

felt that vehicular traffic control problems were more responsible for traffic back-ups than bridge openings. Three respondents expressed concern for vessel's safety when located between the two bridges (the other being the railroad bridge at mile 2.4) while waiting for the Route 1 bridge to open during an advance notice period or for the quarter past the hour opening. The proposed regulations are extending the existing time period for once hourly openings between May 1 and October 31 by only one hour (to begin at 7:15 a.m. versus 8:15 a.m.). The existing regulation has been in effect since 1965 and, except for early morning vehicular traffic congestion, has generally proven satisfactory to both vehicular and marine traffic. During advance notice periods, vessels should experience minimal delays in bridge openings for which they have made an appointment. Further, there is no indication that congestion on the waterway is greater before, than after 8:15 a.m. A couple of respondents suggested elimination of the hourly bridge openings during peak traffic periods, between 7:00 a.m.-8:15 a.m.; 4:30 p.m.-5:30 p.m.; and 12:15 p.m., in order to relieve vehicular traffic congestion. The proposed regulations did not include a change of this type. A separate Notice of Proposed Rulemaking would have to be issued after review, analysis and a determination that sufficient justification exists to warrant said change. Seven of the respondents cited the need for passage through the bridge for emergency and commercial vessels at any time. Sections of the existing regulations, which will not be changed by this rule, already require the bridge to be opened for certain vessels including those state and local vessels used for public safety and commercial vessels. One of these seven also pointed out the possibility of emergency vehicles on land being delayed because of a bridge opening. Existing regulations provide that when a draw tender is informed by a reliable source that an emergency vehicle is due to cross the draw, the draw tender shall take all reasonable measures to have the draw closed at the time the emergency vehicle arrives at the bridge.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary.

No vehicular/navigational conflict is expected to occur because the regulations for the boating season will only extend by one hour regulations already in effect most of the day. Additionally, the eight hours notice at night, November through April, would not pose a problem since there are few vessel openings and minimal vehicular traffic. Also most of the openings outside the boating season can be rescheduled slightly to conform with times the bridge opens on signal, thereby avoiding notice periods. Only recreational vessels will be affected by these regulations and only to a minimal extent. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.211(b) is revised to read as follows:

§ 117.211 Mystic River.

* * * * *

(b) The draw of the US 1 bridge, mile 2.8 at Mystic, shall open on signal, with a maximum delay of 20 minutes; except:

(1) From May 1 through October 31 from 7:15 a.m. to 7:15 p.m., the draw need only open hourly at quarter past the hour.

(2) From November 1 through April 30 from 7:15 p.m. to 5:15 a.m., the draw shall open on signal upon eight hours notice.

* * * * *

Dated: June 21, 1985.

Robert T. Nelson,
Captain, U.S. Coast Guard, Acting
Commander, Third Coast Guard District.

[FR Doc. 85-15610 Filed 6-27-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD3 85-42]

Drawbridge Operation Regulations; Corrections and Miscellaneous Amendments

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction and miscellaneous amendments.

SUMMARY: This document corrects and makes miscellaneous amendments to a final rule which reorganized the Coast Guard regulations for drawbridges across navigable waters of the United States published in the *Federal Register* on Tuesday, April 24, 1984 (49 FR 17450). This action is necessary to correct typographical errors, omission of words and phrases, and omission of previously published regulations. Certain of these are due to various final rules published in the *Federal Register* by the Third Coast Guard District shortly before and after the final reorganization document was published. This document makes no substantive changes to the omitted material.

EFFECTIVE DATE: June 28, 1985.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District (212) 668-7994.

SUPPLEMENTARY INFORMATION: On April 24, 1984, the Coast Guard published a final rule in the *Federal Register* (49 FR 17450) which completely reorganized 33 CFR Part 117 containing requirements relating to the use and operation of drawbridges across the navigable waters of the United States. The revision was designed to simplify the use of these regulations by grouping all of the general rules into a single subpart and by arranging the provisions pertaining to individual drawbridges alphabetically by state and waterway. Since publication, various persons have pointed out errors in and material omitted from the revisions. Three documents have been published which corrected some of these errors and omissions (49 FR 26721, June 29, 1984; 49 FR 37381, September 24, 1984; and 49 FR 43457, October 29, 1984). Additional corrections are contained in this document.

Drafting Information

The principal persons involved in drafting this document are William C. Heming, project manager, and Mary Ann Arisman, project attorney.

Discussion of Amendments

None of the amendments in this rule make substantive changes not already contained in existing Coast Guard regulations. This rule merely incorporates the material omitted, as well as corrects certain errors, without change other than for organization and formatting purposes. The sections affected and the reasons for amending them are listed below:

Sections 117.205, 117.207(b), 117.213(b), 117.219, 117.237, 117.723(a), 117.734, 117.734-1, 117.739, and 117.903 are added or amended to include material found in the Code of Federal Regulations which was inadvertently omitted from the April 24, 1984 revision and subsequent corrections or to clarify ambiguous language in the revision.

Sections 117.723(c), 117.738 and 117.795 are removed or revised to conform to the format used throughout Part 117.

Section 117.231(a) is removed because the bridge referred to has been removed and the regulation was previously deleted.

Section 117.733 is amended to correct errors in paragraph designation due to multiple amendments which appeared in the Federal Register shortly before or after the correction document of October 29, 1984 (49 FR 43457).

Sections 117.217, 117.777(a), and 117.791(e)(1) are amended to correct spelling errors and names of bridge and bridge owners to properly identify the bridge and location.

This rulemaking action is purely administrative in nature and merely corrects typographical errors, and incorporates without substantive change existing regulations omitted from the Part 117 reorganization. Therefore, the Coast Guard finds that notice and public procedure thereon are unnecessary and that they rule may be made effective in less than 30 days under 5 U.S.C. 553(d).

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.205 is revised to read as follows:

§ 117.205 Connecticut River.

(a) The draws of the Amtrak Old Saybrook—Old Lyme Bridge, mile 3.4, and the Conrail Middletown Bridge, mile 32.0, shall open on signal:

(1) For commercial vessels except as described below:

(i) Amtrak Bridge, mile 3.4, when a westbound train scheduled to cross the bridge without stopping has passed Old Lyme and Blackhall Station, or an eastbound train has passed Saybrook Junction Station, and is in motion toward the bridge, the draw shall be opened as soon as the train has crossed the bridge.

(ii) Conrail Middletown Bridge, mile 32.0, when a westbound train scheduled to cross the bridge without stopping has passed Portland Station, or an eastbound train has passed Middletown Station, and is in motion toward the bridge, the draw shall be opened as soon as the train has crossed the bridge.

(2) For all other vessels which cannot pass the closed bridges the draws shall be opened as soon as practicable, but in no case shall the delay be more than 20 minutes from the time of request.

(b) All openings of the draws shall afford full horizontal and vertical clearance, regardless of the size or requirements of the passing vessel.

3. By revising § 117.207(b)(2) to read as follows:

§ 117.207 Housatonic River.

(b) * * *

(2) A delay in opening the draw shall not exceed 20 minutes for the passage of approaching trains from the time of the request.

4. By revising § 117.213(b) to read as follows:

§ 117.213 New Haven Harbor, Quinnipiac and Mill Rivers.

* * * * *

(b) Public vessels of the United States, state or local vessels used for public safety, commercial vessels and vessels in distress, shall notify the operator of the Tomlinson and the Ferry Street bridges and shall be passed through each of the bridges listed in this section as soon as possible at anytime.

* * * * *

§ 117.217 [Corrected]

5. By correcting "Conrail bridge," in § 117.217(b) to read "Metro-North 'WALK' bridge."

6. By revising § 117.219 to read as follows:

§ 117.219 Pequonnock River.

(a) Public vessels of the United States and vessels in distress shall be passed

through the draw of each bridge as soon as possible.

(b) The draw of the Stratford Avenue Bridge, mile 0.1 at Bridgeport, shall open on signal; except that, the draw need not open for passage of vessels from 6:45 a.m. to 7:15 a.m. and 7:45 a.m. to 8:15 a.m., 11:45 a.m. to 1:15 p.m. and 4:30 p.m. to 6:10 p.m. The opening signal is one prolonged blast followed by one short blast.

(c) The draw of the Metro-North "PECK" bridge, mile 0.3 at Bridgeport, shall open on the signal of three blasts as follows:

(1) From 5:45 a.m. to 9 p.m. except:

(i) From Monday through Friday, excluding holidays or emergencies, the draw need not be opened from 6:45 a.m. to 7:15 a.m., 7:45 a.m. to 8:15 a.m., and 4:30 p.m. to 6:10 p.m.

(ii) From Monday through Friday, excluding holidays or emergencies, the draws need not be opened more than once during the periods 5:45 a.m. to 6:45 a.m., 7:15 a.m. to 7:45 a.m., 8:15 a.m. to 9 a.m., and 6:10 p.m. to 8:15 p.m.

(2) From 9 a.m. to 5:45 a.m., the draws shall open on signal if at least eight hours notice is given.

(3) The draw need not open on signal if a train is approaching so closely that it may not be safely stopped; however, the delay in opening the draw shall not exceed 7 minutes from time of the request.

(d) The draw of the Congress Street Bridge, mile 0.4 at Bridgeport, shall open on signal as follows:

(1) From 8 a.m. to 9 p.m.; except that the draw need not open for the passage of other than commercial vessels from 11:45 a.m. to 1:15 p.m. and for all vessels from 4:30 p.m. to 6:10 p.m.

(2) From 9 p.m. to 8 a.m., if at least eight hours notice is given; except that the draw need not open for the passage of vessels from 6:45 a.m. to 7:15 a.m.; and from 7:45 a.m. to 8 a.m.

(3) The opening signal is two prolonged blasts followed by two short blasts.

(e) The draw of the East Washington Street bridge mile 0.6, shall open on the signal of one prolonged blast followed by two short blasts if at least 24 hours notice is given.

(f) The draw of the Grand Street bridge mile 0.9 at Bridgeport need not be opened for the passage of vessels. However, the draw shall be returned to operable condition within 12 months after notification by the District Commander to do so.

§ 117.231 [Amended]

7. By removing § 117.231(a) and removing the designation of paragraph (b).

8. By revising § 117.237(a) to read as follows:

§ 117.237 Christina River.

(a) The owners of the bridges on this waterway:

(1) Shall provide and keep in good legible condition two board gages painted white with black figures not less than six inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridges that they are plainly visible to the operator of each vessel approaching the bridge either up or downstream.

(2) Shall open on signal except that the draw of a railroad bridge need not be opened when a train is in the bridge block, approaching the bridge, or within 5 minutes of the passage of a passenger train; but in no event shall the opening of the draw be delayed more than 10 minutes.

9. By removing § 117.723(c) in its entirety and adding § 117.723(a)(6) to read as follows:

§ 117.723 Hackensack River.

(a) * * *

(6) Trains and locomotives shall be controlled so that any delay in opening the draw span shall not exceed five minutes except as provided in paragraph (a)(1) of this section. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before stopping.

10. By revising § 117.733 to read as follows:

§ 117.733 New Jersey Intracoastal Waterway.

(a) The following requirements apply to all bridges listed in this section:

(1) Except as otherwise provided in this section, these bridges need not stay open for more than 10 minutes for the passage of vessels nor need they stay closed for more than 10 minutes for the passage of land traffic.

(2) The owners of these bridges shall provide and keep in good legible condition two board gages painted white with black figures not less than six inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels

approaching the bridge either up or downstream.

(b) The draw of the Route 35 bridge, mile 1.1 (Manasquan River) at Brielle shall open on signal; except that, from Memorial Day through Labor Day on Saturdays, Sundays, and Federal holidays from 10 a.m. to 8 p.m., the draw need only open on the hour and half hour. The draw shall open at all times as soon as possible for passage of a public vessel of the United States or for a vessel in distress.

(c) The draw of the County Route 528 bridge across Barnegat Bay, mile 6.3 at Mantoloking shall open on signal; except that on Saturday, Sunday, and Federal holidays from Memorial Day through Labor Day from 9 a.m. to 6 p.m., the draw need be opened only on the hour, twenty minutes after the hour, and forty minutes after the hour. The draw shall open at all times as soon as possible for a public vessel of the United States, a vessel in distress or for a vessel with tow.

(d) The draw of the S37 bridge across Barnegat Bay, mile 14.1 at Seaside Heights, shall open on signal except as follows:

(1) From December 1 through March 31 from 11 p.m. to 7 a.m., the draw need not be opened.

(2) From Memorial Day through Labor Day from 10 a.m. to 2 p.m. Saturdays, Sundays, and Federal holidays, the draw need only be opened on the hour and half hour, except that it shall open at any time for the passage of vessels with tows.

(e) The draws of the New Jersey Transit Rail Operations railroad bridge across Beach Thorofare, mile 68.9 at Atlantic City, shall open on signal from 11 p.m. to 6 a.m. From 6 a.m. to 11 p.m., the draw shall open on signal from 20 minutes to 30 minutes after each hour and remain open for all awaiting vessels.

(f) The draw of the Albany Avenue (US40-322) bridge across Inside Thorofare, mile 70.0 at Atlantic City, shall open on signal, except that from June 1 through September 30 from 9 a.m. to 4 p.m. and from 6 p.m. to 9 p.m., the draw shall open on signal only on the hour and half hour and from 4 p.m. to 6 p.m., the draw need not be opened.

(g) The draw of the Dorset Avenue bridge across Inside Thorofare, mile 71.2 at Ventnor City, shall open on signal; except that, from June 1 through September 30, from 9:15 a.m. to 9:15 p.m., the draw need be opened only on the quarter and three-quarter hours. Public vessels of the United States and vessels in distress shall be passed at any time.

(h) The draw of the Route 52 (Ninth Street) bridge, mile 80.4 at Ocean City,

shall open on signal; except that, from Memorial Day through Labor Day from 11 a.m. to 5 p.m. on Saturdays, Sundays, and Federal holidays, the draw need be opened only on the hour and half hour. Public vessels of the United States, vessels with another vessel in tow, and vessels in distress shall be passed at any time.

(i) The draw of the Stone Harbor Boulevard Bridge across Great Channel, mile 102.0 at Stone Harbor, shall open on signal except:

(1) From October 1 through March 31 from 10 p.m. to 6 a.m. the draw need only open if at least eight hours notice is given.

(2) From Memorial Day through Labor Day, from 6 a.m. to 6 p.m. on Saturday, Sunday and holidays, the draw need open only for waiting vessels on the hour, 20 minutes after the hour, and 20 minutes before the hour.

(3) The draw shall be opened at all times as soon as possible for a vessel with a tow, a public vessel of the United States or a vessel in distress.

(j) The draw of the Cape May County Bridge Commission bridge, mile 104.0 between Stone Harbor and Nummy Island, shall open on signal from May 15 through October 15 from 6 a.m. to 10 p.m., and from 10 p.m. to 6 a.m. if at least four hours notice is given. From October 16 through May 14, the draw shall open on signal if at least 24 hours notice is given. Public vessels of the United States shall be passed as soon as possible at any time.

11. By adding § 117.734 to read as follows:

§ 117.734 Navesink River (Swimming River).

The owners of all bridges over the waterway shall provide and keep in good legible condition two board gages painted white with black figures not less than eight inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

12. By redesignating § 117.735 as § 117.736 and by adding a new § 117.735 to read as follows:

§ 117.735 Newark Bay.

The following requirements apply to all bridges across this waterway:

(a) Public vessels of the United States, state or local vessels used for public service, and vessels in distress shall be passed through the draw without delay. The opening signal from these vessels is

four or more short blasts of a whistle or horn or a radio request.

(b) The owners of these bridges shall provide and keep in good legible condition two board gages painted white with black figures not less than 12 inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

(c) Trains and locomotives shall be controlled so that any delay in opening the draw span shall not exceed five minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before stopping.

13. By adding § 117.738 to read as follows:

§ 117.738 Overpeck Creek.

(a) The draws of the Conrail and the New York, Susquehanna and Western railroad bridges, mile 0.0 both at Ridgefield Park, NJ, operate as follows:

(1) The draws shall open on signal if at least 24 hours notice is given.

(2) Public vessels of the United States, state or local vessels used for public safety, and vessels in distress shall be passed through the draw of each bridge as soon as possible.

(3) The owners of these bridges shall provide and keep in good legible condition two board gages painted white with black figures not less than 12 inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

(b) Trains and locomotives shall be controlled so that any delay in opening the draw span shall not exceed five minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before stopping.

14. By revising § 117.739 to read as follows:

§ 117.739 Passaic River.

(a) The following requirements apply to all bridges across the Passaic River:

(1) Public vessels of the United States, state or local vessels used for public service, and vessels in distress shall be passed through the draw of each bridge

as soon as possible without delay at any time. The opening signal from these vessels is four or more short blasts of a whistle or horn or a radio request.

(2) The owners of these bridges shall provide and keep in good legible condition two board gages painted white with black figures not less than 12 inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

(3) Trains and locomotives shall be controlled so that any delay in opening the draw span shall not exceed five minutes except as provided in paragraph (c) of this section. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before stopping.

(4) Except as provided in paragraph (b) through (m) of this section the draws shall open on signal.

(b) The draw of the Jackson Street Bridge, mile 4.6, at Harrison, shall open on signal; except that, notice must be given before 2:30 a.m. for openings between 3 a.m. and 8:30 a.m. and before 2:30 p.m. for openings between 4:30 p.m. and 7:00 p.m.

(c) The draw of Amtrak's Dock bridge, mile 5.0 at Harrison, need not be opened from 7:20 a.m. to 9:20 a.m. and 4:30 p.m. to 6:50 p.m. Monday through Friday except Federal holidays. At all other times, an opening may be delayed no more than 10 minutes, unless the draw tender and the vessel operator, communicating by radiotelephone, agree to a longer delay.

(d) The draw of the Bridge Street Bridge, mile 5.6 at Harrison, shall open on signal except that, notice must be given before 2:30 a.m. for openings between 3 a.m. and 8:30 a.m. and before 2:30 p.m. for openings between 4:30 p.m. and 7:00 p.m.

(e) The draw of New Jersey Rail Operations Morristown Line bridge, mile 5.8 at Harrison, need not be opened from 7:23 a.m. to 9 a.m. and 4:30 p.m. to 6:50 p.m. Monday through Friday except Federal holidays.

(f) The draw of the Route 280 (Stickel Memorial) bridge, mile 5.8 at Harrison, shall open on signal if at least eight hours notice is given. In an emergency, the draw shall open as soon as possible but not more than two hours after the opening request.

(g) The draw of the Clay Street Bridge, mile 6.0 at Harrison, shall open on signal except that, notice must be given before

2:30 a.m. for openings between 3 a.m. and 8:30 a.m. and before 2:30 p.m. for openings between 4:30 p.m. and 7:00 p.m.

(h) The draw of the New Jersey Transit Rail Operations bridge (West Arlington), mile 8.0 at Kearney, shall open on signal from 7 a.m. to 11 p.m. if at least eight hours notice is given. From 11 p.m. to 7 a.m., the draw need not be opened.

(i) The draw of the Avondale Bridge, mile 10.7 at Lyndhurst, shall open on signal except that, notice must be given before 2:30 a.m. for openings between 3 a.m. and 8:30 a.m. and before 2:30 p.m. for openings between 4:30 p.m. and 7:00 p.m.

(j) The draw of the New Jersey Transit Rail Operations bridge, mile 11.7 at Lyndhurst, shall open on signal from 8 a.m. to 4 p.m. if at least six hours notice is given. From 4 p.m. to 8 a.m., the draw need not be opened.

(k) The draw of the Route 3 bridge, mile 11.8 at Rutherford, shall open on signal if at least six hours notice is given.

(l) The draw of the Union Avenue bridge, mile 13.2 at Wallington, shall open on signal; except that, from midnight to 8 a.m., the draw shall open on signal if at least eight hours notice is given.

(m) The draw of the following bridges need not be opened for the passage of vessels:

(1) Gregory Avenue bridge, mile 14.0 at Wallington.

(2) Second Street bridge, mile 14.7 at Wallington.

(3) West Eighth Street bridge, mile 15.3 at Garfield.

§ 117.777 [Corrected]

15. By correcting "The draw of the Long Island Railroad bridge, mile 1.1 at New York City," in § 117.777(a) to read "The draws of the Long Island Railroad bridges, mile 1.1 both at New York City."

§ 117.191 [Corrected]

16. By correcting "before 4:30 p.m. to the time" in § 117.791(e)(1) to read "before 4:30 p.m. of the time."

17. By revising § 117.795 to read as follows:

§ 117.795 Jamaica Bay and Connecting Waterways.

(a) The draw of the Marine Parkway bridge, mile 3.0 over Rockaway Inlet, shall open on signal Monday through Friday from 8 a.m. to 4 p.m. At all other times, the draw shall open on signal if at least eight hours notice is given; however, the draw shall open on signal

if at least a one hour notice is given for the passage of U.S. Navy or National Oceanic and Atmospheric Administration vessels.

(b) The draws of the New York City highway bridge, mile 0.8 across Mill Basin on Belt Parkway, need not be opened for the passage of vessels from noon to 9 p.m. on Sundays from May 15 to September 30, and on Memorial Day, Independence Day, and Labor Day. However, on these days, from two hours before to one hour after predicted high tide, the draw shall open on signal. For the purpose of this section, predicted high tide occurs 15 minutes later than that predicted for Sandy Hook, as given in the tide tables published by the National Oceanic and Atmospheric Administration. At all times, public vessels of the United States and state or local vessels used for public safety shall be passed as soon as possible.

(c) The draws of the New York City Cross Bay Boulevard bridge, mile 10.0, and the New York City Transit Authority bridge, mile 10.6 both across the North Channel at Hamilton Beach, need not be opened for the passage of vessels.

18. By revising § 117.903 to read as follows:

§ 117.903 Darby Creek.

(a) The owners of the bridges on this waterway shall provide and keep in good legible condition two board gages painted white with black figures, nine inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

(b) The draw of the Conrail railroad bridge, mile 0.3, and the Reading railroad bridge, mile 0.3 both at Easington, shall operate as follows:

(1) From May 15 through October 15:

(i) From 11 p.m. to 7 a.m., the draw need not be opened for the passage of vessels.

(ii) Between 7 a.m. and 11 p.m., the draw shall open on signal at 7:15 a.m., 10:30 a.m., 1 p.m., 3 p.m., 7:30 p.m., and 10:30 p.m. and at all other times during these hours, if an opening will not unduly delay railroad operations.

(2) From October 16 through May 14, the draws shall open on signal if at least 24 hours notice is given.

(3) Any vessel which has passed through one of these bridges shall be passed through the draw of the other bridge without delay. When open for the passage of any vessel, these bridges shall remain open sufficiently long to

permit the passage through both bridges of all vessels waiting to pass.

(4) The draws shall open as soon as possible for an emergency or vessel in distress.

Dated: June 21, 1985.

Robert T. Nelson,

Captain, U.S. Coast Guard, Acting Commander, Third Coast Guard District.

[FR Doc. 85-15605 Filed 6-27-85; 8:45 am]

BILLING CODE 4910-14-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 211

[Docket RM 84-6A]

Mask Work Protection; Implementation of the Semiconductor Chip Protection Act of 1984

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The Copyright Office of the Congress is issuing final regulations establishing a new Part 211 to 37 CFR Ch. II. These regulations implement certain provisions of the Semiconductor Chip Protection Act of 1984, Pub. L. 98-620 (Nov. 8, 1984). The Act establishes a registration system for mask works to be administered by the Copyright Office and authorizes the Office to establish regulations in several cases, including the registration of claims of protection in mask works, the recordation in the Copyright Office of documents pertaining to mask works and the mask work notice. Part 211 of 37 CFR Chapter II sets forth specific requirements for filing applications for registration of mask work claims and for the recordation of documents. The regulations also provide examples of methods of affixation and placement of the mask work notice. Portions of interim rules published January 3, 1985 at 50 FR 263 are herein modified.

EFFECTIVE DATE: June 28, 1985.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559 (202) 287-8380.

SUPPLEMENTARY INFORMATION: On November 8, 1984, the President signed into law the Semiconductor Chip Protection Act of 1984, Pub. L. 98-620. The Act creates a new form of intellectual property law separate and apart from any earlier law. The legislation consists of an amalgam of patent and copyright principles, but also contains new features. The law is

codified as chapter 9 of title 17 of the U.S. Code and is primarily administered by the Copyright Office. Noteworthy is the requirement in section 908(a) of the Act that registration in the Copyright Office of a claim of protection in a mask work must be made within two years of first commercial exploitation of the work anywhere in the world or protection under the Act terminates. The Act also provides for a notice of mask work protection; however, unlike the copyright notice, this notice is not a condition of protection.

On October 4, 1984, the Copyright Office issued a Notice of Inquiry and of Public Hearing in the *Federal Register* to advise the public that the Office would institute a rulemaking proceeding to implement certain provisions of the Semiconductor Chip Protection Act of 1984, and to invite public comment, views and information to assist it in the preparation of regulations (49 FR 39171). The Copyright Office was particularly interested in receiving public comment on a registration form, filing fee for registration and fees for other services, application for registration, deposit of identifying material, mask work notice and publication of registrations made by the Copyright Office.

At the public hearing on implementation of the Semiconductor Chip Protection Act of 1984, held at the Copyright Office on October 18, 1984, representatives of the Semiconductor Industry Association [hereinafter SIA] testified on the issues raised in the Notice of Inquiry and submitted a written statement for the record. During the course of the hearings, the Copyright Office circulated for information and comment a preliminary draft form, Form MW, to be used for registration of a claim of protection in a mask work. Following the hearing, supplemental comments were received from SIA and from other interested parties. The comment period was held open until October 31, 1984.

On January 3, 1985, the Copyright Office issued interim regulations implementing the Semiconductor Chip Protection Act of 1984. (50 FR 263). The regulations were made immediately effective since owners of mask works were entitled to file applications for registration on January 7, 1985. A lengthy comment period was provided in order to encourage public participation in the rulemaking process.

Approximately simultaneously with publication in the *Federal Register* of the interim regulations, the Copyright Office issued Form MW and an information circular. A mask work examining unit

was also formed within the Examining Division of the Copyright Office.

The Copyright Office received eleven comments on the interim regulations. In addition, one claimant, in submitting several mask works for registration, petitioned the Copyright Office to modify its regulations in two areas—the deposit regulation governing mask works containing trade secrets and the “intermediate forms” regulation. The portion of these petitions which addressed modification of Copyright Office regulations were treated as comment letter purposes of analysis.

The subject which appeared to be the most controversial was the “intermediate form” regulation. Five submissions were received on this issue. The deposit provision produced eight comments. The requirement that eligibility based on a transfer of rights consist of a transfer of the totality of rights drew four comments. Registration under a section 914 Order drew two comments. Line eight of Form MW (Nature of Contribution) drew two comments. The mask work notice drew one comment. The effect of the deadline date of July 1, 1985, on claims requiring correspondence drew one comment. The special handling provision drew one comment.

1. *Intermediate forms.* A “semiconductor chip product” is defined in section 901 of the Act as including “the final or intermediate form of any product” A mask work cannot be protected under the Act until it has been fixed in such a product.

In interim regulation § 211.4 (c) and (d), a principle was advanced allowing only one registration for the same version of a mask work fixed in an intermediate or final form of any semiconductor chip product. Under interim regulation § 211.4(e) special rules were established for registering mask works fixed as intermediate forms of a semiconductor chip product. Under this provision, registration in intermediate form was possible only if fixation had occurred solely in intermediate form and the intermediate form represented twenty percent or more of the intended final form.

The purpose of these policies was to discourage applicants from fractionalizing their mask work contributions into smaller portions. The commentary preceding the interim regulation cited a number of reasons for this policy. In cases where claims were asserted on the basis of small portions of mask works fixed in semiconductor chip products, it would be difficult to develop and apply standards of originality. The practice of registering multiple claims in small portions of

mask works might discourage legitimate reverse engineering under section 906 of the Act. A problem in calculating the duration of protection might also arise if several portions of a final product were registered separately at different times because duration for unexploited mask works begins upon registration. Finally, multiple registrations could lead to compounding of statutory damages in a way not contemplated by Congress.

In comments on the interim regulation, industry spokesmen attacked the prohibition against registering an intermediate form where a final form was in existence. They also attacked the twenty percent rule as an arbitrary standard which was without support under the Act.

At the heart of the argument was the industry view that applicants should have discretion to subdivide their mask work contribution. That it would be easier to prove substantial similarity in litigation was cited as the primary reason an applicant would choose to follow such a course. On this point the comment letter of the SIA made the following statement:

Granted, the mask work owner can apply for registration of a final chip product containing the mask work of intermediate form or gate array. However, assume the final chip product contains 24 layers of which 17 are the gate array. As long as the pirate must copy all 17 layers and a court concludes that a chip product containing 17 of 24 layers is substantially similar, 37 CFR 211.4(e) has no substantive effect on the outcome of an infringement action. But, what if the pirate needs to only copy 12 of the 17 layers so that the “infringing” product only contains 12 of the 24 layers, will a court hold this number of layers to be substantially similar? If it doesn't so hold, 37 CFR 211.4(e) has a substantive effect on the outcome of an infringement action because the applicant would have preferred to have filed for registration on only the 17 layers of the gate array. SIA believes that the Copyright Office's reasons for 37 CFR 211.4(e) are not sufficient to warrant such a possible unjust decision, especially when the Act clearly includes protection for intermediate forms such as gate arrays.¹

Commentators also expressed other concerns. The requirement that registration could not be sought for intermediate forms of mask works fixed in final forms was seen as limiting the registrability of gate arrays and cell libraries. Commentators asserted that the legislative history of the Act favors the registration of these intermediate forms.

The Copyright Office has concluded that the basic policy of the interim regulation in favor of one registration per work is a sound policy. In

implementing this policy, however, the Copyright Office has decided to adopt a number of changes. Under the approach of the interim regulation, artificial distinctions were arguably fostered between “intermediate forms” and final forms. Therefore, the Copyright Office has decided to recast the language of § 211.4(e) to require applicants to register mask work contributions in their most complete form.

The twenty percent rule as an absolute bar to registration has been eliminated. However, in cases where an applicant seeks registration of a contribution of less than 20 percent of the intended final form, a full disclosure deposit is required.

The reasons underlying these policy decisions are as follows:

(a) *Discretionary subdivision of claims.* It appears from the general structure of the Act and the nature of the testimony in the Congressional hearings that the concept of intermediate form was inserted in the definition of “semiconductor chip product” in recognition of the lengthy testing period applicable to most semiconductor chip products. In many instances semiconductor chip products will be field tested before they are made generally available. In addition, semiconductor chip products are often offered for sale several months before the testing is complete. In such circumstances it is conceivable that a semiconductor chip manufacturer would need protection before a semiconductor chip product is completed in final form. The Copyright Office believes the reference to “intermediate forms” was intended to address this problem.

Essentially the proponents of discretionary subdivision of claims urge that this is necessary to prevent judges from misconstruing the Act. It appears more likely, however, that much greater confusion would flow from permitting multiple registrations of largely completed semiconductor chip products. If discretionary subdivision of claims were permitted, each manufacturer would be tempted to divide his mask works into as small a portion as possible in order to maximize his level of protection. Moreover, under the interim deposit regulation, applicants were not required to disclose fully the content of their mask work contribution due to trade secret concerns. It appears clear from the comment letters received that claims in very small portions of semiconductor chip products will be advanced. SIA, for instance, took the position that “a very simple cell of a couple dozen transistors in a cell library” might meet the standards of

¹ SIA Comment (No. 5) at 11-12.

originality under the Act.² Without policies discouraging discretionary subdivision of claims, in order to adjudicate the protection of only one semiconductor chip product, federal judges could be required to take account of multiple registrations based on deposits which were calculated to obscure the nature of the claim. The registration and the public record would be of minimal assistance to the court, if helpful at all.

Discretionary subdivision of claims would lead to substantial problems in applying numerous statutory provisions of the Act. The commentary to the interim regulation identified these provisions as the originality provision of section 902(b), the duration provision of section 904, the reverse engineering provision of section 906, and the statutory damages provision of section 911(c). The courts will ultimately determine the proper construction of these provisions of the Act. However, in framing the registration practices for mask works, the Copyright Office believes the practices should advance all of the Act's policies to the greatest extent possible. If Congress intended to permit the practice of discretionary subdivision of claims, the Copyright Office believes it would have made some adjustments in sections 902(b), 904, 906, and 911(c) since these provisions are obviously affected. Without a clear indication in the language of the Act that Congress intended to permit discretionary subdivision of claims, the Copyright Office believes sound administration of the Act requires some limits on the practice.

(b) *Most Complete Form.* Under interim regulation § 211.4(e) registration of an intermediate form was permitted only if fixation occurred solely in intermediate form. Final regulation § 211.4(e) continues this general policy by requiring that "claimants seeking registration of a mask work contribution must submit the entire original mask work contribution in its most complete form as fixed in a semiconductor chip product." The most complete form is defined as "the stage of the manufacturing process which is closest to completion."

The development of semiconductor chip products is clearly an evolutionary process. What gives semiconductor chip products their value are the functions they can perform after all of the

manufacturing stages are complete. The Copyright Office believes the best representation of an original mask work is its most advanced form in the manufacturing process. The Copyright Office sees no compelling reason why applicants should be allowed indiscriminately to select earlier versions of intermediate forms when they have in their possession more complete versions.

(c) *Gate arrays and cell libraries.* The complaint from commentators that the interim regulations preclude registration of gate arrays and cell libraries appears exaggerated. In general, semi-custom gate arrays contain an array of unconnected cells which can be customized to create a wide variety of semiconductor chip products. Cell libraries are collections of parts of semiconductor chip products stored in computer memory tape which are used by chip designers to create new semiconductor chip products.

Under the interim regulations, it has been possible to register claims in gate arrays—both in the base layers and in the customization or "personality" layers. Under the final regulations this registration practice will continue.

To the extent that there have been problems with registration of cell libraries, these appear to stem from the requirements of the Act and not the regulations of the Copyright Office. Mask works protectible under the Act must be fixed in a semiconductor chip product. House Report No. 98-781, 98th Cong., 2d Sess. 16-17 (1984) identifies semiconductor materials as "silicon, germanium, and gallium arsenide." The Report further indicates that fixation solely in computer tapes does not meet the fixation requirement for purposes of eligibility.

The Copyright Office believes under its final regulations, all intermediate forms eligible for protection under the Act are eligible for registration under the regulations. Registration must be sought, however, for the most complete form of the intermediate form in existence.

(d) *The Twenty Percent Rule.* The Copyright Office has decided to eliminate the "twenty percent" rule as an absolute bar to registration. Nevertheless, the Copyright Office believes different policy considerations apply to registration of mask works that represent small portions of semiconductor chip products which generally do not arise where registration is sought for the complete mask work as fixed in an entire product. For this reason the Copyright Office has established a full disclosure deposit

requirement under § 211.5(b)(2)(ii), to apply in instances where registration is sought for a mask work contribution consisting of less than twenty percent of the area of the intended final form of the semiconductor chip product.

The essence of the full disclosure requirement is the deposit of visually perceptible representations "which reveal the totality of the mask work contribution to a person trained in the state of the art." It is contemplated that the type of material deposited under this provision would be of a similar nature to the material an engineer would send to a colleague for purposes of comment and evaluation.

The Copyright Office is aware of the dual Congressional concern over trade secret material which may be embodied in mask works fixed in semiconductor chip products, and the importance of a clear public record. The present deposit provision grants applicants considerable discretion in withholding material from the deposit of visually perceptible representations. However, where registration is sought for small portions of semiconductor chip products, the necessity of a clear public record to facilitate adjudication of the originality of mask work claims predominates. The Senate Memorandum (Explanatory Memorandum—Mathias-Leahy Amendment to S. 1201, 130 Cong. Rec. S12917 (daily ed. Oct. 3, 1984)) states that in most instances assertions of invalidity due to a lack of originality will be raised in court. In circumstances where only a small portion of the mask work contribution has been registered, the likelihood of invalidity due to a lack of originality is substantially increased. The Copyright Office believes a full disclosure deposit is necessary to allow judges and defendants to ascertain the nature of the plaintiff's mask work contribution.

The general public also benefits from a clear public record. See *House Explanatory Memorandum of Senate Amendment to H.R. 6163*, 130 Cong. Rec. E4433 (daily ed. Oct. 10, 1984). If the Copyright Office were to permit registration of small portions of semiconductor chip products without a full disclosure, litigation over small combinations of elements could arise where the nature of the combination was obscured from the deposit.

2. *Deposit of identifying material.* The most significant change in § 211.5 from the interim regulation is the introduction of a full disclosure deposit requirement under section 211.5(b)(2)(ii) where the mask work contribution represents less than twenty percent of the area of the intended final form. Since the policy

² The Copyright Office takes no position on whether a combination with as few as 24 transistors meets the originality standard of the Act. Citation to the SIA statement is made for purposes of analysis and evaluation.

reasons for this addition have been discussed in the preceding section, no further elaboration on that provision will be made here.

Issues relating to deposit of identifying material include the following:

(a) *Trade Secret protection under § 211.5(c)*. Most of the comments about the deposit provision were concerned about accommodation for trade secret material. A number of proposals have been adopted. For example, the proposal of SIA for allowing two layers to be withheld for each five layers of commercially exploited mask works has been adopted. In addition, the opportunity to deposit visually perceptible representations with blocked out portions has been introduced.

One proposal which was not adopted is the suggestion of SIA to substitute the phrase "made available to the public" in place of "commercially exploited," throughout § 211.5. SIA argues that the phrase "made available to the public" is more consistent with trade secret principles. This consideration, however, is not a sufficient reason to depart from statutory language. The concept of "commercially exploited" is firmly grounded in the Act itself. Applicants can refer to a statutory definition and legislative history to ascertain its meaning. Adoption of the SIA proposal would inject into federal law a concept which is not grounded in the statute. Presumably the meaning of "made available to the public" could only be derived by referring to an amorphous body of trade secret law. In addition, since trade secret law is based upon state law, what is "made available to the public" in one state may not be "made available to the public" in another state. For these reasons, the proposal of SIA was not adopted.

(b) *Permissive deposit of chips for mask works not commercially exploited*. The Copyright Office believes that chips deposited with the Copyright Office may become significant evidentiary material in litigation concerning mask works. For this reason the Copyright Office has added an express provision which allows owners of mask works not commercially exploited to deposit chips in addition to visually perceptible representations. We had allowed such deposit by practice even under the interim regulations.

(c) *Defective chips*. The Copyright Office has added a provision clarifying that "defective" chips are acceptable if the mask work contribution would be revealed in a reverse dissection process. Chips which do not reveal the mask work contribution are not acceptable

since they would have little or no evidentiary value should litigation concerning the chips arise.

(d) *Deposit of chips containing classified material*. One comment expressed concerns about depositing mask works which are classified for national security reasons.

The Copyright Office believes that the principle of 17 U.S.C. 705(b) must be applied to mask work deposits; consequently, the Office will make available for public inspection the visually perceptible representations of registered mask works. In addition, the Copyright Office is not equipped to provide the kind of security necessary for classified mask works. For these reasons, owners of classified mask works should not deposit any material which might jeopardize national security. Should an owner wish to register a classified mask work, he or she should first write a letter of inquiry under the special relief provision of § 211.5(d).

3. *Eligibility under a transfer of all rights under the Act*. Section 902(a)(1) of the Act establishes as one of the tests of eligibility that "the owner of the mask work is a national or domiciliary of the United States * * *". Section 901(a)(6) of the Act defines owner as the person to whom "all the rights under this chapter" are transferred.

Copyright Office interim regulation § 211.4(b)(2)(ii) implements these provisions by basing eligibility on a transfer of the totality of rights. Therefore, a U.S. subsidiary of a foreign corporation receiving a transfer limited to U.S. rights was prohibited from registering on the basis of ownership.

The commentary accompanying the interim regulation noted that:

If the ownership criterion of section 902(a)(1)(A) includes licensees of United States rights, it would be fairly simple for a foreign owner to retain all rights outside the United States, and license a subsidiary, parent, or third party to claim rights in the United States before first commercial exploitation. In some cases, the conveyance might constitute a license of United States rights without further qualifications; in other cases, the conveyance might purport to require a license-back to the original foreign owner.

Congress established a unique transitional procedure in section 914 apparently because it believed the general eligibility criteria would foreclose registration of most foreign-owned chips. An overbroad interpretation of the general eligibility criteria will largely, if not completely, eliminate the incentive to seek section 914 Orders or bilateral agreements. The United States would in effect offer unilateral protection for mask works with no assurance of protection for United States mask works in foreign countries. (50 FR 268).

The interpretation of the Copyright Office was criticized in three comment letters. The major thrust of the comments was that the term "all rights under this chapter" plainly meant U.S. rights. It was further argued that the interpretation did not follow traditional intellectual property practices.

The Copyright Office has concluded that there is doubt about the correct interpretation of the Act on this point, and we should therefore not refuse registration. The concerns of the Copyright Office regarding the disincentive such a construction may have on the advancement of mask work protection for U.S. nationals abroad remain. The Copyright Office has decided, however, to change § 211.4(b)(2) to reflect the statutory language under the Act. If the United States public becomes dissatisfied with the protection afforded U.S. works abroad, the Congress may wish to narrow the eligibility criteria of this law.

4. *Registration under a section 914 Order*. Certain issues concerning registration under a section 914 Order involve a classic case of conflicting statutory policies. Sections 908 and 913(d)(1) apply clear statutory deadlines for the securing of protection under the Act. Under section 908(a) registration must be sought within two years of first commercial exploitation. Under section 913(d)(1) mask works first commercially exploited between July 1, 1983 and November 8, 1984, must be registered before July 1, 1985. How these deadlines apply to section 914 Orders which are backdated in accordance with Section 914(c) is not specified under the Act.

Under interim regulation § 211.4(f)(4) it was required that an Order be issued before the statutory deadline in order for a mask work to be eligible for protection. Under this interpretation, claims from foreign owners received in the Office before the statutory deadline which were waiting for a 914 Order could not be registered after expiration of the statutory deadline on the basis of an Order issued after the expiration of the statutory deadline. Backdating was to be permitted if the Order was timely. The reason for this policy was the belief that Congress did not intend the discretion under section 914 to be applied in a way which would waive the explicit statutory deadlines.

The Copyright Office received two comments on this issue criticizing this position. It was argued that the time constraints placed on foreign governments to secure issuance of a 914 Order posed a hardship in light of the complexities of the issue. In addition, it was argued the authorization to issue

backdated Orders under section 914 was the most pertinent indication of Congressional intent.

Under a proposal of the Electronic Industries Association of Japan (hereafter EIAJ) foreign applications made during the pendency of a possible section 914 Order would not be permanently denied registration upon expiration of the statutory deadlines. Instead, they would be held in abeyance. If the pending Order were later issued and backdated to before the expiration date, the registration would be made. Applications received in the Copyright Office after the expiration date, however, would be denied registration.

This issue presents a dilemma for the Copyright Office. Under the interim regulation, some claims in chips associated with a foreign country whose mask works the Secretary of Commerce arguably deems worthy of protection may be denied registration. Such a policy might generate ill will in the foreign country to which the provision was applied because issuance of the Order would presumably be based on the availability of protection for U.S. works in that country.

The policy of holding in abeyance foreign claims awaiting a section 914 Order even after expiration of the statutory deadlines has serious drawbacks, however. Under such a policy, the certainty stemming from registration within the statutory deadlines is eliminated. In addition, a de facto form of protection would probably be extended for chips held in abeyance since there would exist a possibility of protection under the Act. In circumstances where an Order is never issued this de facto protection will be achieved without securing eligibility under the Act. As a result, foreign claims which are found underserving of a section 914 Order by the Secretary of Commerce may be given a de facto form of protection for a period of the authority of the Secretary.

Ultimately, only a court can resolve this statutory conflict. The Copyright Office is inclined to believe that the better interpretation of the Act is one which applies the statutory deadlines, while recognizing discretion to backdate Orders, as long as the statutory deadlines are observed. This was the interpretation adopted in the interim regulations. The Copyright Office continues to hope that it will be possible for the Secretary of Commerce to act upon section 914 petitions within the statutory deadlines. Nevertheless, in light of the Act's favorable stance towards establishment of international mask work protection, the Copyright

Office has decided to allow registration for whatever it may be worth, should the Secretary of Commerce backdate an Order issued after a statutory deadline expires, pending court guidance. The Copyright Office notes that the authority of the Secretary of Commerce to issue section 914 Orders will expire on November 8, 1987. If Congress considers extending this authority, it is hoped the policy regarding the statutory deadlines will be clarified.

5. *Comments on Space 8 of Form MW.* Two comments were received criticizing the descriptive language contained at Space 8 of Form MW regarding Nature of Contribution.

The statement at Space 8 is intended to secure information about the original material on which the owner bases its claim. The statement should exclude significant preexisting material and mask work contributions owned by others.

The Copyright Office is open to suggestions as to how the descriptive language at Space 8 can be improved. When revision of Form MW is undertaken, these suggestions will be taken into account.

6. *The mask work notice.* The Boston Patent Law Association (hereafter BPLA) advanced two suggestions on the mask work notice. One suggestion was that the Copyright Office establish a registry for abbreviations of names of mask work owners. Another suggestion concerned expanding the methods of affixation to include placement within the semiconductor chip product.

The Copyright Office has decided not to adopt these proposals. The test for validity of an abbreviation under the statute is whether the abbreviation is generally recognizable. The proposed registry in the Copyright Office could not make an unknown abbreviation "generally recognizable." For this reason it could have little legal effect, and would likely prove misleading because owners would rely on it to validate their choice of an abbreviation.

Under section 909, the validity of the notice is determined by whether it gives "reasonable notice" of protection. The examples in the regulation are only illustrative and not exhaustive. Under the proposal of BPLA, only engineers conducting a reverse engineering of the chips would be aware of the notice. It may be that a court will find a notice contained in the semiconductor chip product meets the statutory test under section 909. The Copyright Office, however, has not adopted the proposal because it feels members of the general public may have an interest in knowing that a chip is protected under the Act.

7. *The effect of the deadline date of July 1, 1985 on claims requiring correspondence.* The law firm of Skjerven, Morrill, MacPherson, Franklin & Friel urged that mask works commercially exploited between July 1, 1983 and November 8, 1984 which are in correspondence on July 1, 1985, be considered for an effective date as of the original date of receipt under certain conditions. These conditions included a certification from the applicant's attorney that the applicant believed in good faith that the application and deposit was complete.

Ultimately, it is the responsibility of the applicant to deliver the materials necessary for registration to the Copyright Office before expiration of the statutory deadlines. The effective date of registration is established by the receipt of an acceptable deposit, application and fee. Where a valid claim is established by the original filing, correspondence relating to errors or inconsistencies in the application or minor problems with the deposit material will not normally affect the effective date of registration. In cases where the original submission does not establish that a valid claim exists, the effective date of registration will be the date on which corrective material is received.

8. *Special handling.* Under a policy statement published in the *Federal Register* special handling may be requested "in cases involving pending or prospective litigation, customs matters, or contract or publishing deadlines that necessitate the expedited issuance of a certificate." (49 FR 39742). The Electronic Industries Association of Japan urged these criteria be enlarged to include cases involving section 914 Orders. Under regulation § 211.4(f)(2) foreign claims waiting for a section 914 Order are processed by the Copyright Office. As a result, there should normally not be a significant delay in the issuance of a certificate once the Order has been issued. For this reason, the Copyright Office has decided not to enlarge the present criteria for special handling.

9. *Regulatory Flexibility Act Statement.* With respect to the Regulatory Flexibility Act, the Copyright Office takes the position this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, Chapter 5 of the U.S.

Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.³

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyright has determined that this final regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 211

Mask works, Semiconductor chip products.

Final Regulations

In consideration of the foregoing, Chapter II of 37 CFR is amended in the manner set forth below.

PARTS 205-210—[RESERVED]

1. Parts 205-210 are added and reserved.

2. A new Part 211 is revised to 37 CFR Ch. II as follows:

PART 211—MASK WORK PROTECTION

Sec.

211.1 General provisions.

211.2 Recordation of documents pertaining to mask works.

211.3 Mask work fees.

211.4 Registration of claims of protection in mask works.

211.5 Deposit of identifying material.

211.6 Methods of affixation and placement of mask work notice.

Authority: 17 U.S.C.—701, 908.

§211.1 General provisions.

(a) Mail and other communications with the Copyright Office concerning the Semiconductor Chip Protection Act of 1984, Pub. L. 98-620, chapter 9 of Title 17 U.S.C., shall be addressed to: Library of Congress, Department MW, Washington, D.C. 20540.

(b) Section 201.2 of this chapter relating to the information given by the Copyright Office, and Parts 203 and 204 of this chapter pertaining to the Freedom of Information Act and Privacy Act, shall apply, where appropriate, to the

administration by the Copyright Office of the Semiconductor Chip Protection Act of 1984, Pub. L. 98-620.

(c) For purposes of this part, the terms "semiconductor chip product," "mask work," "fixed," "commercially exploited," and "owner," shall have the meanings set forth in section 901 of Title 17 U.S.C.

§211.2 Recordation of documents pertaining to mask works.

The conditions prescribed in section 201.4 of this chapter for recordation of transfers of copyright ownership and other documents pertaining to copyright are applicable to the recordation of documents pertaining to mask works under section 903 of Title 17 U.S.C.

§211.3 Mask work fees.

(a) The following fees or charges are established by the Register of Copyrights for services relating to mask works:

- | | |
|--|----------|
| (1) For filing an application for registration of a mask work claim..... | \$20.00 |
| (2) For recordation of a document consisting of six pages or less covering no more than one title..... | \$10.00 |
| (3) For recordation of each page over six and each title over one..... | \$5.00 |
| (4) For a certified copy of a certificate of registration..... | \$4.00 |
| (5) For certifications of photocopies of other Copyright Office records..... | \$4.00 |
| (6) For the issuance of a receipt of a deposit..... | \$2.00 |
| (7) For each hour or fraction of an hour consumed in the making and reporting of a routine search, and for any related services..... | \$10.00 |
| (8) For special handling of an application for registration of a claim..... | \$200.00 |
| (9) For any special services not listed above requiring a substantial amount of time or expense, the fees will be fixed on the basis of the cost of providing the service..... | |

(b) Section 201.6 of this chapter on the payment and refund of Copyright Office fees shall apply to mask work fees.

§211.4 Registration of claims of protection in mask works.

(a) *General.* This section prescribes conditions for the registration of claims of protection in mask works pursuant to section 908 of Title 17 U.S.C.

(b) *Application for registration.* (1) For purposes of registration of mask work claims, the Register of Copyrights has designated "Form MW" to be used for all applications submitted on and after January 7, 1985. Copies of the form are available free upon request to the Public Information Office, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559. Applications submitted

before January 7, 1985 will be dated January 7, 1985.

(2) An application for registration of a mask work claim may be submitted by the owner of the mask work, or the duly authorized agent of any such owner.

(i) The owner of a mask work includes a party that has obtained the transfer of all of the exclusive rights in the work, but does not include the transferee of less than all of the exclusive rights, or the licensee of all or less than all of these rights.

(ii) For purposes of eligibility to claim mask work protection pursuant to section 902(a)(1)(A) of 17 U.S.C., the owner of the mask work must be either the initial owner or a person who has obtained by transfer the totality of rights in the mask work under the Act.

(3) An application for registration shall be submitted on Form MW prescribed by the Register under paragraph (b)(1) of this section, and shall be accompanied by the registration fee and deposit required under 17 U.S.C. 908 and §§ 211.3 and 211.5 of these regulations. The application shall contain the information required by the form and its accompanying instructions, and shall include a certification. The certification shall consist of: (i) A declaration that the applicant is authorized to submit the application and that the statements made are correct to the best of that person's knowledge; and (ii) the handwritten signature of the applicant, accompanied by the typed or printed name of that person.

(c) *One registration per mask work.* As a general rule only one registration can be made for the same version of a mask work fixed in an intermediate or final form of any semiconductor chip product. However, where an applicant for registration alleges that an earlier registration for the same version of the work is unauthorized and legally invalid and submits for recordation a signed affidavit, a registration may be made in the applicant's name.

(d) *Registration as a single work.* For purposes of registration on a single application and upon payment of a single fee, the following shall be considered a single mask work:

(1) In the case of a mask work that has not been commercially exploited: All original mask work elements fixed in a particular form of a semiconductor chip product at the time an application for registration is filed and in which the owner or owners of the mask work is or are the same; and

(2) In the case of a mask work that has been commercially exploited: All original mask work elements fixed in a semiconductor chip product at the time

³The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d), of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title [17] except with respect to the making of copies of copyright deposits"). [17 U.S.C. 706(b)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

that product was first commercially exploited and in which the owner or owners of the mask work is or are the same.

(e) *Registration in most complete form.* Owners seeking registration of a mask work contribution must submit the entire original mask work contribution in its most complete form as fixed in a semiconductor chip product. The most complete form means the stage of the manufacturing process which is closest to completion. In cases where the owner is unable to register on the basis of the most complete form because he or she lacks control over the most complete form, an averment of this fact must be made at Space 2 of Form MW. Where such an averment is made, the owner may register on the basis of the most complete form in his or her possession.

(f) *Section 914 Orders.* (1) For purposes of this section, the terms "Commissioner" and "Order" shall have the meaning given them in the *Guidelines for the Submission of Applications for Interim Protection of Mask Works Under 17 U.S.C. 914* (49 FR 44517; Nov. 7, 1984) as follows:

(i) "Commissioner" means the Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

(ii) "Order" means an action by the Commissioner issuing or terminating an Order extending to foreign nationals, domiciliaries and sovereign authorities the privilege of making interim registrations for mask works pursuant to Chapter 9 of title 17, U.S.C.

(2) In the case of a mask work which is eligible for registration only after issuance of an Order of the Commissioner pursuant to section 914, 17 U.S.C., applications for registration under section 908 may be submitted, along with the proper identifying material and fee, if a request for issuance of an Order has been made in accordance with the *Guidelines*. The Copyright Office will process and examine the claims, but will not issue a certificate of registration unless and until an Order is issued pursuant to 17 U.S.C. 914.

(3) The effective date of any registration premised on a section 914, 17 U.S.C. Order shall not be earlier than the effective date of the Order.

(4) Registration premised on a section 914, 17 U.S.C. Order will be refused unless the Order is given an effective date before, and the proper application, deposit of identifying material, and fee are received in the Copyright Office before:

(i) July 1, 1985, in the case of mask works first commercially exploited

between July 1, 1983, and November 8, 1984; or

(ii) the expiration of two years following first commercial exploitation, in the case of a mask work commercially exploited on or after November 8, 1984.

(5) Subject to paragraph (e)(4) of this section, registration of a claim premised on a section 914, 17 U.S.C. Order will be made even after the termination or expiration of an Order, provided that a proper application, deposit of identifying material, and fee are received in the Copyright Office while the Order is in effect, and the claim is otherwise entitled to registration under chapter 9 of Title 17 U.S.C.

(g) *Corrections and amplifications of prior registration.* Except for errors or omissions made by the Copyright Office, no corrections or amplifications can be made to the information contained in the record of a completed registration after the effective date of the registration. A document purporting to correct or amplify the information in a completed registration may be recorded in the Copyright Office for whatever effect a court of competent jurisdiction may later give to it, if the document is signed by the owner of the mask work, as identified in the registration record, or by a duly authorized agent of the owner.

§ 211.5 Deposit of identifying material.

(a) *General.* This section prescribes rules pertaining to the deposit of identifying material for registration of a claim of protection in a mask work under section 908 of Title 17 U.S.C.

(b) *Nature of required deposit.* Subject to the provisions of paragraph (c) of this section, the deposit of identifying material to accompany an application for registration of a mask work claim under § 211.4 of these regulations shall consist of:

(1) In the case of a commercially exploited mask work, four reproductions of the mask work fixed in the form of the semiconductor chip product in which it was first commercially exploited. Defective chips may be deposited under this section provided that the mask work contribution would be revealed in reverse dissection of the chips. The four reproductions shall be accompanied by a visually perceptible representation of each layer of the mask work consisting of:

(i) Sets of plastic color overlay sheets;

(ii) drawings or plots in composite form on a single sheet or on separate sheets; or

(iii) a photograph of each layer of the work fixed in a semiconductor chip product.

The visually perceptible representation of a mask work deposited under this section shall be reproduced on material which can be readily stored in an 8½ x 11 inch format, and shall be reproduced at a magnification sufficient to reveal the basic circuitry design of the mask work and which shall in all cases be at least 20 times magnification.

(2) In the case of a mask work that has not been commercially exploited, one of the following:

(i) Where the mask work contribution in which registration is sought represents twenty percent or more of the area of the intended final form, a visually perceptible representation of the work in accordance with paragraph (b)(1)(i) or (ii) of this section. In addition to the deposit of visually perceptible representations of the work, an applicant may, at his or her option, deposit four reproductions in the most complete form of the mask work as fixed in a semiconductor product.

(ii) Where the mask work contribution in which registration is sought represents less than twenty percent of the area of the intended final form, a visually perceptible representation of the work which reveals the totality of the mask work contribution to a person trained in the state of the art. The visually perceptible representations may consist of any combination of plastic color overlay sheets, drawing or plots in composite form, or a photograph or photographs of the entire mask set. If the visually perceptible representation fails to identify all of the elements of the mask work contribution, they may be accompanied by additional explanatory material. The visually perceptible representation of a mask work deposited under this section shall be reproduced on material which can be readily stored in an 8½ x 11 inch format and shall be of sufficient magnification and completeness to reveal all elements of the mask work contribution. In addition to the deposit of visually perceptible representations of the work, an applicant may, at his or her option, deposit four reproductions in the most complete form of the mask work as fixed in a semiconductor chip product.

(c) *Trade secret protection.* Where specific layers of a mask work fixed in a semiconductor chip product contain information in which trade secret protection is asserted, certain material may be withheld as follows:

(1) *Mask works commercially exploited.* For commercially exploited mask works no more than two layers of each five or more layers in the work. In lieu of the visually perceptible representations required under

paragraph (b)(1) of this section, identifying portions of the withheld material must be submitted. For these purposes, "identifying portions" shall mean (i) a printout of the mask work design data pertaining to each withheld layer, reproduced in microform, or (ii) visually perceptible representations in accordance with paragraph (b)(1) (i), (ii), or (iii) of this section with those portions containing sensitive information maintained under a claim of trade secrecy blocked out, provided that the portions remaining are greater than those which are blocked out.

(2) *Mask work not commercially exploited.* For mask works not commercially exploited falling under paragraph (b)(2)(i) of this section, any layer may be withheld. In lieu of the visually perceptible representations required under paragraph (b)(2) of this section, "identifying portions" shall mean (i) a printout of the mask work design data pertaining to each withheld layer, reproduced in microform, in which sensitive information maintained under a claim of trade secrecy has been blocked out or stripped, or (ii) visually perceptible representations in accordance with paragraph (b)(2)(i) with those portions containing sensitive information maintained under a claim of trade secrecy blocked out, provided that the portions remaining are greater than those which are blocked out. The identifying portions shall be accompanied by a single photograph of the top or other visible layers of the mask work fixed in a semiconductor chip product in which the sensitive information maintained under a claim of trade secrecy has been blocked out, provided that the blocked out portions do not exceed the remaining portions.

(d) *Special relief.* The Register of Copyrights may decide to grant special relief from the deposit requirements of this section, and shall determine the conditions under which special relief is to be granted. Requests for special relief under this paragraph shall be made in writing to the Chief, Examining Division of the Copyright Office, Washington, D.C. 20559, shall be signed by the person signing the application for registration, shall set forth specific reasons why the request should be granted and shall propose an alternative form of deposit.

(e) *Retention and disposition of deposits.* (1) Any identifying material deposited under this section, including material deposited in connection with claims that have been refused registration, are the property of the United States Government.

(2) Where a claim of protection in a mask work is registered in the Copyright Office, the identifying material

deposited in connection with the claim shall be retained under the control of the Copyright Office, including retention in Government storage facilities, during the period of protection. After that period, it is within the joint discretion of the Register of Copyrights and the Librarian of Congress to order its destruction or other disposition.

§211.6 Methods of affixation and placement of mask work notice

(a) *General.* (1) This section specifies methods of affixation and placement of the mask work notice that will satisfy the notice requirement in section 909 of title 17 U.S.C. A notice deemed "acceptable" under this regulation shall be considered to satisfy the requirement of that section that it be affixed "in such manner and location as to give reasonable notice" of protection. As provided in that section, the examples specified in this regulation shall not be considered exhaustive of the methods of affixation and positions giving reasonable notice of the claim of protection in a mask work.

(2) The acceptability of a mask work notice under these regulations shall depend upon its being legible under normal conditions of use, and affixed in such manner and position that, when affixed, it may be viewed upon reasonable examination.

(b) *Elements of mask work notice.* The elements of a mask work notice shall consist of:

(1) the words "mask work", the symbol "M", or the symbol "M" (the letter M in a circle); and

(2) the name of the owner or owners of the mask work or an abbreviation by which the name is recognized or is generally known.

(c) *Methods of affixation and placement of the notice.* In the case of a mask work fixed in a semiconductor chip product, the following locations are acceptable:

(1) A gummed or other label securely affixed or imprinted upon the package or other container used as a permanent receptacle for the product; or

(2) A notice imprinted or otherwise affixed in or on the top or other visible layer of the product.

Dated: June 21, 1985.

Donald C. Curran,

Acting Register of Copyrights.

Approved by:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 85-15514 Filed 6-27-85; 8:45 am]

BILLING CODE 1410-03-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1

[OA-FRL-2855-4]

Statement of Organization and General Information

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This document updates the statement of organization and general information to reflect the current organization of the U.S. Environmental Protection Agency.

EFFECTIVE DATE: June 20, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Gary M. Katz, Director, Management and Organization Division, Office of Administration, 202-382-5000.

List of Subjects in 40 CFR Part 1

Organization and functions (Government agencies).

Dated: June 20, 1985.

Howard M. Messner,
Assistant Administrator for Administration
and Resources Management.

Part 1 of Title 40 of the Code of Federal Regulations is revised as follows:

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

Subpart A—Introduction

Sec.

- 1.1 Creation and authority.
- 1.3 Purpose and functions.
- 1.5 Organization and general information.
- 1.7 Location of principal offices.

Subpart B—Headquarters

- 1.21 General.
- 1.23 Office of the Administrator.
- 1.25 Staff Offices.
- 1.27 Offices of the Associate Administrators.
- 1.29 Office of Inspector General.
- 1.31 Office of General Counsel.
- 1.33 Office of Administration and Resources Management.
- 1.35 Office of Enforcement and Compliance Monitoring.
- 1.37 Office of External Affairs.
- 1.39 Office of Policy, Planning and Evaluation.
- 1.41 Office of Air and Radiation.
- 1.43 Office of Pesticides and Toxic Substances.
- 1.45 Office of Research and Development.
- 1.47 Office of Solid Waste and Emergency Response.
- 1.49 Office of Water.