The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act*: This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 19, 1984.

John D. Ward

Acting Director, Office of Surface Mining.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

PART 906—COLORADO

30 CFR Part 906 is amended by revising § 906.16 to read as follows:

§ 906.16 Required program amendments.

Pursuant to 30 CFR 732.17, Colorado is required to submit for OSM's approval the following proposed program amendments by the date specified.

(a) By March 4, 1985, Colorado shall submit for OSM's approval

(1) rules governing the training, examination and certification of blasters and

(2) a program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operation.

[FR Doc. 84-30907 Filed 11-23-84; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50503A; FRL-2558-11]

Significant New Use of Chemical Substances; Isopropylamine, Distillation Residues, and Ethylamine, Distillation Residues

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2604(a)(2), to require persons to notify EPA at least 90 days before manufacturing, importing, or processing isopropylamine distillation residues (CAS No. 79771-08-7) and ethylamine distillation residues (CAS No. 79771-09-8) for use in metalworking fluids. These substances were the subject of premanufacture notices P-80-289 and P-80-290, respectively. EPA believes that these substances may react with nitrosating agents in metalworking fluids to form carcinogenic nitrosamines and that use of the contaminated metalworking fluids could result in significant human exposure to nitrosamines.

DATES: These regulations shall be promulgated for the purposes of judicial review at 1:00 p.m. eastern time on December 10, 1984.This rule is effective February 8, 1985.

FOR FURTHER INFORMATION CONTACT: Edward Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), Washington, D.C: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB Control Number 2070-0012.

I. Authority

Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule, after considering all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B), submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. Such a notice is generally subject to the some statutory requirements and procedures as a PMN submitted under section 5(a)(1)(A) of TSCA which is interpreted at 40 CFR Part 720 published in the **Federal Register** of May 13, 1983 (48 FR 21722). In particular, these include the information submission requirements of section 5 (b)(1) and (d)(1), certain exemptions authorized by section 5(h), and the regulatory authorities of section 5 (e) and (f). If EPA does not take regulatory action under section 5, 6, or 7 to control activities on which it has received a SNUR notice, section 5(g) requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Substances covered by proposed or final SNURs are subject to the export reporting requirements of TSCA section 12(b). EPA regulations interpreting section 12(b) requirements appear at 40 CFR Part 707. Substances subject to final SNURs are subject to TSCA section 13 import certification requirements at 19 CFR 12.118 through 12.127 and 127.28, published in the **Federal Register** of August 1, 1983 (48 FR 34734). The EPA policy in support of these requirements appears at 40 CFR Part 707 published in the **Federal Register** of December 13, 1983 (48 FR 55462).

II. Applicability of General Provisions

EPA has promulgated general provisions under 40 CFR Part 721, Subpart A which are applicable to SNURs and were published in the **Federal Register** of September 5, 1984 (49 FR 35011). These general provisions will apply to this SNUR without change except as discussed in this preamble. Interested persons should refer to that document for a detailed discussion of the general provisions.

The general provisions governing SNUR reporting were promulgated subsequent to the proposal of this rule in the **Federal Register**. Therefore, this final rule is structurally different from its proposal format because the non-substantive and procedural matters are now contained in Subpart A to Part 721. Because the reformatting of this rule is a non-substantive change, reproposal is not required.

III. Summary of This Rule

The chemical substances subject to this rule are identified by chemical name and by Chemical Abstracts Service (CAS) number as isopropylamine distillation residues (CAS No. 79771-08-7) and ethylamine distillation residues (CAS No. 79771-09-8). They were the subject of PMNs P-80-289 and P-80-290. EPA is designating use in metal working fluids as a significant new use of the substances.

IV. Background

On August 24, 1983 (48 FR 38502), the Agency proposed a SNUR for two chemical substances which were the subject of PMNs P-80-289 and P-80-290. EPA proposed that use in metalworking fluids be designated as a significant new use of both substances. The background of each PMN, the reasons for proposing the SNUR, and supporting information are set forth in the preamble to the proposed rule.

The notice submitter stated that these substances would be used as corrosion inhibitors for oil well service lines and secondary recovery recirculating water systems. EPA did not find that the specific uses of the two substances may present an unreasonable risk to health or the environment and allowed the substances to enter commercial production. However, EPA is concerned that these substances could also be used as corrosion inhibitors in metalworking fluids and during this use could come into contact with nitrosating agents resulting in the formation of nitrosamines. The Agency is concerned that these nitrosamines would present carcinogenic risks to the large number of workers potentially using the metalworking fluids.

EPA received a notice of commencement of manufacture from the notice submitter on February 25, 1981, and the two substances were added to the TSCA Chemical Substance Inventory.

EPA received comments from three persons on the proposed SNUR. The major issues that were raised are discussed in this preamble.

V. Findings

For the reasons set forth in the preamble to the proposed rule and further discussed in this preamble, the Agency has concluded that use of these two substances in metalworking fluids would be a significant new use. When used in metalworking fluids, these two substances may be exposed to nitrosating agents, in particular nitrites, which would convert the amines into nitrosamines, many of which are known or suspected carcinogens in animals. Exposure to workers in this use could be substantial and would be different from exposures to workers in the uses of these two substances described in the PMNs. The risk of cancer in these workers contributes to the finding that the use is significant. No commenter presented any information relevant to the risks of these substances in the significant new use, and EPA has obtained no new information to change its basic risk concerns. Accordingly, the Agency is promulgating this final rule.

One commenter stated that the Agency has not demonstrated "significant risk" and indicated that EPA must quantify such risk to issue a SNUR. The Agency believes that such an approach is not required by TSCA nor intended by Congress. Section 5 of TSCA was specifically designed to address situations where more data are needed. Consequently, the Agency commonly uses qualitative risk assessments where sufficient data are lacking to conduct a quantitative risk assessment. If the Agency reasonably concludes that a use may have some significant adverse health or environmental impact there is sufficient justification for issuing a SNUR.

VI. Designation of a Significant New Use

To determine what would constitute a significant new use of these chemical substances, EPA considered relevant information about the toxicity of the two substances and likely exposures associated with possible uses, including the four factors listed in section 5(a)(2) of TSCA. In particular, EPA focused on the following factors: (1) The intended use of the two substances; (2) the current markets for distillation residue amines; (3) potential uses for the two substances; (4) the potential exposures to nitrosamines inadvertently formed from use in metalworking fluids; and (5) the potential risks associated with exposures to the two substances and their N-nitroso derivatives. Based on these considerations, EPA has decided to define "use in metalworking fluids" as a significant new use of the two substances. A detailed discussion of EPA's analysis of exposure and risk in this use is contained in the preamble to the proposed rule (48 FR 38502).

EPA also considered defining the significant new use as "use in metalworking fluids that contain nitrosating agents." This approach would be parallel in construction to a recently published immediately effective proposed rule under sections 5(f) and 6(a) of TSCA, which prohibits the addition of nitrosating agents to two new chemical substances when used in metalworking fluids (49 FR 2762, January 23, 1984). This approach to the SNUR would be more narrow in that a significant new use notice would only be required in specific situations where a person actually intended to use the two substances with nitrosating agents. The Agency did not adopt this approach because users who are not manufacturers or processors are not limited by a SNUR. They may add nitrites to these two substances without notice to either EPA or their suppliers. Under the recent section 6 rule, it would be unlawful for any of these persons, including distributors and users to take actions which would result in the addition of nitrosating agents to the substance regulated under section 6(a).

One commenter stated that the identified nitrosamines of concern are possible byproducts of the use of the two substances in the presence of other chemicals, and thus the Agency's concern is narrower than the defined significant new use. Therefore, the commenter suggested that, "use in metalworking fluids" may not be appropriate as the significant new use in this case. Furthermore, the commenter suggested that the use of SNUR authority may not be appropriate where the identified concern is a possible byproduct of the significant new use. Section 5 gives the Agency the authority to consider risks associated with the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance. Byproducts associated with such activities are clearly included within the scope of EPA's TSCA authority. In fact, section 5(d)(1) of TSCA specifically requires that byproducts associated with the manufacture, processing, use, or disposal of a chemical substance be reported to EPA. EPA believes that this demonstrates that Congress intended EPA to consider byproducts when determining the need for regulation. In the present case, EPA wants to review the use of these substances in situations where both carcinogenic or potentially carcinogenic byproducts resulting from a use can form and significant exposure can occur.

EPA adopted the significant new use definition "use in metalworking fluids" because EPA's analysis shows the metalworking fluids are likely to contain nitrites and other nitrosating agents or to have nitrites or other nitrosating agents added during use in machine shops. In connection with EPA's continuing examination of the problem of nitrosamines in metalworking fluids, EPA has determined that nitrosating agents, in particular nitrites, are frequently added to metalworking fluid concentrates by formulators ("processors" under TSCA) for their corrosion inhibiting properties. In addition, EPA has determined that nitrosating agents, such as nitrites, are commonly available to workers in machine shops and are routinely added to metalworking fluids during use, particularly to restore the corrosion inhibiting properties of a fluid that has been used for some time. Thus, EPA would be concerned about the use of these substances in metalworking fluids even if the formulators did not add nitrosating agents during formulation since nitrosating agents could also be added during use.

VII. Alternatives

In the proposed SNUR, EPA considered other possible approaches: A section 8(a) rule, a section 6 rule, and taking no action.

For the reasons discussed in the proposed rule, EPA has elected to proceed with the promulgation of a SNUR for the significant new use of P–80–289 and P–80–290.

One commenter supported the use of SNUP authority in this case rather than section 8(a), section 6, or no action. However, the commenter believes that, whenever possible, the Agency should first institute a section 8(a) reporting rule to determine whether the activity of concern is one which is already occurring. Another commenter supported the use of section 8(a) in this case to gather the needed information rather than use SNUR authority, since the substances may have been used in metalworking fluids during the two to three year interval between the PMN submission and the proposal of the SNUR. The Agency believes that the use of SNUR authority rather than issuing a section 8(a) reporting rule makes better sense in this case. If EPA were informed in a section 8(a) reporting rule about the use of these substances by someone for the significant new use, the Agency could not take immediate action under section 5(e) as it can under a SNUR. By issuing a SNUR, the Agency believes it can protect human health while allowing innovation.

EPA considered taking action under section 6 to regulate use of these substances in metalworking fluids. If further information were submitted to EPA in a SNUR notice which supported EPA's concerns about nitrosamine formation, EPA could regulate the use of these substances in metalworking fluids in an appropriate manner, such as under section 5(f) of TSCA. EPA recently issued an immediately effective section 6(a) proposed rule under the authority of section 5(f) of TSCA for two new chemical substances, one of which will be used as a corrosion inhibitor in metalworking fluids (49 FR 2762). In this situation EPA had sufficient information on formation of a nitrosamine which is a known carcinogen.

One commenter stated that the Agency did not comply with section 9 of TSCA, specifically the referral to the Occupational Safety and Health Administration of the workplace hazards associated with these substances. Section 9 does not apply to SNURs. A referral under section 9 of TSCA occurs only when the Agency makes a finding that an activity "presents or will present an unreasonable risk." The Agency does not make such a finding in a SNUR rulemaking.

VIII. Persons Subject to SNUR Notice Requirements

Section 721.5 of the general SNUR provisions requires persons to submit a SNUR notice to EPA before they manufacture, import, or process a substance subject to a SNUR for a significant new use. EPA has decided to require manufacturers, importer, and processors to submit notices for this SNUR. Thus § 721.5 will apply to this SNUR without change.

EPA made this decision for several reasons. First, manufacturers, importers, and processors are likely to have information relevant to EPA's analysis of the significant new use should it be developed. Second, determining who should report between two or more parties is likely to be subjective in this significant new use situation and thus not susceptible to a clear standard in the rule. Third, the knowledge of manufacturers, importers, and processors that a significant new use has been developed is likely to vary.

In making this decision, EPA considered the manner in which the significant new use might be developed. For example, in some cases a manufacturer or importer might decide to market these two substances to formulators of metalworking fluids without having specific customers in mind at the time. In that situation, the manufacturer or importer must submit a SNUR notice. Since there would be no identified processors in that case, only the manufacturer or importer would submit a notice. EPA would evaluate the use based on the information submitted by the manufacturer or importer. If there were insufficient information about risks, either because of the lack of test data or because exposure information was missing, EPA could prohibit or limit the new use under section 5(e). Any processor later purchasing the substances from that manufacturer or importer for use in metalworking fluids would have to submit a SNUR notice in turn, prior to such processing, unless EPA amended the SNUR as a result of the manufacturer's or importer's SNUR notice.

In another situation, a manufacturer or importer might market the substances for uses other than in metalworking fluids and notify its customers of the SNUR. A processor who purchased the two substances from that manufacturer or importer might decide to develop the metalworking fluid use without informing the manufacturer or importer. In that instance only the processor would submit the notice because only the processor would intend the significant new use. If the processor informed the manufacturer or importer of the intended significant new use, the manufacturer or processor would also be required to submit a notice.

There are likely to be situations where, for the same transaction, both the manufacturer or importer and the processor/customer jointly develop the significant new use. In that situation or in any other situation where both have knowledge of the significant new use, both would be obligated to submit a notice because both would intend the significant new use. However, to avoid two potentially duplicative notices on the same transaction, EPA had determined that § 721.10(b) of the general provisions apply to allow manufacturers, importers, and processors in this situation to submit one joint SNUR notice or to submit separate notices each containing the information known to or reasonably ascertainable by the respective party. A detailed discussion of joint notice procedures appears in the preamble to the Subpart A promulgation (49 FR 35011).

Another approach EPA considered was to require only the person who actively develops and markets the substances for the significant new use to submit a SNUR notice because this person is likely to know the most about exposure from the significant new use and to have the most information about the market potential for the substance in the new use. The other party or parties technically subject to the notice requirements would at least initially be excused from this responsibility. One commenter supported this approach. EPA rejected this approach because it is not the best means for ensuring complete and accurate reporting. EPA has determined that each party might have information necessary to evaluate the risks of the new use. EPA believes that allowing a joint submission when both parties intend the new use relieves any additional burdens that might result and reduces the need for EPA to use section 5(e) to obtain additional necessary risk information.

IX. Applicability to Uses Which May Have Occurred Before Promulgation of the Final Rule

The chemical substances subject to this SNUR were added to the Inventory before the proposal. Thus, they could have been manufactured or processed for use in metalworking fluids before promulgation of this final rule.

Several commenters stated that the significant new use may not actually be a "new" use because two to three years have elapsed since the original PMN submission and the actual proposal of this SNUR. However, no one has indicated in response to the proposal that they were using the two substances in metalworking fluids. Therefore, the Agency has no evidence that this use is currently ongoing. As to uses that may have occurred since the proposal of this SNUR, EPA has decided that the intent of section 5(a)(1)(B) is best served by determining whether a use is a significant new use as of the proposal date of the SNUR. If uses begun during the proposal period were not considered to be significant new uses, it would be almost impossible for EPA to establish SNUR notice requirements, since any person could defeat the SNUR by initiating the proposed significant new uses before the rule becomes final. This is contrary to the general intent of section 5(a)(1)(B).

Thus, even if the substances were manufactured, imported, or processed between proposal and promulgation of this rule for the significant new use, such activities may not continue after the effective date of this rule. Any such person must cease such activity until it has complied with all SNUR notice requirements. One commenter disagreed with this approach. EPA recognizes that this interpretation may disrupt commercial activities of persons who began manufacture or processing for a "significant new use" during the proposal period; however, no commenters indicated that the significant new use had begun during the comment period on this particular rule. Further, the Agency believes that manufacturers and processors were given adequate notice of this interpretation by the terms of the proposal.

One commenter stated that the best way to avoid business disruptions for persons who may have been planning to commercialize the substances for the significant new use are (1) the Agency should have a formal SNUR policy that alerts persons to this possibility; (2) the Agency should not allow two to three years to elapse between the PMN submission and the promulgation of a SNUR; and (3) the Agency should not make the SNUR effective upon proposal. The Agency believes that, since over 3,000 substances have been submitted in PMNs, the best way to formalize its SNUR policy is through developing individual SNURs and receiving public comment on the SNURs. It is true that two to three years have elapsed between the submission of PMNs on these substances and this SNUR; however, the Agency may regulate any substance under a SNUR at any time. This is especially true if test data show that a substance that previously completed PMN review is potentially hazardous in a particular use. Finally, the Agency is not, in most cases, proposing immediately effective SNURs. Rather, most SNURs will be effective only after an opportunity for comment.

X. Procedures for Informing Persons of the Existence of This Significant New Use Rule

EPA will publish information concerning this final SNUR in the TSCA Chemicals-in-Progress Bulletin, published by the TSCA Assistance Office of EPA's Office of Toxic Substances. EPA will also use the TSCA Chemical Substance Inventory to inform persons of the existence of this final SNUR through footnotes by the chemical identities of the two substances subject to this SNUR. The footnotes will refer to an Inventory Appendix which will give a **Federal Register** or CFR citation of this SNUR. Commenters supported the use of all available means of informing persons of the existence of SNURs.

EPA recognizes that some processors may not know the identities of substances they process and therefore may not know they are required to submit a SNUR notice. The Agency believes this is unlikely in cases such as this, where the chemical substances are not confidential. Nevertheless, EPA has decided on a strategy to ensure that processors are aware that substances are subject to a SNUR. This strategy is reflected in § 721.5 of the general SNUR provisions which provides among other things, that manufacturers, importers, and processors must submit a SNUR notice if they distribute these substances in commerce unless they inform their customers in writing that the substances are subject to this SNUR and maintain records to verify such notification. Even if a manufacturer, importer, or processor provides such information to a customer, if the manufacturer, importer, or processor has reason to believe that the customer is processing the substances for the significant new use before submitting a SNUR notice, the manufacturer, importer, or processor must either submit a SNUR notice to EPA or cease sales to the customer for that use and report the matter to EPA enforcement authorities.

Some commenters stated that EPA should not hold manufacturers responsible if their customers fail to comply with SNUR requirements where the manufacturer did not know that the customer intended to process the substance for a significant new use. Instead of this approach, one commenter suggested that only processors should be responsible for complying with SNUR requirements. The Agency believes that the scheme it has selected in § 721.5 allows the greatest flexibility to manufacturers, importers, and processors of these substances, and is therefore less burdensome and is fair to all parties concerned. A detailed discussion of § 721.5 and the reasons for adopting it appears in 49 FR 35011.

XI. Reporting Form

As discussed in the proposal, and consistent with § 721.10 of the general provisions, the Agency will require SNUR notice submitters to use the PMN form published in the **Federal Register** of May 13, 1983 (48 FR 21722). However, for the purposes of this rule, EPA is interested only in gathering information concerning the actual significant new use and formulations employed in the use of these substances. Therefore, the rule requires that submitters only complete those sections of the form dealing with the chemical identity, the submitter identity, and the specific use. In addition, any health and safety data relating to these substances must be attached. Therefore, submitters must complete Parts I and III of the form as it appears in Appendix A to 40 CFR Part 720. The submitter may also provide information related to anticipated exposure to fluids in actual machinery operation. This information can be provided in Part II, B of the form. SNUR notices will be processed like PMNs according to the premanufacture notice procedures published in the **Federal Register** of May 13, 1983 (48 FR 21722), and appearing at 40 CFR Part 720.

XII. Exemptions to Reporting Requirements

The Agency has promulgated exemptions to SNUR reporting requirements under § 721.19 of the general SNUR provisions. In the case of these two substances, the terms of § 721.19 apply without change.

Section 721.19 adds four exemptions to those originally included in the proposed rule. The reasons for those additional exemptions are discussed in the **Federal Register** of September 5, 1984 (49 FR 35011). For this rule, EPA decided to exempt persons who manufacture, import, or process the substances only as impurities because such persons are less likely to know the identity of impurities and because EPA believes the risks potentially posed by such impurities, based on current concerns, are not significant. EPA has also exempted persons who import or process the substances as part of an article because EPA believes articles cannot be used as metalworking fluids and because the substances would not be available in articles to react to form nitrosamines.

EPA has also exempted persons from the rule when they manufacture or process the substances solely for export and label the substances in accordance with section 12(a)(1)(B) of TSCA. However, such persons must notify EPA of such export under section 12(b) of TSCA (see § 721.7 of the general SNUR provisions). EPA is not concerned about worker exposure during manufacture, import, or processing of the substances. Rather, EPA is concerned about workers who may be exposed to metalworking fluids containing the substances. Section 12(a) of TSCA exempts substances manufactured, processed, or distributed in commerce solely for export from regulation under section 5(a)(2) unless EPA finds that the activities will present an unreasonable risk of injury to health or the environment in the United States. In this case, if the use of these substances will occur outside the United States, EPA is not immediately concerned. The term "manufacture solely for export" is defined in the PMN rule (40 CFR 720.3(s)). The term "process solely for export" is defined in § 721.3 of the general SNUR provisions in a similar fashion. Thus persons would be exempt from reporting under this SNUR if a person manufactures (the term manufacture includes import) or processes the substances solely for export from the United States under the following restrictions: (1) There is no use of the substances in the U.S., other than in small quantities solely for research and development; (2) processing is restricted to sites under the control of the manufacturer, or processor, respectively; and (3) distribution in commerce is limited to purposes of export. If a person manufactured or processed these substances both for export and for use in the United States, such manufacture and processing would not be "solely for export" because some manufacture or processing would be for use in the United States.

EPA issued its final premanufacture notification rules under 40 CFR Part 720 which was published in the **Federal Register** of May 13, 1983 (48 FR 21722) including § 720.36 which contained detailed rules for the section 5(h)(3) exemption for chemical substances manufactured or imported in small quantities solely for research and development. On September 13, 1983 (48 FR 41132), EPA stayed the effectiveness of § 720.36, among other provisions of the PMN rule, pending further rulemaking to revise the provisions. Because § 720.36 was not in effect when EPA codified § 721.19, the Agency relied on the general definition of "small quantities solely for research and development" in § 720.3(cc) and section 5(h)(3) of TSCA to determine whether activities qualify under this exemption. Upon promulgation of a revised § 720.36, EPA intends to amend § 721.19 to adopt the provisions of the revised § 720.36.

XIII. Test Data and Other Information

EPA recognizes that under TSCA section 5 a person is not required to develop any particular test data before submitting a notice. Rather, a person is required only to submit test data in the person's possession or control and to describe any other data known to or reasonably ascertainable by that person. However, in view of the potential health risk that may be posed by the significant new use of these two substances, EPA encourages possible SNUR notice submitters to test the substances under various simulated use conditions to identify and quantify the level of nitrosamines formed in metalworking fluids. Consideration should be given to pH and temperatures during use and any other factors that might influence nitrosamine formation. If a SNUR notice is submitted for use in metalworking fluids without such test data, EPA may take action under section 5(e).

As part of an optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate the significant new use of the two substances. During prenotice consultation, EPA will also discuss information that will be particularly useful to the Agency in reviewing these substances. EPA encourages persons to consult with the Agency before selecting a protocol for testing the substances.

XIV. Economic Analysis

The Agency evaluated the potential costs of establishing significant new use reporting requirements for these two substances and the potential costs of the section 8(a) alternative. This evaluation is summarized in the preamble to the proposed rule. The complete economic analysis of this rule and other regulatory options is included in the rulemaking record and is available for public review.

XV. Judicial Review

Judicial review of this final rule may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so-called "races to the courthouse," EPA has decided to promulgate this rule for purposes of judicial review two weeks after publication in the **Federal Register**, as reflected in "DATES" in this document. The effective date has, in turn, been calculated from the promulgation date.

XVI. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50503A).

The record includes basic information considered by the Agency in developing this rule. The record now includes the following:

1. The PMNs for these substances.
2. The **Federal Register** notice of receipt of the PMNs.
3. The proposed SNUR for these substances.
4. The economic support document for the proposed SNUR.
5. The notice of commencement of manufacture for these substances.
6. Public comments on the proposal.
7. Comments from OMB and EPA's response.
8. The 21 references listed in the preamble to the proposed rule.

A public version of this record from which confidential business information is deleted is available to the public in the OPTS Public Information Office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays, located in Rm. E-107, 401 M St., SW., Washington, D.C.

XVII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "Major Rule" because it will not have an effect on the economy of $100 million or more and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this rule, EPA believes that the cost will be low. Even if EPA received 25 SNUR notices, and each submitter performed the recommended testing, the direct cost of the rule would be under $1 million. In addition, because of the nature of the rule and the substances subject to it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation which has high potential value. Finally, this rule may encourage innovation in safe chemical substances or highly beneficial uses.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this rule are likely to be small businesses. However, EPA believes that the number of small businesses affected by this rule would not be substantial even if the significant new use were developed by small companies. EPA expects to receive few SNUR notices for the substances. With these data, EPA would be able to evaluate the risks posed by the substances in this use and, if necessary, take action to control those risks. Therefore, even if all SNUR notices are submitted by small businesses, only a few small businesses will be directly affected by the rule. In addition, the cost of the testing that may be encouraged by this rule should not have a major impact on a small business that may want to use these substances in metalworking fluids.

C. Paperwork Reduction Act

The information reporting requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2070–0012.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: November 8, 1984.

William D. Ruckelshaus,
Administrator.

PART 721—[AMENDED]

Therefore, Chapter I of Title 40 is amended as follows:

1. By alphabetically adding the definition for "metalworking fluid" to § 721.3 to read as follows:

§ 721.3 Definitions.

* * * * *

"Metalworking fluid" means a liquid of any viscosity or color containing intentionally added water and used in metal machining operations for the purpose of cooling, lubricating, or rust inhibition.

* * * * *

2. By adding a new § 721.170 to read as follows:

§ 721.170 Isopropylamine distillation residues and ethylamine distillation residues.

(a) *Chemical substances and significant new use subject to reporting.* (1) The following chemical substances referred to by their Chemical Abstracts Service (CAS) register numbers and chemical names are subject to reporting under this section for the significant new use identified in paragraph (a)(2) of this section: CAS No. 79771–08–7, isopropylamine distillation residues, and CAS No. 79771–09–98, ethylamine distillation residues.

(2) The significant new use is use in metalworking fluids.

(b) *Specific requirements.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph.

(1) *Notice Requirements and Procedures.* Section 721.10 applies to this section, except persons submitting a notice must complete only Parts I and III of the notice form.

(2) [Reserved].

(Sec. 5, Pub. L. 94–469, 90 Stat. 2012 (15 U.S.C. 2604))

(Approved by the Office of Management and Budget Under—OMB control number 2070–0012)

[FR Doc. 84–30838 Filed 11–23–84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 31

[CC Docket No. 81–893; FCC 84–547]

Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry); and Amendment of the Commission's Rules To Provide for Nonregulated Activities of Telephone Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule (Fifth Report and Order).

SUMMARY: This action requires a separate set of books for nonregulated activities of telephone carriers. These accounting changes are prescribed in order to implement the Commission's *Computer II* decision which required carriers to account for nonregulated activities in separate books of account when those activities are not conducted through a separate subsidiary. This action will establish specific below-the-line accounts on the regulated books to identify costs associated with nonregulated activities and will eliminate some unnecessary rules.

EFFECTIVE DATE: May 27, 1985.

FOR FURTHER INFORMATION CONTACT: Gerald P. Vaughan, Chief, Accounting and Audits Division, Common Carrier Bureau (202) 634–1861.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 31

Telephone, Uniform System of Accounts, Communications common carriers, Reporting and recordkeeping requirements.

Fifth Report and Order

In the matter of Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry) amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies, to provide for nonregulated activities; CC Docket No. 81–893.

Adopted: November 9, 1984.

Released: November 20, 1984.

By the Commission.

I. Introduction

1. In the Notice of Proposed Rulemaking (NPRM) in Docket 81–893 released June 21, 1983, 48 FR 29891 (1983), the Commission proposed to revise Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies (USOA), to establish provisions to account for carriers' nonregulated activities in separate books of account. These revisions were proposed to implement the Commission's decision in Docket 20828, *Second Computer Inquiry (Computer II)*, [1] that nonregulated activities should be accounted for in separate books of account by carriers who do not conduct these activities through a separate subsidiary. Of course, if a carrier established a subsidiary to conduct nonregulated activities, it would establish a separate set of books for the subsidiary as a separate legal entity. Based on our analysis of the comments received in this proceeding, we have decided to adopt, with some minor modifications,

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[1] Amendment § 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384 (1980), *reconsideration*, 84 FCC 2d 50 (1980), *further reconsideration*, 88 FCC 2d 512 (1981), *aff'd sub nom.* CCIA v. FCC, 693 F. 2d 198 (D.C. Cir. 1982), *cert. denied sub nom.* Louisiana Pub. Serv. Comm'n v. FCC, 103 S. Ct. 2109 (1983).

the accounting changes proposed in the NPRM.

2. The NPRM also sought comments as to what allocation procedures and controls should be established to ensure that nonregulated activities receive a fair share of a company's joint and common costs. Although several parties commented in this area, these comments do not provide an adequate record to permit us to decide to what extent we should prescribe such procedures and controls. Accordingly, we are deferring the question of allocations to another NPRM which we will issue in the near future.

II. Background

3. In the *Computer II* decision the Commission allowed telephone carriers other than AT&T (and after divestiture, the Bell Operating Companies) to offer enhanced services and customer premises equipment (CPE) on a nonregulated basis without establishing a separate subsidiary. In doing so, however, the Commission decided that carriers conducting these nonregulated activities should account for them in separate books of account.[2]

4. The accounting proposed for telephone carriers in this proceeding was based on similar accounting proposed for record carriers in a Notice of Proposed Rulemaking in Docket 82-678, 47 FR 44781, released October 4, 1982. Subsequently, this accounting was adopted with minor changes in the *Report and Order* in Docket 82-678 on September 9, 1983, FCC 83-398.

III. Proposed Revisions

5. As indicated in the NPRM, our objectives in proposing separate books of account for nonregulated activities were to: (1) Assure availability for regulatory purposes of data which are not distorted by nonregulated activities; (2) establish specific accounts to identify account balances associated with nonregulated activities; (3) allow maximum latitude for carriers in establishing their accounting systems for nonregulated activities; (4) identify accounts affected by deregulation and establish instructions for transfers from prescribed accounts to the accounts for nonregulated activities; [3] (5) provide for recording joint transactions and any necessary allocations between the regulated entity and its nonregulated activities; and (6) monitor the scope of nonregulated activities and any potential for adverse impacts on regulated services.

6. To achieve these objectives, we proposed to establish on the regulated books two new accounts for nonregulated activities, as asset account entitled "Nonregulated investment" and a profit and loss account entitled "Income from nonregulated activities." We also proposed to modify the existing accounts used in accounting for nonregulated activities to conform them to the new accounting requirements. Under the proposal, the new investment account would include the investment in physical property for other than the regulated activities, receivables representing the nonregulated portion of expenses incurred by the regulated activities, payables representing costs incurred by the nonregulated activities for the regulated business, and the net income or loss of the nonregulated activities for each month. The proposed profit and loss account would be used to record the monthly net income or loss of the nonregulated activities at the same time that it is included in the investment account. The nonregulated entity would maintain its own books of account.

IV. Summary of Comments

7. Interested parties were invited to file comments on our proposal on or before August 1, 1983, and reply comments on or before August 22, 1983. Comments and/or reply comments on the above proposals were received from Arthur Andersen & Co.; Virginia State Corporation Commission (Virginia); Rural Telephone Coalition (RTC); Colorado Public Utilities Commission (Colorado); Central Telephone Company (Centel); GTE Service Corporation (GTE); United Telephone Systems, Inc. (United); State of California and the Public Utilities Commission of the State of California (California); Independent Data Communications Manufacturers Association, Inc. (IDCMA); Staff of the Michigan Public Service Commission (Michigan); North American Telephone Association (NATA); New York State Department of Public Service (New York); Southern New England Telephone Co. (SNET); American Telephone and Telegraph Company (AT&T); Public Service Commission of Wisconsin (Wisconsin); Kentucky Public Service Commission (Kentucky); and Idaho Public Utilities Commission (Idaho).

8. The respondents raised three major issues. These issues are (1) Whether the Commission should require separate books of account for nonregulated activities, (2) if separate books of account are required, whether the Commission should prescribe a detailed accounting system for the nonregulated activities, and (3) to what extent the nonregulated activities should be reported to the Commission and disclosed to the public.

9. *Separate books of account.* Only one respondent, Arthur Andersen and Co., opposes the establishment of a separate set of books for nonregulated activities as proposed. It states that the separation proposed by the Commission would cause confusion and added clerical cost and is unnecessary to meet the Commission's stated objectives. It argues that the nonregulated costs can be isolated by segregating the amounts within the existing below-the-line accounts. Centel also comments on the use of existing below-the-line accounts, although it does not oppose the establishment of a separate set of books per se. Centel's concern is that some of the independent companies, particularly the smaller ones, may not have enough nonregulated business to justify the expense of establishing a separate set of books for those activities. Therefore, Centel urges the Commission to allow carriers the option of using existing below-the-line accounts or establishing a separate set of books for nonregulated activities.

10. None of the remaining respondents disagree with the proposal to establish separate books of account for the provision of nonregulated services. Of these respondents, nine specifically support our proposal to establish below-the-line summary accounts on the regulated books to reflect the regulated entities investment in and the operating results of the nonregulated activities. These respondents generally support the need to account for the nonregulated activities separately from the regulated activities as a means of meeting the primary objective of this proceeding, which is to ensure that the Commission

[2] We note that the Telecommunications Industry Advisory Group (TIAG), an advisory committee established to assist the Commission in rewriting the Uniform System of Accounts (USOA) for telephone companies (CC Docket No. 78-196), forwarded to the Commission on May 31, 1984, an accounting system recommendation which is less comprehensive in its accounting for nonregulated activities and does not include the concept of separate books of account. In effect, this constitutes a recommendation to reconsider a basic *Computer II* policy. In our original charge to the TIAG for an accounting system recommendation, we did not envision entertaining recommendations for substantive changes in basic policy and do not believe that it would be appropriate to consider such changes in the context of accounting system revision. The accounting established herein is premised on our existing *Computer II* policies and, thus, will be reflected in our forthcoming design of a revised USOA.

[3] The accounting for proceeds from the sale of CPE under regulation, the valuation of CPE supporting assets (including land and buildings) transferred to nonregulated activities by the Independents, and the treatment of embedded CPE owned by the Independents and tariffed with this Commission rather than the state commissions was addressed in a separate Order.

has data available for regulatory purposes that are not distorted by nonregulated activities. In its reply comments, IDCMA states that Arthur Andersen and Co.'s position that separate books are unnecessary is an untimely request for reconsideration of *Computer II*.

11. *Accounting system for nonregulated activities.* We received a number of comments indicating that the Commission should go beyond the proposed summary accounts and prescribe a detailed system of accounts to be used in accounting for nonregulated activities in a separate set of books. They contend that a detailed prescription of accounts is necessary to safeguard against the potential for cross subsidization, particularly in those instances involving the joint use of plant and personnel, and to ensure an easily auditable system. New York, for instance, recommends that we prescribe specific accounts in which to accumulate major groups of nonregulated costs by business activity. California and IDCMA argue that if carriers are allowed to use plant and employees jointly in both regulated and nonregulated activities, the accounting system must be detailed, precise and auditable. NATA proposes a highly structured system of accounts for nonregulated activities and sets forth in considerable detail the accounts that it believes should be prescribed.

12. Several other respondents, on the other hand, support the Commission's proposal to permit the carriers flexibility in establishing the nonregulated accounting system. They state that flexibility for the nonregulated accounting is necessary to avoid undue burdens on the carriers, particularly the smaller ones.

13. *Reporting and disclosure of nonregulated activities.* The disclosure of the nonregulated activities of the carriers was addressed by three respondents. NATA states that financial reporting requirements should be imposed for nonregulated activities as an aid to enforcement of the accounting provisions. It suggests a detailed balance sheet and income statement be filed for the nonregulated activities. GTE and SNET, on the other hand, are concerned that the proposed accounting and the Commission's current rules will disclose information which they consider proprietary. GTE states that the Commission should not adopt the proposed summary accounts for nonregulated activities because they would disclose the investment and operating results of those activities. It recommends, therefore, that the Commission accommodate the accounting within the existing accounts and defer establishing new accounts to the project to rewrite the USOA, Docket 78–196, 88 FCC 2d (1981). SNET's concern about disclosure focuses on the supplemental annual report for noncarrier operations required under the provisions of § 43.21(b) of the Commission's Rules and Regulations.[4] It requests that the provisions in Section 43.21(b) be waived or eliminated in this proceeding.

14. *Other issues.* Finally, the respondents raised several other issues. First, AT&T recommends that, when plant is used in both regulated and nonregulated activities, the entire investment be recorded in the regulated accounts with the nonregulated entity being charged an appropriate allocation of the cost of the investment (*e.g.*, depreciation) plus a return on the investment. SNET also recommends that shared costs first be recorded on the regulated books with appropriate amounts subsequently allocated to the nonregulated activities. Second, RTC seeks refinement to ensure that companies' operations that are currently recorded in account 103, "Miscellaneous physical property," but subject to some degree of regulation (*e.g.*, cable television investments) are not confused with nonregulated activities. Third, New York indicates that it is unclear whether the Commission intends to apply its accounting proposal to all independents, and argues that we should not attempt to fashion accounting for those independents not subject to our accounting rules.

Discussion

15. *Separate books of account.* In the NPRM we proposed that carriers account for all investments, revenues, and expenses of nonregulated activities in separate books of account when a separate legal entity is not established for those activities. As proposed, the regulated books would reflect only the net investment and net income or loss of nonregulated activities in below-the-line accounts. The primary objective of our proposal was to ensure that the Commission had data available for regulatory purposes that are not distorted by nonregulated activities.

16. Arthur Andersen and Co. argues that it is not necessary to establish separate books of account for nonregulated activities. It states that the nonregulated activities can be isolated by segregating the amounts within a carrier's existing (below-the-line) accounts. We agree that nonregulated activities can be accounted for within existing accounts. In fact, in CC Docket 79–105, 86 FCC 2d 885 (1981), and in CC Docket 82–681, FCC 83–457, released November 2, 1983, we prescribed the use of existing accounts as interim accounting for detariffed CPE until the rules were revised to provide for a separate set of books for nonregulated activities.

17. As stated previously, we made the decision to require a separate set of books for nonregulated activities under *Computer II.* Arthur Andersen and Co.'s comments provide no new information that was not considered in our *Computer II* decision. Accordingly, we agree with IDCMA that Arthur Andersen and Co. has submitted an untimely request for reconsideration. We will, however, consider Arthur Andersen and Co.'s arguments as supportive of Centel's request that we waive the accounting rules for small companies.

18. Centel's comment that some small carriers might not generate enough nonregulated business to warrant the cost of establishing separate books of account raises a valid concern. We do not believe, however, that this concern warrants adopting Centel's recommendation that carriers be allowed an option of using existing accounts or establishing a separate set of books.

19. To address this concern, we have considered establishing a standard which would provide automatic exemption from the separate books requirement for carriers with insignificant nonregulated activities. We have decided not to do so, however, because we have no basis for establishing such a standard. Accordingly, we have decided to adopt our proposal and to address individual carrier problems on a case by case basis. Carriers that believe that this requirement is unnecessary and unduly

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[4] Section 43.21(b) provides as follows: Each communication common carrier that has separate departments or divisions for the conduct of its common carrier operations and its noncarrier activities, shall file with the Commission a supplemental annual report with respect to its common carrier operations, exclusively, and a supplemental annual report applicable only to its noncarrier operations. Each such report shall be prepared on the basis of the accounting performed for the respective departments prior to elimination of intracompany items and shall be accompanied by a statement of consolidation and eliminations or other explanation showing how the consolidated report submitted in compliance with paragraph (a) of this section was developed. Each such supplemental report shall be completed in its entirety wherever applicable to the respective departments, except that any schedule or statement that would be an exact duplicate of the corresponding schedule or statement in the consolidated report may be omitted from the supplemental report if proper annotation is made.

burdensome should request a waiver as provided for in Section 1.3 or our Rules.

20. *Accounting system for nonregulated activities.* New York, NATA, Michigan and California indicate that the Commission should prescribe a detailed accounting system for the nonregulated activities. They believe a detailed system is necessary to safeguard against cross subsidization and to ensure that the nonregulated activities are auditable.

21. After reviewing the comments, we find that the accounts we proposed are sufficient to meet our regulatory needs. These proposed accounts will isolate the nonregulated activities on the regulated books. Moreover, all transactions between the regulated activity and the nonregulated activities will be recorded in Account 106, "Nonregulated investments," which will provide a clear audit trail for review of these transactions and should insulate the regulated accounts from distortion by the nonregulated activities. The actual separate set of books to be established will be left to the companies. This approach gives the companies flexibility to develop their own nonregulated accounting system, and at the same time, provides an audit trail on the regulated books. These results are consistent with our stated objectives in this proceeding.[5]

22. *Reporting and disclosure or nonregulated activities.* NATA believes that the Commission should require detailed financial reporting for nonregulated operations as an aid to enforcing the prescribed accounting separations for regulated and nonregulated activities. As discussed at para. 13, SNET and GTE, on the other hand, believe that detailed data for nonregulated activities should not be reported and that disclosure of such data would cause them competitive harm.

23. We have carefully considered the comments concerning the reporting and disclosure of nonregulated activities and have decided not to require detailed reporting for those activities. We did not propose detailed reporting for nonregulated activities, and more importantly it has not been our intent to have that information disclosed. Moreover, we are not convinced that reporting of nonregulated data is needed to achieve our objective that regulated data not be distorted, and that regulated activities not cross-subsidize nonregulated activities. In addition to accounting prescribed herein, we plan to meet that objective through the allocation procedures and controls, and through our audits of the carriers' accounts. If in the future we find that allocation procedures and audits are insufficient to assure undistorted regulatory data or find a need for additional information, we will consider the use of additional reporting requirements as a further control. Accordingly, we have decided not to adopt detailed reporting as recommended by NATA.

24. The reporting requirement of § 43.21(b) has been in place for over twenty years and was implemented so that the Commission would receive information on AT&T's operating divisions that conducted common carrier related activities, such as AT&T's General Department. This provision was not intended to be applicable to the post *Computer II* nonregulated activities conducted in today's competitive environment which are subject to accounting rules adopted in this Report and Order. Accordingly, we are waiving § 43.21(b) to the extent that it would require carriers to file a supplemental annual report for nonregulated activities recorded in the new below-the-line summary accounts. The balances in these accounts, however, will be included in the carriers' reports and disclosed. Disclosure of those accounts was clearly contemplated by objective 2 as set forth in paragraph 5 above.

25. *Other Issues.* AT&T and SNET have raised questions concerning the manner in which joint costs should be recorded. We generally agree that the common costs should be recorded on the regulated books and that allocations should be made for the nonregulated portions. The specific allocation procedures are not being prescribed at this time. As previously indicated we will soon address cost allocations in another NPRM. Meanwhile, carriers are required to allocate costs to nonregulated activities on a fully distributed costing basis and shall maintain records for costs and usage to support their allocations. These allocations will be subject to increased audit review by this Commission in the future.

26. We have reviewed RTC's concern that we define our accounts in such a way as to distinguish activities considered by some to be subject to regulation (*e.g.* cable television investment) from the nonregulated activities we are concerned with. For accounting purposes, regulated activities of subject carriers are all common carrier telecommunications products and services subject to the tariff filing requirements contained in Title II of the Communications Act of 1934, as amended, and telecommunications products and services tariffed by the state commissions.[6] The activities described by RTC do not meet our definition of regulated services.

27. Finally, New York's concern that we might be prescribing accounting in this area for all independents is unfounded. In the Notice of Inquiry in this Docket, we envisioned that state regulatory commissions would oversee the appropriate accounting separation for carriers subject exclusively to their jurisdictions.

28. *Amendments.* Based on the foregoing, we are establishing a new below-the-line investment account 106, "Nonregulated investments," to record nonregulated activities. Account 106 will include the permanent investment, a receivable for all costs, including taxes, incurred on behalf of the nonregulated activities and a payable for all costs incurred by the nonregulated activities on behalf of the regulated activity and the monthly profit or loss from the nonregulated operations. Account 317, "Income from nonregulated activities," will include only the net of total revenues and total expenses with an offsetting entry to account 106.

29. Other miscellaneous changes are necessary to substitute the use of account 106 for account 103, and account 124, "Merchandise and materials held for sale or lease on a detariffed basis," and to remove nonregulated amounts from accounts 315, "Income from miscellaneous physical property," or 316, "Miscellaneous income," as established in Docket 79–105, and Docket 82–681. These Dockets established interim accounting to be used for nonregulated sale or lease transactions. Since this Order establishes the final accounting for nonregulated activities, this interim accounting is no longer necessary.

IV. Regulatory Flexibility Act

30. In compliance with the provisions of Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the above discussion sets forth the purpose of these amendments. Further, we certify that these accounting changes can be readily implemented by all

[5] However, we are in no way attempting to preclude the states from exercising their long standing right to require side records to meet their regulatory objectives.

[6] Telephone companies may, under certain circumstances, construct cable systems and offer the facilities to cable operators under state tariffs. In such cases, the revenues and expenses would be included in accounts for regulated activities.

carriers subject to Part 31 without significant economic impact.

V. Ordering Clauses

31. Accordingly, it is ordered, that under the authority contained in Sections 4(i), 4(j) and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 4(j) and 220, Part 31, *Uniform System of Accounts for Class A and Class B Telephone Companies,* of the Commission's Rules is amended as set forth in the attached Appendix to be effective May 27, 1985, provided however, that any carrier may, at its option, adopt these changes effective no earlier than January 1, 1985.

32. It is further ordered, that the Secretary shall, pursant to Section 220(i) of the Communications Act of 1934, as amended, 47 U.S.C. 220(i) cause this *Fifth Report and Order* to be served on each state commission having jurisdiction over intrastate communications service.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 31, "Uniform System of Accounts For Class A and Class B Telephone Companies," is amended as follows:

1. Section 31.01-3, "Definitions," is amended to add new paragraphs (x) and (cc), and to redesignate the old items (x) —(aa) as (y)—(bb), and to redesignate old items (bb) —(kk) as (dd) —(mm).

§ 31.01-3 Definitions.

* * * * *

(x) " Nonregulated activities" refers to those activities of a subject telephone company which are not common carrier telecommunications products and services subject to the tariff requirements contained in Title II of the Communications Act of 1934, as amended, and common carrier telecommunications products and services tariffed by the state commissions.

* * * * *

(cc) "Regulated telephone service" refers to those activities of subject telephone companies that are subject to the tariff filing requirements of Title II of the Communications Act of 1934, as amended, and common carrier telecommunications products and services tariffed by the state commissions.

2. Section 31.100:1, "Telephone plant in service," is revised to read as follows:

§ 31.100:1 Telephone plant in service.

This account shall include the original cost of the company's property used in regulated telephone service or shared with nonregulated activities at the date of the balance sheet as classified under accounts 201 to 277, inclusive. (Note also §§ 31.2-20, 31.2-21, 31.106 and 31.524.)

3. Section 31.103, "Miscellaneous physical property," is revised to read as follows:

§ 31.103 Miscellaneous physical property.

This account shall include the company's investment in physical property other than property the investment in which is includible in accounts 100:1, "Telephone plant in service," 100.2, "Telephone plant under construction," 100.3, "Property held for future telephone use," 100:4 "Telephone plant acquisition adjustment," and 106, "Nonregulated investments." It shall include the company's investment in regulated telephone property retired and held for sale.

4. Section 31.2-20 "Purpose of telephone plant accounts," is revised by adding the following after item (d):

§ 31.2-20 Purpose of telephone plant accounts.

* * * * *

(d) * * *

(See also § 31.106.)

5. Section 31.106, "Nonregulated investments," is added to read as follows:

§ 31.106 Nonregulated investments.

(a) This account shall include all of the carrier's investment in physical property, both in service and in stock, together with related allowance for depreciation that is used or held entirely for other than regulated communication services. It shall include the amount of all assessments for the construction of public improvements levied against nonregulated physical property utilized in nonregulated operations. This account shall include, as a receivable, costs including taxes incurred on behalf of nonregulated operations, and, as a payable, costs incurred by the nonregulated business on behalf of regulated operations. This account shall reflect net income or loss on nonregulated activity.

(b) This account shall be subdivided as follows:

106:01 Permanent investment
106:02 Receivable/payable
106:03 Current net income or loss.

6. Section 31.122, "Materials and Supplies," paragraph (a) and Note E are revised and (e) is added, as follows:

§ 31.122 Materials and supplies.

(a) This account shall include the cost (consideration being given to the adjustments outlined in paragraphs (b), (c) and (d), and Notes A, B, C, D and E) of unappropriated material and supplies held solely for use in regulated communications services or shared with nonregulated activities (including plant supplies, unissued small tools, fuel, stationery and other supplies) and of material and articles of the company in process of manufacture for supply stock. (See also Note E to this account.)

* * * * *

(e) This account shall be subdivided as follows:

122:01 Materials held solely for use in the carrier's operations or shared with nonregulated activities.
122:02 Materials in process of conversion
122:03 Undistributed supply expenses.

Note E: This account shall not include items in stock which are includible in account 231, "Station apparatus," or account 106, "Nonregulated investments." Materials in stock that are normally used for the repair of regulated station apparatus shall be includible in account 605, "Installations and repairs of station equipment," if company-held, and in this account if in stock and held by others.

§ 31.124 [Removed]

7. Section 31.124 is removed.

8. Section 31.231, "Station apparatus," is amended to revise paragraph (a) as follows:

§ 31.231 Station apparatus.

(a) This account shall include the original cost of station apparus, including small private branch exchanges installed for customers' use. (Note also accounts 221, 235 and 262.) This account shall also include the cost of materials in stock which are normally used as station apparatus or additions, thereto, as distinguished from items normally used for repair purposes. (Note also accounts 106, 221, 235 and 262.) Items included in this account which are normally used as station apparatus shall remain herein until finally disposed of or until used in such manner as to be includible in other accounts.

* * * * *

9. Section 31.232, "Station connections—inside wiring," is amended by revising Note A as follows:

§ 31.232 Station connections—inside wiring.

* * * * *

Note A: Costs charged to this account prior to October 1, 1981, in connection with inside cabling are restricted to cables used in section installations instead of wires, such as those that run from wall outlets or floor terminals to the station apparatus, and to cables used in installing small private branch exchanges. (See also accounts 106, 221, 235, 262 and 317.) The cost of wires or cabling used in installing equipment includible in account 234, "Large private branch exchanges," shall be included in that account and shall not be included in whole or in part in account 232. (See also accounts 106, 221, and 262.) The cost of riser and distributing cables, including associated cross-connection boxes, terminals, distributing frames, etc., is chargeable to account 242:1, "Aerial cable."

* * * * *

§ 31.234 [Amended]

10. Note E of Section 31.234 is removed.

§ 31.235 [Amended]

11. Note B of Section 31.235 is removed.

§ 31.241 [Amended]

12. Section 31.241, "Pole lines," is amended by removing the Note.

§ 31.242:1 [Amended]

13. Note C of Section 31.242:1 is removed.

§ 31.242:2 [Amended]

14. Note F of Section 31.242:2 is removed.

§ 31.242:3 [Amended]

15. Note C of Section 31.242:3 is removed.

§ 31.243 [Amended]

16. Note B of Section 31.243 is removed.

§ 31.244 [Amended]

17. Note C of Section 31.244 is removed.

18. Section 31.3–30, "Purpose of income accounts," is revised as follows:

§ 31.3–30 Purpose of income accounts.

The income accounts (300 to 380, inclusively) are designed to show as nearly as practicable for each calendar year the total operating revenues; the total operating expenses; the income and other operating taxes of the company; the income from securities owned; the net income from property not used in the company's communication operations; amounts accrued for interest costs; credits from interest charged to construction; miscellaneous income, expenses, and taxes; rents from and for operating property; profit or loss from nonregulated activities; and extraordinary and delayed income credits and charges. The net balance in the income accounts shall be cleared to account 400, "Balance transferred from income accounts."

19. Section 31.316, "Miscellaneous income," is revised to read as follows:

§ 31.316 Miscellaneous income.

This account shall include all items not provided for elsewhere, properly credited to income.

Items

(Note § 31.01–8)

Fees collected in connection with the exchange of coupon bonds for registered bonds.

Profits from the telephone operations of other companies realized by the company under contract.

Profits realized on the sale of temporary cash investments.

20. Section 31.317, "Income from nonregulated activities," is added as follows:

§ 31.317 Income from nonregulated activities.

(a) This account shall be used by those companies who, according to our rules, can engage in offering customer premises equipment, and enhanced services and other nonregulated activities without establishing a separate subsidiary for that purpose.

(b) All revenues and expenses (including taxes) incurred in these nonregulated activities shall be recorded on separate books of account for such operations. [Only the net of the total revenues and total expenses shall be recorded in this account.]

21. Section 31–6–60, "Purpose of operating expense accounts," is revised by designating the text as paragraph (a) and adding paragraph (b).

§ 31.6–60 Purpose of operating expense accounts.

* * * * *

(b) Expenses incurred by a carrier on behalf of its nonregulated operation should be charged directly to that operation where possible. Expenses incurred by a carrier on behalf of its nonregulated operation and initially charged to its regulated operation should be transferred monthly to account 106, "Nonregulated Investment," and a separate subclass shall be established for the credits to the appropriate expense accounts for amounts transferred to nonregulated activities. Note also §§ 31.106 and 31.6–62.)

§ 31.6–61 [Amended]

22. Section 31.6–61, "Cost of repairs," is revised to remove the Note to paragraph (b).

[FR Doc. 84-30903 Filed 11-23-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 69

[CC Docket No. 78-72; Phase I; FCC 84-545]

MTS and WATS Market Structure

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: As part of the third reconsideration of the *Access Charge Order*, CC Docket No. 78-72, (Phase I), 93 FCC 2d 241 (1983), the Commission adopted an amendment to § 69.303(c) of the Commission's Rules, altering the allocation of Category 5 station equipment investment between the switched access and special access categories. Pursuant to the access charge plan, exchange carrier investment in plant and equipment used to originate or terminate interstate telecommunications is recovered through access tariffs reflecting the cost of providing interstate access to the local switched network or to private connections provided by exchange carriers. The amended rule requires exchange carriers to allocate Category 5 station equipment investment based on the relative number of equivalent lines in use, but excludes from that allocation formula special access lines that are exempt from the special access surcharge as provided in § 69.115(e) of the Commission's Rules. Thus, private lines that do not terminate in Category 5 station equipment are not counted for the purposes of determining the allocation.

EFFECTIVE DATE: This Order will be effective November 27, 1984.

FOR FURTHER INFORMATION CONTACT: Mary L. Brown or Thomas J. Sugrue, Policy and Program Planning Division (202) 632–9342.

List of Subjects in 47 CFR Part 69

Access charges, Cost allocation, Communications common carriers.

Memorandum Opinion and Order

In the matter of MTS and WATS Market Structure, CC Docket No. 78-72, Phase I.

Adopted: November 8, 1984.

Released: November 14, 1984.

By the Commission.

1. In the *Third Report and Order* in this docket (*Access Charge Order*),[1] we

[1] *MTS and WATS Market Structure*, CC Docket No. 78-72, Phase I, 93 FCC 2d 241 (1983), *modified on reconsideration*, FCC 83-356, 48 FR 10319, 54 RR2d 615 (released August 22, 1983) (*First Reconsideration Order*), *further modified on reconsideration*, FCC 84-36, 49 FR 7810, 55 RR2d 785 (released February 15, 1984) (*Second Reconsideration Order*), *aff'd in part, remanded in*

Continued

adopted rules governing the process by which local telephone companies are to recover the costs of their facilities and services used in the origination or termination of interstate and foreign telecommunications.[2] Since that time we have twice amended these "access charge" rules in orders on reconsideration. In response to the *Second Reconsideration Order*, numerous parties have petitioned for further reconsideration of these rules. One of the issues raised in this third reconsideration round concerns the allocation of Category 5 station equipment investment between the switched and special access categories. Because of actions we are taking today with respect to the special access tariffs, immediate resolution of this issue is necessary to allow exchange carriers to file revised tariffs that properly reflect the costs associated with the various types of private lines.

2. In our companion order in the access tariff proceeding,[3] we find the proposed special access tariffs unlawful and direct the exchange carriers to file revised tariffs by December 3, 1984, with a scheduled effective date of January 17, 1985. We do not anticipate acting on all the issues raised in the third reconsideration round in this docket (*i.e.* No. 78–72) before the revised tariffs must be filed. Accordingly, we have split the third reconsideration in this docket into two parts. The first part of the reconsideration, embodied in this Order, addresses the issue of the allocation of Category 5 station equipment costs to the special access category. The second part will address the remainder of the issues raised in the third reconsideration round.

I. Further Reconsideration Petitions

3. Western Union argues that § 69.303(c) of the access charge rules results in an improper assignment of Category 5 station equipment[4] costs to specialized private lines (such as telex lines) that makes no use of that equipment.[5] Pursuant to the rule, investment in Category 5 station equipment is apportioned between the special access and common line elements on the basis of the relative number of equivalent lines in use.[6] Western Union asserts that since § 69.303(a) of the rules directly assigns the cost of Category 2 private line station equipment to special access, specialized private lines are already bearing the cost of associated station equipment, and a proportional assignment of message equipment investment based on a count of those same lines is improper. As a result, it argues, the special access revenue requirement is being inflated through the over-assignment of station equipment investment.

4. Western Union further asserts that this result does not reflect our original intent in promulgating § 69.303(c) in the *Access Charge Order*. The rule at that time divided investment in Category 5 station equipment between the common line and dedicated access elements. The dedicated access category included WATs access lines and private lines that terminate in a PBX, a key system, or similar equipment.[7] Thus, under the original § 69.303(c), investment in Category 5 station equipment was to be allocated only to those lines that actually use such equipment. Furthermore, at that time the special access category included only those private lines that were connected to equipment that was used exclusively for private line services (*i.e.*, that could not be used for message telephone services). The investment in this "Category 2" station equipment[8] was, and still is, directly assigned to the special access element under § 69.303(a). When in the *First Reconsideration Order* we eliminated dedicated access as a separate category and merged it into special access,[9] we amended § 69.303(c) by simply substituting the term "special access" for "dedicated access" in the allocation provisions of that rule. Western Union complains that by this substitution we (perhaps inadvertently) have made private lines that make no use of message station equipment subject to an allocation of the costs of that equipment. It asks us to restrict the private lines counted for the purposes of the apportionment in § 69.303(c) to those lines originating or terminating in Category 5 equipment.

5. Dow Jones supports Western Union's arguments and suggests that one solution to the problems would be to limit the special access lines subject to § 69.303(c) to those lines subject to the $25 special access surcharge.[10] AT&T and SBS also support Western Union's position.[11] Pacific objects to the proposed rule change on the grounds that: (i) Special accesss is often a close substitute for message service and should bear the cost of message equipment; and (ii) in any event, the problem is a temporary one because station equipment is being phased out of the separations process.[12] Pacific also

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part, *Nat'l Assn. of Regulatory Comm'rs v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *petition for cert. pending*, 53 U.S.L.W. 3070 (filed July 18, 1984).

[2] The separations rules govern the apportionment of local telephone company investment and expense between the interstate and the intrastate jurisdictions. These rules are set out in Part 67 of the Commission's Rules. *See Amendment of Part 67 and Establishment of a Joint Board*, CC Docket No. 80–286 (Decision and Order), FCC 83–564, 49 FR 7934 (released February 15, 1984).

[3] *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83–1145, Phase I and Phase II, Part I, FCC 84——, adopted November 8, 1984.

[4] Under the separations rules, Category 5 station equipment includes all station equipment not specifically assigned to other categories, *i.e.*, equipment that is not used to provide teletypewriter exchange, private line, station identification, or wideband services. Section 67.152 of the Commission's Rules. Thus, Category 5 includes ordinary message station equipment, as well as station equipment used jointly for both special services and message telephone services (*e.g.* PBXs and keysets). *Id.* at § 67.151(b)(3). While the current separations rules provide that "surrogate" customer premises equipment and inside wiring are treated separately from Category 5 equipment (*see* § 67.151(a)(1), (2)), the access charge rules provide for the apportionment of such investment among access elements pursuant to the formula governing Category 5 investment provided in § 69.303(c). *See* §§ 69.303(d) (surrogate CPE), 69.401(b) (inside wiring). Accordingly, for purposes of our discussion here, Category 5 station equipment includes surrogate CPE and inside wiring connected to equipment used (wholly or in part) for message telephone service.

[5] Western Union Petition at 3–4. On January 24, 1984, after the close of the pleading cycle in the second reconsideration round and shortly before we adopted the *Second Reconsideration Order*, Western Union submitted a Petition for Clarification and/or Further Rulemaking in this docket, asking us to clarify or amend § 69.303(c) along the lines it has suggested in its petition in this third reconsideration round. Dow Jones & Company, Inc. and Pacific Bell and Nevada Bell submitted responsive pleadings. In its reconsideration petition, Western Union referenced this rulemaking petition in its argument that § 69.303(c) should be amended. Accordingly, since we are continuing to refine our access charge rules through the reconsideration process, we have elected to treat the rulemaking petition as part of Western Union's petition for reconsideration and incorporate it and the responsive pleadings into the record of this reconsideration round.

[6] Equivalent lines are computed on the basis of bandwidth. For example, a special access line having twice the bandwidth of a normal voice line would be counted as two lines. *See* § 69.303(c) of the Commission's Rules.

[7] *First Reconsideration Order* at para. 50. The term "dedicated access line" was defined as "a WATS access line or a private line that does not terminate in customer premises equipment that is used exclusively for a particular interexchange carrier." *Access Charge Order* at App. A.

[8] *See* § 67.152(b) of the Commission's Rules.

[9] The original access charge plan included usage-sensitive end user charges up to a maximum, and the dedicated access line charge was used to establish that maximum. When we eliminated end-user usage charges in the *First Reconsideration Order*, there no longer was a need for a maximum end-user charge, and we therefore decided to eliminate the dedicated access category and combine it with the special access category. *First Reconsideration Order* at para. 52.

[10] Dow Jones (Rulemaking) Comments at 1–6 Dow Jones proposal would have the effect of eliminating from the § 69.303(c) allocation formula those private lines that are not connected to equipment capable of being used for message telephone services. *See* § 69.115(e) of the Commission's Rules.

[11] AT&T Opposition at 22; SBS Petition at 12–15.

[12] Pacific (Rulemaking) Opposition at 4–5.

questions whether the Commission should consider proposals to change the rule because the issue was not raised in the second reconsideration round pleadings.

II. Discussion

6. Because Western Union asks us to reconsider a provision of the access charge rules promulgated in the *First Reconsideration Order*, we must initially address the procedural status of its petition. As we explained in the *Second Reconsideration Order*, in order to bring finality to our decision making process and to eliminate uncertainty, we adopted § 1.429(i) of our rules, which provides:

> The Commission may grant [a] petition for reconsideration in whole or in part or may deny the petition . . . Any order disposing of a petition for reconsideration which modifies rules adopted by the original order is, to the extent of such modification, subject to reconsideration in the same manner as the original order. Except in such circumstances, a second petition for reconsideration may be dismissed by the staff as repetitious.

47 CFR 1.429(i). We relied on this rule in the *Second Reconsideration Order* to deny requests that we reconsider certain aspects of the access charge plan adopted in the *Access Charge Order* that the *First Reconsideration Order* left intact. But as we recognized in the *Second Resconsideration Order*, § 1.429(i) is permissive and not mandatory.[13] It authorizes us to deny such requests as untimely and repetitious, but does not compel us to do so if we find that on balance it would better serve the public interest to address those requests on their merits. In the present case, we elect to address the request for reconsideration made by Western Union because of the substantial policy issues it raises regarding the apportionment of net investment between special and switched access.

7. We conclude that the arguments raised by Western Union and others that the formula in § 69.303(c) results in an inappropriate allocation of costs to special access are meritorious.[14] That formula allocates investment in Category 5 station equipment based on the relative numbers of switched lines and private lines, including in the latter category private lines that do not terminate in Category 5 equipment. We agree with Western Union that as a result there is an over-allocation of investment in Category 5 station equipment to special access, which raises the special access revenue requirement. We also agree that this result is not consistent with our intent in originally promulgating the rules for the apportionment of station equipment investment in § 69.303. Accordingly, we will adopt the suggestion of Dow Jones and revise the § 69.303(c) formula to provide that only those lines to which the special access surcharge applies should be counted for the purpose of allocating investment in Category 5 station equipment.[15]

8. We recognize that in our *First Reconsideration Order*, we declined to amend § 69.303(c) to reflect the changes made here.[16] We gave three reasons for that decision. First, we stated the problem was simply a transitional one because the interstate CPE costs would gradually disappear over four years pursuant to the CPE phaseout plan.[17] Second, we indicated that even if we were to limit the private lines included in the § 69.303(c) allocation process to those that use Category 5 equipment, the result would not be a precise cost-causational allocation because, for example, many end users with private line connected to a PBX may not have used a telephone company PBX for years. Third, we indicated that under our special access rules exchange carriers could solve the problem by not assessing users or specialized private line services the costs of unrelated Category 5 station equipment. However, we no longer find these reasons convincing for maintaining the rule in its present form. With respect to our last reason, we now know that the exchange carriers have not solved the problem under their proposed special access tariffs.[18] And the parties have persuaded us that neither the transitional nature of the problem, nor the fact that as a practical matter no rule will achieve a perfect match between costs and customers, is a good reason not to amend the rule to achieve a better match for that transition, particularly one that is consistent with our initial intent in promulgating the rule in the *Access Charge Order*. Accordingly, we will amend § 69.303(c), as indicated above, so that special access lines that do not utilize Category 5 station equipment do not have to bear its costs.[19]

III. Ordering Clauses

9. Accordingly, it is hereby ordered, that pursuant to 47 U.S.C. 154(i) and (j), 201, 202, 203, 205, 218, 403 and 405 and 5 U.S.C. 553, the *Second Reconsideration Order* adopted in this proceeding is modified to the extent set forth in this *Memorandum Opinion and Order*.

10. It is further ordered, that the petitions for further reconsideration or clarification of § 69.303 of the Commission's Rules are granted to the extent set forth in this *Memorandum Opinion and Order*, and are otherwise denied.

11. It is further ordered, that the Petition for Clarification and/or Further Rulemaking submitted by Western Union, together with its associated, responsive pleadings, is incorporated as part of the record in this reconsideration round.

12. It is further ordered, That Part 69 of the Commission's rules is amended as set forth in Appendix A, effective on the day following publication in the **Federal Register**. We find good cause for requiring an effective date earlier than thirty days following publication in the **Federal Register**. This good cause arises from the need for telephone companies to file tariffs for special access services by December 3, 1984, to be effective on or before January 17, 1985, that are based on the access charge rules as revised by this Memorandum Opinion and Order.

(Secs. 154 (i) and (j), 201, 202, 47 U.S.C 154)

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[13] *Second Reconsideration Order* at 140.

[14] But we do not agree with certain arguments raised by SBA concerning § 69.303(c). SBS questions "whether the Commission intended for . . . [the] surcharge on special access lines to be in addition to the new rule allocating station equipment investment to special access . . . or in lieu of this allocation process." SBS Petition at 12. SBS states that the surcharge alone should satisfy the Commission's concerns about private lines that terminate in a PBX or PBX-like device, and it asks the Commission to clarify its intent in this regard. The short answer to SBS' request for clarification is that it was our intent that both rules apply to special access lines. The rules serve different purposes—allocation of station equipment costs among different types of lines that use that equipment and recovery of local network costs from private lines with the capacity to "leak" interstate traffic into the local exchange. Neither rule is a substitute for the other.

[15] Western Union indicates that while it would prefer a broader exemption, the Dow Jones proposal would provide an acceptable solution. Western Union (Rulemaking) Reply at 5–6. And Pacific, while opposing any amendment to 69.303(c), states that if a change is to be made, it supports the Dow Jones proposal. Pacific (Rulemaking) Opposition at 5–6.

[16] *First Reconsideration Order* at para. 53.

[17] *See* Amendment of Part 67 (Decision and Order), CC Docket No. 80-286, 89 FCC 2d 1, *as modified*, 90 FCC 2d 52 (1982).

[18] Western Union (Rulemaking) Petition at 4.

[19] The amended rule appears at Appendix A. The mechanism for recovering these costs appears in *Special Access Tariff Order* at paras. 69–70. In that Order, we direct that the costs allocated to the special access tariff element, pursuant to § 69.303(c), be recovered by charges on those lines subject to the special access surcharge.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix A

Section 69.303 is amended by revising paragraph (c) to read as follows:

§ 69.303 Station equipment.

* * * * *

(c) Investment in all other station equipment shall be apportioned between the Special Access and Common Line elements on the basis of the relative number of equivalent lines in use, as provided herein. Each interstate or foreign Special Access line, excluding lines designated in § 69.115(e), shall be counted as one or more equivalent lines where channels are of higher than voice bandwidth, and the number of equivalent lines shall equal the number of voice capacity analog or digital channels to which the higher capacity is equivalent. Local exchange subscriber lines and WATS access lines shall be multipled by the interstate separations factor for non-traffic sensitive plant to determine the number of equivalent local exchange subscriber lines and the number of equivalent WATS access lines.

[FR Doc. 84-30905 Filed 11-23-84; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-1236; RM-4370]

TV Broadcast Station in Ventura, CA; Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of Stephen J. Mewhort, assigns UHF TV Channel 41 to Ventura, California, as that community's second local television allocation.

EFFECTIVE DATE: January 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television Broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, Television Broadcast Stations, (Ventura, California) MM Docket No. 83-1236, RM-4370.

Adopted: Oct. 29, 1984.
Released: November 9, 1984.
By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 48 FR 53721, published November 29, 1983, proposing the assignment of UHF TV Channel 41 to Ventura, California, as that community's second local television allocation, at the request of Stephen J. Mewhort ("petitioner"). Petitioner and Romauldo Achoa both filed comments stating their intention to apply for the channel, if assigned. Opposing comments were filed by California Broadcasting Corporation ("CBC").

2. Ventura (population 74,474),[1] in Ventura County (population 529,174)[2], is located in southern California, approximately 90 kilometers (55 miles) northwest of Los Angeles. UHF Television Channel 16 (two applications pending), is currently assigned to Ventura.[3]

3. CBC is one of two mutually exclusive applicants for use of Channel 16 at Ventura. CBC bases its opposition to the assignment of Channel 41 on two grounds. First, it states that an applicant for Channel 41 would face "virtually insurmountable site limitations." Secondly, it states that the Commission now has pending before it a petition for rule making (RM-3975)[4] submitted by the Sheriff's Department of Los Angeles County, California, requesting the reassignment of Channel 16 to Los Angeles County for public safety use and the consequent substitution of Channel 26 or 27 at Ventura.

4. CBC urges the Commission to defer action in the instant proceeding pending a final ruling in RM-3975, in order to protect the applicants for use of Channel 16 at Ventura. CBC's engineering studies indicate Channel 41 would be one of the few channels, and perhaps the only channel, available for substitution for Channel 16 at Ventura.

5. The Commission's proposal to reassign Channel 19 to Los Angeles County, California, for public safety use (see fn. 4) nullifies the possible need to delete Channel 16 from Ventura. Therefore, Channel 16 remains available at Ventura for the competing applicants.

6. Channel 41 can be sited in Ventura, or in its immediate environs, in compliance with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules. As there is no site restriction, it should be assumed that city grade service can be provided to Ventura. Thus, we see no impediment to the assignment of Channel 41 at this time. Therefore, after careful consideration of the points raised by CBC, we have concluded that the opposition is not valid.

7. In view of the foregoing, we believe the public interest would be served by assigning UHF TV Channel 41 to Ventura, California, as that community's second local television allocation.

8. Since the proposal is within 400 kilometers (250 miles) of the U.S.-Mexican border, we have received concurrence of the Mexican government.

9. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective January 15, 1985, the TV Table of Assignments, § 73.606(b) of the Rules, is amended for the following community:

City	Channel No.
Ventura, California	16+, and 41+.

10. It is further ordered, that this proceeding is terminated.

11. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.
Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-30904 Filed 11-23-84; 8:45 am]
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[1] Population figure is taken from the 1984 Rand McNally Atlas.

[2] Population figures were extracted from the 1980 U.S. Census, unless otherwise indicated.

[3] California Broadcasting Corp. was awarded the permit for Channel 16 in an *Initial Decision*. That proceeding has been remanded by the Commission's Review Board for further proceedings.

[4] *Notice of Proposed Rule Making*, GEN Docket No. 84-902, issued September 1984, proposes to allow the Los Angeles County Sheriff's Department to use Channel 19 for public safety land mobile use.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 83-12; Notice 2]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.