**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 227C at Killeen and adding Cedar Park, Channel 227C.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–3643 Filed 2–15–00; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

### Radio Broadcast Services

*CFR Correction*

In Title 47 of the Code of Federal Regulations, parts 70 to 79, revised as of Oct. 1, 1999, on page 217, second column, § 73.682 is corrected in paragraph (c)(9) by removing in the second line the text following ''75 kHz'' to the end of the paragraph and also by removing paragraph (1) following (c)(9).

[FR Doc. 00–55503 Filed 2–15–00; 8:45 am]

**BILLING CODE 1505–01–D**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–210; MM Docket No. 96–11, RM–8742]**

### Television Broadcasting Services; (Waverly, New York and Altoona, PA)

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; denial of petition of reconsideration.

**SUMMARY:** This document dismisses the petition for reconsideration filed by WSKG Public Television Council and denies the petition for reconsideration filed by Renard Communications of the action taken in our *Report and Order*, 61 FR 53644 (1996) allotting Channel *57- to Waverly, New York as a noncommercial channel. In light of action taken in the DTV allotment proceedings petitioners' arguments were either speculative and unsupported or moot. With this action, the proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 96–11, adopted January 27, 2000 and released February 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), at its headquarters, 445 12th Street, S.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Mass Media Bureau.*

[FR Doc. 00–3639 Filed 2–15–00; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

**[PR Docket No. 93–144; FCC 99–399]**

### Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule: deadline requirement.

**SUMMARY:** In this document, the Commission addresses the construction requirements imposed on incumbent licensees in the 800 MHz Specialized Mobile Radio (SMR) service that have received authorizations to construct wide-area systems. This action is taken pursuant to the order issued by the United States Court of Appeals for the District of Columbia Circuit in *Fresno Mobile Radio, Inc., et al.* v. *Federal Communications Commission (Fresno)*, 165 F.3d 965 (D.C. Cir. 1999). The court remanded for further consideration the Commission's prior decision maintaining the requirement that incumbent wide-area Specialized Mobile Radio (SMR) licensees, licensees who had received ''extended implementation'' authorizations, must construct and operate all sites and all frequencies by the construction deadline. Upon further reconsideration, the Commission will allow incumbent wide-area 800 MHz SMR licensees who were within their construction periods at the time *Fresno* was decided to satisfy construction requirements similar to those given to Economic Area licensees in the 800 MHz band.

**DATES:** Effective February 16, 2000. Written comments by the public on the modified information collections are due March 17, 2000. Written comments must be submitted by OMB on the information collections on or before April 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** William Kunze, Wireless Telecommunications Bureau, at (202) 418–0620; for additional information concerning the information collections contained in this document contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This *Memorandum Opinion & Order on Remand (MO&O on Remand)* in PR Docket No. 93–144, adopted December 17, 1999, and released December 23, 1999, is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, SW, Washington DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington DC 20036 (202) 857–3800. The document is also available via the internet at *http://www.fcc.gov/Bureaus/Wireless/Orders/1999/index2.html*.

**Synopsis of Memorandum Opinion and Order on Remand**

**I. Introduction**

This action is taken pursuant to the order issued by the United States Court of Appeals for the District of Columbia Circuit in *Fresno Mobile Radio, Inc., et al.* v. *Federal Communications Commission (Fresno)*, 165 F.3d 965 (D.C. Cir. 1999). Upon further reconsideration, the Commission will allow incumbent wide-area licensees who were within their construction periods at the time *Fresno* was decided to satisfy construction requirements similar to those given to Economic Area licensees in the 800 MHz band. Incumbent wide-area licensees must file certifications of construction within fifteen (15) days after the licensee's applicable construction deadline or April 17, 2000, whichever is later.

**II. Summary of the Remand Order**

*A. Background*

Prior to December 1995, when the Commission amended its 800 MHz SMR rules to provide for geographic area licensing, 800 MHz SMR licenses were awarded on a site-by-site, channel-by-channel basis. If an SMR licensee failed to construct and begin operation on all

authorized frequencies at a particular site, the unconstructed frequencies would automatically cancel. In 1991, the Commission began granting some SMR licensees extended implementation (EI) authority to construct their systems, whereby the licensee would have up to five years to construct all of the facilities within the wide-area ''footprint'' established by its licenses. At the end of the EI period, any frequency licensed at a specific site within the footprint that was not fully constructed and in operation would cancel automatically.

In December 1995, in the *800 MHz Order*, 61 FR 6212 (Feb. 16, 1996) the Commission adopted a new wide-area licensing scheme by creating geographic-based licenses (Economic Area, or EA, licenses) for the upper 200 channels of the 800 MHz SMR band. As part of the new licensing scheme, the Commission adopted construction and coverage requirements for EA licensees similar to those required of broadband PCS and 900 MHz SMR licensees. In addition to creating rules for the new EA licensees, the Commission also concluded that continuation of the prior site-based extended implementation licensing process would be contrary to the new wide-area licensing plan.

The Commission decided to stop accepting new applications for extended implementation authority and dismissed all pending applications. The Commission also required licensees who had previously obtained EI authorizations to rejustify their authorizations by demonstrating that continuing to maintain their extended time to construct their facilities was warranted and in the public interest. If a wide-area licensee's rejustification of EI authority was found sufficient, the Commission would give the licensee two years from the decision to construct and begin operation, or maintain its original construction deadline, whichever was earlier. If the rejustification was not approved, the licensee's EI authorization would be terminated, and the licensee would be given six months from the termination date to complete construction of its site-based facilities. In May and November 1997, the Wireless Telecommunications Bureau (Bureau) acted on the rejustification submissions filed by thirty-seven wide-area licensees. Of the thirty-seven submissions, the Bureau approved thirty-one, including the rejustification submission of Southern Company, one of the petitioners in Fresno. The Bureau rejected the remaining six rejustification submissions because these licensees had not constructed any facilities during the period of extended implementation.

In the *800 MHz Reconsideration Order*, 62 FR 41190 (July 31, 1997), the Commission also affirmed its decision that rejustified EI licensees would receive a maximum of two years to complete construction of their facilities. Any site-specific license within a licensee's wide-area ''footprint'' that was not constructed by the two-year deadline would be automatically cancelled, with the unconstructed frequencies reverting to the EA licensee. The Commission rejected the claim made by Southern that the two-year construction requirement for site-based EI licensees, which required full construction of all facilities, was unfairly discriminatory in comparison to the five-year build-out period for EA licensees, which required only partial coverage of the EA licensing area.

On September 26, 1997, Southern petitioned the United States Court of Appeals for the District of Columbia for review of the Commission's decision in the 800 MHz Reconsideration Order not to give incumbent wide-area SMR licensees the same construction requirements given to EA licensees. On February 5, 1999, the United States Court of Appeals for the District of Columbia held that the Commission had not adequately explained why incumbent wide-area SMR licensees were not allowed to apply the same coverage requirements as EA licensees, cellular licensees, or PCS licensees, given that they are substantially similar CMRS providers. The court rejected the Commission's argument that EA licensees who must pay for their licenses at auction have a greater incentive to construct than incumbent licensees who acquired their licenses for free, like the EI licensees. The court found the Commission had not fully considered whether incumbent wide-area licensees are sufficiently different from 800 MHz EA licensees, cellular licensees and PCS licensees to justify the different requirements, and therefore, remanded the matter to the Commission to reconsider the issue. In the interim, the court ordered that Southern Company should not be denied the benefit of the more liberal construction requirements applicable to EA licensees.

In light of the *Fresno* decision, the Bureau temporarily suspended the construction timetable for incumbent 800 MHz licensees whose EI rejustifications were approved by the Bureau in 1997. The Bureau then sought comment on whether the Commission should retain existing EI construction requirements, adopt new construction requirements for EI licensees that would be comparable to EA licensees' requirements, or consider some other alternative.

None of the comments received in response to the Bureau's Public Notice support the Commission's decision in the 800 MHz Reconsideration Order to maintain the existing construction requirements for incumbent wide-area SMR licensees (*i.e.*, requiring build-out of all authorized sites on all frequencies).

*B. Discussion*

The Commission concludes that SMR licensees granted extended implementation authority are sufficiently similar to EA licensees that they should have similar flexibility with respect to construction requirements. The record on remand demonstrates that incumbent wide-area SMR licensees such as Southern do provide service that is similar, if not identical, to that provided by EA licensees and other CMRS providers. Recognizing that these licensees may have constructed their systems in accordance with the requirements in place at the time (*i.e.*, site-by-site, frequency-by-frequency), we will give eligible wide-area SMR licensees the option of complying with the terms of their EI authorizations or applying the EA construction requirements to their wide-area systems. We believe that giving incumbent wide-area SMR licensees the choice between applying the site- and frequency-specific requirements and the EA coverage requirements establishes reasonable parity between incumbent wide-area SMR licensees and EA licensees.

Construction Period. When an eligible wide-area licensee elects to apply the EA construction requirements to its system, the five-year construction period shall begin from the grant date of its extended implementation authority (''EI grant'') because that date is most analogous to the initial grant date of an EA license. Because the current EI incumbents have already had several years to build out their systems, we believe that adding five more years to their build-out periods on a cumulative basis would give incumbent wide-area SMR licensees an inequitable advantage over EA licensees. Moreover, eligible EI licensees will not be harmed by having the five years run from the date of EI grant because this alternative is still more flexible than the rules they have been operating under, which required them to construct all sites on all frequencies. Under the more flexible EA requirements, an eligible EI licensee will now be able to leave certain sites

and frequencies unconstructed for potential future use. Finally, starting the EA construction period from the grant of EI authority provides a degree of certainty for EA licensees in the upper 200 channels that will soon be coming on their own three-year benchmark (which must be met regardless of the level of incumbency) and for bidders in the future auction of EA licenses in the lower 230 channels. Therefore, we will start the construction period for those eligible licensees who choose the EA construction requirements from the date of EI grant.

We will not require EI licensees to meet the interim three-year coverage requirement. Therefore, an eligible wide-area SMR licensee in the upper 200 channels, which elects to apply the EA construction requirements must have constructed and placed into operation a sufficient number of base stations to provide coverage to at least two-thirds of the population of its wide-area system within five years of EI grant plus the tolling period described below. A wide-area licensee exercising this option must demonstrate that it has constructed fifty percent of its total authorized upper 200 channels within its wide-area system. An incumbent wide-area licensee that is authorized for frequencies in the lower 230 channels and chooses the EA requirements may elect to demonstrate that it is providing substantial service within five years of EI grant, in lieu of the specific population coverage requirements, for those frequencies.

Effect of Tolling on Construction Deadline. By this *MO&O on Remand*, we hereby terminate the temporary suspension of the construction timetable for incumbent wide-area 800 MHz SMR licensees that was instituted by the Bureau's Public Notice. For all licensees entitled to relief under this decision, we will add 321 days to their construction periods, representing the amount of time between the Fresno decision and the release of this order. Therefore, the applicable construction deadline for any eligible incumbent wide-area SMR licensee that elects to apply the EA coverage requirements shall be five years from the date of EI grant plus 321 days. Likewise, the applicable construction deadline for incumbent wide-area SMR licensees that do not elect the EA requirements shall be 321 days after the EI deadline established in the *800 MHz Rejustification Order* (rel. May 20, 1997).

Certification Filing. An incumbent wide-area 800 MHz SMR licensee that was within its construction period at the time of the Fresno decision must certify in a filing with the Bureau that it either met the EA construction requirements, as set out herein, or complied with the terms of its EI authorization. In addition to the certification, if a licensee chooses to meet the EA requirements for frequencies in the lower 230 channels using the substantial service option, it must demonstrate in the same filing with the Bureau how it is providing substantial service. All filings must be made within fifteen (15) days after the licensee's applicable construction deadline or April 17, 2000, whichever is later.

Class of Licensees Affected. The Fresno court ordered that the petitioner in the case, Southern Company, not be denied the benefit of EA-type construction requirements while the matter is pending before the Commission. The court did not, however, indicate what, if any, class of similar licensees should be accorded interim coverage requirements if the Commission reversed its decision. We extend the relief contained in this order to all 800 MHz licensees, such as Southern, who were granted extended implementation authority and were within their construction period at the time of the Fresno decision.

Two of the commenters, Chadmoore and Mobile Relays urge the Commission to apply EA-type construction requirements to either an expanded or a narrower class of licensees. Chadmoore argues that the Commission should extend the new construction requirements retroactively to any 800 MHz SMR incumbent licensee that has ever sought EI authority, whether or not it was granted. Chadmoore urges the Commission to reinstate these licenses and allow the licensees to demonstrate that they have met the interim coverage requirements. Mobile Relays urges the Commission to limit EA-type construction requirements to 800 MHz SMR frequencies held by wide-area licensees that have requested wide-area authorizations as part of a plan to convert and upgrade existing, analog SMR systems.

We conclude that all 800 MHz SMR licensees that have been granted extended implementation and were within their construction periods at the time of the Fresno decision should be given the opportunity to apply EA-type requirements. We decline to apply the EA-type construction requirements retroactively, as Chadmoore suggests. This would require reinstating licenses that have previously reached the expiration of their construction periods and been cancelled for failure to construct, in most cases over two years ago. We do not believe that reinstating these licenses would be in the public

We agree with Mobile Relays's suggestion that the relief in Fresno apply only to SMR frequencies. The Fresno court's decision specifically involves SMR frequencies, and the construction status of non-SMR frequencies, including Business and Industrial/Land Transportation frequencies converted under inter-category sharing for SMR use, is beyond the scope of this proceeding. However, we disagree with Mobile Relays's argument that relief should be limited only to EI licensees who are converting from analog to digital systems.

Area of Coverage. When determining if an eligible wide-area SMR licensee has met a specific coverage requirement (*i.e.*, covering one-third or two-thirds of the population), the population should be measured using the licensee's wide-area ''footprint'' as established in the licensee's rejustification submission. A wide-area licensee may compute population covered within its footprint on a county basis using 1990 U.S. Census information. In cases where the footprint does not align with county boundaries, a wide-area licensee should include the entire population of the county if the licensee covers any portion of it.

Minimum Number of Frequencies. An EA licensee in the upper 200 channels of the 800 MHz band must construct and operate fifty percent of the total channels included in its spectrum block in at least one location in its respective EA-based service area within three years of initial license grant and retain such channel usage for the remainder of the five-year construction period (''channel use requirement''). We will require that wide-area licensees that elect to apply the EA construction requirements also meet such a requirement for those frequencies within their extended implementation authority that are in the upper 200 channels. We note that commenters generally disfavor imposing the channel use requirement for incumbent wide-area licensees. However, we interpret the channel use requirement for EA licensees in the upper 200 channels differently than the comments suggest. Instead of requiring fifty percent of the licensee's authorized channels to be constructed and in operation at one site, we interpret the requirement to mean that a licensee must construct and operate fifty percent of the channels throughout its licensed area, so that the aggregate number of channels in use is fifty percent of those authorized. The licensee may choose to meet the channel use requirement at one site, but may also choose to use any number of sites (but at least one site). Based on this interpretation, we believe

that incumbent wide-area licensees are capable of meeting this requirement. Therefore, those incumbent wide-area licensees that do elect to apply EA construction requirements must also meet the same channel use requirement for their upper 200 channel frequencies that EA licensees in the upper 200 channels must meet.

In addition to the channel use requirement imposed on upper 200 channel EA licensees, Mobile Relays recommends that the Commission require that incumbent wide-area licensees demonstrate service by a minimum of two frequencies at each site. There is no justification for the two-frequency minimum, and that it would not provide regulatory parity between wide-area and EA licensees. Incumbent wide-area licensees, therefore, need only demonstrate coverage by constructing and operating one frequency at each site, with the exception, of the channel use requirement for frequencies in the upper 200 channels.

Any incumbent wide-area 800 MHz licensee that was still in its construction period as of the date of that decision may choose to apply either the existing site-by-site, frequency-by-frequency construction requirements or the EA construction requirements. Those licensees who choose the latter must certify in a filing with the Commission their compliance with the requirements within the later of fifteen days from their applicable construction benchmarks or April 17, 2000, whichever is later. Such a certification should include compliance with the channel use requirement, if applicable, and a demonstration of substantial service, if elected.

## IV. Procedural Matters

### *A. Paperwork Reduction Act of 1995 Analysis*

*Supplementary Information:* This *MO&O on Remand* contains a modified information collection, which has been submitted to the Office of Management and Budget for approval. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collection contained in this *MO&O on Remand*, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public comments should be submitted to OMB and the Commission, and are due thirty days from date of publication of this *MO&O on Remand* in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*OMB Approval Number:* 3060–0307.

*Title:* Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band.

*Form No.:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 35.

*Estimated Time Per Response:* 2 hours.

*Total Annual Burden:* 70 hours.

*Frequency of Response:* Single response.

*Total Annual Estimated Costs:* $14,000. This cost includes an estimate that 100% of the respondents will hire an outside consultant at $200 per hour to prepare the information.

*Needs and Uses:* The Commission will use this information to determine whether wide-area SMR licensees have complied with the Commission's 800 MHz construction requirements for their respective systems.

*Address:* In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov; and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, NW, Washington, DC 20503 or via the Internet to fain—t@al.eop.gov.

### *B. Regulatory Flexibility Act*

To assist the public in determining the possible impact on small entities of the requirements adopted in this *MO&O on Remand*, the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA). The Office of Media Relations, Reference Operations Division, will send a copy of the *MO&O on Remand*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

1. Need for, and Objectives of, the *MO&O on Remand*

This *MO&O on Remand* was initiated by order of the United States Court of Appeals for the District of Columbia in the case of Fresno Mobile Relays, Inc. v. Federal Communications Commission (Fresno). This *MO&O on Remand* allows incumbent wide-area 800 MHz SMR licensees who were within their construction periods at the time of the *Fresno* decision to choose between complying with the terms of their EI authorizations or applying construction requirements similar to those given to EA licensees. Therefore, this *MO&O on Remand* (1) gives the incumbent licensees greater flexibility to leave certain sites and frequencies unconstructed (for potential future use), (2) establishes reasonable regulatory parity between incumbent wide-area licensees and EA licensees in the 800 MHz SMR service, without prejudicing the interests of either, and (3) provides the 800 MHz SMR service with a degree of certainty for both current and future EA licensees.

(2) Summary of Significant Issues Raised by Public Comment in Response to the Initial Regulatory Flexibility Analysis

This *MO&O on Remand* was initiated by order of the United States Court of Appeals for the District of Columbia. Therefore, there was no Initial Regulatory Flexibility Analysis.

(3) Description and Estimate of the Number of Small Entities to Which Rules Will Apply

The Regulatory Flexibility Act (RFA) directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by our rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The provisions adopted in this *MO&O on Remand* will apply to approximately 30—35 current incumbent 800 MHz SMR operators, most of which may be considered small entities.

(4) Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This *MO&O on Remand* gives eligible wide-area 800 MHz SMR licensees the option of complying with the terms of their EI authorizations or applying EA-type construction requirements to their wide area footprints. If a licensee chooses the former, it need only comply with the requirements already imposed by the Commission's rules.

(5) Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The action taken by this *MO&O on Remand* not only gives eligible incumbent wide-area 800 MHz SMR licensees greater flexibility to leave certain sites and frequencies unconstructed (for potential future use), but also establishes reasonable parity between incumbent wide-area licensees and EA licensees in the 800 MHz SMR service. Eligible incumbent licensees need only report their compliance with the construction requirements in the same fashion that EA 800 MHz licensees do (i.e., in a certification and, if the substantial service option is elected, a demonstration).

(6) Report to Congress

The Commission shall send a copy of this Supplemental Final Regulatory Flexibility Analysis, along with this *MO&O on Remand*, in a report to Congress pursuant to the Small Business Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A).

## V. ORDERING CLAUSES

Accordingly, it is ordered that incumbent wide-area 800 MHz SMR licensees eligible for relief as described herein must comply with the terms of their extended implementation authorizations or apply the alternative construction requirements described herein. This action is taken pursuant to the authority of section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i).

It is further ordered that incumbent wide-area 800 MHz SMR licensees eligible for relief as described herein must certify in a filing with the Wireless Telecommunications Bureau their compliance with the construction requirements as described herein within the later of fifteen days after the licensee's applicable construction deadline or April 17, 2000.

It is further ordered that the temporary suspension of the construction timetable for incumbent wide-area SMR licensees as set forth in Public Notice DA 99–698 released April 15, 1999, is terminated.

It is further ordered that the Commission's Consumer Information Bureau, the Reference Information Center, SHALL SEND a copy of this *MO&O on Remand*, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–3784 Filed 2–14–00; 11:53 am]

BILLING CODE 6712–01–U

## DEPARTMENT OF TRANSPORTATION

## Federal Motor Carrier Safety Administration

## 49 CFR Part 386

**[Docket No. FMCSA–99–6438 (Formerly FHWA Docket No. FHWA–97–2299; MC–96–18)]**

**RIN 2126–AA49**

## Rules of Practice for Motor Carrier Proceedings; Violations of Commercial Regulations

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FMCSA is amending its rules of practice for motor carrier administrative proceedings to include proceedings arising under the ICC Termination Act of 1995 (ICCTA). These proceedings formerly fell within the jurisdiction of the Interstate Commerce Commission (ICC) and were implemented and administered under ICC regulations. The ICCTA transferred much of the ICC's motor carrier jurisdiction to the Secretary of Transportation (Secretary), who delegated it to the Federal Highway Administration (FHWA), effective January 1, 1996, and redelegated it to the Office of Motor Carrier Safety (OMCS), effective October 9, 1999. This jurisdiction was again redelegated to the FMCSA, effective January 1, 2000. However, the FMCSA's rules of practice for motor carrier administrative proceedings apply only to proceedings involving violations of the Federal Motor Carrier Safety and Hazardous Materials regulations. This final rule ensures that all civil forfeiture and investigation proceedings instituted by the FMCSA are governed by uniform and consistent procedures. The FMCSA is also making technical amendments to reflect recent organizational changes, remove obsolete statutory citations, and incorporate recent statutory changes affecting the civil penalty schedule.

**EFFECTIVE DATE:** March 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Neill Thomas, Office of Bus and Truck Standards and Operations, (202) 366–2983, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590; and Mr. Michael J. Falk, Office of the Chief Counsel, HCC–20, (202) 366–1384, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

### Creation of New Agency

In October 1999, the Secretary of Transportation rescinded the authority previously delegated to the Federal Highway Administrator to perform the motor carrier functions and operations, and to carry out the duties and powers related to motor carrier safety, that are statutorily vested in the Secretary. That authority was redelegated to the Director of the Office of Motor Carrier Safety (OMCS), a new office within the Department (see, 64 FR 56270, October 19, 1999, and 64 FR 58356, October 29, 1999). The OMCS had previously been the FHWA's Office of Motor Carriers (OMC).

The Motor Carrier Safety Improvement Act of 1999 established the Federal Motor Carrier Safety Administration as a new operating administration within the Department of Transportation, effective January 1, 2000 (Pub. L. 106–159, 113 Stat. 1748,