

records center storage facilities must meet to store Federal records. This document corrects several editorial and printing errors in that final rule. Two of the corrections substantively affect the final rule. The date in the definition of "Existing records storage facility" is corrected to read January 2, 2000. The text following the first sentence of § 1228.228(n)(4) should have been part of paragraph (n)(4).

DATES: Effective January 3, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at 301-713-7360, ext. 226.

SUPPLEMENTARY INFORMATION: In the document FR 99-30973 published on December 2 1999 (99 FR 67634), make the following corrections:

1. On page 67635, in the second column, correct the second heading to read: "**Definitions (§ 1228.226)**".

2. On page 67637, in the first column, correct the last line of that column to read "source of water leakage, but to permit".

§ 1228.226 [Corrected]

3. On page 67643, in the third column, in § 1228.226, in the definition of "Existing records storage facility", 4th line, correct the date "September 30, 1999," to read "January 2, 2000,".

§ 1228.228 [Corrected]

4. On page 67644, in the third column, in § 1228.228(k), 4th and 5th lines, add quotation marks at the beginning and end of the title "Vulnerability Assessment of Federal Facilities".

5. On page 67645, in the first column, in § 1228.228(n)(4), the undesignated paragraph following paragraph (n)(4) is correctly designated as the second and third sentences of paragraph (n)(4).

Dated: December 6, 1999.

Nancy Y. Allard,

Federal Register Liaison.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GC Docket No. 95-21; FCC 99-322]

Ex Parte Presentations in Commission Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission denies petitions for reconsideration and amends on its own motion its

regulations concerning ex parte presentations in Commission proceedings, which were comprehensively revised in 1997. The current amendments modify the rules in minor respects based on the Commission's experience with the revised rules since 1997. The intended effect of the current amendments is to further make the rules simpler and easier to comply with, to enhance the fairness of the Commission's processes, and to facilitate the public's ability to communicate with the Commission.

DATES: Effective January 10, 2000.

FOR FURTHER INFORMATION CONTACT: David S. Senzel, Office of General Counsel (202) 418-1720.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, GC Docket No. 95-21, adopted on October 28, 1999, and released November 9, 1999. The full text of the memorandum opinion and order is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW, Washington DC 20554. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., Room CY-B400, 445 12th Street, SW, Washington DC 20554, telephone (202) 314-3070.

Summary of Memorandum Opinion and Order

1. In 1997, the Commission revised its rules governing ex parte presentations in Commission proceedings. *Report and Order*, 62 FR 15852 (April 3, 1997). The revision was intended to make the rules simpler and clearer, and thus more effective in ensuring fairness in Commission proceedings. The Commission stressed that the ex parte rules are important and that full compliance is expected.

2. Two law firms, Hogan & Hartson and Lukas, McGowan, Nace & Gutierrez, seek reconsideration of the revised rules. Hogan & Hartson contends that the Commission should treat all proceedings as "permit-but-disclose" except for certain quasi-judicial proceedings. Lukas, McGowan, Nace & Gutierrez proposes that informal complaints under 47 U.S.C. 208 should be treated as "restricted." The Commission finds both petitions for reconsideration without merit and denies them.

3. The Commission, however, finds that, although its experience with the revised rules has generally been positive, certain areas warrant further consideration. The Commission

therefore takes the opportunity to modify the revised rules in certain minor respects. The modifications are:

A. Parties

1. In proceedings designated for hearing, only persons formally given party status will be treated as parties for ex parte purposes.

2. The "viewer/listener" exception, under which viewers or listeners do not become parties because they comment on a pending broadcast application and do not have to serve the broadcaster, is clarified.

3. Members of Congress and other governmental officials will not become parties merely by serving a presentation; they will be made parties only if that is warranted based on an affirmative request for party status.

4. Petitions to revoke and petitions for orders to show cause will be treated the same as complaints.

B. Classification of Proceedings

1. Requests for modification of payment arrangements under 47 CFR 64.1001 will be treated as permit-but-disclose instead of restricted.

2. BOC applications to provide in-region interLATA services pursuant to 47 U.S.C. 271(d), petitions for Commission preemption of authority to review interconnection agreements under 47 U.S.C. 252(e)(5), and petitions for preemption under 47 U.S.C. 253 will be treated as permit-but-disclose instead of restricted.

3. Persons filing petitions for declaratory rulings or rulemakings that seek Commission preemption will be required to serve any state or local government, the actions of which are cited as a basis for requesting preemption. Such pleadings that are not served will be dismissed without consideration as a defective pleading and treated as a violation of the ex parte rules unless the Commission determines that the matter should be entertained by making it part of the record under 47 CFR 1.1212(d) and the parties are so informed.

C. Exempt Presentations

1. Presentations between Commission staff and administrators, such as the Universal Service Administrative Company, will be exempt.

D. Status Inquiries

1. The newly-adopted exemption for oral status inquiries requesting action by a particular date or giving reasons that a proceeding should be expedited other than to avoid administrative delay will apply only in non-hearing proceedings.

E. Clarifications and Typographical Errors

1. The rules are amended where necessary to clarify them and eliminate typographical errors.

F. Public Notices

1. The Bureaus and Offices are encouraged to specify the ex parte status of proceedings when they issue public notices.

Regulatory Flexibility Certification

4. The NPRM (60 FR 8995 (February 16, 1995)) incorporated an Initial Regulatory Flexibility Analysis (IFRA) of the proposed rules pursuant to 5 U.S.C. 605. No comments were received in direct response to the IFRA. Section 604 of the Regulatory Flexibility Act, as amended, requires a final regulatory flexibility analysis in a notice and comment rulemaking proceeding unless the Commission certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). The Commission believes that the rules it adopted will not have a significant economic impact on a substantial number of small entities.

5. As noted, the Commission's purpose in revising the ex parte rules is to simplify and clarify them. It finds that the modifications do not impose any additional compliance burden on persons dealing with the Commission including small entities. It also finds that the revised rules clarify the situations in which ex parte presentations are permissible, when they must be reported on the record, and when they are prohibited, without significantly changing the current rules substantively. The Commission believes that the revised rules do not otherwise affect the rights of persons to participate as parties in Commission proceedings. It further finds that there is no reason to believe that operation of the revised rules will impose any costs on parties in particular proceedings subject to those rules, beyond those costs incurred under our former rules. Rather, the Commission anticipates that the revisions will serve to make the rules easier to comply with and more effective for small entities as well as others. By increasing the frequency with which the Commission issues reports of ex parte presentations, the amended rules will make it easier for small entities and others to determine when ex parte presentations have occurred.

6. Accordingly, the Commission certifies, pursuant to Section 605(b) of the Regulatory Flexibility Act, as amended by the Contract with America

Advancement Act of 1996 (CWAAA), Public Law 104-121, 110 Stat. 847 (1996), that the rules will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Radio, Telecommunications, Television.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Changes

Part 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), and 309.

2. Section 1.1202 is amended by revising the note to paragraph (a), paragraph (d) introductory text, paragraphs (d)(1) through (d)(5) and by adding note 5 to paragraph (d) to read as follows:

§ 1.1202 Definitions.

(a) * * *

Note to paragraph (a): A communication expressing concern about administrative delay or expressing concern that a proceeding be resolved expeditiously will be treated as a permissible status inquiry so long as no reason is given as to why the proceeding should be expedited other than the need to resolve administrative delay, no view is expressed as to the merits or outcome of the proceeding, and no view is expressed as to a date by which the proceeding should be resolved. A presentation by a party in a restricted proceeding not designated for hearing requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay (and responsive presentations by other parties) may be made on an ex parte basis subject to the provisions of § 1.1204(a)(11).

* * * * *

(d) *Party.* Unless otherwise ordered by the Commission, the following persons are parties:

(1) In a proceeding not designated for hearing, any person who files an application, waiver request, petition, motion, request for a declaratory ruling, or other filing seeking affirmative relief (including a Freedom of Information Act request), and any person (other than an individual viewer or listener filing comments regarding a pending broadcast application or members of

Congress or their staffs or branches of the federal government or their staffs) filing a written submission referencing and regarding such pending filing which is served on the filer, or, in the case of an application, any person filing a mutually exclusive application;

(2) Any person who files a complaint or request to revoke a license or other authorization or for an order to show cause which shows that the complainant has served it on the subject of the complaint or which is a formal complaint under 47 U.S.C. 208 and § 1.721 or 47 U.S.C. 255 and § 5.21, and the person who is the subject of such a complaint or request that shows service or is a formal complaint under 47 U.S.C. 208 and § 1.721 or 47 U.S.C. 255 and § 5.21;

(3) The subject of an order to show cause, hearing designation order, notice of apparent liability, or similar notice or order, or petition for such notice or order;

(4) In a proceeding designated for hearing, any person who has been given formal party status; and

(5) In an informal rulemaking proceeding conducted under section 553 of the Administrative Procedure Act (other than a proceeding for the allotment of a broadcast channel) or a proceeding before a Joint Board or before the Commission to consider the recommendation of a Joint Board, members of the general public after the issuance of a notice of proposed rulemaking or other order as provided under § 1.1206(a) (1) or (2).

* * * * *

Note 5 to paragraph (d): A member of Congress or his or her staff, or other agencies or branches of the federal government or their staffs will not become a party by service of a written submission regarding a pending proceeding that has not been designated for hearing unless the submission affirmatively seeks and warrants grant of party status.

3. Section 1.1203 is amended by revising paragraph (a) introductory text to read as follows:

§ 1.1203 Sunshine period prohibition.

(a) With respect to any Commission proceeding, all presentations to decisionmakers concerning matters listed on a Sunshine Agenda, whether ex parte or not, are prohibited during the period prescribed in paragraph (b) of this section unless:

* * * * *

4. Section 1.1204 is amended by revising paragraph (a) introductory text, paragraphs (a)(6), (a)(9), (a)(10)(iii), and (a)(11), by adding paragraph (a)(12), and by adding the note to paragraph (b) to read as follows:

§ 1.1204 Exempt ex parte presentations and proceedings.

(a) *Exempt ex parte presentations.* The following types of presentations are exempt from the prohibitions in restricted proceedings (§ 1.1208), the disclosure requirements in permit-but-disclose proceedings (§ 1.1206), and the prohibitions during the Sunshine Agenda period prohibition (§ 1.1203):

* * * * *

(6) The presentation is to or from the United States Department of Justice or Federal Trade Commission and involves a telecommunications competition matter in a proceeding which has not been designated for hearing and in which the relevant agency is not a party or commenter (in an informal rulemaking or Joint board proceeding) *provided that*, any new factual information obtained through such a presentation that is relied on by the Commission in its decision-making process will be disclosed by the Commission no later than at the time of the release of the Commission's decision;

* * * * *

(9) The presentation is made pursuant to an express or implied promise of confidentiality to protect an individual from the possibility of reprisal, or there is a reasonable expectation that disclosure would endanger the life or physical safety of an individual;

(10) * * *

(iii) If the presentation is made in a proceeding subject to permit-but-disclose requirements, disclosure of any new written information elicited from such request or a summary of any new oral information elicited from such request must be made in accordance with the requirements of § 1.1206(b), provided, however, that the Commission or its staff may determine that disclosure would interfere with the effective conduct of an investigation and dispense with the disclosure requirement. As in paragraph (a)(10)(ii) of this section, information relating to how a proceeding should or could be settled, as opposed to new information regarding the merits, shall not be deemed to be new information for purposes of this section;

* * * * *

(11) The presentation is an oral presentation in a restricted proceeding not designated for hearing requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay. A detailed summary of the presentation shall promptly be filed in the record and served by the person making the presentation on the other parties to the

proceeding, who may respond in support or opposition to the request for expedition, including by oral *ex parte* presentation, subject to the same service requirement.

(12) The presentation is between Commission staff and:

(i) The administrator of the interstate telecommunications relay services fund relating to administration of the telecommunications relay services fund pursuant to 47 U.S.C. 225;

(ii) The North American Numbering Plan Administrator or the North American Numbering Plan Billing and Collection Agent relating to the administration of the North American Numbering Plan pursuant to 47 U.S.C. 251(e);

(iii) The Universal Service Administrative Company relating to the administration of universal service support mechanisms pursuant to 47 U.S.C. 254; or

(iv) The Number Portability Administrator relating to the administration of local number portability pursuant to 47 U.S.C. 251(b)(2) and (e); provided that the relevant administrator has not filed comments or otherwise participated as a party in the proceeding.

(b) * * *

Note 4 to paragraph (b): In the case of petitions for rulemaking that seek Commission preemption of state or local regulatory authority, the petitioner must serve the original petition on any state or local government, the actions of which are specifically cited as a basis for requesting preemption. Service should be made on those bodies within the state or local governments that are legally authorized to accept service of legal documents in a civil context. Such pleadings that are not served will be dismissed without consideration as a defective pleading and treated as a violation of the *ex parte* rules unless the Commission determines that the matter should be entertained by making it part of the record under § 1.1212(d) and the parties are so informed.

* * * * *

5. Section 1.1206 is amended by adding note 1 to paragraph (a) introductory text, revising and redesignating note 1 as note 2, and by revising and redesignating note 2 as note 3, and by adding paragraphs (a)(12) through (a)(14) to read as follows:

§ 1.1206 Permit-but-disclose proceedings.

(a) * * *

Note 1 to paragraph (a) introductory text: In the case of petitions for declaratory ruling that seek Commission preemption of state or local regulatory authority, the petitioner must serve the original petition on any state or local government, the actions of which are specifically cited as a basis for requesting preemption. Service should be made on those bodies within the state or local governments

that are legally authorized to accept service of legal documents in a civil context. Such pleadings that are not served will be dismissed without consideration as a defective pleading and treated as a violation of the *ex parte* rules unless the Commission determines that the matter should be entertained by making it part of the record under § 1.1212(d) of this section and the parties are so informed.

* * * * *

(7) * * *

Note 2 to paragraph (a): Where the requested information is the subject of a request for confidentiality, the person filing the request for confidentiality shall be deemed a party.

* * * * *

(12) A modification request filed pursuant to § 64.1001 of this chapter;

(13) Applications by Bell Operating Companies to provide in-region, interLATA services pursuant to § 271(d) of the Communications Act; and

(14) Petitions for Commission preemption of authority to review interconnection agreements under § 252(e)(5) of the Communications Act and petitions for preemption under § 253 of the Communications Act.

Note 3 to paragraph (a): In a permit-but-disclose proceeding involving only one "party," as defined in § 1.1202(d) of this section, the party and the Commission may freely make presentations to each other and need not comply with the disclosure requirements of paragraph (b) of this section.

6. Section 1.1208 is amended by revising the undesignated text to read as follows:

§ 1.1208 Restricted proceedings.

Unless otherwise provided by the Commission or its staff pursuant to § 1.1200(a) of this section, *ex parte* presentations (other than *ex parte* presentations exempt under § 1.1204(a) of this section) to or from Commission decision-making personnel are prohibited in all proceedings not listed as exempt in § 1.1204(b) or permit-but-disclose in § 1.1206(a) of this section until the proceeding is no longer subject to administrative reconsideration or review or judicial review. Proceedings in which *ex parte* presentations are prohibited, referred to as "restricted" proceedings, include, but are not limited to, all proceedings that have been designated for hearing, proceedings involving amendments to the broadcast table of allotments, applications for authority under Title III of the Communications Act, and all waiver proceedings (except for those directly associated with tariff filings).

7. Section 1.1210 is revised to read as follows:

§ 1.1210 Prohibition on solicitation of presentations.

No person shall solicit or encourage others to make any improper presentation under the provisions of this section.

[FR Doc. 99-31620 Filed 12-8-99; 8:45 am]

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 990304063-9063-01; I.D. 120299A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Hook-and-line or Pot Gear in the Bering Sea and Aleutian Islands

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by vessels using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the portion of the 1999 total allowable catch (TAC) of Pacific cod allocated to these vessels in this area.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), December 6, 1999 until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 12103, March 11, 1999) established the portion of the TAC of Pacific cod allocated to vessels using hook-and-line or pot gear in the BSAI as 83,500 metric tons (mt) which was then modified by two reallocations of Pacific cod TAC (64 FR 52472, September 29, 1999; the

second document has just been submitted to the *Office of the Federal Register* and will be published in approximately the second week of December) to 95,300 mt. See § 679.20(c)(3)(iii) and § 679.20(a)(7).

The fishery for Pacific cod by vessels using hook-and-line or pot gear in the BSAI was closed to directed fishing under § 679.20(d)(1)(iii) on October 19, 1999 (64 FR 56475, October 20, 1999), in order to reserve amounts of Pacific cod anticipated to be needed for incidental catch in other fisheries.

NMFS has determined that, with the reallocation of Pacific cod from catcher/processors and catcher vessels using trawl gear to vessels using hook-and-line or pot gear, 2,000 mt remain in the portion of the TAC of Pacific cod allocated to vessels using hook-and-line or pot gear in the BSAI. Because this amount exceeds anticipated needs for incidental catch of Pacific cod in other fisheries, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by vessels using hook-and-line or pot gear in the BSAI.

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the Pacific cod TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. Further delay would only disrupt the FMP objective of providing the Pacific cod TAC for harvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 3, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99-31954 Filed 12-6-99; 3:58 pm]

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 990304063-9063-01; I.D. 120299B]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod

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

ACTION: Reallocation.

SUMMARY: NMFS is reallocating projected unused amounts of Bering Sea and Aleutian Islands management area (BSAI) Pacific cod from trawl catcher/processors and trawl catcher vessels to vessels using hook-and-line or pot gear. This action is necessary to allow the 1999 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective December 6, 1999 through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(5), the Final 1999 Harvest Specifications for Groundfish for the BSAI (64 FR 12103, March 11, 1999) established the Pacific cod initial TAC for the BSAI as 163,725 metric tons (mt). Of this amount, 3,275 mt was allocated to vessels using jig gear, 38,475 mt to trawl catcher vessels, 38,475 mt to trawl catcher/processors, and 83,500 mt to vessels using hook-and-line or pot gear. Subsequently, 5,000 mt were reallocated from the trawl catcher/processors to vessels using hook-and-line or pot gear and 2,800 mt were reallocated from vessels using jig gear to vessels using hook-and-line or pot gear (64 FR 52472, September 29, 1999). That reallocation resulted in allocations of 475 mt to vessels using jig gear, 38,475 mt to trawl catcher vessels, 33,475 mt to trawl catcher/processors, and 91,300 mt to vessels using hook-and-line or pot gear.