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[FR Doc. 97–23227 Filed 8–29–97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5884–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of partial deletion of the Unit Structure Property from the Koppers Company, Inc., superfund site, Morrisville, Wake County, North Carolina, from the national priorities list.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 announces the deletion of the Unit Structure Property portion of the Koppers Company, Inc. Superfund Site from the National Priorities List (NPL), (Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP)). EPA and the State of North Carolina Department of Environment, Health and Natural Resources have determined that the Unit Structure Property poses no significant threat to public health or the environment and, therefore, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) remedial measures are not appropriate. This deletion does not preclude future action under Superfund.

EFFECTIVE DATE: September 1, 1997.

FOR FURTHER INFORMATION CONTACT: Please contact Beverly T. Hudson, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, North Site Management Branch, 61 Forsyth Street, S.W., Atlanta, Georgia 30303–3014, (404) 562–8816 or 1–800–435–9233.

SUPPLEMENTARY INFORMATION: The Site affected by this partial deletion from the NPL is: Koppers Company, Inc. Superfund Site, Wake County, Morrisville, North Carolina.

A Notice of Intent to Delete for this Site was published on June 23, 1997 at 62 FR 33787. The closing date for comments on the Notice of Intent to Delete was July 23, 1997. EPA received no written comments, and only one by telephone which supported the partial deletion action.

EPA identifies sites that appear to present a significant risk to the public health, welfare and the environment and it maintains the NPL as the list of those sites. Any site or portion thereof deleted from the NPL remains eligible for Fund-financed remedial actions in the future. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 14, 1997.

A. Stanley Meiburg,

Deputy Regional Administrator, U.S. EPA, Region 4.

For reasons set out in the preamble, 40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by revising the entry for Koppers Co., Inc. (Morrisville Plant), Morrisville, North Carolina to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes
*	*	*	*
NC	Koppers Co., Inc. (Morrisville Plant)	Morrisville	P
*	*	*	*

P = Sites with parial deletion(s).

[FR Doc. 97–23093 Filed 8–29–97; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR No. 89–552; FCC 97–225]

Use of the 220–222 MHz Band by the Private Land Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *Fourth Report and Order*, the Commission repeals the ''40-mile rule'' for all nationwide and non-nationwide Phase I 220 MHz Service licensees. The 40-mile rule provides that no Phase I 220 MHz licensee may be authorized to operate a station in a particular service category within 40 miles of an existing system authorized to that licensee in the same category unless ''the licensee can demonstrate that the additional system is justified on the basis of its communications requirements.'' This action is needed because the 40-mile rule no longer serves its original purpose and repeal of the rule is expected to promote competition among all commercial mobile radio service providers.

EFFECTIVE DATE: October 2, 1997.

FOR FURTHER INFORMATION CONTACT: Eli Johnson, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Fourth Report and Order* in PR Docket No. 89–552, FCC 97–225, adopted June 23, 1997, and released August 25, 1997. The complete text of the *Fourth Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the

Commission's copy contractor, International Transcription Service, Inc. at (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

Synopsis of the Fourth Report and Order

1. By this *Fourth Report and Order,* the Commission repeals the ''40-mile rule'' contained in Section 90.739(a) of the Commission's Rules for all nationwide and non-nationwide Phase 1 220 MHz Service licensees. The Commission finds that, in light of the changes to the 220 MHz Service adopted in the *Third Report and Order* in this proceeding (62 FR 16004, April 3, 1997) the 40-mile rule is unnecessary and no longer serves its original purpose of preventing the warehousing of spectrum.

2. The 40-mile rule currently provides that no Phase I 220 MHz licensee may be authorized to operate a station in a particular service category within 40 miles of an existing system authorized to that licensee in the same category unless ''the licensee can demonstrate that the additional system is justified on the basis of its communications requirements (47 CFR § 90.739(a)).'' The Commission adopted the 40-mile rule in a 1991 *Report and Order* (56 FR 19598, April 29, 1991). At that time, 220 MHz licenses were awarded on a first-come, first-served basis with mutually exclusive applications filed on the same day assigned through a random selection process. Thus, the 40-mile rule was intended to prevent licensees from acquiring more spectrum than they needed within a particular geographic area and then warehousing that spectrum for possible future use.

3. The *Third Report and Order* in this proceeding adopted a new licensing scheme for the 220–222 MHz band. Instead of being assigned on a first-come, first-served basis, in the future 220 MHz licenses will be initially awarded through competitive bidding based on Commission designated channel blocks and geographical areas. The only way to acquire a 220 MHz Service license, therefore, will be to purchase it through an auction or to acquire it through transfer or assignment from another licensee. In either case, 220 MHz Service licenses will be assigned to entities that have shown their willingness to pay market value for the licenses. Thus, the *Third Report and Order* did not limit the number of licenses that may be acquired by one entity, and the Commission allows licensees to place stations anywhere within a licensee's geographically licensed area. On April 5, 1996, the SMR Advisory Group, L.C. (SMR Group) filed *ex parte* comments in the 220 MHz proceeding, urging the Commission to eliminate the 40-mile rule with respect to all existing and future 220 MHz licensees.

4. The Commission agrees with SMR Group that we should eliminate the 40-mile rule for all Phase I 220 MHz Service licensees. We conclude that, as applicable to Phase I licensees, the 40-mile rule represents an unnecessary regulatory burden. We believe that effective use of the spectrum can be achieved by relying on market conditions to control whether a licensee acquires a 220 MHz Service license because of current demand for more spectrum or an anticipated need for additional spectrum. Our decision to repeal the 40-mile rule applies to all Phase I 220 MHz licensees, including non-commercial entities, licensees providing commercial services, and 220 MHz public safety licensees.

Final Regulatory Flexibility Analysis

5. As required by Section 603 of the Regulatory Flexibility Act of 1980, 5 U.S.C. § 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Third Notice of Proposed Rulemaking* (60 FR 46564, September 7, 1995) in this proceeding that considers the impact on small entities of the proposed changes being contemplated for the 220 MHz Service. The Commission sought written public comments on the proposals contained in that Notice of Proposed Rulemaking, including the IRFA. The Secretary sent a copy of that Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the RFA.

6. As required by the RFA, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA). The Secretary shall send a copy of the FRFA, along with the *Fourth Report and Order,* to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the RFA. The FRFA is set forth below:

7. *Purpose of Rule Change:* Repeal of the 40-mile rule for Phase I 220 MHz licensees will allow for a more efficient use of the 220 MHz Service. It also eliminates unnecessary regulatory burdens on existing 220 MHz licensees, enhances the competitive potential of 220 MHz Service in the mobile marketplace, and the development of spectrally efficient technologies. This decision will promote economic opportunity and ensure that new and innovative technologies are readily accessible to the American people.

8. *Summary of Issues Raised by the Public Comments in Response to the IRFA:* The commenters did not raise any issues specifically with respect to the IRFA. We have, however, considered the economic impact of our decision to repeal the 40-mile rule for Phase I licensees who are small entities by considering the comments that were submitted by small businesses on the Commission's proposal. Eliminating the 40-mile rule for Phase I licensees reduces regulatory burden for all Phase I licensees, including small businesses. This conclusion is supported by the fact that all of the comments that were received on the Commission's proposal supported repeal of the rule.

9. *Description and Estimate of the Small Entities Involved:* For the purposes of this *Fourth Report and Order,* the RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[1] Under the Small Business Act, a ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[2]

10. There are approximately 2,800 Phase I 220 MHz licensees, many of whom may be small entities, and at least six equipment manufactures, three of whom may be small businesses, that are subject to the elimination of the 40-mile rule for Phase I licensees.

11. The Commission has not developed a definition of small entities applicable to 220 MHz Phase I licensees, or equipment manufacturers for purposes of this FRFA, and since the RFA amendments were not in effect until the record in this proceeding was closed, the Commission did not request information regarding the number of small businesses that are associated with the 220 MHz Service. To estimate the number of Phase I licensees and the number of 220 MHz equipment manufacturers that are small businesses we shall use the relevant definitions provided by the Small Business Administration (SBA).

12. There are approximately 2,800 non-nationwide Phase I licensees and 4 nationwide licensees currently authorized to operate in the 220 MHz band. To estimate the number of such entities that are small businesses, we

[1] *See* 5 U.S.C. § 601(3) (incorporating by reference the definition of ''small business concern'' in 5 U.S.C. § 632).

[2] 15 U.S.C. § 632.

apply the definition of a small entity under SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.[3] However, the size data provided by the SBA do not allow us to make a meaningful estimate of the number of 220 MHz providers that are small entities because they combine all radiotelephone companies with 500 or more employees.[4] We therefore use the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. Data from the Bureau of the Census' 1992 study indicate that only 12 out of a total 1,178 radiotelephone firms which operated during 1992 had 1,000 or more employees—and these may or may not be small entities, depending on whether they employed more or less than 1,500 employees.[5] But 1,166 radiotelephone firms had fewer than 1,000 employees and therefore, under the SBA definition, are small entities. However, we do not know how many of these 1,166 firms are likely to be involved in the 220 MHz Service.

13. We anticipate that at least six radio equipment manufacturers will be affected by our decision in this proceeding. According to the SBA's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.[6] Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities.[7] We do not have information that indicates how many of the six radio equipment manufacturers associated with this proceeding are among these 778 firms. However, because three of these manufacturers (Motorola, Ericsson and E.F. Johnson) are major, nationwide radio equipment manufacturers, we conclude that these manufacturers would not qualify as small business.

14. *Summary of the Projected Reporting, Recordkeeping, and Other Compliance Requirements:* By repealing the 40-mile rule for all Phase I 220 MHz licensees, the Commission reduces reporting, recordkeeping and compliance requirements. These licensees will no longer have to file a waiver request with the Commission in order to operate two systems in the same service category that are less than 40 miles apart. The Commission has found the 40-mile rule to no longer serve the public interest and by repealing this rule the Commission reduces unnecessary regulatory burden.

15. *Significant Alternatives and Steps Taken by Agency to Minimize the Significant Economic Impact on a Substantial Number of Small Entities Consistent With Stated Objects:* The Commission's chief objectives in adopting the *Fourth Report and Order* are to ensure a regulatory plan for the 220 MHz Service that will allow for the efficient licensing and use of the service, to eliminate unnecessary regulatory burdens, to enhance the competitive potential of the 220 MHz Service in the mobile services marketplace, to provide a wide variety of radio services to the public, and to continue to provide a home for the development of spectrally efficient technologies. The action taken in the *Fourth Report and Order* achieves these objectives by repealing a Commission regulation that had previously been adopted. The elimination of the 40-mile rule for Phase I licensees demonstrates the Commission's commitment to continually review its regulations and eliminate rules that are outdated.

16. The Commission received seven sets of comments on its tentative conclusion to repeal the 40-mile rule for Phase I licensees. All the comments support the elimination of the 40-mile rule for Phase I licensees. Five of the comments were submitted by what are mostly likely small businesses.

17. In its comments, ComTech Communications, Inc. urges the Commission to repeal the 40-mile rule. ComTech argues that the rule is inconsistent with the Commission's 45 MHz CMRS spectrum cap, that regulatory parity requires the elimination of the rule and elimination of the rule will reduce administrative costs for Phase I licensees.

18. Likewise, Securicor Radiocoms Ltd. urges the Commission to eliminate the 40-mile rule. Securicor argues that by eliminating the rule Phase I 220 MHz licensees can expand the availability and the diversity of their service offerings. In addition, Securicor states that elimination of the rule will permit Phase I 220 MHz licensees to realize the benefits of economies of scale and will enhance the ability of 220 MHz licensees to expand and participate in Phase II auctions. Securicor also argues that the 40-mile rule has outlived its usefulness.

19. Incom Communications Corporation and Narrowband Network Systems argue that the 40-mile rule no longer serves a legitimate purpose and regulatory parity requires the elimination of the rule. Roamer One, Inc. concurs that the 40-mile rule no longer serves a valid regulatory purpose and requests that the Commission eliminate the rule on an expedited basis. E.F. Johnson Company, Inc. fully supports the elimination of the rule.

20. American Mobile Telecommunications Association, Inc (AMTA) states that it strongly supports the Commission's conclusion to eliminate the 40-mile rule. AMTA argues that retaining the 40-mile rule is inconsistent with the Commission's rules governing other CMRS services and is inconsistent with the Commission's move toward flexible regulation.

21. The Commission's decision to repeal the 40-mile rule for all Phase I 220 MHz licensees, therefore, is supported by the comments it received on its proposal.

22. *Report to Congress:* The Commission shall send a copy of this FRFA, along with this *Fourth Report and Order*, in a report to Congress pursuant to 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the **Federal Register**.

Ordering Clauses

23. Authority for issuance of this *Fourth Report and Order* is contained in Sections 4(i), 303(r), 309(j), and 332 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 303(r), 309(j), 332.

24. Accordingly, *it is ordered* that § 90.739 of the Commission's Rules, 47 CFR § 90.739, *is amended* as set forth below, effective October 2, 1997.

25. *It is further ordered* that the Secretary shall send a copy of this *Fourth Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.* (1980).

[3] 13 CFR § 121.201, Standard Industrial Classification (SIC) Code 4812.

[4] U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, Table 3, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

[5] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC Code 4812 (issued May 1995).

[6] 13 CFR § 121.201, (SIC) Code 3663.

[7] U.S. Dept. of Commerce, *1992 Census of Transportation, Communications and Utilities* (issued May 1995), SIC category 3663.

List of Subjects in 47 CFR Part 90

Business and industry, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 90 of title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority; Secs. 4, 251–2, 303, 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251–2, 303, 309 and 332, unless otherwise noted.

2. Section 90.739 is revised to read as follows:

§ 90.739 Number of systems authorized in a geographical area.

There is no limit on the number of licenses that may be authorized to a single licensee.

[FR Doc. 97–23187 Filed 8–29–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 174, 175, 176 and 177

[Docket No. RSPA–97–2850 (HM–169B)]

RIN 2137–AD08

Hazardous Materials: Withdrawal of Radiation Protection Program Requirement

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Direct final rule.

SUMMARY: RSPA is removing Radiation Protection Program regulations and related modal provisions that require the development and maintenance of a written radiation protection program for persons who offer, accept for transportation, or transport radioactive materials. This action is necessary to address difficulties and complexities concerning implementation of and compliance with the requirements for a radiation protection program, as evidenced by comments received from the radioactive material transportation industry and other interested parties.

DATES: This final rule is effective September 30, 1997, unless an adverse comment or notice of intent to file an adverse comment is received by September 30, 1997. RSPA will publish in the **Federal Register** a document confirming the effective date of this direct final rule.

ADDRESSES: Address comments to the Dockets Unit (DHM–30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Comments should identify the Docket (HM–169B) and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard showing the docket number. The Docket Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590–0001. Public dockets may be viewed between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Comments may also be submitted by E-mail to ''rules@rspa.dot.gov.'' In every case, the comment should refer to the Docket Number set forth above.

FOR FURTHER INFORMATION CONTACT: *Dr. Fred D. Ferate II,* Office of Hazardous Materials Technology, (202) 366–4545 or *Charles E. Betts,* Office of Hazardous Materials Standards, (202) 366–8553; RSPA, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

On September 28, 1995, RSPA published a final rule in the **Federal Register** under Docket No. HM–169A (60 FR 50292). The changes made in Docket HM–169A were part of RSPA's ongoing effort to harmonize the Hazardous Materials Regulations (HMR; 49 CFR 171–180) with international standards and to improve radiation safety for workers and the public during operations involving the transportation of radioactive materials.

One of the substantive rules in Docket HM–169A was a requirement to establish a written radiation protection program (RPP). The RPP requirements are found in subpart I of 49 CFR part 172. The RPP implementation provisions for rail, air, vessel and highway are found in §§ 174.705, 175.706, 176.703, and 177.827, respectively. The RPP requirement applies, with certain exceptions, to each person who offers for transportation, accepts for transportation, or transports Class 7 (radioactive) materials. The effective date of the RPP requirement is October 1, 1997. Following publication of the September 28, 1995 final rule, many comments were received concerning technical difficulties in implementing the RPP requirements. Subsequently, on April 19, 1996, RSPA published in the **Federal Register** a request for comments on the implementation of the RPP requirements (Notice 96–7; 61 FR 17349). In Notice 96–7, RSPA stated its intention to develop guidance for the radioactive material industry to facilitate compliance with the RPP requirements. RSPA received 23 comments in response to Notice 96–7.

Several commenters cited modal differences as a factor which makes application of the RPP regulations difficult. Examples given include difficulties in tracking doses to workers involved in shipping radioactive material by rail because of multiple transfers from one company to another of rail cars during transport, or to ship crews because of ships being registered under foreign flags, or because often their operations are carried out in foreign ports. Several commenters stated that dose to personnel involved in bulk or containerized transport of radioactive material by highway, rail, or vessel is usually much lower than for non-bulk shipments.

Additional comments pointed to ambiguities in the regulations that make honest efforts to develop RPP plans uncertain as to their adequacy. Some of the ambiguities cited are that the regulations do not make clear whether the 200 transport index (TI) threshold to qualify for an exception is to be applied over an entire company or at each site; that concepts such as ''approved by a Federal or state agency'' and ''occupationally exposed hazmat worker'' are vague; and that the requirement to monitor occupationally exposed hazmat workers appears to be too inclusive and may be interpreted to extend even to those workers whose doses would be expected to be below the limit of detection of the dosimeters. Most commenters noted the practical impossibility of being able to assure compliance with the requirements cited in the regulations for dose and dose rate limits for members of the general public, and the uncertainty as to which persons are included in the category of ''general public.''

Several commenters cited inconsistencies with other regulations. For example, in contrast to the HMR, the Nuclear Regulatory Commission (NRC) regulations and Environmental Protection Agency (EPA) guidelines do not include a quarterly occupational dose limit, or a weekly dose or a dose rate limit for members of the public; the HMR criteria for determining whether monitoring is required differ