

- 73.6016 Digital Class A TV station protection of TV broadcast stations.
- 73.6017 Digital Class A TV station protection of Class A TV, low power TV, and TV translator stations.
- 73.6018 Digital Class A TV station protection of DTV stations.
- 73.6019 Digital Class A TV station protection of digital Class A TV stations.
- 73.6020 Protection of stations in the land mobile radio service.
- 73.6022 Negotiated interference and relocation agreements.
- 73.6024 Transmission standards and system requirements.
- 73.6025 Antenna system and station location.
- 73.6026 Broadcast regulations applicable to Class A television stations.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[CC Docket Nos. 96-45 and 97-21; FCC 00-180]

#### Federal-State Joint Board on Universal Service and Changes to the Board of Directors of the National Exchange Carrier Association, Inc.

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document concerning the Federal-State Joint Board on Universal Service and Changes to the Board of Directors of the National Exchange Carriers Association, Inc. amends a procedural rule which sets out the time period by which the Common Carrier Bureau or the Commission must take action on a request for review of a decision issued by the Schools and Libraries Division of the Universal Service Administrative Company (USAC or Administrator). This document makes clear that a decision of the Administrator will not be deemed approved upon the running of the 90-day deadline for taking action on requests for review that are pending before the Bureau.

**DATES:** Effective May 30, 2000.

**FOR FURTHER INFORMATION CONTACT:** Linda Chang, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418-7400.

**SUPPLEMENTARY INFORMATION:** This is a summary of a Commission's Order in CC Docket Nos. 96-45 and 97-21 released on May 22, 2000. The full text

of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, SW., Washington, DC, 20554.

1. On March 1, 2000, the Commission released the *Bureau Extension Order*, 65 FR 12135 (March 8, 2000), that amended a rule to make clear that the Common Carrier Bureau (Bureau) may extend, for up to ninety days, the time period for taking action on a request for review of the Schools and Libraries Division of the Universal Service Administrative Company's (USAC or Administrator) decision that is pending before the Bureau or the Commission pursuant to § 54.724 of the Commission's rules. The *Bureau Extension Order* clarified that the Commission may extend the time period for taking action on a pending request for review of an Administrator's decision that is before either the Bureau or the Commission, but the Commission is not limited to a maximum 90-day extension period. In this Order, we amend a procedural rule which sets out the time period by which the Bureau or the Commission must take action on a request for review of a decision issued by the Administrator). We amend § 54.724 of the Commission's rules to make clear that a decision of the Administrator will not be deemed approved upon the running of the 90-day deadline for taking action on requests for review that are pending before the Bureau.

2. Section 54.724(a) of the Commission's rules establishes procedures for a request for review of an Administrator decision that is properly before the Bureau. Matters that are properly before the Bureau are appeals of Administrator decisions that do not involve novel issues of fact, law or policy. If the Bureau does not take action within 90 days regarding a request for review not involving novel issues, the decision issued by the Administrator is deemed approved. The rule also specifies that either the Commission or the Bureau may extend the time period for taking action on a matter before the Bureau.

3. In contrast, § 54.724(b) of the Commission's rules directs the Commission to issue, within 90 days, a written decision resolving a request for review of an Administrator decision that involves novel questions of fact, law or policy. The rules provide that the Commission or Bureau may extend the time period for taking action. Unlike appeals pending before the Bureau, if the Commission does not issue a decision within 90 days or does not extend the time period for taking action on the request for review, the

Commission's rules do not provide that the Administrator's decision will be automatically approved.

4. The procedural distinction between matters pending before the Commission and those pending before the Bureau may pose problems for schools and libraries that request reviews of Administrator decisions. The appellants will not be certain whether or not their requests for review raise novel questions of fact, law or policy. As a consequence, appellants are not in a position to determine whether their appeals are pending before the Bureau or the Commission. Without knowledge of whether an appeal is being considered by the Bureau or Commission, a school or library cannot determine whether its appeal remains pending before the Commission or was subject to automatic denial where the 90-day time period for taking action ran without a decision or extension of time having been issued by the Bureau. Because of this lack of certainty, appellants cannot know when a denial is final and when the time period for pursuing further review has begun.

5. We believe that this uncertainty puts appellants in an untenable position. A party adversely affected by a Bureau decision has the right to seek reconsideration or Commission review of the decision. In order to exercise their right to seek review of an adverse decision, however, appellants must file either a petition for reconsideration or an application for review within thirty days from the date of public notice of the final action or release of the decision. The rules fail, however, to set forth a mechanism for public notice of Administrator decisions that are deemed approved upon the passage of 90 days in the absence of action by the Bureau.

6. The requirement in § 54.724(a) that Administrator decisions will be deemed approved in the absence of Bureau action on matters not involving new or novel issues was adopted to promote the prompt and efficient resolution of pending requests for review. We did not anticipate, however, that this means of streamlining our review process would add uncertainty to the appeals process or interfere with the ability of appellants to seek further review. Because we conclude that the different procedural processes found in §§ 54.724(a) and (b) generate uncertainty as to the status of certain requests for review, we find that it is in the public interest to eliminate the provision in § 54.724(a) specifying that a decision by the Administrator will be deemed approved where the Bureau has not acted within the 90-day review period. Accordingly, we find

that it is appropriate to amend § 54.724(a) in this respect to conform to the rule that applies to Commission-level appeals. At the same time, we recognize the need of applicants under the schools and libraries program to have certainty over the status of their funding requests, and we remain committed to timely resolution of all appeals before us.

7. We believe this procedural amendment will clarify our administrative processes and prevent confusion regarding the procedural status of requests for review of Administrator decisions that are pending before the Bureau. Accordingly, as set forth, we amend § 54.724(a) of the Commission's rules to clarify that a decision of the Administrator will not be deemed approved upon the running of the 90-day time period for taking action on requests for review that are pending before the Bureau.

#### Ordering Clauses

8. The authority contained in sections 1-4, 201-205, 218-220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, and § 1.108 of the Commission's rules, is adopted.

9. Part 54 of the Commission's Rules 47 CFR part 54, is revised as set forth.

10. This action is exempt from the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553, because it affects only rules of agency procedure or practice.

11. Because this action involves an internal procedural matter, it is further ordered that the rule change set forth is May 30, 2000.

#### List of Subjects in 47 CFR Part 54

Universal service.  
Federal Communications Commission.

Magalie Roman Salas,  
Secretary.

#### Rule Changes

Part 54 of title 47 of the Code of Federal Regulations is amended as follows:

#### PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

**Authority:** 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Amend § 54.724 by revising paragraph (a) to read as follows:

#### § 54.724 Time periods for Commission approval of Administrator decisions.

(a) The Common Carrier Bureau shall, within ninety (90) days, take action in response to a request for review of an

Administrator decision that is properly before it. The Common Carrier Bureau may extend the time period for taking action on a request for review of an Administrator decision for a period of up to ninety days. The Commission may also, at any time, extend the time period for taking action on a request for review of an Administrator decision pending before the Common Carrier Bureau.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 216

[Docket No. 991210333-0089-02; I.D. 111099C]

RIN 0648-AN37

#### Dolphin-Safe Tuna Labeling; Official Mark

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to designate an official mark that can be used to label tuna products as being "dolphin-safe." The Dolphin Protection Consumer Information Act (DPCIA), as amended by the International Dolphin Conservation Program Act (IDCPA), requires the Secretary of Commerce to develop an official mark that can be used to label tuna products as "dolphin-safe." The intent of this rule is to establish and designate that mark.

**DATES:** Effective June 29, 2000.

**ADDRESSES:** A full color version of the official mark is available at the NMFS Southwest Region website at <http://swr.ucsd.edu/dsl.htm> or by contacting J. Allison Routt, NMFS, Southwest Region, Protected Resources Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

**FOR FURTHER INFORMATION CONTACT:** J. Allison Routt, NMFS, Southwest Region, Protected Resources Division, (562) 980-4020, fax (562) 980-4027.

#### SUPPLEMENTARY INFORMATION:

##### Background

The DPCIA, 16 U.S.C. 1385, as amended by the IDCPA, requires the Secretary of Commerce to develop an official mark that can be used to label tuna products as "dolphin-safe." The

IDCPA and the official mark provisions of the DPCIA became effective on March 3, 1999, when the Secretary of State certified to Congress that the Agreement on the International Dolphin Conservation Program had been adopted and was in force.

#### Official Mark

As discussed in the proposed rule to implement the IDCPA (December 22, 1999; 64 FR 71722), the Secretary of Commerce considered the designation of a commonly used "dolphin-safe" logo as the official mark, but instead decided to develop a unique logo as the official mark.

The DPCIA establishes "dolphin-safe" standards applicable to tuna products labeled with either the official mark or an alternative mark (16 U.S.C. 1385(d)). The DPCIA does not mandate the use of the official mark nor does it prohibit the use of alternative marks. However, as set forth under paragraph (d)(3)(B) of the DPCIA, whenever a tuna product bears the official mark, it may not bear any other mark or label that refers to dolphins, porpoises, or marine mammals. The dolphin-safe labeling standards, which are not a part of this rule-making, appear at 50 CFR 216.91 through 216.94. The standards are the subject of ongoing litigation. This final rule codifies the official mark at 50 CFR 216.96.

#### Proposed Rule

On December 22, 1999, NMFS published proposed regulations to designate an official mark that can be used to label tuna products as being dolphin-safe (64 FR 71722). Public comments on the proposed rule were accepted through January 5, 2000. In addition to publishing the proposed rule in the **Federal Register**, NMFS sent via fax and mail the notice to industry representatives, environmental groups, the Department of State, the Inter-American Tropical Tuna Commission (IATTC), the U.S. Commissioners to the IATTC, the Secretary of the Treasury, the U.S. Customs Service, the Marine Mammal Commission, and the Federal Trade Commission. NMFS also issued a press release summarizing the major issues contained in the proposed rule. Information in the press release was sent to several national newspapers and published on e-mail discussion groups and NMFS websites.

#### Responses to Comments

NMFS received 43 letters of comment in response to the proposed rule. Comments were received from environmental organizations and members of the public.