

applicants and licensees that may one day choose to develop and provide such service.

3. The Commission will send a copy of this final certification, along with this *Second Report and Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A), and to the Chief Counsel for Advocacy of the Small Business Administration, 5 U.S.C. 605(b). A copy of this certification will also be published in the **Federal Register**.

4. *Ordering Clauses*. Accordingly, it is ordered, that pursuant to the authority of Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 393(r), this *Second Report and Order* is adopted, and Part 21 of the Commission's Rules are amended.

5. It is further ordered, that the rule amendment will become effective August 10, 1998, following approval by the Office of Management and Budget, unless a notice is published in the **Federal Register** stating otherwise.

6. It is further ordered, that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Second Report and Order*, including the Final Regulatory Flexibility Act Certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

7. It is further ordered, that CC Docket No. 86-179 is terminated.

List of Subjects in 47 CFR Part 21

Communications common carriers, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Changes

Part 21 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 48 Stat. 1064, 1066, 1070-1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102, as amended; 47 U.S.C. 151, 154, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 602; 47 U.S.C. 552, 554.

2. Section 21.940 is added to read as follows:

§ 21.940 Non-subscription MDS service.

The Commission must be notified, and prior Commission approval obtained, before Multipoint Distribution Service or Multichannel Multipoint Distribution Service may be provided on a non-subscription basis.

[FR Doc. 98-14376 Filed 5-29-98; 8:45 am]
BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96-171; RM-8846, RM-9145]

Radio Broadcasting Services; Indian Springs, NV, Mountain Pass, CA, Kingman, AZ, St. George, UT

AGENCY: Federal Communications Commission.

ACTION: Withdrawal of final rule.

SUMMARY: The Commission, on its own motion, pursuant to section 1.113(a) of the Commission's Rules, withdraws the final rule in this proceeding, DA 98-689, published at 63 FR 23226, April 28, 1998. That document substituted Channel 257C for Channel 257A at Indian Springs, Nevada, modified the construction permit of Station KPXC to specify the higher powered channel, substituted Channel 259B for Channel 258B at Mountain Pass, California, modified the license of Station KHYZ to specify the alternate Class B channel, substituted Channel 261C2 for Channel 260C2 at Kingman, Arizona, modified the license of Station KGMN to specify the alternate Class C2 channel, substituted Channel 260C for Channel 259C at St. George, Utah, modified the license of Station KZEEZ to specify the alternate Class C channel, and allotted Channel 272C to Indian Springs, Nevada, as a new allotment.

DATES: This withdrawal is effective May 27, 1998.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order, DA No. 98-1003, adopted May 22, 1998, and released May 27, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-

3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

The final rule amending § 73.202 published on April 28, 1998, at 63 FR 23226, is withdrawn.

[FR Doc. 98-14471 Filed 5-29-98; 8:45 am]
BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Notice No. 98-5]

Hazardous Materials Ticketing Program

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

ACTION: Notification continuing the ticketing program.

SUMMARY: On May 15, 1996, RSPA initiated a pilot program for issuing tickets for certain hazardous materials transportation violations. The goal of the program has been to streamline administrative procedures, cut costs, and reduce regulatory burdens on persons subject to Federal hazardous materials transportation law. Tickets have been issued for violations that had little or no direct impact on safety. Penalties have been substantially reduced for persons who paid the amounts assessed in the tickets.

This program is consistent with the recommendation in the National Performance Review to streamline the enforcement process by implementing pilot programs to offer greater flexibility in enforcement methods. RSPA's ticketing program has successfully cut costs, simplified the processing of violations, and achieved compliance through more efficient and effective processes. RSPA has decided to make ticketing a permanent part of its compliance program.

EFFECTIVE DATE: May 15, 1998.

FOR FURTHER INFORMATION CONTACT: John J. O'Connell, Jr., Director, Office of Hazardous Materials Enforcement, (202) 366-4700; or Donna L. O'Berry, Office of the Chief Counsel, (202) 366-4400, Research and Special Programs Administration, U.S. Department of

Transportation, 400 Seventh Street SW, Washington DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Background

The Research and Special Programs Administration (RSPA) is the administration within the Department of Transportation (DOT) primarily responsible for implementing the Federal hazardous materials transportation law (Federal hazmat law), 49 U.S.C. 5101-5127. RSPA does this by issuing and enforcing the Hazardous Materials Regulations (HMR), 49 CFR Parts 171-180.

Under delegations from the Secretary of Transportation [49 CFR Part 1], the authority for enforcement under Federal hazardous materials transportation law (Federal hazmat law), 49 U.S.C. 5101-5127, is shared by RSPA and each of the four modal administrations: the Federal Highway Administration, the Federal Railroad Administration, the Federal Aviation Administration and the United States Coast Guard. RSPA has primary jurisdiction over packaging manufacturers, reconditioners, and retesters (except with respect to bulk packagings, which are the responsibility of the applicable modal administrations) and shared authority over shippers of hazardous materials.

RSPA's Office of the Chief Counsel (OCC) may initiate administrative proceedings for violations of the HMR, and these proceedings may result in a civil penalty, an order directing compliance actions, or both. 49 CFR 107.307. OCC initiates an administrative proceeding by mailing a notice of probable violation (NOPV) to a person believed to have violated the HMR. 49 CFR 107.311. The NOPV specifies the alleged violation(s) of the HMR, states the proposed penalty, and includes a copy of the inspection/investigation report. Within 30 days of receiving the NOPV, the recipient of the notice may admit the allegations by paying the proposed penalty, make an informal response, or request a formal hearing. 49 CFR 107.313, 107.315.

The recipient who chooses to respond informally submits a written response to OCC to contest the alleged violations or the proposed penalty. OCC considers the inspection report, the response, and any additional evidence obtained to determine whether the recipient committed the alleged violations and, if so, the appropriate penalty in accordance with the statutory criteria for penalty determination, 49 U.S.C. 5123(c). See also RSPA's civil penalty guidelines at 49 CFR 107, Subpart D, Appendix A. If the recipient requests an informal conference, RSPA provides an

opportunity to supplement the written response in person or by telephone with the OCC attorney and the inspector. Information obtained by OCC during the informal conference becomes part of the case file. Unless the NOPV is withdrawn, the Chief Counsel issues an order finding a violation or violations and, for each violation found, assesses a civil penalty. The order may be appealed to the RSPA Administrator. See generally 49 CFR 107.317, 107.325(b).

Alternatively, the recipient may request a formal administrative hearing on the record before an ALJ from DOT's Office of Hearings. At the conclusion of the hearing, the ALJ determines whether the alleged violations have been committed and, if so, imposes a penalty in accordance with the statutory assessment criteria. Either party may appeal a decision of the ALJ to the RSPA Administrator. See generally, 49 CFR 107.319, 107.325(a).

At any time during an informal or a formal proceeding, RSPA and the recipient of the notice may agree upon an appropriate resolution of the case. 49 CFR 107.327.

II. Procedures Under the Ticketing Program

On August 21, 1995, RSPA published a notice of proposed rulemaking (NPRM), under Docket HM-207E [60 FR 43430], seeking public comment on a proposal to implement a pilot program for ticketing certain violations of the HMR. On October 17, 1995, RSPA extended the comment period for an additional 30 days. See 60 FR 53729. On February 26, 1996, RSPA published the final rule for the ticketing program; that rule contained no expiration date. The final rule was effective on May 15, 1996. See 61 FR 7178.

Under the program, the Associate Administrator for Hazardous Materials Safety is authorized to issue tickets for certain HMR violations that were handled through the civil penalty process. Violations eligible for inclusion in the pilot ticketing program are those that do not have a substantial impact on safety. Because the program is designed to ease administrative and regulatory burdens on persons subject to enforcement proceedings under the HMR, violations eligible, under 49 CFR 107.309, for letters of warning generally are not included in the pilot ticketing program. This procedure will remain the same.

The preamble of the final rule also suggested a number of violations for inclusion in the ticketing program. These violations included, among others, operating under an expired

exemption, failing to register as a hazardous materials shipper when required, failing to maintain training records, and failing to file hazardous materials incident reports. In the final rule, RSPA indicated that, based on comments received and experience gained through administration of the pilot ticketing program, additional types of violations might be added to the program. RSPA has determined to continue to include all of the previously mentioned violations as part of the ticketing program. In addition, RSPA has added to the program violations such as failing to conduct hazardous materials training, marking a packaging with unauthorized DOT specification markings after October 1, 1994, using unauthorized DOT specification packagings after October 1, 1996, and failing to follow the packaging manufacturer's closing instructions for closing a package. RSPA believes that there is a continuing need for flexibility and, therefore, will not establish a definitive list of violations under this program.

RSPA will continue its policy of not processing violations under the ticketing program when more serious violations are also alleged. Furthermore, a previous ticketing violation will continue to be considered a "prior" violation in the event of a future violation of the HMR by the same party.

As contemplated in the final rule, the Associate Administrator for Hazardous Materials Safety has delegated the ticketing authority to the Director, Office of Hazardous Materials Enforcement (OHME), who in turn has redelegated the authority to the six OHME unit chiefs. RSPA field inspectors conduct the inspections of parties. Unit chiefs then evaluate the inspector reports and issue tickets to parties when appropriate. Tickets are not issued on the spot by inspectors following an inspection.

A ticket includes a statement of the facts supporting the alleged violation. In addition, the ticket sets forth the maximum penalty provided by statute, the proposed penalty determined according to the RSPA civil penalty guidelines, see 49 CFR part 107, Subpart D, Appendix A, and the ticket penalty amount. The ticket states that the recipient must pay the penalty or contest the violation or penalty within 45 days of receipt of the ticket.

Typically, the civil penalty contained in the ticket is substantially less than the penalty that would be imposed under current procedures or that could be imposed by an ALJ at a hearing. RSPA's policy is to calculate a penalty as it does under its current procedures

and guidelines and then reduce that penalty by 50 percent for each violation processed under this program. In no case will a penalty be less than the statutory minimum of \$250.

If the recipient pays the ticket amount and states that action has been taken to correct the violation, the matter is closed and there is no further agency action. If the recipient elects to contest a ticket, that person may do so, within 45 days of receiving the ticket, by making an informal response under 49 CFR 107.317 or requesting a formal hearing under 49 CFR 107.319. In this situation, the ticket will be the functional equivalent of an NOPV, and contested matters will be handled by OCC. OCC will not be bound by the reduced penalty amount shown on the ticket and could impose a penalty as high as the unreduced proposed penalty determined under RSPA's civil penalty guidelines, which is also shown on the ticket. OCC will not seek a penalty greater than the highest penalty amount shown on the ticket.

A recipient waives the right to a hearing by failing to respond to the ticket within 45 days. Moreover, failure to respond is deemed an admission of the violation, and the reduced penalty is owed to RSPA. Unpaid penalty amounts constitute a debt owed to the United States Government.

III. Pilot Ticketing Program Evaluation

The NPRM contained a proposal for a two-year pilot program. RSPA indicated in the preamble of the final rule that, at the end of two years from May 15, 1996, it would evaluate the program in terms of cost savings, time savings, and impact on the effectiveness of its compliance program.

1. Experience Under the Program

Between June 1, 1996 and April 30, 1998, RSPA issued 380 tickets and closed 285 tickets with collection of \$351,757 in civil penalties. Regarding the closed tickets, 231 of them (82%) involved one or more of the violations previously listed. Nearly half of all the closed tickets involved failure to train employees, failure to maintain records of training or both. The next most frequent violations were manufacture of unauthorized DOT specification packaging after its expiration date (8%), failure to register with RSPA (7%), and operating under an expired exemption (6%).

2. Cost Savings

RSPA has determined that, because of its streamlined approach, the ticketing program has produced significant costs savings for its compliance program and

for the regulated community. A party who chooses to pay the ticket receives an immediate cost saving because the proposed penalty is half of what it would have been in a civil penalty proceeding. The ticket recipient also avoids the need to make a detailed written response to the agency (other than a statement addressing corrective action) and avoids the oral and written communications that arise during OCC processing of the case. The formal hearing process is bypassed and legal fees are avoided.

OHME and OCC realize cost savings when a party elects to pay a ticket because there is no OCC or post-ticket OHME involvement in the matter. OCC does not have to issue an NOPV, hold an informal conference, respond to a compromise offers, issue an order, participate in ALJ proceedings, draft a decision on appeal, or issue a close-out letter. OHME avoids involvement in informal conferences or ALJ proceedings and does not have to interact with the OCC on factual and technical issues.

Even where a ticket is contested, there are cost savings to OCC, which will not be required to issue an NOPV, but can rely on the ticket to have provided notice of the alleged violations to the ticket recipient. The information that OCC receives from OHME will contain the ticket, a response to the ticket (which may set forth corrective action) and possibly a compromise offer. This information allows OCC to begin processing the case in a more advanced state than would otherwise be the case and reduces the overall processing time.

3. Time Savings

As stated in the discussion of cost savings, the ticketing program has produced significant time savings in the amount of work required by OHME, OCC and the ticket recipient to process an enforcement case. In addition, the average length of time it takes to process a ticket is significantly less than the time it takes to process a case under the current procedures. To illustrate, RSPA closed 200 civil penalty cases in 1997; the average time from issuance of the Notice of Probable Violation to closure of the case was 17 months. By contrast, RSPA closed 145 tickets in 1997; the average time from issuance to closure was 1.5 months.

4. Impact on the Effectiveness of RSPA's Compliance Program

The primary means for RSPA to determine the effectiveness of its enforcement program is to conduct reinspections of companies involved in enforcement actions. Although RSPA's

reinspection program with regard to civil penalties cases is extensive, RSPA only recently began to do reinspections of parties which had received tickets. Thus far, the compliance rate is over 90%.

Another direct result of the effectiveness of the ticketing program is the ability of RSPA personnel to spend the time saved by disposing of cases through tickets on other matters, such as outreach programs, inspection and investigation of more serious types of violations and more expeditious processing of existing enforcement cases.

IV. Conclusion

In light of the cost and time savings for all involved parties and the positive impact on the effectiveness of RSPA's hazardous materials compliance program, RSPA has decided to continue the ticketing program.

Issued in Washington, DC on May 22, 1998.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Transportation.

[FR Doc. 98-14285 Filed 5-29-98; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297-8054-02; I.D. 052698A]

Fisheries of the Economic Exclusive Zone Off Alaska; Groundfish Fisheries by Vessels using Hook-and-Line Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for groundfish by vessels using hook-and-line gear in the Gulf of Alaska (GOA), except for sablefish or demersal shelf rockfish. This action is necessary because the second seasonal bycatch allowance of Pacific halibut apportioned to hook-and-line gear targeting groundfish other than sablefish or demersal shelf rockfish in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 26, 1998, until 1200 hrs, A.l.t., September 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.