of an application or settling of a proceeding, including any agreement on the part of an applicant or principal of an applicant to render consulting services to another party or principal of another party in the proceeding.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91-66 Filed 1-3-91; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 516 and 552

[APD 2800.12A, CHGE 17]

General Services Administration Acquisition Regulation; Placing Orders Electronically

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is revised to add section 516.505 to prescribe a Placement of Orders clause with two alternates for use by the Federal Supply Service in contracts awarded under the stock and special order program and under the schedule program, and to add section 552.216-73 to provide the text of the Placement of Orders clause and alternates. The intended effect is to provide a mechanism for placing orders against contracts using Electronic Data Interchange (EDI).

EFFECTIVE DATE: January 4, 1991.

FOR FURTHER INFORMATION CONTACT: Paul L. Linfield, Office of GSA Acquisition Policy, (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

A notice of proposed rulemaking was published in the **Federal Register** on June 20, 1990, (GSAR Notice No. 5-301, 55 FR 25141). No public comments were received. Comments from various GSA Offices have been considered and where appropriate incorporated in the final rule.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This exemption applies to this rule.

C. Regulatory Flexibility Act.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the GSA certifies that this rule will not have a significant impact on a substantial number or small entities, since the placement of orders electronically must be agreeable to the contractor.

D. Paperwork Reduction Act

This rule contains an information collection requirement that has been approved by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and assigned control number 3090-0248. The title of the collection is 48 CFR 552.216-73 Placement of Orders. The clause provides for the placement of delivery orders electronically. However, before orders can be placed electronically, the Contractor must enter into one or more Trading Partner Agreements (TPA) with Federal agencies that will be placing orders electronically. The TPA identifies the third party provider(s) through which electronic orders will be placed, the transaction sets to be used, security procedures, and provides guidelines for implementation. This information collection requirement does not impose a burden because the information exchanged through the TPA is the same as that exchanged in the normal course of business in the private sector when using EDI. No greater burden is imposed by this rule. Comments on the information collection requirement may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503.

List of Subjects in 48 CFR Parts 516 and 552.

Government procurement.

1. The authority citation for 48 CFR parts 516 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 516—TYPES OF CONTRACTS

2. Subpart 516.5 is added to read as follows:

Subpart 516.5—Indefinite-Delivery Contracts

516.505 Contract clauses.

The contracting officer shall insert the clause at 552.216-73, Placement of Orders, in solicitations and contracts for stock or special order program items when the contract authorizes agencies other than GSA to issue delivery orders. If GSA alone will issue delivery orders use, Alternate I. If a Federal Supply Schedule contract (single or multiple award) is contemplated, use Alternate II.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 552.216-73 is added to read as follows:

552.216-73 Placement of Orders.

As prescribed in 516.505, insert the following clause:

Placement of Orders (Dec. 1990)

(a) Orders will be placed by: [Contracting Officer insert names of Federal agencies].

(b) When mutually agreeable to the ordering agency and the contractor, delivery orders may be placed electronically using American National Standards Institute (ANSI) X12 Standard for Electronic Data Interchange (EDI) procedures.

(c) When EDI procedures are to be used to place delivery orders, the Contractor shall enter into one or more Trading Partner Agreements (TPA) with each Federal agency placing orders electronically in order to ensure mutual understanding by the parties of certain electronic transaction conventions and to recognize the rights and responsibilities of the parties as they apply to this method of placing delivery orders. The TPA shall identify, among other things, the third party provider(s) through which electronic orders are placed, the transaction sets used, security procedures, and guidelines for implementation.

(d) The Contractor shall be responsible for providing its own hardware and software necessary to transmit and receive data electronically under the framework of the TPA. Additionally, each party to the TPA shall be responsible for the costs associated with its use of third party provider services.