upwind and downwind of these plants will be correlated with wind direction and other meteorological parameters. It is also planned to examine high-volume data gathered before, during, and after the recent coal strike to determine if decreased coke production was reflected in total suspended particulate readings.

The Agency believes that there are proven methods of controlling pushing emissions, e.g., sheds and mobile hoods, which can consistently meet a standard equivalent to Ringelmann No. 1. Nevertheless, during the forthcoming tests to determine the quantity of emissions produced during pushing, EPA will also document the capture efficiency of mechanical control systems. Such documentation will consist of observer readings of the opacity of emissions escaping capture, as well as moving pictures taken of capture systems during the pushing operation.

EPA is now having a contractor study the capabilities and cost of technology for controlling pushing emissions. In addition, particulate size distribution data will be developed for pushing emissions during the above-mentioned tests of mechanical push control systems. This data will help to determine optimum gas cleaner size, type, power requirements, power cost, etc. It will also help to determine the importance of pushing emissions for ambient air quality (atmospheric residence times). The development of such data will allow realistic estimates of control costs and cost/benefit ratios to be made.

On April 29, 1975 (40 FR 18726), the Administrator designated three Air Quality Maintenance Areas in the State of Alabama. Most of the coking facilities in the State are located in these areas. The State is currently conducting in-depth analyses of its AQMA's, which, coupled with emission and cost data being developed for pushing, will permit more realistic estimates of the cost-effectiveness of push controls in relation to other control options.

Some comments suggested that coke ovens in Alabama, since they are of the single-main type, might be unable to achieve the same level of control attained by ovens in other parts of the country. The basic issue here is the control of charging emissions. In response to these comments, it need only be noted that a number of Alabama coking plants, e.g., those of Republic Steel and U.S. Steel in Jefferson County, have already designed and installed charge control systems which are as effective—or more effective—than the best charge control systems presently operational on double-main ovens elsewhere.

During EPA's testing of mechanical push controls, NIOSH will measure benzene-soluble hydrocarbons and respirable dust in any sheds which are studied. This should help to determine if any occupational health problem is to be anticipated from the use of sheds to control pushing emissions. The test program should also furnish information related to other comments received on push control sheds.

Approval Comments

The Administrator has determined that the new Alabama coking regulations offer the most reasonable approach to the control of particulate emissions from such sources: they are more enforceable than Part 4.1 and Part 4.4 of the State's regulations and will require the installation of the best available retrofit technology for all coking operations in the State except pushing. The regulations are designed (with such pushing controls as may be appropriate) to attain and maintain the national ambient air quality standards and, accordingly, the new regulations are hereby approved except for Section 4.9.4, Pushing. No action is being taken at this time on Section 4.9.4 because the Administrator feels that the questions raised concerning the degree of control needed to attain the standard warrants further consideration by the Agency. If EPA's completed studies indicate that push controls beyond those specified in section 4.9.4 are needed to attain or maintain the national ambient air quality standards, the Agency will propose whatever controls are determined to be necessary. Upon finalization of such regulations, it is expected that the producers will be able to issue contracts for them promptly. The Agency will not allow long delays for the purpose of studying acceptable control options. On the other hand, if the results of the studies show that additional push controls are not needed, the Administrator will promptly approve section 4.9.4.

The action set forth herein is effective immediately. The Administrator finds that there is no need to defer the effective date of his approval of the new Alabama coking regulations since they are already in effect under Alabama law, and this action of the Agency places no additional regulatory burden on the facilities affected.

(Section 110(a) of the Clean Air Act (42 U.S.C. 1857c-5(a))

Dated: August 21, 1975.

Russell E. Train,
Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart B—Alabama

In § 52.50 paragraph (c) (2) is amended to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) Supplemental information was submitted on: * * *

(2) February 15, April 24, June 29, September 26, and October 31, 1973, and May 27, June 17 and 20, 1974. (No approval or disapproval action is taken on section 4.9.4 dealing with particulate emissions from the pushing of coke.)

[FR Doc.75-22927 Filed 8-27-75;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 105—GENERAL SERVICES ADMINISTRATION

PART 105-735—STANDARDS OF CONDUCT

Disclosing Information About Individuals

This part sets forth the responsibilities of officers and employees of GSA under the Privacy Act of 1974. Specifically, this part governs standards of conduct of persons involved in the design, development, operation, or maintenance of systems of records with respect to disclosure of personal information contained in GSA records.

The table of contents for Part 105-735 is amended by adding the following entry:

Sec.
105-735.222 Disclosure of information about an individual.

Section 105-735.222 is added to read as follows:

§ 105-735.222 Disclosure of information about an individual.

(a) Every officer and employee who is involved in the design, development, operation, or maintenance of a system of records or who has access to a system of records shall familiarize himself with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) and the GSA regulations and orders issued thereunder and apply these requirements to all systems of records.

(b) No officer or employee shall disclose any record which is contained in a system of records by any means of communication to any person or to another agency, except pursuant to a written request by, or with the prior written consent of the individual to whom the record pertains, unless the disclosure is to a recipient specified in paragraph (c) of this section. The term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including but not limited to his education, financial transactions, medical history, and criminal or employment history and that contains his name or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voiceprint, or photograph. The term "system of records" means a group of any records under the control of GSA from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The term "routine use" means, with respect to the disclosure of a record, the use of that record for a purpose which is compatible with the purpose for which it was collected. The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence. The term "agency" is defined in 5 U.S.C. 552(e).

(c) An employee may disclose any record which is contained in a system of

records without a written request by and without the prior written consent of the individual to whom the record pertains if the disclosure is:

(1) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) Pursuant to section 552 of Title 5 U.S.C.;

(3) For a routine use as defined in section (a)(7) of the Privacy Act of 1974 (described in paragraph (b) of this section);

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 U.S.C.;

(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record and that the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of the individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or a subcommittee of any such joint committee;

(10) To the Comptroller General or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) Pursuant to the order of a court of competent jurisdiction.

(d) No officer or employee shall maintain a record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

(e) No officer or employee shall sell or rent an individual's name and address unless such action is specifically authorized by law.

(f) An officer or employee (1) who by virtue of his employment or official position has possession of or access to agency records which contain individually identifiable information the disclosure of which is prohibited by paragraph (a) of this section or by any other rules or regulations of GSA established under the Privacy Act of 1974, and who (i) knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, or (ii) willfully maintains a system of records without meeting the notice requirements of the Privacy Act of 1974, or (iii) knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses, is subject to criminal penalties and administrative sanctions; or (2) who (i) makes a determination not to amend an individual's record in accordance with the Privacy Act of 1974; or (ii) refuses to comply with an individual's request to gain access to review and to obtain a copy of any information pertaining to him; or (iii) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to ensure fairness in any determination relating to the qualifications, character, rights, or opportunities of or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or (iv) fails to comply with any provision of the Privacy Act of 1974 or any GSA regulation implementing it, subjects GSA to civil penalties and himself to administrative sanctions.

(E.O. 11222, 3 CFR 1964–1965 Comp.; 5 CFR 735.104)

This regulation was approved by the United States Civil Service Commission on July 31, 1975, by Dr. Philip A. D. Schneider, Associate Director, Bureau of Manpower Information Systems.

Effective date. This regulation is effective on September 27, 1975.

Dated: AUGUST 25, 1975.

ARTHUR F. SAMPSON,
Administrator of General Services.

[FR Doc.75-22814 Filed 8-27-75;8:45 am]

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION

PART 86—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

Technical Corrections

In FR Doc. Volume 40, No. 108, Part II appearing at page 24128 in the FEDERAL REGISTER, of Wednesday, June 4, 1975, the following technical changes should be made:

1. On page 24136 paragraph 96 is corrected in the first line of that paragraph by substituting "§ 86.61" for "§ 86.51."

2. On page 24138 § 86.3(d) is corrected in the fourth line of that section by substituting "completion" for "competition."

3. On page 24139 § 86.15(b) is corrected in the third line of that section by substituting "§ 86.16, § 86.17" for "§§ 86.15 and 86.16."

4. On page 24139 § 86.15(c) is corrected in the second line of that section by substituting "(d) and (e)" for "(c) and (d)."

5. On page 24140 § 86.17(a) is corrected in the second line by substituting "§ 86.16" for "86.15."

6. On page 24142 § 86.37(a) is corrected in the second line by substituting "(b) and (c)" for "(b), (c) and (d)."

7. On page 24142 § 86.41(a) is corrected in the seventh line by inserting "a" after "by" and before "recipient."

8. On page 24143 § 86.55(c) is corrected in the eighth line by substituting "§ 86.61" for "§ 86.51."

Dated: August 22, 1975.

THOMAS S. MCFEE,
Deputy Assistant Secretary for Management Planning and Technology.

[FR Doc.75-22911 Filed 8-27-75;8:45 am]

Title 46—Shipping

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 74-182]

SHIPS CARRYING BULK GRAIN CARGOES

Intact Stability Requirements

Correction

In FR Doc. 75-21907, appearing on page 36342, of the issue of Wednesday, August 20, 1975, the following change should be made in the Notes at the end of the table on page 36344. The words "Svedberg flotation" should be changed to read "Storage Factor" the three times they appear.

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 75-972]

PART 0—COMMISSION ORGANIZATION

PART 1—PRACTICE AND PROCEDURE

Report and Order; Amendment of Freedom of Information Rules

1. The Commission's rules were recently amended to implement the 1974 amendments of the Freedom of Information Act (40 FR 34115), (FCC 75-134, February 11, 1975). Since that time, we have reviewed those rules, drawing on experience in using them, and have decided on a number of additional changes. They are set out in the Appendix and discussed below in numerical sequence.

2. *Section 0.457(d)(1)(i).* This amendment provides that information and correspondence concerning the computa-

tion of the fee imposed upon transfer or assignment of a broadcast station license are not routinely available for public inspection. The amendment is not related to the 1974 amendments to the Act. The computations are based on the licensee's financial report, which is itself not routinely available.

3. *Section 0.461(d)(1).* This rule currently provides that requests for inspection of records which are to be acted on by the officer presiding at a hearing shall be submitted to the Executive Director, who will deliver them to the presiding officer. Under the revised rules, all requests for inspection of Commission records, including requests which are filed by a party to a hearing proceeding, will be acted on by the custodian of the records. The custodian of the records is defined as the appropriate Bureau or Office Chief. Thus, the Executive Director will not deliver requests for records to the presiding officer, and the provision to that effect has been deleted. Section 0.461(j), to the same effect, has also been deleted, and appropriate changes have been made in the discovery rules (see §§ 1.311(b)(3) and 1.325(b)). Hereafter, requests for the inspection and copying of Commission records will be considered exclusively under the Freedom of Information Act and the implementing regulations.

4. *Section 0.461(f).* The reference to paragraph (j) has been deleted.

5. *Section 0.461(g).* The provision for telephone notice of action on a request for inspection of records has been deleted. Telephone notice is desirable in some circumstances and will be given when appropriate. However, including telephone notice as a regulation, and thus offering more than the statute requires, has produced administrative difficulties and detracted from staff time available for acting on the requests.

6. *Section 0.461(h).* This rule deals with requests for inspection of records submitted to the Commission in confidence under § 0.457(d) and § 0.459 and with problems associated with affording multiple parties an adequate opportunity to express their positions, while leaving the Commission time to act on applications for review within the statutory period. Generally, 10 days, running from the date of the initial written ruling, are allowed for filing applications for review; service on the opposition party is required; and 10 days are allowed for a response. In the case of a partial grant, however, provision must be made to reduce these periods if necessary to permit the Commission to act on the application within the 20 day period specified by the statute (the 20 day period could otherwise be taken by the pleadings). Under the revised rule, the 20 day period for Commission action begins to run when the person seeking the records files an application for review or, if an application is filed only by the person resisting the request, the period begins to run with the filing of his application for review. Provision has, in addition, been made for captioning the application for review and the envelope containing it (if any), "REVIEW OF FREEDOM OF INFORMATION REQUEST." A cross-reference to § 1.115, the general rule dealing with applications for review, has been added.

7. *Section 0.461(i).* This rule deals with review of rulings denying a request for inspection of records. Provision is made for captioning the pleading and the envelope, for service of the application for review on the person (if any) who submitted the materials to the Commission in confidence, for a response by that person within 10 working days after the application is filed, and for 10 working days in which to obtain a stay of the ruling on review if the records are made available on review.

8. *Section 0.461(j).* This rule has been deleted. See the discussion in para. 3 above.

9. *Section 0.461(k).* A cross-reference to § 0.461(h)(2) has been added. That section specifies, among other things, the date on which the 20-day period for acting on an application for review begins to run when applications are filed by more than one person on different dates.

10. *Section 0.461(m).* The revised rule states with greater specificity the persons responsible for denying a request for inspection of records who will be identified in the letter or order of denial.

11. *Section 1.301(a)(3).* This rule currently provides that rulings by the presiding officer in a hearing proceeding granting a request for inspection of Commission records are appealable as a matter of right. Because the presiding officer will not hereafter be issuing such rulings, and because the application for review (rather than the appeal) process applies to rulings by the custodian of the records, the provision is being deleted. See the discussion in para. 3 above.

12. *Sections 1.311(b)(3) and 1.325(b).* These amendments to the discovery rules make it clear that they do not apply to the production of Commission records for inspection, and that the production of Commission records is governed exclusively by the Freedom of Information Act and the implementing rules.

13. We think that these changes clarify and simplify the freedom of information rules released on February 11, 1975, and therefore that they serve the public interest.

14. Authority for these amendments is contained in Sections 4(i) and (j) of the Communications Act of 1934, as amended, 47 CFR 154 (i) and (j), and in the Freedom of Information Act, as amended by Pub. L. 93-502, 5 U.S.C. 552. Because the amendments relate to matters of procedure, compliance with the notice and effective date provisions of 5 U.S.C. 553 is unnecessary.

15. Accordingly, it is ordered, effective September 2, 1975, That the amendments to Parts 0 and 1 of the Rules set forth below are adopted.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1088; (47 U.S.C. 154, 303).)

Adopted: August 18, 1975.

Released: August 21, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

Parts 0 and 1 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

1. Section 0.457(d)(1)(i) is revised to read as follows:

§ 0.457 Records not routinely available for public inspection.

* * * * * * *

(d) * * *

(1) * * *

(i) Financial reports submitted by licensees of broadcast stations pursuant to § 1.611 of this chapter or by radio and television networks are not routinely available for public inspection. (Fees paid upon consummation of the assignment or transfer of a broadcast station license, pursuant to § 1.1111 of this chapter, are computed from information contained in financial reports submitted pursuant to § 1.611. Information and correspondence concerning such computations are not routinely available for public inspection.)

* * * * * * *

2. Section 0.461 is revised to read as follows:

§ 0.461 Requests for inspection of materials not routinely available for public inspection.

Any person desiring to inspect Commission records which are not listed in § 0.453 or § 0.455 shall file a request for inspection meeting the requirements of this section.

(a) The records in question must be reasonably described by the person requesting them, so as to permit their location by staff personnel. See § 0.460(c).

(b)(1) Requests shall be captioned, "REQUEST FOR INSPECTION OF RECORDS", shall be dated, shall list the telephone number (if any) of the person making the request and, for each document requested, shall set out all information known to the person making the request which would be helpful in identifying and locating the document.

(2) The request shall, in addition, specify the maximum search fee the person making the request is prepared to pay (see § 0.466). If the specified maximum is reached before all of the records have been located, the search will be terminated and the person making the request will be so notified.

(c) If the records are of the kinds listed in § 0.457 or if they have been withheld from inspection under § 0.459, the request shall, in addition, contain a statement of the reasons for inspection and the facts in support thereof. In the case of other materials, no such statement need accompany the request; but the custodian of the records may require the submission of such a statement if he determines that the materials in question may lawfully be withheld from inspection.

(d)(1) Requests shall be delivered or mailed to the Executive Director, who will determine the identity of the custodian of the records and deliver the request to him. (For purposes of this section, the custodian of the records is the Chief of the appropriate Bureau or Office.)

(2) If the request is enclosed in an envelope, the envelope shall be marked, "REQUEST FOR INSPECTION OF RECORDS."

(3) An original and two copies of the request shall be submitted. If the request is for materials not open to routine public inspection under § 0.457(d) or § 0.459, one copy of the request will be mailed by the custodian of the records to the person who originally submitted the materials to the Commission.

(e) When the request is received by the Executive Director, it will be date-stamped.

(f) Requests for inspection of records will be acted on as follows by the custodian of the records.

(1) If the Commission is prohibited from disclosing the records in question, the request for inspection will be denied with a statement setting forth the specific grounds for denial.

(2) If the records are the property of another agency, the request will be referred to that agency and the person who submitted the request will be so advised, with the reasons therefor.

(3) If it is determined that the Commission does not have authority to withhold the records from public inspection, the request will be granted.

(4) If it is determined that the Commission does have authority to withhold the records from public inspection, the considerations favoring disclosure and non-disclosure will be weighed in the light of the facts presented, and the request will be granted, either conditionally or unconditionally, or denied.

(5) If there is a statutory basis for withholding part of a document only from inspection, that part will be deleted and the remainder will be made available for inspection.

(g) The custodian of the records will make every effort to act on the request within 10 working days after it is received by the Executive Director. If it is not possible to locate the records and to determine whether they should be made available for inspection within 10 working days, the custodian may, in any of the following circumstances, extend the time for action by up to 10 working days:

(1) It is necessary to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) It is necessary to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) It is necessary to consult with another agency having a substantial interest in the determination of the request or among two or more components of the Commission.

If these circumstances are not present or if it is not possible to locate the records and make the determination within the extended period, the person who made the request will be advised of his rights and asked to consent to an extension or further extension. If he agrees to an extension, the custodian of the records will confirm the agreement in a letter specifying the length of the agreed-upon extension. If he does not agree to an extension, the request will be denied, on the ground that the custodian has not been able to locate the records and/or to make the determination within the period for an initial ruling mandated by the Freedom of Information Act, 5 U.S.C. 552. In that event, the custodian will continue to search for and/or assess the records and will advise the person who made the request of further developments; but that person may file an application for review by the Commission. When action is taken by the custodian of the records, written notice of the action will be given.

(h)(1) If a request for inspection of records submitted to the Commission in confidence under § 0.457(d) or § 0.459 is granted, an application for review of the action may be filed only by the person who submitted the records to the Commission. The application for review and the envelope containing it (if any) shall be captioned "REVIEW OF FREEDOM OF INFORMATION ACTION." The application for review shall be filed within 10 working days after the date of the written ruling and shall be served on the person who filed the request for inspection of records. The person who filed the request for inspection of records may respond to the application for review within 10 working days after it is filed. If an application for review is not filed within this period, the records will be produced for inspection.

(2) If the request for inspection of records submitted to the Commission in confidence under § 0.457(d) or § 0.459 is partially granted and partially denied, the person who submitted the records to the Commission and the person who filed the request for inspection of those records may file an application for review within 10 working days after the date of the written ruling. If either person files an application for review, he shall serve it on the other. Responses may be filed within 10 working days after the application(s) for review is filed. If both persons file, or if an application for review is filed only by the person who filed the request for inspection of records, the application(s) will be acted on within 20 working days after the application filed by the person who requested the records is filed. If an application for review is filed only by the person who submitted the records to the Commission, it will be acted on within 20 days after it is filed. The time for filing applications for review and responses may be reduced on notice, if necessary to act on the request within the 20 day period. If an application for review is not filed within this period by the person who submitted the records to the Commission, the partial grant will be implemented.

(3) If the application for review filed by either person is denied, that person will be notified and advised of his rights in writing.

(4) If an application for review filed by the person who submitted the records to the Commission is denied, or if records are made available on review which were not initially made available, the person who submitted the records to the Commission will be afforded 10 working days from the date of the written ruling in which to move for a judicial stay of the Commission's action. If he does not move for stay within this period, the records will be produced for inspection.

(5) Because of the statutory constraints imposed upon the Commission, no extensions of time will be granted to seek either Commission review or a judicial stay.

(i) Except as provided in paragraph (h) of this section, an application for review of an initial action on a request for inspection may be filed only by the person who made the request. The application shall be filed within 30 days after the date of the written ruling by the custodian of the records, and shall be captioned, "REVIEW OF FREEDOM OF INFORMATION ACTION." The envelope (if any) shall also be so captioned. The application shall be served on the person (if any) who originally submitted the materials to the Commission. That person may file a response within 10 working days after the application for review is filed. If the records are made available, on review, the person who submitted them to the Commission (if any) will be afforded 10 working days after the date of the written ruling to seek a judicial stay. See paragraph (h) of this section. (For general procedures relating to applications for review, see § 1.115 of this chapter.)

(j) [Reserved]

(k) The Commission will make every effort to act on an application for review of an action on a request for inspection of records within 20 working days after it is filed. See, however, paragraph (h)(2) of this section. If it is not possible to locate the records and to determine whether they should be made available for inspection within 20 working days, the General Counsel may, in the following circumstances and to the extent time has not been extended under paragraph (g) of this section, extend the time for action by up to 10 working days (The total period of extensions taken under this paragraph and under paragraph (g) of this section without the consent of the person who submitted the request shall not exceed 10 working days.):

(1) It is necessary to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) It is necessary to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) It is necessary to consult with another agency having a substantial interest in the determination of the request or among two or more components of the Commission.

If these circumstances are not present or if it is not possible to locate the records and make the determination within the extended period, the person who made the request will be advised of his rights and asked to consent to an extension or further extension. If he agrees to an extension, the General Counsel will confirm the agreement in a letter specifying the length of the agreed-upon extension. If he does not agree to an extension, the Commission will continue to search for and/or assess the records and will advise the person who made the request of further developments; but that person may file a complaint in an appropriate United States district court.

(l) Subject to the application for review and judicial stay provisions of paragraphs (h) and (i) of this section, if the request is granted, the records will be produced for inspection at the earliest possible time.

(m) Staff orders and letters denying requests for inspection are signed by the official (or officials) who give final approval of their contents. If a request is denied by the Commission, notice of denial will set forth the names of the Commissioners participating in the decision.

3. Section 1.301(a)(3) is deleted and reserved, as follows:

§ 1.301 Appeal from presiding officer's interlocutory ruling; effective date of ruling.

(a) * * *

(3) [Reserved]

* * * * *

4. Section 1.311(b)(3) is revised to read as follows:

§ 1.311 General.

* * * * *

(b) * * *

(3) Commission records are not subject to discovery under § 1.325. The inspection of Commission records is governed by the Freedom of Information Act, as amended, and by §§ 0.451–0.467 of this chapter. Commission employees may be questioned by written interrogatories regarding the existence, nature, description, custody, condition and location of Commission records, but may not be questioned concerning their contents unless the records are available (or are made available) for inspection under §§ 0.451–0.467. See § 0.451(b)(5) of this chapter.

* * * * *

5. Section 1.325(b) is revised to read as follows:

§ 1.325 Discovery and production of documents and things for inspection, copying, or photographing.

* * * * *

(b) Any party seeking the production of Commission records should proceed under § 0.460 or § 0.461 of this chapter. See §§ 0.451–0.467.

[FR Doc.75-22839 Filed 8-27-75;8:45 am]

[Docket No. 20028; FCC 75-937]

PART 76—CABLE TELEVISION SERVICES

Memorandum Opinion and Order

In the Matter of Amendment of Part 76 of the Commission's Rules and Regulations Relevant to Carriage of Late-Night Television Programming by Cable Television Systems.

1. On September 6, 1974, we adopted the Report and Order in Docket 20028[1] (39 FR 33528) in which we amended our signal carriage rules to enable cable television systems to carry, within certain limitations, the late-night programming of otherwise unauthorized signals.[2] Metro Cable Company has petitioned the Commission for reconsideration of that report and order and the Association of Maximum Service Telecasters, Inc. has responded in opposition to Metro Cable's request.

2. Metro Cable Company's petition specifically urges reconsideration of that portion of the subject Report and Order in which the Commission determined that the prevention of head-to-head competition between late-night programming of signals imported pursuant to the new rules and late-night offerings of local signals would, in certain circumstances, result in the carriage of imported late-night programs "in progress" rather than from the very beginning. Although the Commission both implemented provisions to insure carriage of imported late-night programs to their conclusion and took limited measures to prevent local stations' sign-off programming from unduly delaying the commencement of importation of late-night programming,[3] it is petitioner's contention that the rules adopted in Docket 20028 fail to confer a genuine benefit upon the late-night audience whose needs they were designed to serve. To this end, petitioner presents data to illustrate how, over a two-week period, the rules in question actually worked to deprive its subscribers of the beginning portions of imported late-night programs or required them to wait in front of an empty screen, from the time when the last local signal signed off until the first complete late-night program became available.[4]

Number of nights	Minimum loss of programing	or	Minimum delay for next complete program
2	30 min		More than 1 hr.
1	30 min		45 min.
1	unspecified		25 min.
1	unspecified		More than 1 hr.
1	20 min		15 min.
3	15 min		More than 1 hr.
2	15 min		15 min.
1	15 min		10 min.
12			

Petitioner argues that the Commission has misconstrued the public interest by adopting rules which permit viewers to watch only portions of programs or, in the alternative, which require them to wait in front of a blank screen for a program to begin. With respect to the effect of joining programs in progress, petitioner stresses that the beginning of a program is crucial to the program's full enjoyment in that it orients a viewer to such key elements of the plot as location, premises, characters and time frame. Moreover, Metro Cable argues that deletion of the beginning of a program is inconsistent with § 76.55(b)'s endorsement of complete carriage of programs, as is a failure to carry a program to its conclusion. In Metro Cable's view, the present late-night programming rules are unnecessarily protective of broadcasters at the expense of the "small but significant" late-night audience the Commission was seeking to benefit. Thus, as an alternative to the present rules, petitioner suggests a policy whereby a program, at least half of which could be legally imported on the present "join-in-progress" basis, could be carried in its entirety.

3. The Association of Maximum Service Telecasters, Inc. opposed a reconsideration of the late-night programming rule making for the following reasons: (a) That the Commission has already given adequate consideration to the issue which Metro Cable presents; (b) that the late-night programming rules, together with other signal carriage provisions, create more than ample program diversity for late-night and other cable viewers; and (c) that Metro Cable's proposal

[1] FCC 74-957, 48 FCC 2d 699 (1974).

[2] § 76.59(d)(3) contains the late-night program rule for cable television systems located in smaller television markets. It provides, in pertinent part, that in addition to television broadcast signals carried pursuant to the foregoing paragraph of § 76.59, a cable television system may carry: (3) Any television station during the period from sign-off of the last station which the cable television system must carry pursuant to § 76.59(a) to the sign-on of the first station which the cable television system must carry pursuant to § 76.59(a); *Provided, however*, That if a station terminates operations less than thirty minutes after the hour or half hour, it shall be deemed to have signed off on the prior hour or half hour, respectively. A cable system may carry a program to its completion. Carriage of such additional stations shall not require prior approval in the certificating process and shall be consistent with the program exclusivity rules of Subpart F of this part.

Sections 76.57(c) and 76.61(e)(3) are the counterparts of § 76.59(d)(3) for cable television systems located outside all major and smaller television markets and for cable television systems located in major television markets.

[3] See footnote 2, *supra*.

[4] Petitioner's data reveals that on only two of the fourteen successive nights surveyed could the cable television system pick up a complete late-night program without a substantial delay. On the remaining twelve nights, the best option permitted importation subject to the following restrictions:

would result in head-to-head competition which would seriously threaten the expansion and continuation of local, "free" late-night broadcasting. MST argues that while the Commission was aware that the rules in question could result in certain viewers missing the beginning of imported programs, it nevertheless concluded that a balancing of the interests involved impelled such a result. With respect to Metro Cable's reliance on § 76.55(b) of the Commission's Rules, MST points out that the Commission itself considered that provision in adopting the late-night programming rules. MST also disputes that Metro Cable has shown that a "join-in-progress" approach causes more than a minor viewer inconvenience and contends that since at least one local station will always be on the air until importation can commence, "no one is left with a blank screen." Moreover, MST argues that any inconvenience brought about by a "join-in-progress" approach is further ameliorated by late-night programming which may also be available on distant signals which a cable television system regularly carries. Of major concern to MST, however, is the alleged adverse impact which any "beginning of the program" approach would have on local broadcast services. MST points to other signal carriage provisions which it considers to be lenient toward cable television but harmful to broadcasting, and argues that the instant petition for reconsideration is merely another attempt by the cable television industry to erode certain Commission policies by "chipping away." Any relaxation in the present restrictions on importation of late-night programming, argues MST, would certainly lead to abuses by cable television systems.

4. In this proceeding, we have explored the potential of cable television to fulfill the needs of a small but significant portion of the population whose employment or personal habits allowed them to watch television only during the late-night hours and whose local stations did not provide such late-night programming. However, as we stated in the Report and Order in Docket 20028, supra, we intended to accommodate the needs of late-night viewers without inflicting injury on local broadcast television stations. Hence, we believed it necessary to adopt a compromise which, in some instances, could result in overlap of imported programming with a local station's broadcast day and in certain viewers missing the beginning portions of imported programming.[5] In the eight months during which the late-night programming rules have been in effect, they appear on reflection to have fallen somewhat short of our expectations. Not only the instant petition for reconsideration but also petitions for special relief [6] and letters from the public reveal certain flaws of the "join-in-progress" aspect of our present rules, the significance of which was not evident before. Moreover, although we have previously considered the comments of many cable systems which expressed dissatisfaction with a "join-in-progress" approach, we did not have the benefit of the type of data which Metro Cable has now presented and which demonstrates how the present rules work in practice. In light of this data and other considerations which are discussed below, we are prompted, in the public interest, to reexamine our late-night programming rules insofar as they deny viewers the right to watch a program from start to finish.

5. In our previous consideration of this matter, we recognized the high cost of microwave service needed for certain cable television systems to import late-night programming, but we considered this expense mainly in the context of the debate over possible grandfathering provisions for signals imported for late-night programming purposes.[7] However, it is apparent that the magnitude of microwave costs may actually serve as a constraint on the extent to which cable television systems may take advantage of the late-night programming provisions. Both Metro Cable and the systems petitioning for special relief propose to utilize the rules only to the extent that stations engaging in late-night broadcasting are readily available off-the-air or via existing facilities.[8] It appears that the starting times of late-night programs on the limited number of stations practically available for importation are not likely to be compatible with the sign-off times of the systems' last local signal, even as modified by the "half-hour rule." It is also apparent that systems, especially smaller systems, as a practical matter, will be limited to importation of programming on otherwise unauthorized stations which may be receivable off-the-air or by existing microwave service. Such small systems obviously cannot canvass the entire nation to find a station whose late-night programming commences at a time which permits complete carriage pursuant to the existing rules. Accordingly, with only a limited number of late-night signals available for importation, the loss of the beginning of late-night programs due to a "join-in-progress" approach is likely to occur with some frequency.

6. In examining the application of the present rules, certain additional difficulties became evident. Both Metro Cable's data and an examination of nationwide broadcasting schedules reflect that a cable operator who wishes to import late-night programming with a minimum of program loss is confronted with an array of station sign-off times and program starting times which tend to change from day to day. In order to utilize the late-night programming provisions, the cable operator must continually readjust personnel and equipment. Moreover, those viewers who attempt to avail themselves of late-night viewing opportunities will undoubtedly experience some confusion in ascertaining when carriage of late-night programs will begin, when beginning portions of the program will be omitted, and how much of a program they have missed. Although some of these problems are inherent in the irregularity of late-night broadcast schedules, at least some of the administrative difficulty for the system and the uncertainty of the viewers could be alleviated if imported programs could be carried from the beginning and if late-night cable service could commence at a definite time.

7. Certainly we have never intended that cable television systems would deliver programming on a piecemeal basis. For instance, our rules are intended to assure the carriage of complete programs from start to finish.[9] Nonetheless, for reasons that seemed sufficiently compelling at the time, our initial concern was that unrestricted carriage of imported late-night television signal could, in certain instances, result in a direct and deleterious competition between the imported signals and the local stations which remained on the air. Indeed, the broadcasters participating in this proceeding have argued that such competition would fragment their late-night audiences, thus reducing the revenues generated by late-night programming and generally endangering the quality of their overall service. Moreover, the broadcasters contended that a local station's incentive to present late-night programming would be considerably undermined if a local cable system was free to engage in unrestricted importation of late-night television signals. However, for the reasons discussed above, we now believe that neither the extent of late-night programming that is likely to develop nor the amount of overlap that is likely to occur if cable systems are free to provide late-night programming from the outset will have any significant impact upon a station's revenues or programming. We also note that the size of the television audience decidedly decreases after midnight and, consequently, the revenues generated by late-night programming account for a very small percentage of a station's total revenues.[10] Therefore, with one exception, we have decided to modify the rule we adopted in the Report and Order in Docket 20028, to permit cable television systems to engage in late-night programming at a certain fixed time without having to consult constantly shifting local program schedules.

8. Accordingly, we are amending our rules to allow cable television systems to commence the carriage of any station's late-night programs at the sign-off of the last local "must-carry" television station

[5] At most, we allowed 30 minutes of overlap by means of our "half-hour rules" which allowed importation to begin on the previous hour where the last local station signed-off after the hour, and on the previous half-hour where the last local station signed-off after the half-hour.

[6] *See*, e.g., CSR-640, filed on behalf of cable television systems in twelve (12) communities by Gerity Broadcasting Company.

[7] See, Report and Order in Docket 20028, supra, at 707.

[8] Gerity Broadcasting Company's cable television systems propose to import late-night programming on only one station.

[9] *See*, e.g., §§ 76.55(b) and 76.61(b)(2)(ii) of the Commission's rules and report and order in Docket 20028, supra, at 707.

[10] *See*, e.g., American Research Bureau Television Market Summary, Audience Estimates In ARB Markets, February/March, 1973.

or at one o'clock a.m. in the Eastern and Pacific Time Zones and at midnight in the Central and Mountain Time Zones, whichever occurs first. These modifications will permit cable systems to carry most imported late-night programs from their beginning, while restricting the additional competition that such additional service may provide to those times when national network television service has usually concluded. As indicated by the decline in the size of the television audience after midnight, the programming needs of most communities prior to midnight are adequately met by local stations and little harm will befall these local stations if they experience additional competition once network service has terminated. However, when a local television station broadcasts an all-night program schedule, these rules will not permit a local cable system to engage in the carriage of imported late-night television signals. This exception is consistent with the reservations we first expressed in the Notice of Proposed Rule Making in this matter:

> We * * * are concerned that unrestricted importation of late-night broadcasting might harm local stations in two ways. First, head-on competition with distant signals might encourage local stations to drop their existing late-night operations, particularly if they operated in an area with high cable penetration. Second, and potentially more important, importation of late-night programming might deter local stations from entering the market for late-night broadcasting.[11]

For the purposes of these rules, a station is considered to be following an all-night program schedule if it broadcasts continuously from 12:00 a.m. until 6:00 a.m. The amended rules should increase the opportunities for the carriage of late-night programming from start to finish while eliminating much of the uncertainty and administrative complication of our previous approach. Moreover, the exception to the rules will preserve an incentive for local stations to extend their program schedule if they wish to do so. In either case, we believe these rules can confer a genuine benefit on the small but significant number of persons who might otherwise be without access to any sort of regular television.

Accordingly, *it is ordered*, That effective October 2, 1975, the modifications in Part 76 of the Commission's Rules and Regulations that are set forth below are adopted.

It is further ordered, That the petition for reconsideration is granted to the extent indicated in Paragraph 8 above.

It is further ordered, That the opposition to petition for reconsideration is denied.

It is further ordered, That the proceedings in Docket 20028, the subject matter of which was examined in the Report and Order in Docket 20028, 39 FR 33528, are terminated.

Authority for the rule amendments adopted herein is contained in Sections 2, 4 (i) and (j), 301, 303, 307, 308 and 309 of the Communications Act of 1934, as amended.

(Secs. 2, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 154, 301, 303, 307, 308 and 309.)

Adopted: July 30, 1975.

Released: August 22, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. In § 76.57, paragraph (c) is revised to read as follows:

§ 76.57 Provisions for systems operating in communities located outside of all major and smaller television markets.

* * * * *

(c) In addition to the television broadcast signals carried pursuant to paragraphs (a) and (b) of this Section, any television broadcast station during the period from sign-off of the last television broadcast station which the cable television system must carry pursuant to § 76.57(a), or from 12:00 a.m. in the Central and Mountain Time Zones and 1:00 a.m. in the Eastern and Pacific Time Zones, whichever occurs first, to the sign-on of the first station which the cable television system must carry pursuant to § 76.57(a); *Provided however*, That a cable television system may carry a program to its completion; *And provided further*, That this paragraph does not authorize carriage in the manner described above whenever a television broadcast station that the cable television system must carry pursuant to § 76.57(a) broadcasts continuously and does not sign-off during the hours from 12:00 a.m. to 6:00 a.m. Carriage of such additional television signals shall not require prior approval in the certificating process and shall be consistent with the network nonduplication protection and syndicated exclusivity rules of Subpart F of this part.

2. In § 76.59, paragraph (d)(3) is revised as follows.

§ 76.59 Provisions for smaller television markets.

* * * * *

(d) * * *

(3) Any television broadcast station during the period from sign-off of the last television broadcast station which the cable television system must carry pursuant to § 76.59(a), or from 12:00 a.m. in the Central and Mountain Time Zones and 1:00 a.m. in the Eastern and Pacific Time Zones, whichever occurs first, to the sign-on of the first station which the cable television system must carry pursuant to § 76.59(a): *Provided, however*, That a cable television system may carry a program to its completion; *And provided further*, That this subsection does not authorize carriage in the manner described above whenever a television broadcast station that the cable television system must carry pursuant to § 76.59(a) broadcasts continuously and does not sign-off during the hours from 12:00 a.m. to 6:00 a.m. Carriage of such additional television signals shall not require prior approval in the certificating process and shall be consistent with the network nonduplication protection and syndicated exclusivity rules of Subpart F of this part.

* * * * *

3. In § 76.61, paragraph (e)(3) is revised to read as follows:

§ 76.61 Provisions for first 50 major television markets.

* * * * *

(e) * * *

(3) Any television broadcast station during the period from sign-off of the last television broadcast station which the cable television system must carry pursuant to § 76.61(a), or from 12:00 a.m. in the Central and Mountain Time Zones and 1:00 a.m. in the Eastern and Pacific Time Zones, whichever occurs first, to the sign-on of the first station which the cable television system must carry pursuant to § 76.61(a); *Provided, however*, That a cable television system may carry a program to its completion; *And provided further*, That this subsection does not authorize carriage in the manner described above whenever a television broadcast station that the cable television system must carry pursuant to § 76.61(a) broadcasts continuously and does not sign-off during the hours from 12:00 a.m. to 6:00 a.m. Carriage of such additional television signals shall not require prior approval in the certificating process and shall be consistent with the network nonduplication protection and syndicated exclusivity rules of Subpart F of this part.

* * * * *

[FR Doc.75-22840 Filed 8-27-75;8:45 am]

[11] Notice of Proposed Rule Making in Docket 20028, FCC 74-433, 46 FCC 2d 446 at 447 (1974).

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 32—HUNTING

Alamosa National Wildlife Refuge, Colorado

The following special regulation is issued and is effective August 28, 1975.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

COLORADO

ALAMOSA NATIONAL WILDLIFE REFUGE

The public hunting of geese, ducks, coots, mergansers, mourning doves, sora and Virginia rails, and Wilson's snipe on the Alamosa National Wildlife Refuge, Colorado is permitted in accordance with conditions as outlined below, but only on the area designated by signs as open to hunting:

(1) Ducks, coots and mergansers—October 4, 1975 through October 14, 1975,