[4310-10]

PART 114-50—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES

AGENCY: Office of the Secretary, Interior.

ACTION: Final regulation.

SUMMARY: These regulations amend certain departmental regulations pertaining to implementation and administration of Pub. L. 91-646 (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970) activities. The proposed amendment adds to and clarifies the procedures to be followed in preparation of relocation plans.

EFFECTIVE DATE: October 20, 1978.

FOR FURTHER INFORMATION CONTACT:

James O. Wyatt, Chief, Division of Property Management, Office of Administrative and Management Policy (PM/PAM), Room 5310, Department of the Interior, Washington, D.C. 20240, telephone 202-343-3185.

SUPPLEMENTAL INFORMATION: These amendments were published in the FEDERAL REGISTER under a notice of proposed rulemaking on March 1, 1978. No comments were received except from bureaus and offices within the Department of the Interior. The changes proposed, with one exception, related to editorial and not substantive matters. The substantive issue involved the suggestion that provision be made allowing for incremental development of the relocation plan allowing allocation of resources commensurate with the stage of project or program development. The suggestion was adopted and the regulation revised accordingly. The primary author of this document is George Sandberg, Real Property Officer, Office of Administrative and Management Policy, telephone 202-343-3185.

NOTE.—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular No. A-107.

Dated: September 14, 1978.

RICHARD R. HITE,
Deputy Assistant Secretary of the Department of the Interior.

41 CFR 114-50 is amended as follows:

Subpart 114-50.4—Relocation Assistance Advisory Services

Amend § 114-50.402 to read as follows:

§ 114-50.402 Relocation plan.

In conjunction with a program or project proposal involving acquisition of real property, a determination must be made during the preauthorization planning phase whether the real property acquisition activities will result in the displacement of persons from their dwellings, businesses, or farm operations. Where land acquisition activities will cause such displacement, a relocation plan shall be developed prior to commencement of acquisition activities in accordance with procedures outlined in § 114-50.500. The relocation plan may be developed in two stages to meet relocation program requirements. The first stage, the preliminary plan would constitute a preauthorization study sufficient in scope and depth to provide essential program or project planning information. The second stage to be completed prior to commencement of acquisition activities, would entail a fully developed implementation plan. The implementation plan would incorporate, update, and expand upon the preliminary plan. The essential ingredients of each stage are as follows:

(a) Preliminary plan—shall include the following information as a minimum:

(1) An estimate of the number of individuals, families, businesses, farm operations, and nonprofit organizations which will be displaced.

(2) The availability of decent, safe, and sanitary replacement housing (both sale and rental) within the financial means of the individuals and families being displaced.

(3) The probable impact of all other relocation programs, whether federally funded, or not, on the availability of replacement housing.

(4) The estimated total cost, by category (moving expenses, replacement housing for homeowners, etc.), of payments to displaced persons.

(5) The estimated cost of administering required relocation services to displaced persons.

(6) Applicable State and local building restrictions (including minimum lot sizes, zoning regulations, water purity standards, septic and well requirements, utility connection requirements, etc.).

(b) Implementation plan—in addition to updating the above elements the plan shall include:

(1) An inventory of the characteristics and needs of individuals, families, businesses, farm operations, and nonprofit organizations to be displaced.

(2) An inventory of the currently available comparable replacement dwellings in sufficient detail to permit matching of data against the needs of the displaced persons.

(3) Consideration and development, as necessary, of a staged plan of acquisition of improved properties to facilitate assimilation of the displaced persons, businesses, farm operations, and nonprofit organizations into the surrounding community.

(4) Detailed information on the displacement and relocation activities of other Government agencies or private concerns.

(5) Standards to be applied in carrying out relocation operations.

(6) Detailed information on the measures and services to be provided displaced persons and businesses in the conduct of the relocation assistance program.

(c) Each relocation plan shall be:

(1) Coordinated with other Federal and State agencies and private concerns having relocation programs within the project area, to insure that the real estate market from which replacement housing will be obtained is capable of supplying the demands of all users of housing. (See also §§ 114-50.403 and 114-50.404); and

(2) Updated periodically to reflect current real estate conditions. When funds have been appropriated for commencement of real property acquisition, the relocation plan will be continuously updated and serve as a basis for accomplishing required relocation activities.

(3) Reviewed and approved either at the bureau headquarters office level, or by a bureau office assigned the responsibility to review all bureau relocation plans, prior to commencement of acquisition activities (e.g., development of property descriptions, title examination, appraisals, negotiation, etc.).

(4) Submitted (copy only) when approved, to the Assistant Secretary—Policy, Budget and Administration (AMP/PM).

(d) A more elaborate relocation plan may be required in instances where acquisition of real property for a program or project will result in the displacement of a substantial number of persons in a metropolitan area, particularly where low-or moderate-income persons are involved. In any such instances, bureaus and offices shall be guided by the relocation planning instructions promulgated by the Department of Housing and Urban Development in its Relocation Handbook (1371.1 rev.).

[FR Doc. 78-26509 Filed 9-20-78; 8:45 am]

[6730-01]

Title 46—Shipping

CHAPTER IV—FEDERAL MARITIME COMMISSION

[General Order 7; Docket No. 73-64]

PART 528—SELF-POLICING REQUIREMENTS FOR SECTION 15 AGREEMENTS

AGENCY: Federal Maritime Commission.

ACTION: Reconsideration and modification of final rule.

SUMMARY: On April 28, 1978, the Commission published a final rule on self-policing of Commission approved agreements. The Commission has received numerous petitions for reconsideration and modification of that final rule. This document revises part 528 in light of the petitions for reconsideration. Several modifications in language and numbering have been made throughout the rules in the interest of clarity and simplification. The standards applicable to requests for exemption from the independent neutral body requirement have been relaxed. Reporting requirements have been simplified. The term "associate" has been more clearly defined and its use restricted. A provision has been added which prohibits rate-fixing agreements.

DATE: The rule is effective January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Francis C. Hurney, Secretary, Federal Maritime Commission, Room 11101, 1100 L Street NW., Washington, D.C. 20573, 202-523-5740.

SUPPLEMENTARY INFORMATION: The Commission has before it 19 petitions for reconsideration of its April 26, 1978, report and order (April order) amending part 528 of its rules. General order 7, 46 CFR, part 528, 43 FR 18175.[1] A reply to petitions was filed by the Commission's Bureau of Hearing Counsel (Hearing Counsel).

Part 528 of the rules prescribes standards for self-policing by ocean carriers participating in rate-fixing agreements approved under section 15 of the Shipping Act, 1916.[2] The April rules were adopted after analysis of comments received in response to regulations proposed on October 17, 1973 (proposed rules).[3]

The instant petitions urge the retraction of all or part of provisions modified by the April order and raise the following general objections to the order: (1) The Commission lacks authority to require an independent self-policing authority or to direct any specific type of self-policing activity; (2) some of the regulations are vague and unlikely to produce uniform or reliable results; (3) inadequate notice was given of certain features contained in the final regulations, especially the reporting requirements; (4) self-policing should also be required for carriers which do not belong to rate-fixing agreements; and (5) the rules may not be implemented until General Accounting Office review has been completed pursuant to the Federal Reports Act, 44 U.S.C. 3512(c).

The Commission stayed the effective date of part 528 through September 15, 1978, and will not implement the finally revised version adoped today until January 1, 1979, or 30 days following the completion of General Accounting Office review, whichever is later. Nothing more is required to comply with the Federal Reports Act.

Petitioners' jurisdictional argument (1) and their claim that independent carriers should also be subject to part 528(4) were fully considered in the April report. In 1961 Congress concluded that carrier conferences must be adequately self-policed in order to continue receiving an exemption from the antitrust laws. (Pub. L. 87-346, 75 Stat. 764.) Independent carriers are not subject to section 15's express self-policing requirement. The conferences therefore cannot claim that the Commission's failure to place identical self-policing requirements on carriers not fixing rates in violation of the Sherman Act is an arbitrary administrative action.

Petitioners' jurisdictional objection to the imposition of minimum self-policing requirements—inconsistent as it is with their request for the replacement of general phrases like "adequate staffing" with detailed specifications—fails to recognize that part 528 does not permit the disapproval of an agreement without the notice and hearing required by law. Over 10 years experience in reviewing bare bones self-policing reports has made it evident to the Commission that existing self-policing systems rely primarily upon member initiated complaints, and have failed to confront or control major incidents of rebating in both the Atlantic and Pacific trades.[4] Under such circumstances no evidentiary hearings or detailed factual findings are necessary to support our determi-

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[1] Petitions were filed by Sea-Land Service, Inc., and the ocean carriers comprising the membership of the following sec. 15 organizations:

Gulf-Mediterranean Ports Conference; Far East Conference; Pacific Westbound Conference; Atlantic and Gulf-Indonesia Conference and Atlantic and Gulf-Singapore, Malaya, and Thailand Conference (jointly); seven conferences serving areas of India, Pakistan, Ceylon, Burma, East Africa, South Africa, Bangladesh, the Red Sea and the Gulf of Aden (jointly); Marseilles North Atlantic U.S.A. Freight Conference, Med-Gulf Conference, and West Coast of Italy/North Atlantic Conference (jointly); North Atlantic Mediterranean Freight Conference and Greece/U.S. Atlantic Rate Agreement (jointly); Mediterranean-North Pacific Coast Freight Conference and New Zealand Rate Agreement (jointly); U.S. Atlantic and Gulf/Australia-New Zealand Conference and Australia/Eastern U.S.A. Shipping Conference (jointly); Spanish Eastbound Freight Agreement; Iberian/U.S. North Atlantic Westbound Freight Conference; South Atlantic/Spanish, Portuguese, Moroccan, and Mediterranean Rate Agreement; Rate Agreement No. 8900; Pacific Coast European Conference; Japan/Korea-Atlantic and Gulf Freight Conference and Trans-Pacific Freight Conference of Japan/Korea (jointly); Agreement Nos. 7190, 192, 8190, 90, 191, 8100, and 9474 (jointly); Agreement Nos. 10107, 10108, 7190, 192, 9190, 90, 191, 5700, 5600, 8100, 9474, and 14 (jointly); and 15 North Atlantic Conferences (jointly). United States Lines, Inc., disassociated itself from several of the petitions. The viewpoints of various conference members occasionally diverged on specific issues raised in their joint petitions.

Petitions for exemptions from the requirement of establishing an independent self-policing body were received from the ocean carriers comprising the South Sea Islands Rate Agreement, Pacific Coast Rate Agreement, Pacific Coast Australasian Tariff Bureau, and Australia Pacific Coast Rate Agreement. These carriers contend that their activities meet the standards for exemption found in § 528.4(b)(3) of the rules published on April 26, 1978 (April rules), but alternatively request that if exemption is denied under the April rules, that § 528.4(b)(3) be modified to whatever extent the Commission deems necessary to grant them an exemption. These petitions add nothing of substance to the instant proceeding and are being processed solely as exemption petitions.

Several petitioners, as well as a number of other carriers not seeking reconsideration, requested a stay of the July 1, 1978, effective date of revised part 528. On June 26, 1978, the Commission postponed the effective date until Sept. 15, 1978, 43 FR 28496 (1978).

[2] 46 U.S.C. 814 states, in pertinent part, that: "The Commission shall disapprove [a sec. 15 agreement], after notice and hearing, on a finding or inadequate policing of the obligations under it, or failure or refusal to adopt and maintain reasonable procedures for promptly and fairly hearing and considering shippers' requests and complaints."

[3] 38 FR 28841. The proposed rules were themselves a modification of earlier self-policing proposals contained in a broader sec. 15 rulemaking. Docket No. 73-5, 38 FR 4982. Unless otherwise indicated, references to particular section numbers are to the numbers designated in the April rules.

[4] Some 30 settlement agreements have been reached in FMC rebating investigations since Jan. 1, 1977. The civil penalties incurred under these agreements exceed $5,000,000. An equal number of FMC enforcement claims seeking another $5,000,000 for alleged rebating violations is currently outstanding. Still other rebating cases are currently being processed by the Commission's staff.

nation that independent self-policing bodies with broad investigatory powers and more detailed reporting responsibilities are necessary features of adequate self-policing—as a general rule. To the extent a particular factual setting may warrant a different result, the Commission has provided a procedure for exempting smaller conferences operating in relatively "clean" trades from the requirement of retaining an independent self-policing body.

Petitioners' remaining objections (2 and 3) should be met by the modifications in the April rules being adopted today. The Commission's 1973 notice of proposed rulemaking informed all parties of the general scope of this proceeding. Although that notice emphasized the independent body issue and the document availability issue,[5] it also discussed the need for more thorough investigations and specific self-policing reports than had previously been required. The Commission clearly proposed that the nature and basis of each investigation conducted, the findings of each investigation, the identity (coded) of the member investigated, the exact violation found, and the exact sanction imposed be set forth in every semiannual report.[6] The April rules merely added detail to these requirements. The majority of petitioners' complaints concerning lack of notice also allege that certain of the reporting details added by the April order were ambiguous or unrealistic. Upon reconsideration, the Commission has clarified and simplified the reporting requirements in accordance with petitioners' comments whenever feasible. A section by section discussion of these comments and modifications follows.

Section 528.1 Scope and purpose. The last two sentences of § 528.1 were not found in the 1973 proposal. Several petitioners requested deletion of both sentences because they purportedly reflect an intention to disapprove section 15 agreements without the prior notice and hearing required by law and impose illogical and improper standards for judging agreements. The first concern is unfounded, but in the course of revising and shortening § 528.1, we have eliminated the penultimate sentence. The last sentence has also beeen relocated and modified to more accurately reflect the Commission's intention. The existence of a vigorous self-policing system which uncovers an appreciable number of violations during a reporting period does not create an evidentiary presumption that an agreement is or is not "adequately policed" within the meaning of section 15. Such circumstances are, however, reliable evidence of the nature and extent of malpractices in a trade and of the adequacy of a given self-policing system in curbing malpractices.

Section 528.2 General requirements. Several commentators objected to the definition of the term "associates" found in § 528.2, and to its use in §§ 528.3 (a), (b), and (d) and 528.6(10)(ii), where it could be construed as imposing self-policing sanctions upon persons not subject to a rate-fixing agreement. Revisions have been made in former §§ 528.3 and 528.6 to clarify the Commission's intention that only agreement members are subject to self-policing sanctions.

The fact remains that members may violate an agreement through a number of devices, including the use of intermediaries, and it is important that self-policing authorities be empowered to examine the activities and records of those intermediaries most likely to be employed. Accordingly, the definition of "associates" has been revised to eliminate the allegedly unnatural phrase "corporate relation," and include all agents, employees, or other persons subject to the control of a member, persons controlling a member, and persons controlled by persons who control a member.[7] Members must arrange for self-policing authorities to have access to and the cooperation of such "associates." Protection against the possibility that self-policing investigations might result in unrestricted invasions of the non-Shipping Act activities of corporate parents and subsidiaries has been provided by the inclusion of a limited challenge for relevancy procedure in final § 528.2(c).

Sections 528.3(c) and 528.4(c) Duty to investigate complaints. Exception was taken to language in §§ 528.3(c) and 528.4(c) stating that the self-policing authority must investigate all complaints received from any source. It was contended that these provisions could be read as requiring all complaints to be investigated in the same manner, no matter how "frivolous, unreliable, stale or malicious" they might be. This was not the Commission's intention. Self-policing authorities are expected to be both thorough and energetic, but need not adhere to unrealistic and nondiscretionary standards. Former §§528.3 and 528.4 have been modified to clarify this situation and accomodate some of petitioners' complaints.

The final regulations shall require self-policing bodies to promulgate reasonable procedures for the submission of complaints and to investigate all complaints. Self-initiated onsite investigations must also be conducted regularly (e.g., annually) into the activities of each member line. It is unnecessary, however, for all investigations to be identical in scope. Self-policing bodies are expected to possess reasonable discretion in conducting their investigations. It is sufficient that each allegation be examined in a manner and to an extent which is reasonable under the circumstances.

Self-policing bodies may establish procedures for investigating written complaints, provided that oral and other informal communications (including anonymous messages) continue to be received and investigated. A self-policing body shall not require a complaint to be in writing or the identity of the complainant to be revealed before commencing an investigation. Petitioners failed to demonstrate a reasonable basis for limiting the class of persons who may lodge complaints and the final rules allow no such restrictions.

Section 528.4(b)(3) Exemption petitions. The April rules provided for exemptions from the independent self-policing body requirement of § 528.4(b) when it is demonstrated that an agreement has few members, applies to a narrow range of ports, handles only a small percentage of cargo in the trade, and the trade has been relatively free of malpractices. It is now alleged that these factors are rigid and unrealistic—especially the "percentage of the trade" standard—and will preclude many, if not all, small conferences from qualifying.

Modifications have been made in the final rules to provide a more flexible approach to the granting of waivers. Determination will be made on a case-by-case basis where it appears that maintaining an independent self-policing body would unfairly burden a conference because of the size and condition of the trade and the probable effectiveness of the alternative self-policing arrangements proposed.

Section 528.3(e) Identity of complainant. Two petitioning conferences requested that the provisions allowing self-policing bodies to withhold the name of a complainant be amended to *require* the deletion of this information from any materials furnished an accused member. The only support offered for this request was the unclear assertion that the existing language is "inconsistent with the Commission's effort to give the industry effective self-policing" [emphasis supplied]. The Commission believes it preferable to permit divergent practices in this area. Self-policing bodies may reveal

[5] The manner in which the conferences would make their self-policing records available to the Commission.

[6] See §§ 528.2(b) and 528.4(a) of the proposed rules. The Apr. 25, 1974, reply comments of the North Atlantic Conferences illustrates petitioners' awareness that greater specificity in semiannual reporting was under consideration.

[7] The Commission considers it unnecessary to define the term "control" in pt. 528, but intends that the term shall include all incidents of "working" or "de facto" control, whether achieved through ownership, common management, or both.

or withhold the names of complainants as may best enable them to effectively investigate and curb malpractices. They should not, of course, reveal identities in circumstances which encourage retaliation by or against members, or withhold identities when it would unfairly prejudice the member's ability to rebut any material allegations made against it (e.g., if a case depended upon the statement of an unknown accuser).

Sections 528.4(b) and 528.6(a) Application of part 528 to "misrating programs." Some conferences maintain special programs for inspecting cargo carryings and shipping documents, ascertaining cargo misdescriptions or mismeasurements, and requiring that member lines correct any misratings so discovered. These misratings are typically unintentional tariff deviations resulting from clerical errors or reliance upon cargo measurements and descriptions provided by a shipper. It appears that most misrating programs are not presently conducted by self-policing authority personnel, in part because the conferences do not consider misratings to be "malpractices." [8] The April report firmly rejected the notion that "malpractices" could be limited to intentional breaches, but did state that conferences could establish separate investigative bodies for detecting misratings provided that such bodies also complied with part 528 of the rules. Several petitioners commented upon an alleged lack of clarity concerning the status of "misrating programs" under the April rules, but proposed no amendments to correct the purported problem.

The reporting requirements of § 528.6 have been modified to differentiate between unintentional misratings discovered by the self-policing authority and those discovered by other organizations. This modification does not alter the requirement that misratings be treated as a breach of the rate-fixing agreement, but should further indicate that a nonindependent "misrating program" may coexist with a self-policing authority. A conference is welcome to take additional steps to curtail misratings. The critical factor is whether the conference has clearly authorized its self-policing authority to investigate any and all misratings, the self-policing body actually exercises this authority when circumstances reasonably require it, and appropriate damages are assessed for both unintentional overcharges and undercharges. When a "misrating program" is not independent of the conference and its membership, the self-policing authority must be assured of regular and complete access to all of the "misrating program's" findings, reports, and records.

Section 528.6 Disclosure of carrier identity. One of petitioners' major interests throughout this proceeding has been to avoid exposing conference members to civil or criminal penalties under the Shipping Act by virtue of their compliance with section 15's self-policing requirement. Consequently, objections were raised to some of § 528.6's reporting requirements because of the possibility that literal compliance would permit the Commission to ascertain the identity of the accused member.[9] The semiannual report is not intended to routinely reveal which members might have violated the Shipping Act during the reporting period. Although the Commission intends to make appropriate use of semiannual reports in its enforcement activities, the reports will neither be examined for the purpose of ascertaining carrier identity nor be treated as evidence that a violation has occurred. Modifications have therefore been made in the final rule which should lessen its alleged susceptibility to "identity disclosure."

This does not mean, however, that carrier identities are not of legitimate interest to the Commission in a variety of contexts and may not be obtained under the Shipping Act. Accordingly, a new provision has been added to final § 528.1 stating that rate-fixing bodies shall not forbid compliance with a Commission request for self-policing authority records. This requirement merely restates existing Commission policy in this area.[10]

One of the primary justifications for the conference system is its potential for curbing malpractices. Section 15 plainly requires self-policing. Congress also intended the Shipping Act to be enforced. It is neither improper nor unfair for the Commission to employ self-policing data in aid of its wider responsibility to fairly and effectively enforce the Shipping Act.[11] A conference imposed penalty for breach of a rate-fixing agreement is conceptually and legally distinct from a penalty for Shipping Act violations. Both are a means toward the common end of eliminating malpractices.

However, because the Commission's enforcement activities are not revenue generating measures, and because the Commission wishes to promote effective self-policing to the greatest extent practicable, it shall henceforth be our policy to afford significant weight to any self-policing damages paid by a carrier when the same conduct of that carrier becomes the object of an FMC civil penalty claim. As a minimum, credit shall be given for damages paid under a self-policing system. In the case of isolated, less serious Shipping Act violations, no civil penalty claim shall be pursued when the carrier has cooperated fully with the commission and reasonable self-policing penalties have been paid. To help effectuate this policy, final § 528.1(c) shall also forbid rate-fixing bodies from prohibiting their member lines from disclosing self-policing sanctions imposed against them (or any other aspect of their own dealings with the self-policing system) should they desire to do so. Such disclosures may be made on the member's own motion or in response to a Commission order.

Section 528.6(b) Certification of reports. Petitioners object to § 528.6(b)'s requirement that self-policing reports be certified for accuracy and completeness by the reporting officer, the head of the policing authority, and any impartial arbitrators employed during the reporting period. It was contended that the various persons involved would not have personal knowledge of the report's entire contents and should therefore limit their certification to those matters over which they do have such knowledge.

The Commission has modified the rule to eliminate the need for three certifications. Final § 528.5(d) now requires the conference "reporting officer" to certify that the document transmitted is the report of the self-policing authority designated by the conference in full conformity with part 528 of the Commission's rules. The head of the self-policing authority must certify the accuracy and completeness of the report (including arbitration decisions). Both certifications shall be made under penalty of perjury and may be sworn to before a notary or may be an unsworn declaration pursuant to 28 U.S.C. 1746. It is incumbent upon the reporting officer to oversee the activities of the self-policing authority and to have personal knowledge of its staffing, budget, investigative policies and general operations. No certification shall be required from the impartial arbitrator. All matters brought before it and all decisions that it renders shall be reported by the self-policing authority.

Section 528.6(a) Reporting requirements generally. Perhaps the most commonly protested provision of the

[8] Petitioners recognize that not all misratings are innocent or unintentional, and at least some of them provide for repeated or otherwise suspicious incidents to be referred to the self-policing body for investigation.

[9] Disclosure of the "location" of investigations and listing all past violations within a 5-year period were particularly mentioned in this regard.

[10] See Agreement No. 5600-36 and Agreement No. 5660-23, orders denying reconsideration, decided simultaneously herewith.

[11] The complaint of "unfairness" in disclosing member identities appears to consist solely of the possibility that members may eventually be required to pay Shipping Act penalties. Examination of self-policing records is not substantially different from the examination of bills of lading or other commonly maintained carrier records.

April rules was § 528.6. Petitioners claimed that certain terms appearing in the reporting requirements for the first time (e.g., "cargo inspections," "office record examinations," "intelligence gathering activities") were ambiguous and that literal compliance with § 528.6 would be truly burdensome and generate little information of practical value to the Commission. The need to report all of a member's past breaches for a 5-year period was also viewed as onerous, both because of the length of the period and the rule's failure to indicate whether the requirement arose immediately or was to be applied prospectively.

The Commission has modified § 528.6 to eliminate the allegedly vague terms, reduce the "past violations period" to 3 years and apply § 528.6(a)(10)(ii) prospectively.

Other modifications. The Commission has generally edited and renumbered the April rules without intending to alter their substance. One such editorial change was the recognition that the term "impartial adjudicator" and "impartial arbitrator" are considered interchangeable. There have also been certain substantive changes in the final rules.

The inclusion of a specific prohibition against agreement provisions which attempt to block the disclosure of self-policing documents or activities to the Commission has already been discussed. Another substantive amendment has been to require self-policing authorities to maintain detailed records of their activities for a 5-year period (final § 528.3(f)). These records must include the names of the accused members (and any associates) involved in any alleged, potential, or actual breach. Both the self-policing authority records and the semiannual self-policing report must assign case or processing numbers to all investigations, whether instituted by complaint or on the self-policing authority's own initiative.[12] All investigations need not be of the same duration or extent, and it is assumed that self-initiated "investigations" into unintentional misratings would consist of little more than the routine notification of the member of its apparent liability for the penalty prescribed for such breaches.

A further amendment with substantive effect requires a description of the self-policing authority and the impartial arbitrator in the semiannual report (final § 528.5(b)).

Therefore, it is ordered, That the various petitions for reconsideration filed in this proceeding are granted to the extent indicated above and denied in all other respects; and

It is further ordered, That pursuant to section 4 of the Administrative Procedure Act and sections 14, 15, 16, 18(b), 21, 35, and 43 of the Shipping Act, 1916, part 528 of the Commission's rules is amended as set forth below; and

It is further ordered, That revised part 528 of the Commission's rules shall become effective January 1, 1979, provided that General Accounting Office review pursuant to 44 U.S.C. 3512(c) has been completed by that date; and

It is further ordered, That all conference agreements and other rate-fixing agreements approved under section 15 of the Shipping Act, 1916, shall be amended to conform to the requirements of revised part 528 of the Commission's rules and file with the Commission on or before January 1, 1979; and

It is further ordered, That this proceeding is discontinued.

By the Commission.*

JOSEPH C. POLKING,
Assistant Secretary.

Part 528 is revised, including the part heading to read as set forth below.

PART 528—SELF-POLICING REQUIREMENTS FOR SECTION 15 AGREEMENTS

Sec.
528.0 Purpose and scope.
528.1 General requirements.
528.2 Specific requirements: Self-policing provisions.
528.3 Policing authorities (minimum requirements).
528.4 Impartial arbitrators (minimum requirements).
528.5 Reporting requirements.
528.6 Two party rate-fixing agreements—Exemptions.

AUTHORITY: Secs. 14, 15, 16, 18(b), 21, 35, and 43 of the Shipping Act, 1916 (46 U.S.C. 812, 814, 815, 817(b), 820, 833a, and 841a).

§ 528.0 Purpose and scope.

(a) Section 15 of the Shipping Act, 1916, prohibits the approval of agreements which are not adequately self-policed. It also contemplates that self-policing provisions be included in certain agreements subject to the Shipping Act, and that the Commission be kept informed of the manner in which such provisions are being implemented. The provisions of this part are designed to establish minimum standards for judging the adequacy of self-policing activities, assist ocean carriers obtain expeditious approval of their section 15 agreements insofar as self-policing is concerned, provide the Commission with reliable information concerning the nature and performance of self-policing systems, and curtail rebating and other malpractices by ocean carriers.

(b) This part shall apply to all conference and other rate-fixing agreements between common carriers by water in the foreign or domestic offshore commerce of the United States (hereafter referred to as "agreements"), whether or not previously approved by the Commission.

§ 528.1 General requirements.

(a) Every agreement shall contain provisions establishing and describing a system for self-policing its members. These provisions shall describe the methods employed and the standards used to investigate, adjudicate, and penalize breaches of the agreement by the common carriers by water signatory thereto (hereafter referred to as "members"), and shall include within their scope the activities of all persons, firms, associations, or corporations that are agents, employees, or affiliates of members, or are otherwise subject to the control of a member, or which themselves control a member, or are commonly controlled by any person, firm, association, or corporation which controls a member (hereafter referred to as "associates").

(b) Self-policing provisions shall establish both a policing authority and an impartial "arbitrator" or "adjudicator" and describe the functions and authority of each entity. The imparital arbitrator shall be functionally separate and distinct from the policing authority.

(c) No self-policying system shall contain provisions which purport to:

(1) Deny access to or copies of any self-policing records, statistics, reports, or other information (including the identity of members) in contravention of a duly issued order of the Federal Maritime Commission (or a Commission employee with delegated authority to issue such orders); or

(2) Preclude any of its members from disclosing the nature and extent of their own involvement with the self-policing authority (e.g., any damages paid by the member) in any administrative or judicial proceeding to enforce the Shipping Act.

(d) Compliance with the requirements of this part shall not relieve rate fixing bodies of their absolute responsibility to adequately police their activities or preclude the Commission from disapproving an agreement when sufficient evidence of rebating or other malpractices exists to warrant a conclusion that the members' self-policing efforts have been inadequate.

§ 528.2 Specific requirements: self-policing provisions.

Agreements shall contain the following self-policing provisions:

[12] A relatively simple approach to this requirement would be to designate complaint cases by the letter "C" and a number, and to designate self-instituted investigations by the letter "I" and a number.

*Commissioner Bakke dissents in part. His views will be issued separately.

(a) *Breaches (general).* A statement that any violation or breach of any provision of the agreement, or any tariff, rules or regulations promulgated thereunder (hereafter referred to as a "breach"), by any member of the agreement (directly or through an associate) shall subject such member to self-policing sanctions;

(b) *Permissable damages.* A statement specifying the maximum damages, or range of damages, or the method of calculating the damages, which may be assessed against members of the agreement upon finding that such members have committed a breach. Such statement may specify damages for specific breaches and a general category of breaches, or both, and may relate to each and every breach, or to the number of times the member has previously been found guilty of a breach;

(c) *Investigation of breaches.* An effective procedure for investigating all matters which are the subject of complaints or which otherwise suggest or allege the existence of breaches;

(1) The procedure shall require the self-policing authority to:

(i) Receive or gather information concerning breaches from any and all sources;

(ii) Make investigations both in response to complaints and upon its own initiative;

(iii) Examine, audit or inspect, upon demand, with or without notice and wherever located: Any books, records, accounts, invoices, bills of lading or other documents, cargo, containers, ships, property, and facilities owned, used, or transported by any member of the agreement or its associates which may be relevant to the member's participation in the trade. *Provided, however,* That examination of particularly identified materials may be postponed for a reasonable period pending a prompt determination of relevancy by the impartial arbitrator under conditions which assure that the materials in question are sealed or otherwise kept unaltered during the determination period;

(iv) Adopt and publicize procedures for the filing of complaints;

(v) Compile and retain for at least 5 years a complete and thorough record of all its investigatory and prosecutorial activities, including a description of all complaints, the basis, nature and scope of all self-intitiated investigations, and the disposition of all investigations.

(2) The procedure shall require all officers, employees, and associates (including officers, employees and controlling owners) of members to cooperate with, and freely provide information to, the policing authority and its agents;

(d) *Adjudication of breaches.* A procedure for adjudicating alleged breaches which affords accused members the right to a hearing before an impartial arbitrator. The impartial arbitrator shall adjudicate such claims solely and finally, either initially or upon review de novo on the record of an initial determination by the policing authority. "Review de novo on the record" requires the impartial arbitrator to have full authority to affirm, modify or set aside any finding of fact, conclusion of law, or penalty made or imposed by the policing authority;

(e) *Procedural guarantees.* A statement that fundamental fairness will be afforded all members accused of committing a breach (hereafter referred to as "the accused"), which includes the following specific procedural guarantees:

(1) The accused shall be charged in writing, within a reasonable time prior to the initial hearing, in a manner which fairly and clearly discloses the nature of the alleged breach. Such charges need not reveal the identity of the complainant;

(2) The accused shall be furnished with all evidence within a reasonable time prior to the initial hearing. Evidence developed thereafter shall also be furnished to the accused and a delay granted, if necessary, to allow it an opportunity to use such evidence in its defense. The identity of the complainant may be deleted from any evidence furnished the accused;

(3) The accused shall be given a full and fair opportunity to rebut or explain any evidence introduced against it and to present evidence which might show mitigating or extenuating circumstances;

(4) The impartial adjudicator shall receiver and consider only that evidence which has been furnished to the accused by the self-policing authority or has been furnished by the accused in its defense;

(f) *Designated official.* A statement designating a particular officer or official of the rate-fixing body to be responsible for the filing and certifying of self-policing reports with the Commission in accordance with § 528.5;

§ 528.3 Policing authorities (minimum requirements).

(a) Policing authorities shall have an adequate and qualified staff, adequate facilities and an adequate budget.

(b) Policing authorities shall be headed by, and composed of, persons not otherwise employed by, having any financial interest in, or affiliated with, the conference or rate-fixing body established by the agreement or any member or associate thereof; *Provided, however,* That:

(1) An individual or entity may act as the policing authority for more than one rate-fixing body;

(2) An independent certificated public accountant (referred to hereafter as an ICPA) may act as the policing authority, even though it has a client which is a member of the agreement or an associate of such member, where such relationship is disclosed prior to being named as the policing authority and it is disqualified from acting as the policing authority with respect to the member which is, or whose associate is, a client of the ICPA. If the ICPA named as the policing authority discloses that it has a member of the agreement or an associate of such member as a client, an alternate policing authority must be appointed to receive and investigate any complaints against such member;

(3) Upon petition to the Commission, an exemption may be sought to allow officers or employees of a rate-fixing body to act as the head of, or be assigned to duties under, the policing authority, if such person or persons are not otherwise employed by, affiliated with, or have any interest in, any member or any associate of a member. Petitions for exemption will not be lightly granted and must include a convincing showing that:

(i) The persons conducting self-policing activities are qualified and their self-policing activities would not substantially conflict with their other duties and responsibilities;

(ii) The agreement is so limited in scope that the retention of an independent self-policing authority would impose an unrealistic financial burden on the members. The number of members, the financial condition of the members, the nature and extent of the trade, the competitive circumstances prevailing in the trade, and other activities of the members both within and without the trade (e.g., participation in other agreements) are all relevant considerations;

(iii) The trade covered by the agreement has been relatively free of rebating or other conduct violative of the Shipping Act in the 5 years preceding the year when exemption is sought and is likely to continue to be characterized by a minimal level of such malpractices.

(c) The policing authority of each agreement shall be required to establish reasonable written procedures for the receipt and investigation of complaints which shall be made available to any person upon request. Such procedures may include special provisions for the handling of written complaints and for summary investigation of frivolous or incomplete allegations (whether written or not). These procedures may not, however, require that complaints be in writing or restrict the

class of persons entitled to lodge a complaint.

(d) Policing authorities shall be required to investigate all complaints filed in accordance with its established procedures.

(e) Policing authorities shall be required to conduct self-initiated investigations whenever they receive information providing reasonable cause to do so and to periodically conduct self-initiated investigations into the activities of each member. All self-initiated investigations shall include, but not necessarily be limited to, the unannounced inspection of books, records, accounts, shipping documents, invoices, cargo, ships, containers, equipment, and facilities of the member and its associates.

(f) Policing authorities shall compile and retain for at least 5 years a sufficient written record of their activities to demonstrate compliance with this part. This record shall include:

(1) All complaints received (written or oral), the processing or case numbers assigned to each complaint, a description of the steps taken to investigate each complaint (including hearings or arbitration proceedings) copies or summaries of the evidence gathered, and the final disposition of each investigation;

(2) A chronological log summarizing all information (other than complaints) received or gathered which alleges or suggests the existence of a breach and describing the consideration given to this information, including all reports of unintentional cargo misdescriptions and mismeasurements, anonymous tips, and rumors of malpractices;

(3) A description of all self-initiated investigations, the processing or case numbers assigned to each investigation, a description of all investigatory measures employed (including hearings or arbitration proceedings), copies or summaries of the evidence gathered, and the final disposition of each investigation;

(4) A brief statement as to why each investigation was finally disposed of in the particular manner chosen. This statement shall include an exact description of any breach found to have occurred, any decision of the impartial arbitrator and the nature and amount of any penalty assessed and paid.

§528.4 Impartial arbitrators (minimum requirements).

(a) The impartial arbitrator shall be a totally disinterested person or entity, unaffiliated with the rate-fixing body or any member or associate thereof, and may be appointed on permanent basis or selected on an ad hoc basis from a panel or arbitrators pursuant to traditional rules of commercial arbitration.

(b) The impartial arbitrator shall be vested with final authority to adjudicate disputes and assess damages within the scope of the self-policing system.

(c) The impartial arbitrator shall not perform any other duties under the self-policing system with regard to any matter before it for adjudication, including investigation or prosecution.

§528.5 Reporting requirements.

(a) Each rate-fixing body shall mail (air mail postage prepaid) or hand deliver a semiannual report to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before January 31 and July 31 of each year covering that body's self-policing and adjudicatory activities during the 6-month period immediately preceding the respective reporting month (i.e., January or June).

(b) Each semiannual self-policing report may exclude the identity of all parties to an allegation of breach, investigation or penalty assessment, but shall contain the following detailed information:

(1) The name and address of the self-policing body employed during the reporting period and a complete description of its staff, facilities, and budget, and the name and address of the impartial arbitrator employed during the reporting period and a description of its qualifications;

(2) The date, location (community or port area where inspection occurred) and nature of each examination or inspection (including audits) of cargo, facilities, shipping documents, or office records performed during the reporting period. The type and approximate number of accounts, documents, cargo containers, and other items inspected shall also be stated. Each such inspection shall be correlated to a particular investigation bearing a processing or case number;

(3) The number of cargo misdescriptions or mismeasurements detected by:

(i) The self-policing authority or any division thereof;

(ii) Any other organization retained by the rate-fixing body to make misrating determinations and regularly report them to the self-policing authority. When such a separate "misrating committee" or similar organization is employed by a rate-fixing body, the self-policing report shall also identify that organization by name and address, and provide a thorough description of its staffing (including other affiliations with the conference or its members), authority and routine activities, and describe the procedures by which it reports its findings to the self-policing authority;

(4) The number of breaches of the agreement (other than unintentional cargo misdescriptions and mismeasurements) which were detected through the investigation of complaints;

(5) The number of breaches of the agreement (other than unintentional cargo misdescriptions and mismeasurements) which were detected by self-initiated investigations;

(6) A thorough summary of the basis, nature, and scope of each investigation commenced during the reporting period, including any hearings or arbitration proceedings. Each investigation shall be identified by a processing number and the summary shall indicate whether the investigation was initiated by complaint or upon the initiative of the self-policing authority;

(7) A list of information received or gathered during the reporting period alleging or suggesting the existence of a breach, but which was not made the subject of an investigation;

(8) A list (by processing number) of investigations commenced in previous reporting periods and still pending, and a description of the action taken with respect to each during the reporting period (including hearings and arbitration proceedings);

(9) A list and description (by processing number) of all final actions taken with respect to investigations of any type. An action is not "final" unless:

(i) The investigation revealed insufficient evidence to establish a breach; or

(ii) The accused was assessed damages, either based on a voluntary settlement or a decision rendered by the policing authority or the impartial arbitrator.

(10) When a final action involves an assessment of penalties, the report shall also include:

(i) A detailed description of the alleged or adjudicated breach, the amount or type of penalty assessed, and whether the assessment was met;

(ii) A list of all other breaches (other than unintentional cargo misdescriptions and mismeasurements) committed by the member during the period subsequent to the effective date of this part, but not greater than 3 years prior to the final action in question.

(c) The report shall clearly indicate those final actions handled by the policing authority and those matters, including rulings on the relevancy of documents or things sought to be examined by the policing authority, handled by the impartial arbitrator.

(d) The reporting officer designated pursuant to §528.2(f) shall certify under penalty of perjury that the semiannual report has been prepared by the self-policing authority specifically designated by the rate-fixing body to act in full accordance with the requirements of this part during the reporting period. The accuracy and completeness of the report shall be sworn to under penalty of perjury by

the head of the designated self-policing authority.

(e) If there are no complaints, investigations, or final actions during the period, the report shall contain an express statement to this effect as to each category of information required by paragraph (b) of this section.

§ 528.6 Two-party rate-fixing agreements.

Rate-fixing agreements with no more than two signatory parties shall be exempt from the requirements of this part.

[FR Doc. 78-26488 Filed 9-20-78; 8:45 am]

[4910-62]

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION

[OST Docket No. 27; Amdt. 71-16]

PART 71—STANDARD TIME ZONE BOUNDARIES

CFR Correction

AGENCY: Department of Transportation.

ACTION: Final rule; CFR correction.

SUMMARY: This CFR amendment corrects the mistaken reference to the "North Dakota-Nebraska boundary" in the description of the boundary between the central and mountain time zones. (See 49 CFR 71.7.) These two States are not contiguous. The reference should be to the "South Dakota-Nebraska boundary".

EFFECTIVE DATE: September 21, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert I. Ross, Office of the General Counsel, Department of Transportation, Washington, D.C. 20590, 202-426-4723.

SUPPLEMENTARY INFORMATION: The person principally responsible for drafting this document is Robert I. Ross, an attorney in the General Counsel's Office.

This amendment merely corrects an obvious error and does not affect any substantive change; for that reason, it appears unlikely that the public would have any substantive comment. Therefore, providing opportunity for public comment would merely postpone correction of the error without any accompanying benefit and thus be contrary to the public interest. Similarly, I find that good cause exists for making the amendment effective in fewer than 30 days after publication in the FEDERAL REGISTER.

In consideration of the foregoing, § 71.7(b) of Part 71 of Title 49, Code of Federal Regulations, is amended by changing "North Dakota-Nebraska boundary" to "South Dakota-Nebraska boundary", as appears below:

§ 71.7 Boundary line between central and mountain zones.

* * * * *

(b) *South Dakota.* * * * South Dakota-Nebraska boundary.

* * * * *

(Act of March 19, 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260-67); sec. 6(e)(5), Department of Transportation Act (49 U.S.C. 1655(e)(5)); § 1.56(1), Regulations of the Office of the Secretary of Transportation (49 CFR 1.56(1).)

Issued in Washington, D.C., on September 15, 1978.

LINDA HELLER KAMM,
General Counsel.

[FR Doc. 78-26458 Filed 9-20-78; 8:45 am]

[4310-55]

Title 50—Wildlife and Fisheries

CHAPTER 1—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 32—HUNTING

Opening of Upper Souris National Wildlife Refuge, N. Dak., to Deer Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to deer hunting of Upper Souris National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: November 17, 1978, through November 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Refuge Manager, Upper Souris National Wildlife Refuge, R.R. No. 1, Foxholm, N. Dak. 58738, 701-468-5634.

SUPPLEMENTARY INFORMATION:

§ 32.32 Special regulations; big game; for individual wildlife refuge area.

Deer hunting is permitted on the Upper Souris National Wildlife Refuge, N. Dak., on all areas except those designated as closed. The open areas comprising 31,800 acres are delineated on maps available at headquarters, Foxholm, N. Dak., and from the office of the Area Manager, U.S. Fish and Wildlife Service, P.O. Box 1897, Bismarck, N. Dak. 58501. Hunting shall be in accordance with all applicable State regulations covering the hunting of deer subject to the following conditions:

(1) Only bucks may be taken by a special National Wildlife Refuge deer gun permit through the first weekend, November 17, 18, and 19, 1978. The remainder of the season hunters with a valid III A2 permit may take deer of the sex specified in that permit.

(2) All hunters must exhibit their their special National Wildlife Refuge permit hunting license, deer tag, and vehicle contents to Federal and State officers upon request.

(3) The refuge shall be closed to all vehicular travel except the main public roads and refuge recreation area parking areas.

(4) Deer are the only species that may be taken. It is unlawful to carry firearms after the deer tag is used.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in title 50, Code of Federal Regulations, part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

Dated: September 14, 1978.

MAURICE B. WRIGHT,
Refuge Manager.

[FR Doc. 78-26494 Filed 9-20-78; 8:45 am]

[4310-55]

PART 32—HUNTING

Opening of Tamarac National Wildlife Refuge, Minn., to Resident Game Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening of Tamarac National Wildlife Refuge to resident game hunting is compatible with the objectives for which the area was es-

tablished, will utilize a renewable natural resource, and will provide recreational opportunity to the public.

DATES: Ruffed grouse—September 16 through December 31, 1978. Rabbits and hares—September 16, 1978, through February 28, 1979. Gray and fox squirrels—September 16 through December 31, 1978. White-tailed deer—November 4 through November 19 and November 24 through November 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Omer N. Swenson, Refuge Manager, Tamarac National Wildlife Refuge, Rochert, Minn. 56578; telephone No. 218-847-4355.

SUPPLEMENTARY INFORMATION:

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

Public hunting of ruffed grouse, gray and fox squirrels, cottontail, jack rabbit, and snowshoe hare on the Tamarac National Wildlife Refuge, Rochert, Minn., is permitted in the area designated by signs as public hunting area. This area comprising 12,500 acres is delineated on maps available at the refuge headquarters and from the Office of the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minn. 55111.

An additional area of 18,000 acres will be open for public hunting of ruffed grouse only. This ruffed grouse only area is delineated on a map available at the refuge headquarters and from the Office of the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minn. 55111.

Hunting shall be in accordance with all applicable State regulations during the seasons specified above. The hunting of other upland species as may be authorized by Minnesota State regulations is prohibited.

The following special conditions apply:

1. No person shall trap on Tamarac National Wildlife Refuge without first obtaining such permits as may be required and issued by the refuge manager.

2. No person shall, for the purpose of hunting or trapping, enter or leave the refuge except by designated access roads.

3. All hunters and trappers shall comply with further regulations which the refuge manager may prescribe.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

Public hunting of white-tailed deer with legal firearms on the Tamarac National Wildlife Refuge is permitted over the entire refuge with exception of those areas posted as "Area Beyond This Sign Closed." The open area includes 40,200 acres. Areas open for deer hunting are delineated on maps available at the refuge headquarters and from the Office of the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minn. 55111.

Hunting shall be in accordance with all applicable State regulations subject to the following conditions:

1. No taking of black bear or bow hunting is permitted on any portion of the refuge.

2. No person shall, for the purpose of hunting, enter or leave the refuge except by designated access roads.

3. All hunters shall comply with further regulations which the refuge manager may prescribe.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

Dated: September 14, 1978.

OMER N. SWENSON,
Refuge Manager.

[FR Doc. 78-26534 Filed 9-20-78; 8:45 am]

[3510-22]

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 651—ATLANTIC GROUNDFISH—COD, HADDOCK, AND YELLOWTAIL FLOUNDER

Landing Limitation Regulations

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Amendment of emergency and proposed regulations.

SUMMARY: These regulations amend existing regulations for the yellowtail flounder fishery by revising the landing restriction provisions which were implemented effective July 23, 1978, under the fishery management plan (FMP) for Atlantic groundfish. The overrun and the 10 percent allowance provisions are also eliminated. This amendment is intended to reduce the prospect of a closure of the yellowtail fishery.

EFFECTIVE DATE: September 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. William G. Gordon, Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Mass. 01930, telephone 617-281-3600.

SUPPLEMENTARY INFORMATION: Weekly landing restrictions for yellowtail flounder by vessel class were established by emergency regulations (§ 651.8(b)) on July 19, 1978 (43 FR 31015). Section 651.8(e) states that:

[T]he Assistant Administrator may adjust the landing restrictions * * * upon publication of a notice in the FEDERAL REGISTER, for the following purposes:

(1) To spread fishing effort over the entire year;

(2) To reduce the need for quarterly or annual closures;

(3) To allow each of the vessel classes in paragraphs (a) and (b) of this section to harvest its historic percentage of the catch.

Section 651.8(f) states further that:

To accomplish these purposes * * * the Assistant Administrator may adjust the landing restrictions by varying amounts for each vessel class, after consideration of factors including:

(1) Landings for the current and previous quarters;

(2) Projected harvests;

(3) Capability of vessels to fish in other locations or for other species;

(4) status of unregulated species in the trawl fishery * * *.

The Assistant Administrator for Fisheries has determined that, under §§ 651.8 (e) and (f), good cause exists to amend the yellowtail flounder landing restrictions effective September 17, 1978, so that (1) all vessel classes may land only 2,000 lbs per week or per trip (if the trip is longer than a week); (2) eliminate the overrun provision; (3) eliminate the provision "or 10 percent by weight of all fish on board, whichever is greater."

The Assistant Administrator for Fisheries has determined that these amendments are not major Federal actions within the meaning of the National Environmental Policy Act, and are consistent with the national standards of the act and other applicable law. An economic impact analysis was prepared covering this and other economic issues in this fishery. The result of that analysis was a negative finding.

Signed at Washington, D.C., this 14th day of September 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.