

and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-

354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 13, 1995.

**Stephen L. Johnson,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. In § 180.317, by amending paragraph (a) in the table therein by adding and alphabetically inserting the commodity radicchio greens (tops), to read as follows:

**§ 180.317 3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide; tolerances for residues.**

(a) \* \* \*

Commodity	Parts per million
* * * * *	
Radicchio greens (tops) .....	2.0
* * * * *	
* * * * *	

[FR Doc. 95-1855 Filed 1-24-95; 8:45 am]

BILLING CODE 6560-50-F

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 76**

[MM Docket No. 92-266; FCC 95-8]

**Cable Act of 1992—Rate Regulation**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** On its own motion, the Commission amends its rules in order to provide certain cable operators with further incentives to add new channels to cable programming services tiers and to single-tier systems. These incentives apply to independent small systems, to small systems owned by small multiple system operators, and to independent systems and systems owned by small multiple system operators which incur additional monthly per subscriber headend costs of one full cent or more for an additional channel. These systems may take advantage of the streamlined cost-of-service procedure for headend upgrades associated with channel additions, as well as the per channel rate adjustments and programming expense adjustments available to all cable systems adding channels under the existing rule. The Order also provides that the streamlined cost-of-service procedure for headend upgrades associated with channel additions shall apply to single-tier systems.

**EFFECTIVE DATE:** February 24, 1995.

**FOR FURTHER INFORMATION CONTACT:** Joel Kaufman or Meryl S. Icove, Cable Services Bureau, (202) 416-0800.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Seventh Order on Reconsideration in MM Docket 92-266, FCC 95-8, adopted January 5, 1995, and released January 5, 1995. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (ITS), at 2100 M St., NW., Washington, DC 20037, (202) 857-3800.

**Synopsis of the Seventh Order on Reconsideration**

**A. Background**

In the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking ("Fourth Report and Order") in this docket, 59 FR 17943 (April 15, 1994), the Commission specified a "going-forward" mechanism under which price-capped rates are adjusted for changes in the number of channels offered on the basic service tier ("BST") and on cable programming service tiers ("CPSTs"). Under this mechanism, operators first remove all external costs from the tier charge and then adjust the residual component of the tier charge by a per channel adjustment which declines as the number of channels on the system increases. Operators were also allowed

to pass through to subscribers the programming costs associated with new channels as well as a mark-up of 7.5% on new programming expense.

In the Sixth Order on Reconsideration and Fifth Report and Order ("Sixth Reconsideration Order"), 59 FR 62614 (December 6, 1994), the Commission *inter alia*, supplemented its existing going forward rules by creating an alternative channel adjustment methodology. Cable operators adding channels to CPSTs or single-tier systems may recover from subscribers (a) a flat per channel mark-up of up to 20 cents per subscriber per month, subject to a cap on the total amount recovered through December 31, 1997, and (b) programming costs, subject to a cap that applies through December 31, 1996. Operators adding channels to CPSTs or single-tier systems on and after May 15, 1994 may use either the new rules or the existing rules to adjust rates after December 31, 1994, but must use either the existing rules or the new rules consistently with respect to all channels added after December 31, 1994.

In the Sixth Reconsideration Order, the Commission also adopted a special streamlined cost-of-service procedure that permits independent small systems and small systems owned by small multiple system operators ("MSOs") to recover the costs of upgrading their headend equipment when they add new channels to CPSTs. A small system is a cable system that serves 1,000 or fewer subscribers from the system's principal headend, including any technically integrated headends and microwave receive sites. See 47 CFR 76.901(c). A small MSO is defined as a MSO that has 250,000 or fewer total subscribers, owns only systems with less than 10,000 subscribers each, and has an average system size of 1,000 or fewer subscribers. See 47 CFR 76.922(b)(5). To prevent the potential for unreasonably sharp rate increases to small system subscribers, the amount a small system can recover for each channel added was limited to programming costs incurred plus the lesser of the actual cost of the headend equipment or \$5,000. Headend costs that are to be recovered through increased rates must be depreciated over the useful life of the equipment. In addition, the rate of return the small system may earn on such headend costs may not exceed 11.25%. Small systems that increase rates as a result of any channel additions pursuant to this methodology may be reimbursed for the addition of a maximum of seven channels to CPSTs between May 15, 1994 and December 31, 1997. Qualifying small systems adding channels to CPSTs were allowed to choose between this

streamlined cost-of-service procedure and the going forward rules applicable to all systems.

#### B. Discussion

On our own motion, we find our requirement that qualifying small systems elect between the per channel adjustment methodology and the streamlined cost-of-service procedure for upgrading headend equipment insufficient to give qualifying systems an appropriate incentive to add new channels. Although the return of up to 11.25% on the cost of headend equipment was intended to allow small systems a profit when they added channels, we now believe that our formula as a whole may give such systems an insufficient incentive to add channels. This is the case because, except for very small systems, the per subscriber rate adjustment associated with the streamlined cost-of-service showing would be less than the 20 cents per subscriber per month allowed under our general going forward regulations. If the maximum \$5,000 in headend costs is depreciated by a 1,000 subscriber system with an 11.25% rate of return, for example, the monthly per subscriber cost would be just over five cents, assuming a 15 year depreciation period. The Commission has not prescribed depreciation rates for headend equipment, but requires cable operators to follow reasonable depreciation practices in depreciating equipment over its useful life. The Cable Services Bureau, acting on delegated authority in examining cost-of-service rate justifications, concluded that operators generally assign 15-year useful lives to headend equipment and adjusted cable operator's proposed useful lives upward to reflect that norm.

Accordingly, independent small systems and small systems owned by small MSOs will not be required to choose between the per channel adjustment methodology and the streamlined cost-of-service procedure for upgrading headend equipment. Instead, we will allow independent small systems and small systems owned by small MSOs to recover for each channel added by using both the per channel adjustment methodology and the streamlined cost-of-service procedure for upgrading headend equipment in the following manner. First, such operators may recover the lesser of the actual cost of the headend equipment or \$5,000 associated with the channel addition. The recovery of the lesser of the actual cost of the headend equipment or \$5,000 shall otherwise remain subject to the conditions set forth in the Sixth Reconsideration

Order, namely that the headend costs be depreciated over the useful life of the equipment, the rate of return on this investment not exceed 11.25%,<sup>1</sup> and the headend costs may be recovered for no more than seven channels through December 31, 1997. Second, in addition to recovery of headend upgrade costs in a streamlined cost-of-service proceeding, such operators may make rate adjustments to reflect channel additions and programming expenses that all other operators are permitted to make under the existing going forward rules. Specifically, operators may make per channel adjustments under either the new or the "old" going forward rules. As explained in the Sixth Reconsideration Order, operators that elect the new going forward rules are allowed to recover programming expenses associated with adding channels subject to the License Fee Reserve and the Operator's Cap. Of course, headend costs are not included in the Operator's Cap.

In addition, we believe that limiting eligibility to use the streamlined cost-of-service procedure for upgrading headend equipment to independent small systems and small systems owned by small MSOs may fail to give slightly larger systems an appropriate incentive to add channels. Accordingly, we have decided to allow larger systems to use the streamlined cost of service approach subject to the same conditions as independent small systems and small systems owned by small MSOs provided that (a) the systems are either independently owned or owned by small MSOs and (b) the monthly per subscriber cost of the additional headend equipment necessary to receive an additional channel is one cent or more.<sup>2</sup> We are providing this relief for systems that are slightly larger than those that fall under the definition of a small system because we believe that such operators may have higher than average costs and may not always have access to the financial resources or other purchasing discounts of larger companies. However, since average equipment costs were built into the per

<sup>1</sup> Operators are permitted to recover an 11.25% rate of return on the lesser of the actual cost of the headend equipment associated with adding a channel or \$5,000. Therefore, if the cost of the headend equipment associated with adding a channel is \$5,000 or more, the operator is entitled to recover \$5,000 plus an 11.25% rate of return on the \$5,000 investment.

<sup>2</sup> The monthly per subscriber cost of the additional headend equipment necessary to receive the additional channel must be one full cent or more. For this purpose, operators may not round up monthly per subscriber costs of less than one cent. Additionally, operators must depreciate these costs at the same rate as they depreciate all similar equipment.

channel adjustment of up to 20 cents, we believe that it is unnecessary to allow systems with additional per subscriber headend equipment costs of less than one cent for each channel added to use the streamlined cost-of-service procedure for upgrading headend equipment. We believe that such operators may have sufficient resources to add channels without the additional incentive created by the streamlined cost-of-service procedure. However, we note that we may reconsider this issue in light of the comments we have received in response to our Fifth Order on Reconsideration and Further Notice of Proposed Rulemaking, 59 FR 51,869 (10/13/94). In that notice, the Commission solicited comments on whether it should retain its current definitions of small operators and small systems owned by small MSOs and whether it should employ the current Small Business Administration definition of small cable company. The definitions of these terms in the instant item may be affected by the outcome of the Further Notice.

In the Sixth Reconsideration Order, the Commission provided that rates for the BST will continue to be governed exclusively by our current rules, except that where a system offered only one tier on May 14, 1994, the cable operator will be allowed to use the revised per channel adjustment of up to 20 cents. We did not, however similarly provide that the streamlined cost-of-service procedure for headend upgrades by eligible small systems would be available to operators of single-tier systems. We did not intend to exclude single-tier systems from this procedure and, therefore, on our own motion, we reconsider the limitation of the streamlined cost-of-service procedure for headend upgrades to CPSTs. We conclude that the streamlined cost-of-service procedure should also apply to single-tier systems because we recognize that qualifying systems have the same small customer base over which to spread the cost of new equipment associated with providing channels, whether or not they have CPSTs. We also recognize that single-tier systems are commonly smaller systems. Accordingly, we believe that the streamlined cost-of-service procedure for headend upgrades associated with channel additions should apply to single-tier systems as well as CPSTs.

#### Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Act of 1980, 5 U.S.C. 601-612, the Commission's final analysis with respect to the Seventh Order on Reconsideration is as follows:

*Need and purpose of this action.* The Commission, in compliance with § 3 of the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. § 543 (1992), pertaining to rate regulation, adopts revised rules and procedures intended to ensure that cable services are offered at reasonable rates with minimum regulatory and administrative burdens on cable entities.

*Summary of issues by the public in response to the Initial Regulatory Flexibility Analysis.* There were no comments submitted in response to the Initial Regulatory Flexibility Analysis. The Chief Counsel for Advocacy of the United States Small Business Administration (SBA) filed comments in the original rulemaking order. The Commission addressed the concerns raised by the Office of Advocacy in the Report and Order and Further Notice of Proposed Rulemaking, 58 FR 29769 (5/21/93). Consistent with our rules, the SBA also filed an ex parte letter on August 3, 1994.

*Significant alternatives considered and rejected.* In the course of this proceeding, petitioners representing cable interest and franchising authorities submitted several alternatives aimed at minimizing administrative burdens. The Commission has attempted to accommodate the concerns expressed by these parties. In this order, the Commission is providing additional incentives to qualifying small systems to add channels to CPSTs and single-tier systems.

#### Paperwork Reduction Act

The requirements adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found not to impose a new or modified information collection requirement on the public.

#### Ordering Clauses

Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 4(j), 303(r) 612, 622(c) and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 532, 542(c) and 543, the rules, requirements and policies discussed in this Seventh Order on Reconsideration, ARE ADOPTED and Part 76 of the Commission's rules, 47 CFR part 76, IS AMENDED as set forth below.

*It Is Further Ordered* that the Secretary shall send a copy of this Order to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law

No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601 et seq. (1981).

*It Is Further Ordered* that the requirements and regulations established in this decision shall become effective 30 days following publication in the **Federal Register**.

#### List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

Part 76 of title 47 of the Code of Federal Regulations is amended as follows:

#### PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

**Authority:** Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat. as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 535, 542, 543, 552 as amended, 106 Stat. 1460.

2. Section 76.922 is amended by revising paragraph (e)(7) to read as follows:

#### § 76.922 Rates for the basic service tier and cable programming service tiers.

\* \* \* \* \*

(e) \* \* \*

(7) *Headend upgrades.* When adding channels to CPSTs and single-tier systems, cable systems that are either independently owned or owned by small MSOs and incur additional monthly per subscriber headend costs of one full cent or more for an additional channel or are either independently owned or owned by small MSOs as defined in paragraph (b)(5) of this section, may choose among the methodologies set forth in paragraphs (e)(2) and (e)(3) of this section. In addition, such systems may increase rates to recover the actual cost of the headend equipment required to add up to seven such channels to CPSTs and single-tier systems, not to exceed \$5,000 per additional channel. Rate increases pursuant to this paragraph may occur between January 1, 1995, and December 31, 1997, as a result of additional channels offered on those tiers after May 14, 1994. Headend costs shall be depreciated over the useful life of the headend equipment. The rate of return on this investment shall not exceed 11.25 percent. In order to recover costs for headend equipment pursuant to this paragraph, systems must certify to the Commission their eligibility to use this paragraph, the level of costs they have actually incurred for adding the

headend equipment and the depreciation schedule for the equipment.

\* \* \* \*

[FR Doc. 95-1819 Filed 1-24-95; 8:45 am]

BILLING CODE 6712-01-M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 642**

[Docket No. 940710-4292; I.D. 011895A]

**Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction**

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

**ACTION:** Trip limit reduction.

**SUMMARY:** NMFS reduces the commercial trip limit of Atlantic group Spanish mackerel in the southern zone to 1,000 lb (454 kg) per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the Atlantic Spanish mackerel resource.

**EFFECTIVE DATE:** The 1,000-lb (454-kg) commercial trip limit is effective 12:01 a.m., local time, January 20, 1995, and remains in effect through March 31, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mark F. Godcharles, 813-570-5305.

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 642 under the authority of the Magnuson Fishery Conservation and Management Act.

An adjusted allocation and commercial trip limits were recommended by the Councils and implemented by NMFS for Atlantic migratory group Spanish mackerel from the southern zone. As set forth at 50 CFR 642.27(b), the adjusted allocation is 4.35 million lb (1.97 million kg). In accordance with 50 CFR 642.27(a)(2)(iii), after 75 percent of the adjusted allocation of Atlantic group

Spanish mackerel from the southern zone is taken until 100 percent of the adjusted allocation is taken, Spanish mackerel in or from the EEZ in the southern zone may not be possessed aboard or landed from a vessel in a day in amounts exceeding 1,000 pounds (454 kg). In accordance with 50 CFR 642.27(a)(2)(iv), after 100 percent of the adjusted allocation of Atlantic group Spanish mackerel from the southern zone is taken through the end of the fishing year, Spanish mackerel in or from the EEZ in the southern zone may not be possessed aboard or landed from a vessel in a day in amounts exceeding 500 lb (227 kg) per day.

NMFS has determined that 75 percent of the adjusted allocation for Atlantic group Spanish mackerel from the southern zone will be taken by January 19, 1995. Accordingly, the 1,000-pound (454-kg) per day commercial trip limit applies to Spanish mackerel in or from the EEZ in the southern zone effective 12:01 a.m., local time, January 20, 1995, through March 31, 1995, unless changed by further notification in the **Federal Register**.

The southern zone of Atlantic group Spanish mackerel extends from the Georgia/Florida boundary (30°42'45.6" N. lat.) southward to the Dade/Monroe County, Florida, boundary (25°20.4' N. lat.).

**Classification**

This action is taken under 50 CFR 642.27(a)(2)(iii) and (b) and is exempt from review under E.O. 12866.

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

Dated: January 19, 1995.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 95-1776 Filed 1-19-95; 4:32 pm]

BILLING CODE 3510-22-F

**50 CFR Parts 675 and 677**

[Docket No. 950112014-5014-01; I.D. 010695A]

RIN 0648-AH42

**Groundfish of the Bering Sea and Aleutian Islands Area, North Pacific Fisheries Research Plan; Trawl Closure To Protect Red King Crab**

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

**ACTION:** Emergency interim rule; request for comments.

**SUMMARY:** NMFS has determined that an emergency exists in the groundfish fisheries being conducted in the Bering Sea and Aleutian Islands (BSAI) management area. The number of female red king crab in Bristol Bay has declined to a level that presents a serious conservation problem for this stock. To protect Bristol Bay area red king crab, NMFS is implementing by emergency rule a trawl closure in an area of Zone 1 in the Bering Sea (BS). NMFS is also implementing changes to observer-coverage requirements that will aid the monitoring of red king crab bycatch in the BS flatfish trawl fisheries conducted outside of the closure area in Zone 1. These management measures are intended to accomplish the objectives of the North Pacific Fishery Management Council (Council) with respect to fishery management in the BSAI.

**DATES:** Effective January 20, 1995 through April 25, 1995. Comments must be submitted by February 9, 1995.

**ADDRESSES:** Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, Attention: Lori Gravel. Copies of the Environmental Assessment (EA) prepared for the emergency rule may be obtained from the same address.

**FOR FURTHER INFORMATION CONTACT:** Kaja Brix, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

**Background**

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the BSAI is managed by NMFS according to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. The FMP was prepared by the Council under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*), (Magnuson Act), and is implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 675 and 676. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 620.

At times, amendments to the FMP or its implementing regulations are necessary to respond to fishery conservation and management problems that cannot be addressed within the timeframe of the normal procedures provided for by the Magnuson Act. Section 305(c) of the Magnuson Act authorizes NMFS to implement emergency regulations necessary to address these situations. These emergency regulations may remain in effect for not more than 90 days after