emergency action that the initiating official has begun. The show-cause official is authorized to grant relief from the emergency action. The institution may make its presentation in writing or, upon its request, at an informal meeting with the show-cause official.

(3) The show-cause official may limit the time and manner in which argument and evidence may be presented in order to avoid unnecessary delay or the presentation of immaterial, irrelevant, or repetitious matter.

(4) The institution has the burden of persuading the show-cause official that the emergency action imposed by the notice is unwarranted or should be modified because—

(i) The grounds stated in the notice did not, or no longer, exist;

(ii) The grounds stated in the notice will not cause loss or misuse of title IV, HEA program funds; or

(iii) The institution will use procedures that will reliably eliminate the risk of loss from the misuse described in the notice.

(5) The show-cause official continues, modifies, or revokes the emergency action promptly after consideration of any argument and evidence presented by the institution and the initiating official.

(6) The show-cause official notifies the institution of that official's determination promptly after the completion of the show-cause meeting or, if no meeting is requested, after the official receives all the material submitted by the institution in opposition to the emergency action submitted by the institution. The show-cause official may explain that determination by adopting or modifying the statement of reasons provided in the notice of emergency action.

(f)(1) An emergency action does not extend more than 30 days after initiated unless the Secretary initiates a limitation, suspension, or termination proceeding under this part or under 34 CFR part 600 against the institution within that 30-day period, in which case the emergency action continues until a final decision is issued in that proceeding, as provided in § 668.90(c) or (f), as applicable.

(2) Until a final decision is issued by the Secretary in a proceeding described in paragraph (f)(1) of this section, the continuation, modification, or revocation of the emergency action is at the sole discretion of the initiating official, or, if a show-cause proceeding is conducted, the show-cause official.

(3) If an emergency action extends beyond 180 days by virtue of paragraph (f)(1) of this section, the institution may then submit written material to the show-cause official to demonstrate that because of facts occurring after the later of the notice by the initiating official or the show-cause meeting, continuation of the emergency action is unwarranted and the emergency action should be modified or ended. The show-cause official considers any written material submitted and issues a determination that continues, modifies, or revokes the emergency action.

(g) The expiration, modification, or revocation of an emergency action against an institution does not bar subsequent emergency action against that institution on grounds other than those specifically identified in the notice imposing the prior emergency action. Separate grounds may include violation by an institution of an agreement or limitation imposed or resulting from the prior emergency action.

(Authority: 20 U.S.C. 1094)

9. Section 668.91 is amended by revising paragraph (a), by redesignating paragraph (a) and (b) as paragraphs (b) and (c), respectively, by revising the heading and adding a new paragraph (a), to read as follows:

§ 668.91 Filing of requests for hearings and appeals; verification of mailing and receipt dates.

(a) *Filing of request for hearing, show-cause opportunity, or appeal.*

(1) A request by an institution for a hearing or show-cause opportunity, other material submitted by an institution in response to a notice of proposed action under this subpart, or an appeal to the Secretary under this subpart must be filed with the designated department official by hand-delivery, mail, or facsimile transmission.

(2) Documents filed by facsimile transmission must be transmitted to the Department official identified, either in the notice initiating the action, or, for an appeal, in instructions provided by the hearing official, as the individual responsible to receive them. A party filing by facsimile transmission must confirm that a complete and legible copy of the document was received by the Department, and may be required by that official to provide a hard copy of the documents filed by facsimile.

(3) The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(4) If agreed upon by the parties, service of a document required to be served on another party may be made upon the other party by facsimile transmission.

(b) *Verification of mailing and receipt dates.* (1) The date on which a notice from a designated department official initiating an action under this subpart is regarded as mailed is the date of mailing evidenced on the original receipt of mailing from the U.S. Postal Service.

(2) The date on which a request for a show-cause opportunity, a request for a hearing, other material submitted in response to a notice of action under this subpart, a decision by a hearing official, or a notice of appeal is regarded as received is, as applicable—

(i) The date of receipt evidenced on the original receipt for a document sent by certified mail.

(ii) The date following the date recorded by the delivery service as the date material was sent for a document sent by next-day delivery service.

(iii) The date a document sent by regular mail is recorded, according to the regular business practice of the office receiving the document, as received.

(iv) The date a document sent by facsimile transmission is recorded as received by the facsimile equipment that receives the transmission.

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10. Section 668.94 is amended by removing paragraph (c) and revising paragraph (b) to read as follows:

§ 668.94 Termination.

* * * * *

(b) After its participation in a title IV, HEA program has been terminated, an institution may disburse or deliver funds under that Title IV, HEA program to students enrolled at the institution only in accordance with § 668.25 and with any additional requirements imposed under this part.

(Authority: 20 U.S.C. 1094)

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Part V

Department of the Interior

Office of the Secretary

National Environmental Policy Act Implementing Procedures; Notice

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Environmental Policy Act: Implementing Procedures (516 DM 6, Appendix 8)

AGENCY: Department of the Interior.

ACTION: Final notice of an addition to the Department of the Interior's Categorical Exclusions for the Office of Surface Mining Reclamation and Enforcement.

SUMMARY: This notice announces an addition to the categorical exclusions included in the Department Manual 516 DM 6, appendix 8, that lists actions excluded from the National Environmental Policy Act of 1969 (NEPA) procedures for the Office of Surface Mining Reclamation and Enforcement (OSM). The additional categorical exclusion pertains to certain projects carried out in the Abandoned Mine Lands (AML) program under title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Department issued a notice of the proposed categorical exclusion on August 19, 1992 for public comment. Based on analysis of the comments received, one change has been made in the language of the categorical exclusion. This change is to clarify that placement of material into underground mine voids through drilled holes, to address a single structure subsidence problem, is eligible for exclusion if the other criteria are met. This clarification is more thoroughly explained under the subsidence section later in the text.

EFFECTIVE DATE: April 9, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Jonathan P. Deason, Director, Office of Environmental Affairs, MS 2340–MIB, Department of the Interior, 1849 C Street, NW., Washington, DC 20240 or telephone (202) 208–3891; for OSM, David Hamilton, Chief, Operations Branch, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, suite 3C, 4th and Market Streets, Harrisburg, PA 17101 or telephone (717) 782–4036.

SUPPLEMENTARY INFORMATION: SMCRA authorizes OSM to collect a fee on each ton of coal produced from mining. The fee collected from coal producers is placed in the AML Reclamation Fund (Fund). States and Tribes with approved coal mining regulatory programs and abandoned mine reclamation plans receive grants annually from OSM to reclaim specific abandoned mine land projects. Since 1981, OSM has been awarding grants to 23 States and 3 Tribes for the construction and administration of AML reclamation projects. Through Fiscal Year 1991 approximately 1.2 billion dollars have been awarded from the Fund for reclamation of over sixty thousand acres of eligible abandoned mine lands and waters.

States, Tribes, and Federal reclamation activities reclaim and restore land and water resources damaged by coal mining, including abandoned surface coal mines, abandoned coal processing areas, sealing and filling abandoned deep coal mine entries and voids, vegetation of land adversely affected by past coal mining to prevent erosion and sedimentation, and control of water pollution created by coal mine drainage (section 401(c)(1) of SMCRA). These reclamation projects may also be conducted where the damage was a result of non-coal mining if certain conditions are met (section 409(a) of SMCRA). Projects vary considerably in size, from those affecting only a few square feet to those affecting hundreds of acres, and vary in costs from a few thousand dollars to several million.

AML problems are exhibited in several broad categories including highwalls, surface and underground burning coal and coal refuse, subsidence, mine openings (shafts and portals), sediment clogged streams, landslides, piles and embankments, structures, impoundments, mine discharges, and barren or poorly vegetated lands. AML sites present public health and safety and environmental hazards. In order to facilitate compliance with the requirements of the NEPA in the AML program, OSM prepared OSM–EIS–2 in March of 1980 and OSM–EIS–11 in November of 1983.

These environmental impact statements address programmatic aspects of AML and the impacts of reclamation. However, the preparation of site specific environmental assessments has still been required for each project.

NEPA requires that when a major Federal action may have significant impacts on the quality of the human environment, a detailed statement (EIS) be prepared (section 102(2)(C)). When it is known in advance that a certain category of actions will not have a significant effect on the human environment, that category of actions may be excluded from further NEPA requirements (40 CFR 1508.1). The Department previously reviewed the activities authorized under title IV and excluded certain decisions relative to the approval of grants under the AML program.

Review of 649 environmental assessments related to AML projects located in 27 States and 3 Tribal lands across the country from July 1989 to the present has led OSM to conclude that the majority of AML projects have virtually the same reclamation descriptions, reclamation design techniques, environmental impacts, and mitigating measures. These projects are implemented consistent with State and Federal laws, and generally have only local, negligible to moderate short- or long-term impacts which are effectively mitigated through common construction practices.

The Department has created an additional categorical exclusion as subparagraph 8.4.B(33) in appendix 8 in the Department of the Interior's Manual (516 DM 6). The excluded activities would include a majority of typical AML projects, although the excluded projects would be limited in size and scope, as described below. The exclusion is for a category of actions that does not individually or cumulatively have a significant effect on the quality of the human environment. If any proposed AML project involves any of the following, an environmental assessment and/or environmental impact statement will be prepared in accordance with OSM's NEPA Handbook.

1. If the project involves any of the Departmental exceptions to the categorical exclusions listed in Department Manual 516 DM 2, appendix 2.

2. If the project area is more than 100 acres or involves hazardous wastes; explosives; hazardous or explosive gases; dangerous impoundments; mine fires and refuse fires; undisturbed, non-commercial borrow or disposal sites; dangerous slides where abatement has the potential for damaging inhabited property; or subsidence control involving the placement of material into underground mine voids through drilled holes to stabilize more than one structure.

3. If the project impacts resources requiring specialized mitigation or poses unresolved issues concerning topography, land use, soils, vegetation, hydrology, fish and wildlife, historic and cultural resources, recreation, air quality, noise, or other socioeconomic concerns. Unresolved issues would include general controversy expressed by the public.

Appendix 8 must be interpreted in conjunction with the Department's NEPA procedures (516 DM 1–6) and the Council on Environmental Quality

(CEQ) regulations implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). The Department's procedures were published in the Federal Register on April 29, 1980 (45 FR 27541) and revised on May 21, 1984 (49 FR 21437). Appendix 8 for OSM was published on January 23, 1981 (46 FR 7487) and revised on February 28, 1990 (55 FR 7038). The Department's notice of the proposed addition to categorical exclusions included in the Department Manual 516 DM 6, appendix 8 was published in the August 19, 1992 Federal Register (57 FR 37550).

Categorical Exclusion 33 reads as follows: AML reclamation projects involving: No more than 100 acres; no hazardous wastes; no explosives; no hazardous or explosive gases; no dangerous impoundments; no mine fires and refuse fires; no undisturbed, non-commercial borrow or disposal sites; no dangerous slides where abatement has the potential for damaging inhabited property; no subsidences involving the placement of material into underground mine voids through drilled holes to address more than one structure; and no unresolved issues with agencies, persons, or groups or adverse effects requiring specialized mitigation. Departmental exceptions in 516 DM 2, appendix 2 apply to this exclusion. All sites considered in this categorical exclusion would have to first meet the eligibility test in sections 404, 409 and 411 of SMCRA. Also, projects that have been declared an emergency pursuant to section 410 of SMCRA, may be candidates for this exclusion.

Eligibility for this categorical exclusion would be determined by OSM based on the results of on-site inspection(s), survey(s), and other methods of evaluation and documentation prepared by the States or Tribes or OSM to determine the presence or absence of the criteria. States or Tribes will submit environmental information for a site to OSM. OSM will then determine the applicability of the categorical exclusion. Details of this determination process will be added to OSM's NEPA Handbook and the chapter on environmental compliance in the Federal Assistance Manual, which applies to projects funded by grants under title IV. Projects that do not fully meet all of these criteria will not qualify for this categorical exclusion.

Discussion of Categorical Exclusion and Disposition of Comments

In addition to the Federal Register notice, the Department sent supplemental mailings, soliciting comments, to over 100 Federal, and State agencies, interest groups and private citizens. Comments were received from the U.S. Environmental Protection Agency; U.S. Bureau of Mines; States of Arkansas, Colorado, Illinois, Kansas, Missouri, Ohio, Pennsylvania, and Virginia; and the Navajo Tribe.

General Comments

Comment: One commenter suggested that the Proposed Categorical Exclusion not apply to: (1) All sites where mineral resources are present; (2) all sites where subsidence is addressed by placement of material into underground mine voids through tunnels, shafts, adits or entryways; (3) all sites where the AML projects impact surface or underground hydrology. No explanation was given why the exclusion should not apply to these project types.

Response: Almost all AML projects meet one of these three criteria, and their adoption would nullify the exclusion. However, even though mineral and hydrologic resources may be involved, the structure of the categorical exclusion will eliminate application to any proposal that will have significant or long term environmental impacts. Use of the categorical exclusion will not relieve the agency of the need to follow proper project planning and development, implementation actions, and required consultation and coordination procedures. Further, the exclusion will not be allowed when certain site criteria regarding floodplains and wetlands are not met, or when there are unresolved issues, or specialized mitigation is needed to protect sensitive resources, including hydrology. The Department believes there are sufficient controls on the exclusion to assure it is applied judiciously.

The placement of materials into underground mine voids through tunnels, shafts, adits or entryways was found to have no significant effects, and pose no serious threat to the environment. If the specific criteria are met, there is no reason to except this activity from the exclusion. Therefore, the suggested limitation is not accepted.

Comment: One commenter stated that SMCRA regulates only surface coal mining and therefore does not pertain to the surface management and reclamation of lands mined for hardrock and other non-coal minerals. Clarification was requested.

Response: While it is true that SMCRA only regulates the environmental impacts from the mining of coal, non-coal AML sites are eligible for reclamation funds through title IV of SMCRA when certain requirements are met. It is the intent of this exclusion to apply to AML coal and non-coal sites that meet the qualifying criteria.

Comment: One commenter suggested that the U.S. Bureau of Mines be furnished mineral information prior to any actions, specifically those involving backfilling, blasting or permanently sealing non-coal AML sites to insure that mineral data are not lost.

Response: This categorical exclusion action does not pertain to the collection of mineral resource data. The Department believes that such questions can best be addressed during direct discussions between OSM and the Bureau of Mines.

Comment: One commenter suggested that non-coal AML projects with insignificant impacts on health and safety, and the environment should not fall under the hazardous classification by EPA. By the same token, AML projects involving radioactive and other toxic and hazardous materials must be controlled by appropriate health, safety and environmental rules and regulations. Currently the non-coal AML projects are handled in the same manner as the coal projects, without any governing regulations for specific problems like exposure to radiation, etc.

Response: It is the intent of this rulemaking to cover both coal and non-coal projects with the exclusion. However, the proposed exclusion does not apply to projects involving toxic or hazardous wastes as defined by EPA because of the potential for serious health and safety hazards to workers, residents, and the environment. Also, Departmental Manual 516 DM 2 appendix 2 excepts any activity that threatens to violate a Federal, State, Tribal or local law or requirement imposed for the protection of the environment. It is not the intent of the Department to use this exclusion to modify EPA's definition of toxic or hazardous wastes. The presence of State or Federal laws governing the handling and disposal of toxic and hazardous wastes indicates the need for a more thorough NEPA review including evaluation of alternatives.

The State or Tribe or Federal entity conducting the reclamation must always abide by any appropriate State or Federal laws relating to toxic or hazardous substances, regardless of whether or not the project is covered under the categorical exclusion.

Comment: Most commenters supported the categorical exclusion. While one commenter stated that the anticipated time saving was small and that only minor projects would be eligible, another commenter stated that the exclusion would expedite the

planning and grant application process for a majority of the projects.

Response: The Department believes that the categorical exclusion will expedite the NEPA process on many of the less complex AML projects. Projects must still be evaluated for conflicts with sensitive resources such as wetlands and endangered species and they must still be made available for comment by government agencies and interested citizens and private organizations. The exclusion was not designed to capture a specified percentage of AML actions. Rather, the exclusion is structured to simplify the NEPA process or relatively straightforward AML projects that will not adversely affect important resources, have no more than negligible to moderate short or long-term environmental impacts, and have no unresolved issues or controversy associated with the proposed action. The Department recognizes that the exclusion will vary in applicability from State to State.

Comment: One commenter stated that the notice did not contain adequate supporting information to demonstrate that, as a class, AML projects do not have significant impacts on the environment. The commenter recommended expanding the supplementary information discussion in the notice to include information from the OSM review of the 649 environmental assessments that showed that the reclamation descriptions, reclamation design techniques, environmental impacts, and mitigating measures were virtually the same.

Response: OSM–EIS–11, prepared in November 1983, discusses a majority of the reclamation project types, techniques and impacts associated with the AML program. For the purposes of the categorical exclusion evaluation, the 649 projects varied in the composition of AML features being addressed during reclamation.

Projects may address up to five or more AML features at one location. In the 649 projects reviewed, 310 contained abandoned mine openings, 156 contained dangerous highwalls, 78 contained hazardous equipment, and 54 contained dangerous landslides. In addition, 47 projects addressed mine subsidence, 65 addressed dangerous piles or embankments, and 50 contained actions to abate the problems associated with flooding from sediment-clogged streams. Techniques used to address each problem type are described in OSM–EIS–11.

The Department is not proposing to exclude all AML projects from further compliance with NEPA. To the contrary, the Department has identified specific types of projects, reclamation actions, resource impacts, and consultation results that will necessitate the preparation of an environmental assessment. Even though the environmental assessments analyzed in preparation of the categorical exclusion identified no potentially significant environmental impacts, the Department recognizes that certain project types or actions may not yield such predictable results. In addition, the population of projects analyzed for the exclusion did not contain sufficient numbers of certain projects that the Department believes may have a higher probability of producing significant adverse impacts.

To be eligible for the exclusion, an AML project must still be subjected to the same consultation/coordination procedures required for all AML projects. In addition, the project must comply with public involvement requirements contained in approved State AML Reclamation Plans, and complete intergovernmental review requirements specified in Executive Order 12372. Consequently, and even though the project may meet all the conditions required for the exclusion, State, Federal, and local agencies/officials will have an opportunity to review the proposed action and to raise issues that, if left unresolved, would require the preparation of an environmental assessment.

For these reasons, the Department is not providing supplementary information in a revised notice concerning the reclamation descriptions, design techniques, environmental impacts or mitigating measures of AML projects.

Comment: One commenter requested that a discussion be provided on the common construction practices that provide effective mitigation and how their implementation would be assured absent an environmental assessment and a finding of no significant impact.

Response: Common construction practices that provide mitigation range from silt fences to protect against erosion and sediment, and watering roads to suppress dust, to the control of traffic at or near the site to facilitate mobilization and demobilization. Such practices vary from State to State, and are incorporated on site in response to State, Tribal, and local laws, and are not usually the result of a specific impact identified during a NEPA review. Further, preparation of an environmental assessment does not assure that common construction mitigation practices are actually implemented. For these reasons, the Department is not providing additional supplementary information in a revised notice regarding common construction practices that provide mitigation.

The Department also points out that eligibility for this exclusion does not require that projects utilize common construction mitigation practices. Rather, it eliminates projects from categorical exclusion where specialized mitigation techniques are needed to protect resources. Consequently, if project development processes identify an adverse impact that can only be addressed through specialized mitigation techniques, the Department is requiring that an environmental assessment be prepared. This will ensure that other reasonable alternatives are considered when completing the Federal action.

Comment: One commenter stated that the amount of information required to support a categorical exclusion, and the amount of time needed would still be significant and approximate that needed for an environmental assessment. The commenter further speculated that if OSM did not approve a categorical exclusion, the project would not stay on schedule.

Response: Application of a categorical exclusion does not relieve a State or Tribe from the required State and Federal consultation and coordination requirements, nor is it a substitute for project planning and development activities. At completion of these actions, the responsible official should readily be able to determine whether the exclusion applies. Completion of any exclusion documentation should take only a short period of time. By contrast, completion of an environmental assessment could take substantially longer, depending on the project. Further, if the exclusion is properly applied, and any documentation is properly completed, OSM can easily issue a determination. The rationale for a State or Tribal decision regarding whether to pursue a categorical exclusion or an environmental assessment should be clear prior to submittal of the appropriate document. Consultation with OSM in areas of uncertainty will help eliminate disagreements over the applicability of the exclusion to a particular site.

Comment: Another commenter suggested that as long as proper coordination occurs and permits are obtained the categorical exclusion should be allowed.

Response: Extending categorical exclusion status to sites based upon the completion of consultation and permitting activities is not appropriate. Even though proper coordination may have occurred, unresolved issues may

still exist with respect to resource use, alternative selection, or the appropriateness of mitigation efforts. In addition, the issuance of a permit by authorities regulating specific resources does not necessarily indicate that less than significant project impacts are anticipated. In the cases where unresolved issues exist or where project impacts require specialized mitigation, the preparation of an environmental assessment will assist project planners in the development of other reasonable alternatives and will ensure that final decisions are subject to public involvement.

Comment: Another commenter speculated that the majority of the AML projects would not be eligible for the exclusion.

Response: OSM believes that the number of projects eligible for this exclusion will be large, and that availability of the exclusion will make a meaningful reduction in the amount of time expended on NEPA documentation. Applicability of the exclusion will vary depending on the types of AML problems in a State or Tribe, and the projects being worked on from year to year.

Comment: Another commenter stated that many problems were being eliminated from the categorical exclusion because of health and safety issues and not environmental concerns.

Response: A project's potential impacts to the quality of the human environment is an integral part of the analysis under NEPA. Some problem types are eliminated from eligibility under the categorical exclusion because experience has shown that potential adverse impacts to people and property are more likely, and it is more difficult to construct a reclamation project while minimizing or eliminating the risks.

Comment: One commenter wondered if the categorical exclusion would add another step to the grant application process.

Response: The AML grant process would require submission of a categorical exclusion certification or an environmental assessment, but not both. States and Tribes are not required to complete the certification checklist if the exclusion is not applicable. However, use of the checklist may be desired by some as a planning tool. With proper coordination, and training, there should be few instances where a State or Tribal exclusion certification is not accepted by OSM.

Comment: One commenter states that subsidences, mine and refuse fires, and dangerous impoundments should not be ineligible for the categorical exclusion because projects involving these mine problems have been successfully carried out in the past 15 years with few noted problems. The commenter went on to suggest that a sample of these types of projects be reviewed to determine specific impacts and whether they should be included in the categorical exclusion.

Response: The Department's decision to except these types of projects from the categorical exclusion was based on very few environmental assessments available for analysis, agency experience with reclamation, and the higher potential for health and safety problems arising during reclamation. As additional data become available, the Department may revisit these problem types to see if an expansion of the categorical exclusion is supportable. Also see "subsidence" discussion for clarification of eligible actions.

Comment: One commenter suggested that the language of undisturbed non-commercial borrow and disposal sites be changed to borrow or disposal sites.

Response: The suggestion is accepted and all references to borrow and disposal sites have been changed to borrow or disposal sites.

Emergencies

Comment: A number of comments were received concerning the applicability of the exclusion to projects conducted under Federal and State-administered emergency reclamation programs. The comments ranged from general statements requesting that all or additional categories of AML projects declared emergencies pursuant to section 410 of the SMCRA be excluded from the NEPA process, to concerns that requiring preparation of an environmental assessment on emergency projects would result in delays during a time period when the regulatory authority must react quickly to abate health and safety threats.

Response: The Department understands the concern expressed by program officials that the preparation of an environmental assessment may result in delays associated with projects authorized under section 410 of the SMCRA. Under CEQ Regulations (40 CFR 1506.11), emergency actions with significant environmental impacts may be undertaken immediately. However, the Federal agency responsible for the action must limit the action being taken to that necessary to control the immediate impacts of the emergency and must consult with CEQ about alternative arrangements for NEPA compliance. Other actions remain subject to NEPA review.

It is important to note that actions eligible for categorical exclusion are eligible because they do not have significant environmental effects, not because those actions are taken under emergency circumstances. Actions taken in response to an emergency can have significant environmental effects. Actions that have significant environmental effects but that must be taken to respond to an emergency should be brought to the immediate attention of CEQ under 40 CFR 1506.11

The Department of the Interior (DOI) Manual (516 DM 5.8, Emergencies) addresses emergency situations by allowing Federal agencies to abate public health and safety problems when followed by consultation with the DOI Assistant Secretary, Solicitor, and Office of Environmental Affairs. The Federal agency and the Office of Environmental Affairs are responsible for consulting with CEQ.

The Department believes that the subject exclusion will be applicable to the majority of actions which qualify as "emergencies" under SMCRA section 410. For instance, assuming the additional limiting criteria are met, surface-filled pothole subsidences, single structure bore hole injection subsidences, certain qualified landslides, mine openings and shafts, and mine drainage problems all could be eligible for the exclusion. It may be possible to make arrangements with the appropriate State and Federal review agencies for specialized consultation to address emergency situations. Emergency actions not covered by the exclusion will require environmental assessments. Where the urgency of the situation does not allow time needed for determination of a categorical exclusion or preparation of an environmental assessment, procedures discussed in CEQ regulation 40 CFR 1506.11 and DOI Manual 516 DM 5.8 can be utilized.

OSM will continue to collect environmental impact information for grant and emergency projects and may be able to seek future expansions of the categorical exclusion with the proper supporting data.

Small Projects

Comment: One commenter suggested that the Department's previously proposed categorical exclusion for "small projects" which cost less than $10,000, have less than 1 acre of impact, and take less than 2 days to complete, be incorporated into the subject exclusion.

Response: The Department will not incorporate the specific language of the previously proposed "small project" exclusion. The language of the subject exclusion encompasses all "small project" types with the exceptions of

refuse and mine fires. The exclusion excepts mine and refuse fires because of the risk to workers and residents during reclamation, and the small number of mine and refuse fires in the data base available for analysis. In addition, stratification of the proposed exclusion for cost, acres, and duration would unduly complicate decisions made regarding its application in comparison to the limited additional coverage that would be provided.

Mine and Refuse Fires

Comment: One commenter suggested that mine and refuse fires be allowed in the exclusion because the purpose of their reclamation under the emergency program is to remove these threats as soon as possible. It was also stated that workers are required to wear breathing apparatus, and occupants of nearby buildings are evacuated if necessary.

Response: The Department will not modify the categorical exclusion to include mine and refuse fires. Imminent harm to public health or safety is not a standard for developing a categorical exclusion. A categorical exclusion is justified when it can be demonstrated that actions will have no significant impact on the environment. The practice of using breathing devices and evacuations is evidence of the uncertain nature of these types of reclamation projects, and the desirability of more detailed environmental analysis. Also see response under "Emergencies."

Comment: Another commenter pointed out that a refuse pile fire had been abated in a rural area, and therefore was not a threat to residences or businesses. It was suggested that States and Tribes be given the chance to prove there will be no impact from a mine or refuse fire reclamation project (thus qualifying for a categorical exclusion) before determining that an environmental assessment is needed. This same comment was also applied to mine void grouting, explosive gases, and impoundments.

Response: The Department will not modify the proposed exclusion language. Mine and refuse fires were excepted from the exclusion not only because of potential hazards to nearby residents; they were also excepted because of hazards to workers attempting to extinguish fires. Also, there was a small number of EAs available for analysis of potential impacts. Projects that fall within the parameters of the categorical exclusion have already been shown not to have significant impacts on the environment and thus are exempted from a detailed analysis of impacts.

Dangerous Slides

Comment: Two commenters suggested that dangerous slides should be eligible for the categorical exclusion to expedite the remedial action in the case of imminent danger. One commenter stated that abatement of dangerous slides removes the threat of damage, and that occupants will be evacuated, and structural damage caused by the abatement will be repaired if necessary.

Response: No change has been made in response to the comment regarding treatment of landslides in the categorical exclusion. Imminent harm to public health or safety is not an appropriate standard for seeking a categorical exclusion. The commenter's statement regarding relocation of residents, and repairs of damage caused by the abatement is evidence of the reclamation uncertainties exhibited in landslides involving structures. Also see "Emergencies" discussion.

100 Acre Project Limit

Comment: Two commenters questioned the 100 acre project size limit for the categorical exclusion. One stated that project areas often exceeded 100 acres, even though the impacted area is less. Another supposed that projects would be broken into segments of less than 100 acres to avoid preparing an EA. Another asked why 100 acres was selected.

Response: Analysis of the data shows only 4 percent of the projects exceeding 100 acres in size. Further, states and Tribes are not required to include more area within a project boundary than needed to accomplish the reclamation objectives. The Department does not believe it would benefit a State or Tribe to redraw a project's logical boundary from a planning, design and contracting standpoint, just so that it would fit the acreage limitation. Also, such actions are prohibited by NEPA and CEQ rules. Further, 100 acres was selected as the limit because data on projects in excess of this size was insufficient for analysis. The Department can revisit the size limitation in the future if additional data is developed, but will not modify the exclusion language at this time.

Use of Explosives

Comment: One commenter asked that the use of explosives in remote locations be allowed under the exclusion when blasting studies ensure minimum impact on health and safety and the environment. The commenter added that storage and handling of explosives, and blasting activities would have to be in accordance with current laws and regulations.

Response: The Department will not modify the categorical exclusion regarding the use of explosives. The fact that there are specific regulations governing the use of explosives and special studies to evaluate the impacts is indicative of the hazards associated with their use and the need for a full environmental analysis, including discussion of alternatives. Also, defining a range of parameters for explosives would unduly complicate the determination.

Dangerous Impoundments

Comment: One commenter stated that OSM should make an effort to allow some dangerous impoundments to be categorically excluded. The commenter said it does not seem fair to eliminate all dangerous impoundments. Another commenter said that pumping water from underground mine pools for use on other AML reclamation sites should not be automatically excluded.

Response: The Department will not modify the categorical exclusion, but does offer the following clarification. Dangerous impoundments were excepted from the categorical exclusion because of the high degree of uncertainty and risk associated with dewatering projects, which have led to property damage from flooding. However, it should be noted that all impoundments do not meet the definition of "dangerous impoundment" found in OSM Directive AML–1. AML water bodies not meeting the definition could still be eligible for categorical exclusion if the other criteria are met. The use of impounded surface and underground water on other AML projects could also be eligible for categorical exclusion if the activity meets the other criteria.

Definitions

Comment: Three comments were received indicating that the terms "specialized mitigation" and "unresolved issues" should be defined.

Response: The Department is not providing specific definitions of these terms, but does offer the following discussion to help establish some parameters for use in interpreting and applying the criteria. Specialized mitigation practices have generally been identified as those actions that are developed to address impacts that cannot be mitigated through standardized construction practices. Erosion and sediment control fencing and the watering of construction site roads to address dust problems are examples of practices that are generally required on all reclamation sites. The development of specialized mitigation

plans is for the most part determined by the severity of the potential impact and the requirements of State, Tribal, and Federal contracting practices. The determination that an action requires a specialized mitigation plan should be made on a project specific basis.

The existence of unresolved issues is an indication that the scope, chosen alternative, or anticipated impacts have not been accepted by persons, agencies, or groups potentially affected by the project. The preparation of an environmental assessment, in such cases, ensures that project developers consider the full range of alternatives and that the final decision is made with the appropriate level of public involvement pursuant to CEQ regulations (40 CFR 1506.6). The determination that an unresolved issue exists, and the severity of the issue, should be decided on a case by case basis.

Comment: One commenter was concerned that the lack of a definition could result in the interpretation that a section 404 permit (Clean Water Act) review process would constitute specialized mitigation.

Response: The Department finds that the lack of a detailed definition does not affect the categorical exclusion decision when a section 404 permit is required. In accordance with exceptions established by the Department (516 DM 2, appendix 2), sites involving wetlands will not be eligible for the categorical exclusion.

It is the responsibility of project managers to assure compliance with section 404 permitting requirements. Once a project site has been identified and State and Federal wetlands delineation criteria have been applied, project managers will know whether a section 404 permit will be required to proceed with the Federal action.

Comment: One commenter requested that the term "uncertainty" be defined. The commenter was concerned that the lack of a definition would give OSM broad powers to require an environmental assessment.

Response: The Department is not providing a definition for the term "uncertainty". Departmental requirements provide that actions having highly uncertain and potentially significant environmental effects will not be eligible for a categorical exclusion. This exception (516 DM 2 appendix 2, 2.4) ensures that Federal agencies consider the full range of alternatives and impacts in the cases where the proposed action's effects are "highly uncertain and potentially significant". The term will have to be applied on a site by site basis using the best judgment of the responsible State or Federal official. Training will be provided to assist proper application of the categorical exclusion. Federal agencies are responsible for the final decision relative to the impacts of a proposed action, and the Department expects OSM to require preparation of an EA or an EIS where there is disagreement concerning the environmental effects of a proposed project. Consequently, and in accordance with 40 CFR 1508.4, even though the action may fall within the criteria of an existing categorical exclusion, a Federal agency would prepare an environmental assessment if the action appears to have potentially significant or uncertain impacts.

Wetlands

Comment: One commenter suggested that projects with wetlands or floodplains that are considered under the issuance of a Corps of Engineers nationwide permit should be candidates for a categorical exclusion.

Response: The Department did not accept this suggestion. In accordance with DOI Manual 516 DM 2 appendix 2, actions that have adverse effects on wetlands or floodplains are not eligible for the categorical exclusion.

Wildlife

Comment: One commenter questioned the role of critical habitats of endangered species in application of the categorical exclusion. The commenter specifically asked if an environmental assessment would have to be prepared for a project that was to contain critical habitats after State or Federal agencies provided clearance on endangered species.

Response: In accordance with DOI exceptions to categorical exclusion (516 DM, appendix 2), projects involving impacts to critical habitats of endangered species will not be excluded from the preparation of an environmental assessment. Critical habitats are formally designated areas that are afforded protection under the Endangered Species Act. Consultation with the U.S. Fish and Wildlife Service for project impacts on endangered species should also yield information on potentially affected critical habitats. However, in the event that critical habitats are identified after clearance is provided by other State and Federal agencies, those habitats would prohibit the implementation of the categorical exclusion.

Comment: One commenter questioned the implementation of the categorical exclusion with respect to the conservation of bat species in North America. Of primary concern to the commenter was the ability for wildlife agencies to address the issue of bats and abandoned mines on a project by project basis. In addition, the commenter suggested that State-listed species or species of special concern that are currently lacking Federal threatened or endangered status be considered in the implementation of the exclusion.

Response: No changes are necessary to the proposed categorical exclusion. The exclusion is structured to ensure that actions adversely affecting threatened or endangered species, or designated critical habitat, would not be eligible for the categorical exclusion. In addition, if the proposed action results in wildlife impacts that require specialized mitigation procedures, or wildlife issues that remain unresolved, the preparation of an environmental assessment will be required. Finally, Departmental exceptions to categorical exclusions include those actions that adversely affect parks, recreation areas, wilderness areas, ecologically sensitive areas, wild and scenic rivers, and those actions that threaten to violate Federal, Tribal, State, and local laws or requirements imposed for the protection of the environment. Since the eligibility for a categorical exclusion will be determined in part upon the results of required consultation/coordination efforts, issued concerning wildlife resource agencies will be incorporated into the decision on each proposed action.

Subsidence

Comment: Two comments were received concerning restrictions on the exclusion's applicability to subsidence abatement projects. One commenter suggested that small subsidence projects that drill and grout beneath dwellings to a very limited extent should be excluded if they are declared to be emergencies. The suggestion was based upon the need to immediately address the potential for further structural damage and the commenter's belief that such projects were of limited impact. The other commenter proposed a similar suggestion that small, low-pressure stowing/flushing projects in remote areas and low pressure grouting projects should be eligible for the exclusion.

Response: The Department is modifying the exclusion criteria to clarify that subsidence abatement projects that address single structures are eligible for the exclusion. For the reasons cited under the discussion of comments relative to emergency reclamation projects, subsidence events cannot be excluded based solely upon

the existence of an emergency declaration. The subsidence abatement activities analyzed during the development of this exclusion varied from less than one-tenth (0.1) acre to more than 60 acres in size. These activities ranged from backfilling surface subsidence features to project area-wide grouting of multi-property/multi-structure sites to prevent the occurrence of future problems. All subsidence events, regardless of size or abatement technique, were identified as having no more than short or long-term negligible to moderate environmental impacts. The Department limited the eligibility of subsidence projects to essentially surface reclamation activities. This proposed limitation resulted from the small number of area-wide grouting projects reviewed that exceeded one acre in size (57 FR 37551) and OSM's understanding that the environmental impacts of such activities were less predictable than those of smaller pothole or single-structure subsidence projects. The Department maintains that such large area-wide grouting projects are complicated, involve the interests of multiple property owners, and require a considerable amount of time to develop. In reviewing the suggestions made by the commenters relative to small subsidence projects, the Department noted that the exception language prohibited the use of the exclusion on small grouting projects for single structure problems. Recognizing that the exception for area-wide projects was written so as to place these small grouting projects outside the overall exclusion, the Department has modified the language of the categorical exclusion accordingly. The Department intends to extend the categorical exclusion to projects that address only the surface expressions of subsidence (pothole subsidence), and to those projects that address the impacts to a single structure through surface filling or placement of fill in subsurface voids through drilled holes.

Outline: Chapter 6 (516 DM 6) Managing the NEPA Process, appendix 8—Office of Surface Mining Reclamation and Enforcement, 8.4 Categorical Exclusions.

Dated: February 17, 1993.

Jonathan P. Deason,

Director, Office of Environmental Affairs.

516 DM 6, Appendix 8

Office of Surface Mining Reclamation and Enforcement

8.4 Categorical Exclusions

* * * * *

B. * * *

(33) AML reclamation projects involving: No more than 100 acres; no hazardous wastes; no explosives; no hazardous or explosive gases; no dangerous impoundments; no mine fires and refuse fires; no undisturbed, non-commercial borrow or disposal sites; no dangerous slides where abatement has the potential for damaging inhabited property; no subsidences involving the placement of material into underground mine voids through drilled holes to address more than one structure, and no unresolved issues with agencies, persons, or groups or adverse effects requiring specialized mitigation. Departmental exceptions in 516 DM 2, appendix 2 apply to this exclusion. All sites considered in this categorical exclusion would have to first meet the eligibility test in sections 404, 409 and 411 of SMCRA. Also, projects that have been declared an emergency pursuant to section 410 of SMCRA, may be candidates for this exclusion.

[FR Doc. 93-5427 Filed 3-9-93; 8:45 am]

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federal register

Wednesday
March 10, 1993

Part VI

Department of Education

34 CFR Part 674 et al.
Federal Perkins Loan Program and Federal Family Education Loan Programs; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 674 and 682

RIN: 1840–AB50

Federal Perkins Loan Program and Federal Family Education Loan Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Federal Perkins Loan Program and the Federal Family Education Loan (FFEL) Programs. The Secretary takes this action to put in place provisions of the Office of Management and Budget (OMB) Circular A–129 (Revised), "Managing Federal Credit Programs." This circular prescribes policies and procedures for managing Federal credit programs and sets standards for extending credit. As part of this program, OMB requires that all applicants for Federal loan programs certify whether they are delinquent on any Federal debts and, as appropriate, that applicants who are delinquent be denied loans.

DATES: Comments must be received on or before April 26, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Harold McCullough, Chief, Campus-Based Programs Section, Grants Branch, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4018, ROB–3), Washington, DC 20202–5447. Telephone (202) 708–4690.

A copy of any comments that concern information-collection requirements also should be sent to OMB at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Nancy Adams, U.S. Department of Education, 400 Maryland Avenue, SW. room 4018, Washington, DC 20202–5541; the telephone number is (202) 708–4690. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC., 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: These proposed amendments revise the existing regulations for the Federal Perkins Loan Program and the Federal Family Education Loan Programs. In response to a growing concern about the Federal deficit and the management of Federal credit programs, OMB has instituted a governmentwide initiative for managing Federal credit programs. This initiative is described in OMB Circular A–129 (Revised), entitled "Managing Federal Credit Programs." For additional information concerning Circular A–129 (Revised), contact the Office of Management and Budget, EOP Publication, 725 17th Street, NW., New Executive Office Building, room 2200, Washington, DC 20503. The circular prescribes policies and procedures for managing Federal credit programs and sets standards for extending credit. As part of this initiative, OMB requires Federal agencies to modify loan-application forms to include a certification as to the applicant's delinquency status on any Federal debts. As a result, the Secretary is proposing to obtain information from applicants in the Federal Perkins Loan Program and the Federal Family Education Loan Programs about the status of any Federal debts that they owe.

The purpose of these regulations is to improve the efficiency of Federal student aid programs and, by so doing, to improve their capacity to enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary educations are important elements of the National Education Goals.

For the Federal Perkins Loan Program, the Secretary proposes to revise the description of an eligible student, found in 34 CFR 674.9, to require an applicant to certify, in order to be eligible to obtain a Federal Perkins Loan or Direct Loan, whether he or she is delinquent on any Federal debts. The Secretary further proposes to add a new provision in 34 CFR 674.11 to require an educational institution to deny a Federal Perkins Loan or Direct Loan to an applicant who fails to complete a certification regarding his or her delinquency status on any Federal debts. The Secretary also proposes to require an institution to deny a Federal Perkins Loan or Direct Loan to an applicant who certifies that he or she is delinquent in repayment of any Federal debts unless the institution determines and documents that the student is willing to repay that loan.

For the Federal Family Education Loan Programs, the Higher Education Amendments of 1992 require the Secretary, in cooperation with representatives of guaranty agencies, eligible lenders, and organizations involved in student financial assistance, to develop a common application form. Accordingly, 34 CFR 682.401(d)(3) requires guaranty agencies to use a common loan application approved by the Secretary. The Secretary will ensure that the form contains the certification requirement as well as the definition of delinquency on other Federal debt (as described in Circular A–129 (Rev.)). This certification must be collected for use by lenders in implementing the proposed provisions of 34 CFR 682.406(a)(1). The Secretary proposes to modify the conditions of reinsurance coverage in 34 CFR 682.406 to require a lender to maintain documentation in the borrower's file as to why an applicant received a loan despite delinquency on a Federal debt.

The lender's discretion to make a loan regardless of the delinquency status on other Federal debts does not supersede any other eligibility requirements for a Federal Perkins Loan, Direct Loan, or Federal Family Education Loan Programs borrower.

Under 28 U.S.C. 3201(e), an individual whose property is subject to a judgment lien for a debt to the United States generally is not eligible to receive any grant or loan made, insured, guaranteed, or financed by the United States, or to receive funds directly from the Government in any program (except funds to which the debtor is entitled as a beneficiary), until the judgment is paid in full or otherwise satisfied. However, any agency that makes such grants or loans may promulgate regulations to allow for waiver of that eligibility restriction. Although that topic is beyond the scope of this document, which is designed merely to implement OMB Circular A–129 (Revised) with respect to two specific credit programs, the Secretary intends to include regulations of more general applicability in a separate document implementing the provisions of § 3201(e).

Federal Perkins Loan Program

Student Eligibility (§ 674.9(f))

The Secretary proposes that to be eligible to receive a Federal Perkins Loan or Direct Loan a student must file with the institution a completed certification as to delinquency about any Federal debts. The certification completed by the student will be used by the institution to determine whether the student is willing to repay that loan.

Certification as to Delinquency (§ 674.11)

Under the current regulations (34 CFR 674.9(e)), a student must be "willing to repay the loan" to be eligible to receive a Federal Perkins Loan or Direct Loan. The regulations further state that "[f]ailure to meet payment obligations on a previous loan * * * is evidence that the student is unwilling to repay the loan." As one means of determining

if a student is willing to repay a Federal Perkins Loan or Direct Loan, the Secretary proposes to require an institution to obtain a signed certification as to delinquency from each student applying for a loan. The certification statement would respond to this question: "Are you delinquent in repayment of any Federal debts?" The institution may obtain this signed certification from a student by a number of methods. For example, an institution may amend its financial aid application to include the certification or it may create a separate document. The Secretary proposes that the certification must be filed with the institution once for each award year.

The Secretary proposes that institutions must provide instructions for completing the certification that include examples of Federal debts that might be owed by the loan applicant. Examples of such debts include: delinquent taxes, audit disallowances, guaranteed and direct loans (housing, farm, business, and student loans), benefit overpayments, and other miscellaneous administrative debts. Also, the Secretary proposes that the institution must include the following definitions of "delinquency" in the certification instructions:

—For *direct and guaranteed loans:* A status in which the applicant is more than 30 days past due on a scheduled payment.

—For *grants:* A status in which the applicant has received a "Notice of Grants Cost Disallowance" but has not repaid the disallowed amount and has not resolved the disallowance within 30 days from the date of the notice.

—For *contracts and administrative debts:* A status in which the applicant's contract overpayments, fines, penalties, or other debts have not been repaid or resolved within 30 days after the day notification of the debt was mailed to the debtor or within 30 days of the payment due date in the case of contractual agreements.

The Secretary proposes that an institution must deny a loan if the student does not complete the certification as to delinquency. However, the institution should deny a loan on this basis only after reminding the student that the certification is required and affording the student another opportunity to complete it. If the student indicates that he or she is delinquent in the repayment of any Federal debts, the institution must deny a loan unless the institution determines and documents in the student's file that the student is willing to repay that loan. In making this determination, an institution may request that the student provide information regarding the delinquency.

Federal Family Education Loan Programs

Conditions of reinsurance coverage (§ 682.406(a)(1))

The Secretary proposes that when an applicant for a loan indicates that he or she is delinquent on a Federal debt, and the lender makes the loan, the lender must place in the applicant's file a satisfactory explanation as to why the delinquency did not make the applicant an unacceptable credit risk. The creation and maintenance of this documentation is required for the loan to be eligible for reinsurance.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic effect on a substantial number of small entities. The small entities affected by the regulations would be small higher education institutions participating in the Federal Perkins Loan and the Federal Family Education Loan Programs. The proposed regulations modify a definition used to determine the eligibility of applicants for Federal Perkins/Direct Loans and require the institution to add a certification to the Federal Perkins/Direct Loan application process. The proposed regulations also modify the conditions of reinsurance coverage in the Federal Family Education Loan Programs. The administrative costs associated with these changes would not be significant.

Paperwork Reduction Act of 1980

Section 674.11 of the Federal Perkins Loan regulations contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to OMB for its review (44 U.S.C. 3504(h)).

Annual public reporting burden for this collection of information is estimated to average .25 hours per response for 3,000 respondents. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information-collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Inivtation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4018, ROB–3, 7th and D Streets, SW., Washington, D.C. 20202–5447, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. To assist the Department in complying with the specific requirements of Executive Order 12291, the Paperwork Reduction Act of 1980, and the overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comment on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 674

Education loan programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 682

Administrative practice or procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: February 12, 1993.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.038 Federal Perkins Loan Program; 84.032 Stafford Loan Program; and 84.032 PLUS Program)

The Secretary proposes to amend Parts 674 and 682 of Title 34 of the Code of Federal Regulations as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

1. The authority citation for Part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429, unless otherwise noted.

2. Section 674.9 is amended by removing "and" at the end of paragraph (d), removing the period at the end of paragraph (e), and adding in its place "; and ", and adding a new paragraph (f) to read as follows:

§ 674.9 Student eligibility.

* * * * *

(f) Has filed a certification as to delinquency and has otherwise met the requirements in § 674.11.

* * * * *

3. A new § 674.11 is added to read as follows:

§ 674.11 Certification as to delinquency.

(a) To receive a loan under the Federal Perkins Loan program for an award year, a student must first file with the institution a certification as to delinquency. In this certification, the student shall indicate whether he or she is delinquent in repaying any Federal debts.

(b) The Secretary considers the following certification to satisfy this requirement:

Certification as to Delinquency

Are you delinquent in repaying any Federal debt?

Yes_____No_____

Signature:_____

Date:_____

Social Security Number:_____

(c) The institution shall provide the student with instructions for completing the certification that include—

(1) The following examples of Federal debts that might be owed by the student:

(i) delinquent taxes;

(ii) audit disallowances;

(iii) guaranteed and direct loans (housing, farm, business, and student loans);

(iv) benefit overpayments; and

(v) other miscellaneous administrative debts.

(2) The following definitions of "delinquent":

(i) For *direct and guaranteed loans:* a status in which the applicant is more than 30 days past due on a scheduled payment;

(ii) For *grants:* a status in which the applicant has received a "Notice of Grants Cost Disallowance" but has not repaid the disallowed amount and has not resolved the disallowance within 30 days from the date of the notice; and

(iii) For *contracts and administrative debts:* a status in which the applicant's contract overpayments, fines, penalties, or other debts have not been repaid or resolved within 30 days after the day notification of the debt was mailed to the debtor or within 30 days of the payment due date in the case of contractual agreements.

(d) The institution shall deny a loan to a student who indicates that he or she is delinquent in repayment of any Federal debts unless:

(1) The debt is subject to the provisions of 34 CFR § 668.7 (d), (e), or (f); or

(2) The institution determines that the student is willing to repay that loan and documents the basis for that determination in the student's file.

(Authority: 20 U.S.C. 1087dd and 1091.)

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for Part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Section 682.406 is amended by republishing paragraph (a) introductory text by revising paragraph (a)(1) to read as follows:

§ 682.406 Conditions of reinsurance coverage.

(a) A guaranty agency is entitled to reinsurance payments on a loan only if—

(1)(i) The lender exercised due diligence in making, disbursing, and servicing the loan as prescribed by the rules of the agency; and

(ii) If the borrower indicated a delinquency on a Federal debt on the loan application form, and the borrower was not otherwise ineligible under the provisions of § 668.7, the lender created and maintained satisfactory documentation in the borrower's file as to why the delinquency did not make the borrower an unacceptable credit risk;

* * * * *

[FR Doc. 93–5401 Filed 3–9–93; 8:45 am]

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federal register

Wednesday
March 10, 1993

Part VII

Department of Transportation

Coast Guard

46 CFR Part 15
Prince William Sound Pilotage; Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 15

[CGD 91-218]

RIN 2115-AE24

Prince William Sound Pilotage

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Section 4116(a) of the Oil Pollution Act of 1990 (OPA 90) amends 46 U.S.C. 8502(g) to give the Coast Guard discretion to designate certain sections of Prince William Sound, Alaska, on which a coastwise seagoing vessel is not required to be under the direction and control of a Federal pilot. This rule allows coastwise seagoing vessels to navigate in certain sections of Prince William Sound with two licensed officers instead of a Federal pilot. The Coast Guard is also amending its pilotage regulations in 46 CFR part 15 to reflect the amendment to 46 U.S.C. 8502(g) that imposes special pilotage requirements on vessels operating near the Port of Valdez on Prince William Sound. The Coast Guard expects that this rule will reduce the risk of oil spills in the waters of Prince William Sound and ensure the safety of pilots boarding and disembarking vessels in Prince William Sound.

EFFECTIVE DATE: April 9, 1993.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Paul Jewell, Project Manager, Oil Pollution Act (OPA 90) Staff, (202) 267-6746, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Paul Jewell, Project Manager, and Joan Tilghman, Project Counsel, OPA 90 Staff.

Regulatory History

On October 26, 1992 the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (57 FR 48554). The Coast Guard received three letters commenting on the proposal. A public hearing was not requested, and one was not held.

Background and Purpose

Under the Federal pilotage statute (46 U.S.C. 8502), inspected coastwise seagoing vessels, not sailing under register, when underway and not on the high seas, must be under the direction and control of a Federal pilot while navigating the pilotage waters of Prince William Sound and its approaches. Section 4116(a) of OPA 90 amends 46 U.S.C. 8502 by allowing the Secretary to designate areas in Prince William Sound where this pilotage requirement does not apply. OPA 90 also amended Federal pilotage law by stating that pilots of vessels in the waters between 60° 49′ North latitude and the Port of Valdez must:

(1) Not be a member of the crew of that vessel; (2) be licensed by the State of Alaska; and (3) be operating under a Federal license.

Sea and weather conditions pose significant dangers to pilots during boarding operations at the entrance to Prince William Sound. Consequently, the local Captain of the Port (COTP) allows a vessel to navigate in certain sections of Prince William Sound without a pilot abroad as long as there are two licensed deck officers on the bridge. The legislative history states Congress' intent to codify existing practice, balancing pilot safety and environmental protection.

Discussion of Comments and Changes

Of the three comments received, two comments supported the proposed rule because the rule recognizes the value of bridge teamwork and represents a good navigation practice.

The third comment raised several issues and suggested changes to the rule. First, the comment stated that the Coast Guard should focus on improving the Vessel Traffic Service (VTS) in Prince William Sound because that system was proven lacking in the Exxon Valdez casualty. This concern was discussed in the NPRM, which noted a number of measures that the Coast Guard is taking to improve the safety of navigation in Prince William Sound. Some of these actions are directed specifically at improving the quality of the Prince William Sound VTS. These actions are in addition to the action being taken in this rulemaking.

The comment also suggested that the rule should clearly specify that two licensed deck officers must be on the bridge, rather than simply two licensed officers. The Coast Guard agrees and has substituted the term "licensed deck officers" for "licensed officers" in the final rule.

Further, the comment stated that the eastern boundary in Prince William Sound should be 146° 30′ West, rather than 146° West, longitude to prevent vessels from using the more restricted waters near Middle Ground Shoal. The Coast Guard does not agree. The Alaska State pilot station for Cordova is near 146° West longitude and using that longitude as the eastern boundary will allow a vessel to remain in deep, unrestricted water and embark a pilot at the pilot station for Cordova.

The comment also questioned the conclusion in the Federalism assessment that this rulemaking does not conflict with State law, arguing that the proposed rule conflicts with an Alaska State law requiring a State-licensed pilot for oil tankers over 50,000 deadweight tons. The Federal pilotage law applies to U.S.-flag tankers in coastwise trade only. Under 46 U.S.C. 8501, State pilotage jurisdiction does not extend to vessels in coastwise trade. Since the rulemaking applies only to U.S. vessels in coastwise trade, the Federal requirement does not conflict with State law.

Finally, the comment stated that two officers on the bridge are not better than one officer. The comment argued that a single bridge officer is appropriate, as long as the sole officer is well-rested and competent. The comment further noted that there is no guarantee that the Coast Guard would improve safety by applying any new rule governing the manning of foreign tankers in Prince William Sound. The comment stated that the Coast Guard lacks the means to ensure the competency of the foreign officers, nor does the Coast Guard enforce the limits on work hours for crew on foreign flag tankers as required by OPA 90.

This rule applies only to some U.S. flag tankers. For foreign tankers, the manning, training, qualification, and watchkeeping standards for the crew are generally regulated by the flag State or determined by international agreement. Therefore, addressing those issues is beyond the scope of this rulemaking. However, section 4106(a) of OPA 90 requires the Secretary to evaluate those standards. That project has been initiated.

This rule ensures that if there is no Federal pilot aboard a U.S. coastwise seagoing vessel in a specified section of Prince William Sound, then there would be at least two licensed officers on the bridge to navigate. The Coast Guard also has published another NPRM under the requirements of OPA 90 that proposes to require at least two officers on the bridge of tankers over 1,600 gross tons. If that proposal is adopted, all tankers over 1,600 gross tons in certain U.S. waters will be required to navigate with at least two licensed deck officers on the bridge. In pilotage waters, at least one officer should devote undivided attention to the navigation of the tanker while another assists and deals with other necessary functions of the watch.

In fact, navigating with two licensed officers on the bridge when in pilotage waters is already a common maritime practice on most existing tankers. If the Second Officer on the Bridge rule becomes final, only non-tankers would be permitted to operate with a single licensed deck officer on the bridge when in Prince William Sound.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures for Simplification, Analysis, and Review of Regulations (44 FR 11040; February 26, 1979).

Because the rule codifies existing practice, the Coast Guard expects no new costs to be associated with this rule. The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is not necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). "Small entities" also include small not-for-profit organizations and small governmental jurisdictions. Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that the rule does not have sufficient federalism implications to warrant the preparation of the Federalism Assessment. This rule clarifies when and where a Federal pilot is required on coastwise seagoing vessels underway in Prince William Sound. This rule does not apply to vessels that the State of Alaska requires to carry a State licensed pilot. It also does not require a State licensed pilot to procure a Federal license, nor does it affect Alaska's authority to require a State licensed pilot. Therefore, this rule will not preempt any State of Alaska statute or regulation.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation because the rule is administrative in nature. This rule codifies existing practice in Prince William Sound by allowing coastwise seagoing vessels to navigate in certain sections of the Sound with two licensed officers in lieu of a Federal pilot. The Coast Guard has determined that the rule will not have any significant environmental impact. A categorical exclusion determination is available in the docket for inspection where indicated under "ADDRESSES."

List of Subjects in 46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 15 as follows:

PART 15—[AMENDED]

1. The authority citation for part 15 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3703, 8502; 49 CFR 1.45, 1.46.

2. In § 15.812, the introductory text of paragraph (a) is revised and paragraph (f) is added to read as follows:

§ 15.812 Pilots.

(a) Except as specified in paragraph (f) of this section, the following vessels, when underway and not sailing on register, must be under the direction and control of a pilot:

* * * * *

(f) In Prince William Sound, Alaska:

(1) Vessels subject to this section operating from 60° 49′ North latitude to the Port of Valdez must be under the direction and control of a Federally licensed pilot who—

(i) Is operating under the Federal license;

(ii) Holds a license issued by the State of Alaska; and

(iii) Is not a member of the crew of the vessel.

(2) Vessels subject to this section must navigate with either two licensed deck officers on the bridge or a Federally licensed pilot when operating South of 60° 49′ North latitude and in the approaches through Hinchinbrook Entrance and in the area bounded—

(i) On the West by a line one mile west of the western boundary of the Traffic Separation Scheme;

(ii) On the East by 146° 00′ West longitude;

(iii) On the North by 60° 49′ North latitude; and

(iv) On the South by that area of Hinchinbrook Entrance within the territorial sea bounded by 60° 07′ North latitude and 146° 31.5′ West longitude.

* * * * *

Dated: March 2, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–5240 Filed 3–9–93; 8:45 am]

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federal register

Wednesday
March 10, 1993

Part VIII

Department of Transportation

Coast Guard

46 CFR Part 25

Emergency Position Indicating Radio Beacons; Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 25

[CGD 87-016a]

RIN 2115-AC69

Emergency Position Indicating Radio Beacons for Uninspected Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The "EPIRB's On Uninspected Vessels Requirements Act" amended the shipping laws of the United States by requiring uninspected commercial vessels to have the number and type of alerting and locating equipment, including emergency position indicating radio beacons (EPIRBs), prescribed by regulation. As a result, the Coast Guard is amending the uninspected vessel regulations by requiring EPIRBs to be carried on all uninspected commercial vessels, except uninspected passenger vessels, operating on the high seas and on the Great Lakes beyond three miles from the coastline. By implementing this law, the regulations will improve Coast Guard search and rescue activities during emergency situations. Some editorial revisions to the regulations are also being made.

EFFECTIVE DATE: April 26, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markle, Survival Systems Branch, (202) 267-1444. Normal office hours are from 8 a.m. to 4:30 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting these regulations are Mr. Robert Markle, Office of Merchant Marine Safety, Security and Environmental Protection, and Mr. Nicholas E. Grasselli, Project Counsel, Office of Chief Counsel.

Regulatory History

On April 19, 1990, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Emergency Position Indicating Radio Beacons for Uninspected Vessels" (CGD 87-016a) in the **Federal Register** (55 FR 14922). The Coast Guard received 125 letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

On August 17, 1988 the Coast Guard published a final rule in the **Federal Register** (53 FR 31004) revising 46 CFR 25.26 to require the carriage of EPIRBs on uninspected fishing, fish processing, and fish tender vessels operating on the high seas. That rule was published under the authority of section 16 of the "Coast Guard Authorization Act of 1986" (Pub. L. 99-640, 100 Stat. 3545). Under that rule, the affected vessels are required to have a Category 1 406 MHz Satellite EPIRB on board after May 17, 1990. On April 19, 1990, the Coast Guard published a notice in the **Federal Register** (55 FR 14920) indefinitely suspending the compliance date for this EPIRB requirement only for uninspected fishing vessels which did not have installed berthing or galley spaces. The suspension was to remain in effect until a rule for a manually operated, manually launched 406 MHz Satellite EPIRB could be developed and published.

Public Law 100-540, known as the "EPIRB's On Uninspected Vessels Requirements Act" (102 Stat. 2719, October 26, 1988), amended 46 U.S.C. 4102 by revising paragraph (e) to require uninspected commercial vessels operating on the high seas and on the Great Lakes beyond three miles from the coastline to carry the number and type of alerting and locating equipment, including EPIRBs, prescribed by regulation.

This final rule applies to all uninspected commercial vessels, but excludes commercial fishing industry vessels with galleys and berthing facilities and uninspected passenger vessels which remain subject to the requirements of 46 CFR 25.26-1. EPIRB requirements for uninspected passenger vessels, as well as visual distress signal requirements for uninspected vessels not already required to carry them, will be proposed in a future supplemental notice of proposed rulemaking (SNPRM) under docket number CGD 87-016b. Commercial fishing industry vessels with galleys and berthing facilities are already required to carry EPIRBs as a result of the final rule published on April 19, 1990.

Discussion of Comments and Changes

General Comments

In response to the NPRM, the Coast Guard received 89 comments during the open comment period and received 36 comments after the comment period had closed. The comments received after the closing date did not raise any additional issues. Except as discussed below, all comments received in response to the NPRM are addressed in this preamble.

Comments were received from an association representing the tug and barge industry, a maritime hull and cargo surveyors corporation, and interested parties that did not identify their affiliation. Comments were received from the Radio Technical Commission for Maritime Services (RTCM) and the National Transportation Safety Board (NTSB). Additionally, twenty-four individual commercial fishermen and four commercial fishing associations submitted comments to this docket. These commercial fishermen represented themselves as small "day boats" operating between 3 to 10 miles from shore and rarely beyond 20 miles from shore.

The RTCM, one manufacturer of 406 MHz Satellite EPIRBs, one supplier of marine electronics, and the NTSB made comments in support of the proposed rule as written. The NTSB also stated that the 406 MHz Satellite EPIRB "* * * will not only increase safety of uninspected commercial operations significantly, but will reduce search and rescue costs."

As discussed previously, alternative proposals for uninspected passenger vessels will be made in a future SNPRM to be published under docket CGD 87-016b. The SNPRM will address the seventy-two comments received from the charterboat industry which expressed opposition to the proposed rule requiring 406 MHz Satellite EPIRBs on uninspected vessels under 100 gross tons carrying six or less passengers for hire. In general, these comments questioned the need for EPIRBs on charter boats due to the limited nature of their operations (primarily day trips in good weather) and the safety record of these vessels. The Coast Guard remains concerned that vessels carrying passengers for hire have the best feasible safety equipment; however, the comments raise issues of whether a blanket requirement for these vessels to carry EPIRBs is appropriate. In order to proceed with a final rule establishing EPIRB requirements for other vessels, uninspected passenger vessels have been excluded from the final rule and will be addressed separately.

Specific Comments

Many comments raised a concern about the high cost of purchasing the 406 MHz Satellite EPIRB. The cost of this EPIRB has dropped steadily since its introduction. To help keep costs down, several commercial fishing associations have made arrangements with major distributors of EPIRBs to make large volume purchases. The Coast Guard anticipates that bulk purchase orders through associations and a competitive market will operate to further reduce the cost of the EPIRBs.

The phase-in period allowed before all affected vessels will be required to have the 406 MHz Satellite EPIRB on board should also serve to reduce costs, at least in the near term. The Coast Guard expects the cost of the required EPIRB to be less than the cost cited in some of the comments. Additionally, vessels which already have a 121.5/243.0 MHz EPIRB aboard will be able to continue to use that EPIRB to temporarily satisfy this requirement for an extended period, provided that the EPIRB is self-buoyant and is capable of transmitting a signal while floating. The EPIRB will also have to be one manufactured on or after October 1, 1988, in order to meet the Federal Communications Commission (FCC) regulatory requirement at 47 CFR 80.1053(a)(8). The current cost of an EPIRB meeting this requirement is approximately $250. The current cost of a 406 MHz Satellite EPIRB is about $1350.

One comment stated that a manufacturer's lobby exists which supports the expensive 406 MHz Satellite EPIRB requirement. In fact, the 406 MHz Satellite EPIRB is part of the Global Maritime Distress Safety System (GMDSS), a new international radiocommunications system which is being introduced worldwide during the 1990s. The creation and introduction of the GMDSS has been actively supported by the United States in several international forums. The satellite EPIRB system itself has been in development since 1972 as part of a U.S./U.S.S.R. treaty to use satellites to improve alerting of search and rescue forces. (The government of the Russian Federation, as the successor state to the U.S.S.R., continues to honor this treaty). This system was intended to reduce the number of false alarms and give near-pinpoint location of distress alerts.

The comment also stated that the required Coast Guard approved safety equipment does not work and will not hold up in a marine environment. The comment blames the manufacturers' lobby for the laws that require the purchase of inferior products at inflated prices. The Coast Guard and FCC recognize that exposure of electronic equipment to the marine environment can be extremely detrimental. With this in mind, the RTCM developed a standard for the manufacture of the 406 MHz Satellite EPIRB. This standard incorporates rigorous environmental tests that include long term exposure to salt fog, extreme vibrations, and long term drift. These tests were developed to ensure that the 406 MHz Satellite EPIRB will provide successful service throughout its life expectancy. The FCC requires U.S. type accepted 406 MHz satellite EPIRBs to meet the RTCM standard.

One comment requested to continue using the Class A 121.5/243.0 MHz EPIRB until the 406 MHz Satellite EPIRB became more readily available. The requirement to have a 406 MHz Satellite EPIRB will become effective one year after the date of publication of this final rule. However, those vessels with a 121.5/243.0 MHz EPIRB manufactured after October 1, 1988 and installed on board before April 26, 1993 will not be required to have the new 406 MHz Satellite EPIRB on board until February 1, 1998. The NPRM proposed a phase-in period of six years after publication of the final rule. This final rule was originally expected to be published about June 1991 (55 FR 44781, October 29, 1990), resulting in a deadline date for carriage of 406 MHz Satellite EPIRBs of June 1997. The February 1, 1998, date provides an additional seven months beyond the originally projected deadline date. Complete implementation of the GMDSS is scheduled for February 1, 1999.

One comment was in the form of a request for a variance of the rule to allow the carriage of a Category 2 406 MHz Satellite EPIRB for a boat manufactured in accordance with the level flotation requirements of 33 CFR part 183. The Category 1 406 MHz Satellite EPIRB is a fully automatic, float-free device that is mounted on the outside of a vessel in a manner so that if the vessel sinks quickly or unexpectedly, the device will float free, activate, and alert authorities to the distress. In contrast, the Category 2 406 MHz Satellite EPIRB is manually operated, manually launched, and depends upon a person on the vessel to launch the device.

The Coast Guard requirement for level flotation construction in 33 CFR part 183 applies only to recreational vessels 20 feet in length and under. However, the Coast Guard agrees with the comment, and therefore is incorporating revisions in the rule which would allow a boat with sufficient inherently buoyant material to keep the flooded boat afloat to carry either a Category 1 or Category 2 406 MHz Satellite EPIRB to meet the requirement. To qualify, the vessel must be manufactured with and certified as having sufficient flotation material to keep the boat afloat. This requirement must be substantiated by a certification by the manufacturer that the construction of the vessel includes inherently buoyant material which will prevent the boat from sinking. The only mounting restriction for the Category 2 406 MHz Satellite EPIRB is that it be mounted at or near the principal steering station of the vessel.

Comments received from the owners of commercial fishing vessels requested clarification of what constitutes an installed galley and berthing facility. The Coast Guard suspended compliance with the EPIRB requirement for vessels without installed galley and berthing facilities so that the Coast Guard could consider a less expensive alternative for these vessels. The suspension was intended to remove the requirement for smaller vessels involved in day fishing operations. During the suspension period, reports indicated that there were inconsistent interpretations of the suspension guidelines and vessel outfitting. Coast Guard Boarding Officers especially encountered difficulty in making determinations as to whether or not a vessel had a galley and installed berthing on smaller vessels equipped with a day couch, ice box, and a small alcohol stove. In order to reduce this problem, this final rule simply requires vessels under 11 meters (36 feet) in length to carry either a Category 1 or Category 2 406 MHz Satellite EPIRB. Vessels 11 meters or more in length are required to carry a Category 1 406 MHz satellite EPIRB. Some vessels over 11 meters in length do not have a galley or installed berthing, and have not been required to carry 406 MHz satellite EPIRBs until now. This final rule also allows these vessels to continue to use an existing, qualified 121.5/243 MHz EPIRB until February 1, 1998.

For purposes of this regulation, length is defined as the length listed on a vessel's Certificate of Documentation or Certificate of Number. Clarification of the definition of berthing space and galley has been added to the final rule to reduce inconsistent interpretations for vessels 11 meters or more in length. A berthing space is a space that is intended to be used for sleeping. Generally, a berthing space has installed bunks and mattresses. This does not include day couches, sleeping bags, blankets, or convertible tables. A galley is a space that provides for the extended storage and preparation of food. This does not include small alcohol or propane stoves with limited cooking capability, or ice chests or similar devices that are intended for the keeping of small quantities of food for short durations. In no case should a galley determination be made solely on the quantity of food and beverage available (e.g., 10 sandwiches and two six-packs of soda). This change in the final rule will reduce the confusion over this issue and provide the kind of regulatory certainty needed by industry

and the Coast Guard. After February 1, 1998, there will no longer be any need for these definitions, and they can then be removed.

Many comments addressed a need to exempt vessels from the EPIRB requirement for various reasons (i.e., high density fisheries, geographic location, safety record, etc.). Title 46 U.S.C. 4103 provides the Secretary of the department under which the Coast Guard operates the authority to exempt vessels, including uninspected commercial vessels, from safety equipment requirements. This authority has been delegated in 49 CFR 1.46 to the Commandant of the Coast Guard who, in turn, redelegated that authority to District Commanders. Exemption provisions have been added to this final rule providing for case-by-case exemptions upon application to the cognizant Coast Guard District Commander.

The term "high seas" is used in the statute and in the final rule. This term is not defined by the statute. The Coast Guard has defined high seas by regulation in 33 CFR 2.05–1(a); that is, waters which are neither territorial seas nor internal waters of the U.S. or of another country. Territorial seas, with respect to the U.S., are defined in 33 CFR 2.05–5(a) as those waters within the belt, three nautical miles wide, that is adjacent to its coast and seaward of the territorial sea baseline. The baseline generally follows the coastline. The President's Proclamation 5928 of December 27, 1988 (54 FR 777, January 9, 1989) extended the territorial sea to twelve nautical miles from the baseline for the purposes of international law; however, that proclamation did not affect domestic law. Accordingly, the meaning of high seas as used in the final rule is not altered and remains as those waters beyond a line three nautical miles seaward of the Territorial Sea Baseline as defined in 33 CFR 2.05–10.

In order to accommodate the various changes and to ensure the regulations are easily understood, subpart 25.26 was reorganized and revised.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A final regulatory evaluation was prepared and placed in the rulemaking docket.

The final evaluation uses a cost estimate of $1350 for each of the approximately 20,000 uninspected vessels that are affected by this rule. This revised cost estimate is based on currently advertised prices of Category 1 406 MHz Satellite EPIRBs in the United States and is believed to be higher than the actual cost to vessel owners since prices for these EPIRBs are continuing to drop. In addition, many of the vessels will be able to comply with this rule by purchasing Category 2 EPIRBs, reducing costs even further. Approximately 7,500 of the affected vessels will have to install Category 1 or Category 2 406 MHz Satellite EPIRBs within a year at a total cost of $10 million. The remainder will replace their existing EPIRBs over a six-year period at a cost adjusted to 1993 dollars of about $11 million. Over a 10-year period, the total present-value adjusted cost of the regulation, including maintenance and replacement costs, is estimated to be about $26 million.

Although the number of lives that may be saved through mandatory EPIRB requirements cannot be predicted, economic research indicates that $2.5 million per statistical life saved is a reasonable estimate of peoples willingness to pay for safety. The saving of only one or two lives per year for the next 10 years justifies the cost of these rules.

However, more tangible benefits can be identified in the reduction of search and rescue costs. Many unsuccessful searches for overdue vessels are conducted annually that cost millions of dollars before being abandoned. As an example of an extreme case, the unsuccessful search for the fishing vessel AMAZING GRACE took several weeks and cost the Coast Guard and other federal agencies over $12 million. The vessel was never located. In contrast, a number of searches for pleasure, charter, and fishing vessels were expedited as a result of these vessels carrying EPIRBs voluntarily. The savings to the government as a result of elimination or significant reduction of only three or four large-scale searches would justify the cost of these rules alone, even without considering the lives that may be saved by more timely location of vessels in distress.

Small Entities

Generally, uninspected vessel operators are considered to be small entities in that they are typically not part of large diversified corporations, and generally own no more than one or two vessels. The $1350 cost is not considered significant by comparison to the cost of most vessels, or any of the associated equipment necessary to properly and safely operate most of these vessels. Furthermore, this cost is one-half of the $2700 estimate used in the NPRM, reflecting price reductions which have occurred since the publication of the NPRM. As recognized by the phaseout period for existing EPIRBs in this final rule, EPIRBs have a long useful life when properly maintained. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. In this final rule the Coast Guard is amending the uninspected vessel regulations by requiring emergency position indicating radio beacons (EPIRBs) to be carried on all uninspected commercial vessels, except uninspected passenger vessels, operating on the high seas and on the Great Lakes beyond three miles from the coastline. Since this rule affects specific vessels outside of State waters, the Coast Guard intends to preempt State action addressing the same subject matter.

Environment

The Coast Guard considered the environmental impact of this rulemaking and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. These regulations have been developed to enhance the safety of personnel at sea and clearly do not have an environmental impact. A Categorical Exclusion Determination is available for inspection or copying in the rulemaking docket where indicated under "ADDRESSES."

The Coast Guard environmental assessment (EA) for this rulemaking was prepared in accordance with Commandant Instruction M16475.1B, the National Environmental Policy Act of 1969 (NEPA) (Pub. L. 91–190), and the Council of Environmental Quality Regulations of July 1, 1986 (40 CFR parts 1500–1508). This rulemaking is intended primarily to reduce search and rescue efforts and is expected to have no environmental impact. Therefore, the Coast Guard has placed a Finding of No

Significant Impact (FONSI) in the public docket.

List of Subjects in 46 CFR Part 25

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 25 as follows:

PART 25—REQUIREMENTS

1. The authority citation for part 25 continues to read as follows:

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 3306, 4104, and 4302; 49 CFR 1.46.

2. Subpart 25.26 is revised to read as follows:

Subpart 25.26—Emergency Position Indicating Radio Beacons

Sec.

Subpart 25.26—Emergency Position Indicating Radio Beacons (EPIRB)

§ 25.26–1 Definitions.

As used in this subpart:

Berthing space means a space that is intended to be used for sleeping and is provided with installed bunks and mattresses.

EPIRB means an Emergency Position Indicating Radiobeacon which is Type Accepted by the Federal Communications Commission under requirements in 47 CFR parts 2 and 80.

Galley means a space that provides for the preparation and extended storage of food. This does not include small alcohol or propane stoves with limited cooking capability, or ice chests or similar devices that are intended for keeping small quantities of food for short durations.

High seas means the waters beyond a line three nautical miles seaward of the Territorial Sea Baseline as defined in 33 CFR 2.05–10.

Length means the length listed on a vessel's Certificate of Documentation or Certificate of Number.

Uninspected passenger vessel means a vessel which, when used for commercial service, is used solely to carry passengers for hire or to provide non-emergency assistance to boaters (assistance towing), and which is not inspected by the Coast Guard under any other 46 CFR subchapter.

Note: As an example, a vessel on a voyage involving catching fish which are to be sold, is a commercial fishing industry vessel for the purposes of the EPIRB regulations in this section, even if there are passengers on board during the voyage.

§ 25.26–5 Commercial fishing industry vessels.

(a) The owner of a fishing vessel, a fish processing vessel, or a fish tender vessel, 11 meters (36 feet) or more in length, except for vessels described in paragraph (b) or (c) of this section, shall ensure that the vessel does not operate on the high seas or beyond three miles from the coastline of the Great Lakes unless it has on board a float-free, automatically activated Category 1 406 MHz EPIRB stowed in a manner so that it will float-free if the vessel sinks.

(b) After March 10, 1994, the owner of a fishing vessel, fish processing vessel, or a fish tender vessel less than 11 meters (36 feet) in length, or 11 meters or more in length which has a builder's certification that the vessel is constructed with sufficient inherently buoyant material to keep the flooded vessel afloat, shall ensure that the vessel does not operate on the high seas or beyond three miles from the coastline of the Great Lakes, unless it has installed in a readily accessible location at or near the principal steering station—

(1) A manually activated Category 2 406 MHz EPIRB; or

(2) A float-free, automatically activated Category 1 406 MHz EPIRB; or

(3) Until February 1, 1998, a 121.5/243.0 MHz EPIRB meeting § 25.26–30(a).

(c) After March 10, 1994, the owner of a fishing vessel, fish processing vessel, or a fish tender vessel 11 meters (36 feet) or more in length that does not have installed galley and berthing facilities, shall ensure that the vessel does not operate on the high seas or beyond three miles from the coastline of the Great Lakes unless it has on board—

(1) A float-free, automatically activated Category 1 406 MHz EPIRB stowed in a manner so that it will float free if the vessel sinks; or

(2) Until February 1, 1998, a 121.5/243.0 MHz EPIRB meeting § 25.26–30(a).

§ 25.26–10 Uninspected passenger vessels.

An uninspected passenger vessel is not required to carry an EPIRB.

§ 25.26–20 Other manned uninspected commercial vessels.

(a) After March 10, 1994, the owner of a manned uninspected commercial vessel 11 meters (36 feet) or more in length, other than a vessel under § 25.26–5 or § 25.26–10 or under paragraph (b) of this section, shall ensure that the vessel does not operate on the high seas or beyond three miles from the coastline of the Great Lakes, unless it has on board—

(1) A float-free, automatically activated Category 1 406 MHz EPIRB stowed in a manner so that it will float free if the vessel sinks; or

(2) Until February 1, 1998, a 121.5/243.0 MHz EPIRB meeting § 25.26–30(a).

(b) After March 10, 1994, the owner of a manned uninspected commercial vessel less than 11 meters (36 feet) in length, or 11 meters or more in length which has a builder's certification that the vessel is constructed with sufficient inherently buoyant material to keep the flooded vessel afloat, shall ensure that the vessel does not operate on the high seas or beyond three miles from the coastline of the Great Lakes, unless it has installed in a readily accessible location at or near the principal steering station—

(1) A manually activated Category 2 406 MHz EPIRB; or

(2) A float-free, automatically activated Category 1 406 MHz EPIRB; or

(3) Until February 1, 1998, a 121.5/243.0 MHz EPIRB meeting § 25.26–30(a).

§ 25.26–30 121.5/243.0 MHz EPIRBs.

A 121.5/243.0 MHz EPIRB manufactured after October 1, 1988, may be used to meet certain requirements of § 25.26–5 and § 25.26–20, if the EPIRB is operable and was installed on the vessel on or before April 26, 1993. The EPIRB must be a Class A EPIRB, or a Class B EPIRB which is watertight, self-buoyant, and stable in a floating position to properly transmit a distress signal.

§ 25.26–50 Servicing of EPIRBs.

(a) The owner of each vessel required to have an EPIRB under this subpart shall ensure that each EPIRB on board is tested and serviced as required by this section.

(b) The EPIRB must be tested immediately after installation and at least once each month thereafter, unless it is an EPIRB installed in a Coast Guard approved inflatable liferaft that is tested annually during the servicing of the liferaft by an approved servicing facility. The test shall be conducted in accordance with the manufacturer's instructions, using the visual or audio indicator on the EPIRB. If the EPIRB is not operating, it must be repaired or replaced with an operating EPIRB.

(c) The battery of the EPIRB must be replaced—

(1) Immediately after the EPIRB is used for any purpose other than being tested; and

(2) Before the expiration date that is marked on the battery.

§ 25.26–60 Exemptions.

(a) A skiff or work boat is not required to carry an EPIRB if—

(1) Its "mother ship" is required to carry an EPIRB under this subpart; and

(2) When not in use, the skiff or work boat is carried on board the mother ship.

(b) Each Coast Guard District Commander may, on a case-by-case basis, grant exemptions from the carriage requirements of EPIRBs in this subpart for certain geographic areas within the boundaries of his or her own district if the District Commander determines that an EPIRB will not significantly enhance the overall safety of the vessel and crew. Exemptions may be limited to specific time periods. Exemptions granted under this paragraph must be:

(1) Issued in writing by the cognizant Coast Guard District Commander for each individual application and

(2) For geographic locations and may be limited to specific time periods.

Dated: January 28, 1993.

R. C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–5241 Filed 3–9–93; 8:45 am]

BILLING CODE 4910–14–

Federal Register

Wednesday
March 10, 1993

Part IX

Federal Trade Commission

16 CFR Part 308

Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 308

Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On October 28, 1992, the President signed into law the Telephone Disclosure and Dispute Resolution Act of 1992 ("Telephone Disclosure Act" or "the Act"). Title I of the Telephone Disclosure Act directs the Federal Communications Commission (FCC) to prescribe regulations, within 270 days of enactment, establishing requirements for common carriers offering pay-per-call services. Titles II and III of the Telephone Disclosure Act direct the Federal Trade Commission (FTC or Commission) to prescribe regulations, within 270 days of enactment, governing the advertising and operation of pay-per-call services, as well as billing and collection procedures for such services. This notice announces the proposed rule drafted by the Federal Trade Commission pursuant to the Telephone Disclosure Act.

All persons are hereby given notice of the opportunity to submit written data, views, and arguments concerning this proposal. In addition, following the period for written comments, Commission staff plans to conduct a Public Workshop-Conference to afford Commission staff and interested parties an opportunity to explore and discuss issues raised during the comment period.

DATES: Written comments must be submitted on or before April 9, 1993. Due to the time constraints of this rulemaking proceeding, the Commission does not contemplate any extensions to this comment period or any additional periods for written comment or rebuttal comment.

Notification of interest in representing an affected, interested party at the Public Workshop-Conference must be submitted on or before March 25, 1993. A list of affected interests appears in Section D of this Notice.

The Public Workshop-Conference will be held on April 22 and 23, 1993, 9 a.m. until 5 p.m.

ADDRESSES: Written comments should be submitted in 20 copies to the Office of the Secretary, room 159, Federal Trade Commission, Washington, DC 20580. (However, individuals filing comments need not submit multiple copies.) Submissions should be captioned: "Proposed Telephone Disclosure Rule," FTC File No. R311001.

Notifications of interest in the Public Workshop-Conference should be submitted in writing to Heather McDowell, Division of Marketing Practices, Federal Trade Commission, Washington, DC 20580.

The Public Workshop-Conference will be held in the Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: David Torok, (202) 326–3140, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A. Background

Congress based its enactment of the Telephone Disclosure Act, Public Law No. 102–556, upon a number of findings concerning the development of the pay-per-call services industry. Specifically, Congress made the following findings, set forth in section 1 of the Act:

(1) The use of pay-per-call services, most commonly through the use of 900 telephone numbers, has grown exponentially in the past few years into a national, billion-dollar industry as a result of recent technological innovations. Such services are convenient to consumers, cost-effective to vendors, and profitable to communications common carriers.

(2) Many pay-per-call businesses provide valuable information, increase consumer choices, and stimulate innovative and responsive services that benefit the public.

(3) The interstate nature of the pay-per-call industry means that its activities are beyond the reach of individual States and therefore requires Federal regulatory treatment to protect the public interest.

(4) The lack of nationally uniform regulatory guidelines has led to confusion for callers, subscribers, industry participants, and regulatory agencies as to the rights of callers and the oversight responsibilities of regulatory authorities, and has allowed some pay-per-call businesses to engage in practices that abuse the rights of consumers.

(5) Some interstate pay-per-call businesses have engaged in practices which are misleading to the consumer, harmful to the public interest, or contrary to accepted standards of business practices and thus cause harm to the many reputable businesses that are serving the public.

(6) Because the consumer most often incurs a financial obligation as soon as a pay-per-call transaction is completed, the accuracy and descriptiveness of vendor advertisements become crucial in avoiding consumer abuse. The obligation for accuracy should include price-per-call and duration-of-call information, odds disclosure for lotteries, games, and sweepstakes, and obligations for obtaining parental consent from callers under 18.

(7) The continued growth of the legitimate pay-per-call industry is dependent upon consumer confidence that unfair and deceptive behavior will be effectively curtailed and that consumers will have adequate rights of redress.

(8) Vendors of telephone-billed goods and services must also feel confident in their rights and obligations for resolving billing disputes if they are to use this new marketplace for the sale of products of more than nominal value.

Based upon the above findings, Congress directed both the FCC and the FTC to issue regulations governing different aspects of this industry. Regulations to be enacted by the FCC will define the obligations of common carriers with respect to the provision of pay-per-call services. Pay-per-call services can be offered only through the use of certain telephone number prefixes and area codes designated by the FCC for that purpose. Common carriers that assign the designated numbers to providers of pay-per-call services must require by contract or tariff that each such provider comply with regulations prescribed by the FTC pursuant to titles II and III of the Telephone Disclosure Act and terminate the contract of any provider that the common carrier knows (or reasonably should know) to be in violation of the FTC rule.

The Telephone Disclosure Act prohibits common carriers from disconnecting a telephone subscriber's local or long distance telephone service because of nonpayment of charges for any pay-per-call service. In addition, they must offer telephone subscribers the option of blocking access from their telephone numbers to all, or certain specific, prefixes or area codes used by pay-per-call services. Common carriers that assign prefixes or area codes designated for pay-per-call services to those engaged in soliciting charitable contributions must obtain proof of the tax-exempt status of any organization for which contributions are solicited.

Pursuant to the Act, common carriers must prohibit the use of 800 telephone numbers (or any other telephone number advertised or widely understood to be toll free) in a manner that results in any of the following: the

calling party being assessed a charge for the call; the calling party being connected to a pay-per-call service; the calling party being charged for information conveyed during the call (in the absence of a pre-existing agreement or disclosure of a credit card number during the call); or the calling party being called back collect for the provision of audio information or voice conversation services.

Common carriers that offer billing and collection services to a provider of pay-per-call services must ensure that a subscriber is not billed for pay-per-call services that the carrier knows (or reasonably should know) were provided in violation of the FTC regulations issued pursuant to title II of the Telephone Disclosure Act. In addition, the common carrier must establish a local or toll-free telephone number to answer questions and provide information on telephone subscribers' rights and obligations with regard to their use of pay-per-call services and to provide callers the name and mailing address of any provider of pay-per-call services offered by the common carrier. Furthermore, a written disclosure statement must be provided to all telephone subscribers within 60 days of the issuance of final regulations by the FCC. This statement will set forth the rights and obligations of the subscriber and the carrier with respect to the use of and payment for pay-per-call services, including the right of a subscriber not to be billed and the applicable blocking option.

In the telephone bill itself, the common carrier that provides billing must display charges for pay-per-call services in a part of the bill that is identified as not related to local and long distance telephone charges. For each pay-per-call service charge, the bill must show the type of service, the amount of the charge, and the date, time and duration of the call. In addition, the bill must show the toll-free number established to answer consumers' questions with regard to pay-per-call services. Finally, the FCC rule must establish procedures to ensure that common carriers afford refunds to subscribers who have been billed for pay-per-call services found to have violated any of the rules promulgated pursuant to the Telephone Disclosure Act or any other Federal law.

Title II of the Telephone Disclosure Act directs the FTC to prescribe regulations governing the conduct of the providers of pay-per-call services with respect to advertising and the actual operation of such services. The statute requires that disclosure of the cost of a pay-per-call service be made both in advertising and in an introductory disclosure message (or preamble) that must be played before the caller incurs any charge for the call. Advertisements for pay-per-call services that offer a prize or award must disclose the odds of receiving the prize or award. In the case of a pay-per-call service that provides information about a Federal program, both the preamble and any advertisement must disclose that the service is not authorized, endorsed, or approved by any Federal agency.

Pay-per-call services, and advertisements for such services, cannot be directed to children under 12, unless the service is a bona fide educational service. Advertisements directed to individuals under the age of 18, and the preambles to all pay-per-call services, are required to state that persons under 18 must have the consent of a parent or guardian to use such services. Broadcast advertisements may not emit electronic tones that can automatically dial a pay-per-call number. Moreover, pay-per-call services cannot be provided through an 800 telephone number, or any other number widely understood to be toll free.

Requirements for billing statements that are imposed upon the common carriers are also imposed upon the providers of pay-per-call services. Moreover, such providers are liable for refunds to consumers who have been billed for pay-per-call services found to have violated the regulations prescribed pursuant to the Telephone Disclosure Act or any other Federal law. In addition, the Commission is authorized to prescribe other regulations it deems necessary to prevent abusive practices in this industry or to prevent evasion of these requirements.

Title II of the Telephone Disclosure Act gives the FTC limited jurisdiction over common carriers for purposes of this title.[1] Specifically, common carriers will be required to make available to the Commission certain records and financial information relating to the arrangements between the carrier and providers of pay-per-call services.

Enforcement actions for violations of the rule prescribed pursuant to title II will be handled by the FTC in the same manner as for other rules with respect to unfair or deceptive acts or practices under section 5 of the FTC Act.[2] In addition, however, title II authorizes the attorneys general of the States to enforce compliance with the FTC rule by instituting Federal court enforcement actions, after serving prior written notice upon the Commission when feasible.

Title III of the Telephone Disclosure Act directs the FTC to prescribe rules establishing procedures for the correction of billing errors with respect to telephone-billed purchases. These requirements will be similar to those imposed for the resolution of credit disputes under the Truth in Lending Act and the Fair Credit Billing Act.[3] Unlike title II of the Telephone Disclosure Act, title III does not set forth specific provisions to be incorporated into the required regulations. However, with respect to telephone-billed purchases, the Commission has been directed to consider the following:

(1) The initiation of a billing review by a customer.

(2) Responses by billing entities and providing carriers to the initiation of a billing review.

(3) Investigations concerning delivery of telephone-billed purchases.

(4) Limitations upon providing carrier responsibilities, including limitations on a carrier's responsibility to verify delivery of audio information or entertainment.

(5) Requirements on actions by billing entities to set aside charges from a customer's billing statement.

(6) Limitations on collection actions by billing entities and vendors.

(7) The regulation of credit reports on billing disputes.

(8) The prompt notification of credit to an account.

(9) Rights of customers and telephone common carriers regarding claims and defenses.

(10) The extent to which the regulations should diverge from requirements under the Truth in Lending and Fair Credit Billing Acts in order to protect customers, and in order to be cost effective to billing entities.

The Commission will treat the rule promulgated pursuant to title III as a rule issued under Section 18(a)(1)(B) of the FTC Act (15 U.S.C. 57a(a)(1)(B)) and enforced pursuant to Section 5 of the FTC Act (15 U.S.C. 45). For purposes of title III, communications common carriers will be subject to the jurisdiction of the Federal Trade Commission.

Section B of this notice discusses the proposed rule that the Commission has drafted pursuant to the Telephone Disclosure Act.

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[1] In general, common carriers are not subject to the jurisdiction of the FTC Act, 15 U.S.C. 45(a)(2).

[2] 15 U.S.C. 45. The Telephone Disclosure Act provides that the rule issued under title II shall be treated as a rule issued under § 18(a)(1)(B) of the FTC Act (15 U.S.C. 57a(a)(1)(B)).

[3] 15 U.S.C. 1601 *et seq.*

Section B. Discussion of the Proposed Rule

Section 308.1 Scope of Proposed Rule

Section 308.1 sets forth the scope of the proposed regulations. They are proposed in implementation of titles II and III of the Telephone Disclosure and Dispute Resolution Act of 1992.

Section 308.2 Definitions

Section 308.2 defines the following terms used in the proposed regulations: bona fide educational service, Commission, pay-per-call services, person, presubscription or comparable arrangement, program-length commercial, provider of pay-per-call services, reasonably understandable volume, slow and deliberate manner, and sweepstakes.

The proposed rule defines the term "pay-per-call services" as it is defined in the Telephone Disclosure Act—by reference to section 228 of the Communications Act of 1934.[4] The service provided may be audio-information, audio entertainment, conversation with another person, or any other service for which the charges are assessed on the basis of the completion of the call. The caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call. The call is accessed through use of a 900 telephone number or other prefix or area code designated by the FCC for such services. However, the term does not include directory services provided by a common carrier or local exchange carrier; and service for which the charge is tariffed; or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of the service. The proposed rule defines "provider of pay-per-call services" as the individual or entity that is selling the service provided through the pay-per-call service.

The term "presubscription or comparable arrangement" has not been defined by statute or by the FCC. The definition proposed in this rule would limit such arrangements to a contractual agreement established prior to the initiation of pay-per-call services between the consumer and the provider. It makes clear that no action taken during the course of a call to a pay-per-call service can be construed as creating such a contractual agreement. The definition of this term is important to the effectiveness of the proposed rule, since any telephone transaction pursuant to a "presubscription or comparable arrangement" is not afforded the protection of these regulations.

The term "bona fide educational service" describes the one permitted exception to the prohibition against pay-per-call services, and advertisements for such services, directed to children under the age of 12. The proposed definition is narrowly drawn, defining such services in terms of the content of the educational or instructional service itself. The exception to the prohibition is intended to be limited to those programs serving a truly educational or instructional purpose.

The terms "reasonably understandable volume" and "slow and deliberate manner" apply to oral disclosures that must be made either in broadcast advertising or in telephone preambles. They are defined so as to insure that such disclosures will be intelligible to the receiving audience and, at a minimum, are spoken at the same audible level and no faster then the primary message of the advertisement or the pay-per-call service.

Section 308.3 Advertising of Pay-Per-Call Services

Section 308.3 of the proposed rule sets forth the requirements for advertising pay-per-call services. Sections 308.3 (a) through (h) are each based on requirements of the Telephone Disclosure Act.

Each section that mandates a disclosure requires that the disclosure be presented clearly and conspicuously. While there are certain minimum standards that are applicable to all disclosures in advertisements, the definition of "clear and conspicuous" in some sections provides further requirements for those specific disclosures. All audio disclosures, in broadcast advertising or telephone solicitations, must be delivered in a "slow and deliberate manner" and a "reasonably understandable volume," as those terms are defined in § 308.2 (h) and (i). Unless a more stringent standard is specified, the visual portion of television disclosures must appear on the screen for sufficient time to allow consumers to read it. Disclosures in television advertisements must always appear at least once simultaneously in both the audio and video portions of the advertisement. The proposed rule, however, contains an exception for advertisements that are 15 seconds or shorter, and would not require an audio disclosure only if the pay-per-call number is not stated in the audio portion. Print and video disclosures must be of a color or shade that readily contrasts with the background of the advertisement. In print advertisements, disclosures must always be parallel with the base of the advertisement and in at least 12-point type. In addition, required disclosures must always appear in the same language as that principally used in the advertisement. Finally, the proposed rule provides that with respect to each disclosure, nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be made in any advertisement, nor shall any audio or video technique be used that is likely to detract significantly from the communication of the disclosure. This provision is intended to ensure that advertisers do not attempt to circumvent the "clear and conspicuous" requirements, either through the conveyance of other information or through the manner in which the disclosures are made.

Over and above these minimum standards, there are specific additional size and placement requirements that vary according to the type of information being disclosed. This approach represents an effort to display most prominently the information that has the greatest importance for consumers, while at the same time reducing the potential cost burdens on the pay-per-call service providers.

1. Cost of the Call

Section 308.3(a) describes the requirements for disclosing the costs of a call to a pay-per-call number. These requirements are the same as those for disclosure of costs in the preamble to the pay-per-call service itself. Advertisers must disclose the total cost of a call if there is a flat fee charged. If the call is billed on a time-sensitive basis, the advertisement must disclose the cost per minute and any minimum charges. If the duration of the program can be determined in advance, the advertisement must state the total cost for the complete program. If the duration of the program cannot be determined in advance, because it involves a live conservation or is dependent upon options selected by the caller, the advertisement must disclose that the length of the call if subject to the caller's discretion, unless it is otherwise clear from the advertisement that such is the case.

If the call is billed on a variable rate basis, that is, if the rate will change depending on options chosen by the caller, the advertisement must state the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on the options chosen by the caller.

[4] 47 U.S.C. 228. This section was added by title I of the Telephone Disclosure Act.

The advertisement must disclose any other fees that will be charged for the service (for instance, computer time charges). If the caller may be transferred to another pay-per-call number, the advertisement must also disclose the cost of the other call, in accordance with the above.

In television advertising, the cost must be disclosed in both the audio and video portions of the advertisement. The video portion must appear on the screen simultaneously with and for the same duration as the video display of the pay-per-call number. Each letter and numeral of the video portion of the cost disclosure must be at least as large as each letter and numeral of the pay-per-call number to which it is adjacent.

In print advertisements, the disclosure must be placed adjacent to each presentation of the pay-per-call telephone number. As in televisions advertisements, each letter and numeral of the disclosure must be at least as large as each letter and numeral of the pay-per-call number.

In radio advertisements, the cost disclosure must be made at least once, and must be delivered immediately following the first presentation of the pay-per-call number. In any program-length radio commercial, the cost must be disclosed each time the pay-per-call number is given.

2. Sweepstakes; Games of Chance

Section 308.3(b) addresses pay-per-call services that advertise sweepstakes, including games of chance. The proposed rule incorporates the requirements of the Telephone Disclosure Act that such advertisements clearly and conspicuously disclose the odds of winning a prize, award, service, or product at no cost or at reduced cost, or the factors that will determine the odds, if the odds are not calculable in advance (e.g., if the odds depend on how many times the game is played). The proposed rule limits the application of the odds disclosure requirement to those situations where the prize, etc., is offered through a sweepstakes or game of chance. In addition, the proposed rule requires a disclosure that no purchase (*i.e.*, no call to the pay-per-call service) is required to participate, along with a disclosure of a free alternative method of entry and instructions on how to enter.[5] The proposed rule also requires that the advertisement disclosure the scheduled termination date of the game.

In television advertisements, each line of the video disclosure must occupy at least one-tenth of the vertical field of the television screen. There are no additional requirements for print or radio disclosures, beyond the minimum standards described above.

3. Federal Programs

Section 308.3(c) treats advertisements for pay-per-call services that provide information on Federal programs,[6] but that are not sponsored or endorsed by any Federal agency. The proposed rule requires that the advertisement clearly and conspicuously disclose, at the beginning, that the pay-per-call service is not authorized, endorsed, or approved by any federal agency.

In television advertisements, each line of the video disclosure must occupy at least one-tenth of the vertical field of the television screen. In both television and radio advertisements, the disclosure must begin within the first fifteen (15) seconds of the advertisement.

In print advertisements, the disclosure must appear within the top one-third of the advertisement.

4. Prohibition on Advertising to Children

Section 308.3(d) tracks the language contained in the Telephone Disclosure Act by prohibiting a provider of pay-per-call services from directing advertisements for such services at children under the age of 12, unless the service is a bona fide educational service (as defined in § 308.2(a)).

For purposes of the proposed rule, advertisements directed to children under 12 are defined, in § 308.3(d)(2), both by the type of medium in which they appear, as well as by the nature and content of the advertisement. Advertisements directed to children under 12 are presumed to include the following: Advertisements appearing in publications directed to children (*e.g.*, children's books, magazines and comic books); advertisements appearing during or immediately adjacent to television programs directed to children (*e.g.*, children's programming as defined by the FCC,[7] animated programs, and after-school specials directed to children); advertisements broadcast during or immediately adjacent to radio programs directed to children; advertisements appearing on a commercially prepared video directed to children; and advertisements or promotions appearing on product packaging directed to children. In addition, any advertisement, regardless of placement, that is directed to children under 12 in light of its subject matter, visual content, age of models, language, characters, tone, message, or the like, will also be presumed directed to children under the age of 12. However, § 308.3(d)(3) provides that the presumption contained in § 308.3(d)(2) may be rebutted with competent and reliable evidence demonstrating that the receiving audience is composed predominantly of individuals aged 12 or older.

5. Advertising to Individuals Under 18

Section 308.3(e) requires a clear and conspicuous parental permission disclosure in all pay-per-call advertisements directed primarily to individuals under the age of 18, and describes the requirements for such a disclosure. For purposes of the proposed rule, advertisements directed to individuals under 18 are defined, in § 308.3(e)(5), in terms of a presumption based on the medium in which the advertisement is placed, as well as by the nature and content of the advertisement itself.

Advertisements directed primarily to individuals under 18 include the following: Advertisements appearing in publications directed primarily to individuals under 18 (*e.g.*, certain books, magazines and comic books); advertisements appearing during or immediately adjacent to television programs directed primarily to individuals under 18 (*e.g.*, mid-afternoon weekday television shows); advertisements broadcast on radio stations directed primarily to individuals under 18; and advertisements appearing on a commercially-prepared video directed primarily to individuals under 18. Finally, any advertisement, regardless of placement, that is directed primarily to individuals under 18 in light of its subject matter, visual content, age of models, language, characters, tone, message, or the like will be presumed to

[5] Offering a free method of entering a sweepstakes or game of chance is necessary to avoid violation of the Federal law prohibiting commercial lotteries, 18 U.S.C. 1301.

[6] An example would be a service providing on-line computer access to the Federal Register or the Congressional Record.

[7] The FCC defines "children's programming" as "programs originally produced and broadcast for an audience of children 12 years old and under." (Policy and Rules Concerning Children's Television Programming, Report and Order, April 9, 1991, Docket No. 90-570.) Thus, the FCC definition relates to children 12 years old and under, while this rule prohibits pay-per-call services and advertisements for such services directed to children under the age of 12. Nevertheless, the FCC's definition should provide a useful benchmark. Moreover, to the extent that the FCC's definition includes individuals not covered by the Telephone Disclosure Act, an advertiser may submit competent and reliable evidence, such as audience composition data, to show that the audience is predominantly composed of children aged 12 and older.

be directed primarily to individuals under the age of 18. However, § 308.3(e)(6) provides that the presumption contained in § 308.3(e)(5) may be rebutted with competent and reliable evidence demonstrating that the receiving audience is composed primarily of individuals aged 18 or older.

The standard required to demonstrate that the receiving audience is composed primarily of individuals aged 18 or older is different from the standard required to demonstrate that the receiving audience is composed predominantly of individuals aged 12 or older (as described in section 4, above). These different standards ("primarily" versus "predominantly") are based on the specific language differences in the Telephone Disclosure Act. While the Act prohibits advertisements for pay-per-call services "directed" at children under 12, it provides that advertising "directed primarily" to individuals under 18 must have a parental permission disclosure. Thus, the Commission contemplates that in order to rebut the presumption that an advertisement is directed primarily to individuals under 18, the advertiser would need only to show that more than half of the receiving audience is 18 or older. At that point, the advertisement would not appear to be "directed primarily" to those under 18. In contrast, the Commission contemplates that in order to rebut the presumption that an advertisement is directed to children under the age of 12, the advertiser would have to show that something more than two-thirds to three-quarters of the audience is 12 years of age or older. The Commission recognizes the potential difficulties raised by these provisions, and accordingly has framed specific questions for comment on them.

In television or videotape advertisements, the video disclosure concerning parental permission must be adjacent to the largest presentation of the pay-per-call number, and each line of the video portion of the disclosure must occupy at least one-tenth of the vertical field of the television screen. In any program-length commercial (*i.e.*, 15 minutes or longer), the video disclosure must appear simultaneously with and for the same duration as each presentation of the pay-per-call number.

In print advertisements, the disclosure must be adjacent to the largest presentation of the pay-per-call number. In any program-length radio commercial, the disclosure must be delivered immediately preceding each delivery of the pay-per-call number.

6. Prohibition Against Electronic Tones in Advertising

Section 308.3(f) reiterates the language of the Telephone Disclosure Act by prohibiting providers of pay-per-call services from using advertisements that emit electronic tones that can automatically dial a pay-per-call telephone number.

7. Telephone Solicitations

Section 308.3(g) addresses telephone messages that solicit calls to pay-per-call services. Such messages might be accessed through an 800 telephone number, for example,[8] or through any regular long distance or local telephone exchange.[9] The proposed rule requires that the message disclose the cost of the pay-per-call service in accordance with the requirements for cost disclosures set out in § 308.3(a)(1).

8. Toll-free Telephone Numbers

Section 308.3(h) prohibits advertisements for pay-per-call services from referring to an 800 telephone number, or any other telephone number advertised or widely understood to be toll free, if callers to that number may be connected to an access number for, or transferred to, a pay-per-call service.

Section 308.4 Special Rule for Infrequent Publications

As provided in the Telephone Disclosure Act, § 308.4 allows an exemption from the cost disclosure requirements of § 308.3(a) for advertisements for pay-per-call services that appear in certain publications that are printed once a year, or less frequently, such as a yellow pages directory. Instead of the cost disclosures required by § 308.3(a), advertisements for pay-per-call services in this type of publication can include a clear and conspicuous disclosure that a call to the pay-per-call service may result in a substantial charge above the long-distance charge. In order to qualify for this exemption, the publication must be: (1) widely distributed; (2) printed annually or less frequently; and (3) one that has an established and written policy of not publishing specific prices in advertisements.

Section 308.5 Pay-Per-Call Service Standards

Section 308.5 sets forth the various requirements and prohibitions that apply to the actual operation of pay-per-call services. As required by the Telephone Disclosure Act, each pay-per-call telephone message must be preceded by an introduction or preamble, for which the caller is not charged, that discloses various facts relevant to the consumer's decision whether to complete the call and incur the charge for the service. These disclosures are set forth in § 308.5(a).

First, the preamble must identify the name of the provider of the pay-per-call service and describe the service that is offered.[10] Thus, the consumer will have some idea of what he or she will receive for the charge, and some minimal identifying information about the entity he or she is calling.

Second, the preamble must disclose the cost of the call, in the same specific manner and detail required for this information in advertisements.

Third, the preamble must state that charges for the call will begin at the end of the preamble, after a clearly discernible signal or tone, and that the caller may avoid any charge for the call by hanging up at or before the sound of the tone.

Fourth, the preamble must state that anyone under the age of 18 must have parental permission to make the call. Finally, if the pay-per-call service provides information about a Federal program, but is not operated or authorized by any Federal agency, the preamble must state that the service is not authorized, endorsed, or approved by any Federal agency.

The caller must be able to hang up at or before the end of the introductory message without incurring any charge. Therefore, § 308.5(b) states that the provider is prohibited from charging a caller any amount whatsoever if the caller hangs up within five seconds after the conclusion of the preamble. This gives the consumer sufficient time, after hearing the complete preamble message and the signal or tone indicating the end of the preamble, to make the decision to

[8] The proposed rule prohibits the providing of pay-per-call services through 800 telephone numbers. Thus the caller could not be connected or transferred to a pay-per-call service after calling an 800 telephone number. However, there would be no prohibition against using an 800 telephone number to advertise a pay-per-call service so long as no direct connection or transfer to the service could be made.

[9] The Telephone Consumer Protection Act of 1991, 47 U.S.C. 227, would ban all computer-generated calls to homes unless such a call is made for emergency purposes or the subscriber consents in advance to it. The Act became effective December 20, 1992. However, the United States District Court for the District of Oregon granted a preliminary injunction against enforcement. *Moser v. FCC*, No. 92-1408-AS (D. Or. Dec. 22, 1992). If the statute is sustained against challenge, computer-generated calls to homes could not be used to solicit calls to a pay-per-call service.

[10] The statute requires description of the service, but not identification of the pay-per-call provider. However, requiring identification of the provider is consistent with current FCC regulations that govern the interstate transmission of pay-per-call services by common carriers. 47 CFR 64.711(b)

disconnect and to do so without incurring any charge for the call.

The Telephone Disclosure Act gives the Commission discretion to exempt from the preamble requirement pay-per-call services provided at "nominal" charges, as defined by the Commission. This exemption provision recognizes that below a certain minimal level, it may not be cost effective for the provider to offer the service if all of the disclosures required by § 308.5(a) must be included in a preamble for which the caller cannot be charged. Therefore, § 308.5(c) creates an exemption to the preamble requirement when the total cost of the pay-per-cost service (whether billed as a flat rate or on a time-sensitive basis) is $2.00 or less.[11]

In addition, the Act gives the Commission discretion to allow pay-per-call providers to create a mechanism whereby frequent callers to a particular service can bypass the preamble during subsequent calls. However, the Act further states that any such bypass mechanism must be disabled following a price increase, and remain disabled for a period of time sufficient to give frequent callers adequate notice of the price change. Therefore, § 308.5(d) states that pay-per-call service providers that offer frequent callers the option of activating a bypass mechanism to avoid the preamble will not be in violation of § 308.5(a), provided that any such bypass mechanism is disabled for no less than 30 days after the institution of a price increase or a change in the nature of the service offered.

In addition to the preamble message, the Telephone Disclosure Act imposes various other requirements and prohibitions upon the providers of pay-per-call services, and these also have been incorporated into § 308.5 of the proposed rule. Section 308.5(e) prohibits pay-per-call service providers from billing consumers any amount in excess of the amount described in the preamble and from billing for any services provided in violation of the Commission's rule.[12]

Section 308.5(f) requires that providers of pay-per-call services stop the assessment of time-based charges immediately upon disconnection by the caller. However, the Commission recognizes that time-sensitive billing is accomplished in one-minute increments, and that any portion of a minute will be billed as a full minute.

Section 308.5(g) imposes a ban on pay-per-call services directed to children under the age of 12, similar to the ban on advertisements for such services that are directed to children under 12. Pay-per-call services that are produced or designed for children under 12, in light of the subject matter, content, language, featured personality, characters, tone, or message, are presumed to be covered by the prohibition, regardless of when or where they are advertised. Moreover, any service advertised in the manner described in § 308.3(d)(2) (which defines those advertisements presumed to be directed to children under 12) is presumed to be a pay-per-call service itself directed to children under 12. Both presumptions may be rebutted, however, with evidence that recipients of the service are predominantly individuals aged 12 or older.

Section 308.5(h) of the proposed rule prohibits the use of an 800 telephone number (or any other telephone number advertised or widely understood to be toll free) for pay-per-call services. Thus, for example, callers to an 800 number cannot be connected to an access number for, transferred to, or otherwise billed for a pay-per-call service. The provision is a companion to § 308.3(h), which prohibits providers of pay-per-call services from referring in advertisements to an 800 telephone number, if callers to that number are connected or transferred to a pay-per-call service.[13] It should be noted, however, that any service for which charges are assessed pursuant to a "presubscription or comparable arrangement," as defined in § 308.2(e), would still be permitted in connection with a call to an 800 telephone number, since this category of service has been removed from the definition of "pay-per-call services" contained in § 308.2(c).

Under § 308.5(i) of the proposed rule, pay-per-call service providers are obligated to ensure that any billing statement for their charges displays the pay-per-call service charges in a part of the bill identified as not being related to the consumer's local and long distance telephone charges. For each pay-per-call service charge, the bill must specify the type of service, the amount of the charge, and the date, time, and duration of the call.[14]

Finally, § 308.5(j) of the proposed rule makes pay-per-call service providers liable for refunds to consumers who have been billed and have paid for services pursuant to programs found to have violated the regulations prescribed by the FTC or any other Federal rule or law. This provision will facilitate the redress of consumers who have been injured by charges from pay-per-call service providers that have engaged in illegal practices.

Section 308.6 Access to Information

The Telephone Disclosure Act gives the Commission authority to require that common carriers that provide telephone services to providers of pay-per-call services make available to the Commission any records and financial information maintained by the carrier relating to the arrangements (other than for the provision of local exchange service) between the carrier and any provider of pay-per-call services. Section 308.6 of the proposed rule incorporates this requirement as set forth in the statute.[15]

Section 308.7 Billing and Collection for Pay-Per-Call Services

Section 308.7 of the proposed rule sets forth the requirements for billing and collection of pay-per-call services, including procedures for correcting billing errors with respect to telephone-billed purchases. The Telephone Disclosure Act mandates that these requirements be substantially similar to those prescribed under the Truth in Lending Act and the Fair Credit Billing Act, 15 U.S.C. 1601, *et seq.*, to resolve credit billing disputes. Thus, many of the requirements in § 308.7 are

[11] Current FCC regulations for common carriers contain an exemption for programs with a flat-rate charge of $2.00 or less. 47 CFR 64.711(a).

[12] Title I of the Act imposes a similar requirement upon common carriers that bill for pay-per-call services. The carrier must ensure that a telephone subscriber is not billed for any services that the carrier knows, or reasonably should know, were provided in violation of regulations issued by the FTC pursuant to title II of the Act.

[13] A similar provision in title I of the Act, 47 U.S.C. 228(c)(6), requires common carriers to prohibit by tariff or contract the use of an 800 telephone number (or any other number advertised or widely understood to be toll free) for the provision of pay-per-call services. This provision appears to prohibit any use of an 800 or other toll-free number that results in the calling party being charged for the call in the absence of a preexisting agreement or disclosure of a credit or charge card number during the call.

[14] Title I of the Telephone Disclosure Act imposes the same requirements upon common carriers that offer billing and collection services to pay-per-call service providers. In addition, the common carrier must disclose on the billing statement a toll-free telephone number that the subscriber can call for further information, including the name and mailing address of any provider of pay-per-call services offered by that carrier.

[15] In addition, title I of the Act lists certain categories of information that common carriers must make available on request to Federal and State agencies and other interested persons. These include: (A) a list of the telephone numbers for each of the pay-per-call services carried; (B) a short description of each such service; (C) a statement of the total cost or the cost per minute and any other fees for each such service; (D) a statement of the pay-per-call service's name, business address, and business telephone number; and (E) such other information as the FCC considers necessary for the enforcement of its regulations and other applicable Federal statutes and regulations.

reformulations of provisions in Regulation Z, 12 CFR part 226, the implementing regulation of the Truth in Lending Act, or of comments in the Official Staff Commentary on Regulation Z, issued by the Board of Governors of the Federal Reserve System. 12 CFR part 226, Supplement I.

1. Definitions

Section 308.7(a) defines the terms applicable to billing and collection: billing entity, billing error, customer, preexisting agreement, providing carrier, telephone-billed purchase, and vendor.

The term "telephone-billed purchase" is defined as it is in the Telephone Disclosure Act. It applies to any purchase involving the use of a telephone that is consummated solely as a result of the completion of the call or the subsequent entry of a number or access code using a rotary or touch tone telephone, or by comparable action. The term does not apply to any purchase by a caller pursuant to a preexisting agreement (such as presubscription) with the vendor, nor to any service that the FCC determines by rule is closely related to the provision of telephone service and is subject to billing dispute resolution procedures required by Federal or State law. Also exempt are sales transactions that are otherwise subject to billing dispute resolution procedures required by Federal law (*e.g.*, credit card purchases under the Fair Credit Billing Act).

The term "preexisting agreement" is used in the Telephone Disclosure Act but is not defined. The proposed definition would equate the term with a "presubscription or comparable arrangement," defined in § 308.2(e) of these regulations.

The term "billing entity" also is used in the statute but is not defined. The proposed rule defines the term to apply to any person—whether a common carrier, vendor, third-party biller, or other person—who sends a billing statement to a customer for a telephone-billed purchase. The term would also apply to any person who assumes responsibility for receiving and responding to billing error complaints or inquiries, even if that person does not send billing statements to customers.

The Telephone Disclosure Act's definition of "customer" is broadened to cover any person who is billed for a telephone-billed purchase, whether or not that person placed the call or received the goods or services in question. This would give these persons the billing error rights accorded to other "customers" under the statute.

The proposed definition of "providing carrier" is virtually identical to the definition in the Telephone Disclosure Act. It applies to any common carrier whose telephone lines are used to transmit a telephone-billed purchase, regardless of whether the common carrier has a contractual arrangement with the vendor.

"Vendor" is defined as it is in the statute. The term applies to the person who sells the goods or services that are the subject of the telephone-billed purchase.

"Billing error" is defined by the Telephone Disclosure Act to encompass a number of situations that result in the reflection of a mistake or inaccuracy on a billing statement for a telephone-billed purchase about which a customer might complain or seek clarification. The billing errors described in the Act closely resemble those described in the Fair Credit Billing Act's definition of "billing error." 15 U.S.C. 1666(b). The proposed rule expands upon the Act's definition of "billing error" in the following two provisions.

First, § 308.7(a)(2)(i) of the proposed rule includes in the definition of billing error "a reflection on a billing statement of a telephone-billed purchase that was not made by the customer nor made from the telephone of the customer *who was billed for the purchase*" (emphasis added). The clause "who was billed for the purchase" is added to the definition to make clear that the "customer" who has the right to assert this billing error is the customer who was billed for the purchase, not the customer who attempted to acquire the goods or services.[16]

Second, § 308.7(a)(2)(viii) of the proposed rule adds a section to the definition of "billing error." In this section, a billing error is defined to include the failure to display charges for a telephone-billed purchase on a billing statement in the manner prescribed by § 308.5(i) of the proposed rule, *i.e.*, by segregating them from other telephone charges and specifying the type of service, the amount of the charge, and the date, time, and duration of the call.

[16] The Telephone Disclosure Act defines a "customer" to mean "any person who acquires or attempts to acquire goods or services in a telephone-billed purchase," whether or not that person is the one billed for the purchase. In some cases, the person who is billed for the purchase is not the person who made or attempted to make the telephone-billed purchase. This can occur, for example, when a telephone number has been reassigned, and the new recipient is billed for pay-per-call transactions attributable to the previous subscriber who held that telephone number.

2. Initiation of a Billing Review

Section 308.7(b) sets forth the steps a customer must take to properly notify a billing entity of a billing error. The customer must give notice of the error within 60 days after the sending of the first billing statement that disclosed the charge for the telephone-billed purchase. The procedure is patterned after the Fair Credit Billing Act process used to correct credit billing errors. However, unlike the procedure with credit billing errors, the rule as proposed would not require written notice to initiate review of a telephone-billed purchase.

Section 308.7(c) of the proposed rule requires the billing entity to disclose on or with the billing statement whether the customer may provide oral or written notice of the billing error. If the billing entity permits oral notice, the proposed rule establishes a presumption that a customer who orally communicates any notice of a billing error to a billing entity properly initiated a billing review in accordance with the prescribed procedures. This presumption would not apply if the billing entity required its customers to provide written notice to initiate a billing review, and the billing entity disclosed this requirement on or with the billing statement.

3. Responding to a Billing Error Notice

Section 308.7(d) explains the procedure a billing entity must follow to respond to a customer's billing error notice. The billing entity must first acknowledge the customer's notice in writing within 30 days after receiving it. Written notice may consist of a single sentence on the customer's billing statement (*e.g.*, "Your dispute is acknowledged."). An acknowledgment need not be sent if the billing entity resolves the billing error within the 30-day period. In order to resolve a billing error, the billing entity must either correct the problem and credit the customer's account for the amount alleged to be in error, or send an explanation to the customer, after conducting a reasonable investigation, stating by the billing entity believes that no billing error occurred or that a different billing error occurred from the one asserted by the customer.

The billing entity has the option of correcting a billing error without conducting an investigation. If it chooses this option, the billing entity must inform the customer, either orally or in writing, that the error has been corrected and that removal of the disputed charge from the customer's account does not prevent a vendor or

providing carrier who might have a financial interest in the disputed charge from attempting to collect it. The billing entity must provide the customer with the name, address, and telephone number of any such vendor or carrier.

If the billing entity elects to investigate the customer's allegation of a billing error, it must contact any persons who might have documents or other information to support or refute the customer's assertions. If the customer's alleged billing error was that goods or services ordered were never received, the billing entity would not be permitted to deny the validity of the billing error unless its investigation confirmed that the goods or services were actually delivered. There will be a presumption that goods or services were in fact delivered where a vendor or providing carrier can produce business documents showing the date and place of delivery. After conducting the investigation, the billing entity must provide the customer with an explanation if it does not agree that a billing error occurred as alleged by the customer. The billing entity must give the customer a written explanation of its determination, and any supporting documents, if the customer request such documentation.

The billing entity is required to complete all of the actions outlined above, in responding to a customer's billing error complaint, within 90 days from its receipt of the billing error notice. After it has completed its actions, the billing entity must notify the appropriate vendor or providing carrier of its decision if it is determined that any disputed amount is in error. If the billing entity determines that a disputed amount is not in error, it must notify the customer in writing of the time when payment of the disputed amount is due. The customer must be given at least 20 days from the date of this notice to pay the disputed amount. Additionally, the customer must be told in writing that continued failure to pay the disputed amount might subject the customer to collection action or being reported to a credit reporting agency.

Section 308.7(e) excuses the billing entity from following the prescribed response to a billing error notice if the customer agrees that there is no error and withdraws the complaint before the time limit expires for the billing entity to have completed its course of action.

Section 308.7(f) limits the billing entity's obligation to respond to a customer's billing error complaint to the procedures set forth in § 308.7(d). Once the billing entity follows the prescribed procedures, it will not have to continue to respond in the same manner to subsequent assertions by the customer of the same billing error.

4. Restrictions on Collection Action During Billing Review

Section 308.7(g) sets forth the customer's right to withhold payment of any disputed amount after having provided notice of a billing error. No one may try to collect this amount from the customer until the billing entity has completed its billing review and given the customer 20 days thereafter to pay any disputed amount found not to be in error. The billing entity may continue to display the disputed charge on the customer's billing statement during the billing review, so long as the statement discloses that payment of the disputed amount is not required. There is no restriction on the billing entity's right to collect any undisputed charges on the customer's bill.

5. Limitations on Charges for Conducting a Billing Review

A customer may not be assessed any charge for initiating a billing review if a billing error is found to have occurred or if the billing entity elects to credit the customer's account for the alleged error without conducting an investigation. Section 308.7(h) does not prohibit a billing entity, providing carrier, or vendor from imposing a charge when no billing error has occurred, but it does limit the amount of such a charge. Inasmuch as the Telephone Disclosure Act grants the customer billing-error rights with respect to telephone-billed purchases, any such charges may be considered unreasonable, and therefore impermissible, to the extent that they are found to have a chilling effect on customers' good faith assertions of their rights under this section.

6. Restrictions on Credit Reporting

Section 308.7(i) of the proposed rule sets forth restrictions on the reporting of pay-per-call delinquencies to third parties, *e.g.*, credit bureaus. It forbids anyone from reporting or threatening to report adverse information to a third party concerning the customer's withholding payment of any disputed amount until the billing entity has completed its billing review and given the customer an additional 20 days in which to pay any disputed amount found not to be in error. Reporting that the customer's account is delinquent or overdue is prohibited, but a simple statement that the amount or account is in dispute is not considered adverse information.

If the customer reasserts the billing error within 20 days after receiving word of the billing entity's disposition of the matter, a billing entity, providing carrier, vendor, or other agent may not report the customer's account as being delinquent unless that person also reports that the matter is in dispute. In addition, any such person making the report must inform the customer in writing of the name and address of each person to whom it reported the delinquency. Once the dispute has been settled, any person who reported adverse information concerning the customer's account must provide the recipients of that information with written notice of the settlement.

Section 308.7(i) does not prohibit the reporting of adverse information concerning any undisputed portion of the customer's account that remains unpaid.

7. Forfeiture Penalty

Section 308.7(j) imposes a forfeiture sanction upon any billing entity, providing carrier, vendor or other agent that fails to comply with the billing dispute requirements of the proposed rule. Any such person who fails to comply with its responsibilities under the proposed rule with respect to any billing error properly asserted by the customer forfeits the right to collect from the customer the amount alleged to be in error, regardless of whether a billing error has in fact occurred. The amount required to be forfeited under this provision may not exceed $50 per transaction. Any attempt by any person to collect an amount that the person should forfeit under this subsection may be considered to undermine the rights provided to customers under these regulations and, hence, to be a violation of the FTC Act, as provided by the Telephone Disclosure Act.

8. Notification of Returns and Crediting of Refunds

Section 308.7(k) sets forth requirements that any vendor who is not the billing entity must follow to give the customer a prompt credit or refund for returned goods or a forgiven debt. If the customer is to be given a cash refund, the vendor must mail or deliver it to the customer within seven business days after acknowledging that a refund is due. If a credit is to be applied to the customer's account, the vendor must transmit a credit statement to the billing entity within seven days after acknowledging that a credit is due. The vendor must transmit the credit statement to the billing entity through its normal channels for processing telephone-billed purchases. The billing entity is given three business days after receiving the credit statement to credit the customer's account, and the credit

shall be reflected on the customer's next billing statement.

9. Customer's Right to Assert Claims or Defenses

Section 308.7(l) makes any billing entity or providing carrier who attempts to collect charges from a customer for a disputed telephone-billed purchase subject to any claims or defenses that the customer may lawfully assert against the vendor with respect to that purchase. The customer's rights under this provision are not dependent on the customer's assertion of a billing error pursuant to § 308.7(b). However, the customer must first have made a good faith attempt to settle the dispute with the vendor, or the providing carrier (other than the billing entity) if the vendor is not readily accessible. Any determination of what claims or defenses are valid as to the vendor must be made under state or other applicable law. The billing entity or providing carrier cannot be liable under this provision for any amount greater than the amount of the telephone-billed purchase, plus any related charges for which the customer has been billed.

10. Prohibition on Retaliatory Actions

Section 308.7(m) makes it unlawful to accelerate the customer's debt or to restrict or terminate the customer's access to pay-per-call services to penalize the customer for exercising in good faith any billing error rights accorded by these regulations. This does not constitute an absolute prohibition on all actions that might effectively limit a customer's access to pay-per-call services. For example, if a vendor or providing carrier regularly suspends a customer's access to pay-per-call services when that customer's outstanding debt exceeds a certain dollar amount, that vendor or providing carrier would not be prohibited from applying any disputed amount towards that outstanding debt. The determining factor is whether the action was motivated, or reasonably appears to have been motivated, by a desire to retaliate against the customer for asserting his or her billing error rights.

11. Notice of Billing Error Rights

Section 308.7(n) requires a billing entity to provide its customers with written notice of their pay-per-call billing rights at least once per calendar year. If the billing entity is not a common carrier, it must send the notice to each customer (whether that customer is an old, current, or new customer) with the first billing statement for a telephone-billed purchase mailed or delivered to that customer after the effective date of the regulations. Thereafter, the billing entity must ensure that the customer receives the notice at least once during each subsequent calendar year in which that customer receives a bill for a telephone-billed purchase.

Billing entities that are common carriers have the option of sending the annual statement to only those customers whom they have billed for a telephone-billed purchase, or they may elect to send the annual statement to all of their customers who receive telephone service of any kind. If they choose the former approach, they must follow the procedure set forth in § 308.7(n)(1)(i). If they opt for the latter, they must comply with § 308.7(n)(1)(ii), which requires the billing entity to send the annual statement to all of its customers within 60 days after the effective date of the regulations. The billing entity must then send the notice at least once each following year to all of its customers at intervals of not less than six months nor more than 18 months.

The annual statement would inform the customer how to initiate a billing review and would explain the presumption that applies if the customer is permitted to provide oral notice. The annual statement would also describe the procedure the billing entity must follow to respond to a billing error notice and to investigate the alleged billing error. Additionally, the annual statement would disclose the customer's right to withhold payment of any disputed amount and the restrictions placed on collection and adverse reporting of the disputed amount. Finally, this statement would tell the customer about the forfeiture penalty.

Instead of sending the annual statement, the billing entity may choose to send an abridged pay-per-call billing rights summary to its customers with each billing statement. Like the annual statement, the alternative summary statement informs the customer how to initiate a billing review, including the presumption applying to oral notice, but it does not explain the procedure the billing entity must follow to respond to and investigate a billing error complaint. Also, the alternative summary contains an abbreviated statement of the customer's rights with respect to the collection and adverse reporting of any disputed amount, and does not mention the forfeiture penalty.

12. Multiple Billing Entities

A telephone-billed purchase may involve more than one billing entity if the person responsible for responding to and investigating billing error complaints and inquiries is someone other than the person who sends the billing statements to customers. In this event, the billing entities must decide who between or among them will be responsible for making any required disclosures and for complying with the other requirements of these regulations. Where a particular disclosure is required, a single complete disclosure must be made by a single billing entity, rather than partial disclosure from several billing entities.

If the customer sends notice of a billing error to a billing entity other than the one designated to receive such notice, that billing entity must either transmit that notice to the appropriate billing entity within 15 days or promptly provide the customer with the name, address, and telephone number of the appropriate billing entity.

13. Multiple Customers

Under § 308.7(p), disclosures may be made to any customer primarily liable on a joint account. Disclosure responsibilities are not satisfied by giving disclosures only to an authorized user of the account who is not a principal obligor.

Section 308.8 Severability

This section provides that if any rule provision is stayed or held invalid, the other provisions will remain in effect.

Section C. Invitation to Comment

Before adopting this proposed rule as final, consideration will be given to any written comments submitted to the Secretary of the Commission on or before April 9, 1993. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission regulations, on normal business days between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Section, room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

Section D. Public Workshop-Conference

The FTC staff will conduct a Public Workshop-Conference to discuss written comments received in response to the Notice of Proposed Rulemaking. The purpose of the conference is to afford Commission staff and interested parties a further opportunity to openly discuss and explore issues raised in the rulemaking proceeding, and, in particular, to examine publicly areas of significant controversy or divergent opinions that are raised in the written comments. The conference is not intended to achieve a consensus of

opinion among participants or between participants and Commission staff with respect to any issue raised in the rulemaking proceeding. Commission staff will consider the views and suggestions made during the conference, in conjunction with its consideration of the written comments, in formulating its final recommendation to the Commission concerning the proposed rule.

Commission staff will select a limited number of parties, from among those who submit written comments, to represent the significant interests affected by the proposed regulations. These parties will participate in an open discussion of the issues. It is contemplated that the selected parties might ask and answer questions based on their respective comments.

In addition, the conference will be open to the general public. Members of the general public who attend the conference may have an opportunity to make a brief oral statement presenting their views on issues raised in the rulemaking proceeding. Oral statements of views by members of the general public will be limited to a few minutes in length. The time allotted for these statements will be determined on the basis of the time allotted for discussion of the issues by the selected parties, as well as by the number of persons who wish to make statements.

Written submissions of views will not be accepted during the conference. The discussion will be transcribed and the transcription placed on public record.

To the extent possible, Commission staff will select parties to represent the following affected interests: advertisers, alternative billing and collection providers, local exchange carriers, interexchange (long distance) carriers, consumers, providers of pay-per-call services, service bureaus, state law enforcement and regulatory authorities, and any other interests that may be identified and deemed appropriate.

Parties to represent the above-referenced interests will be selected on the basis of the following criteria:

1. The party submits a written comment during the 30-day comment period.
2. The party notifies Commission staff of its interest and authorization to represent an affected interest within fifteen days of publication of the Notice of Proposed Rulemaking.
3. The party's attendance would promote a balance of interests being represented at the conference.
4. The party's attendance would promote the consideration and discussion of a variety of issues raised in the rulemaking proceeding.
5. The party has expertise in activities affected by the proposed regulations.
6. The party adequately reflects the views of the affected interest(s) which it purports to represent.
7. The number of parties selected will not be so large as to inhibit effective discussion among them.

A neutral, third-party facilitator will be retained for the conference. It will be held over the course of two consecutive days, on April 22 and 23, 1993. Parties interested in participating and authorized to represent an affected interest at the conference must notify Commission staff within 15 days of publication of the Notice of Proposed Rulemaking. Prior to the conference, parties selected to represent an affected interest will be provided with copies of written comments received in response to this notice.

Section E. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Commission Rule 1.26(b)(5), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and are promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications. Oral communications from members of Congress shall be transcribed or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications.

Section F. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory analysis (5 U.S.C. 603, 604) are not applicable to this document because it is believed that these regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605).

The Telephone Disclosure Act requires the Commission to issue regulations, not later than 270 days after the date of enactment, relating to the operation of, advertising for, and billing and collection for pay-per-call services. Any economic costs imposed on small entities are, in many instances, specifically imposed by statute. Where they are not, efforts have been made to make the proposed rule's requirements flexible, in part to minimize any unforeseen burden on small entities, as described elsewhere in this notice. In any event, based on information currently available to the Commission staff, it is anticipated that the proposed regulations, as a whole, will result in few, if any, independent additional costs. To ensure, however, that no substantial economic impact is being overlooked, public comment is requested on the effect of the proposed regulations on costs, profitability, competitiveness, and employment in small entities. Subsequent to the receipt of public comments, it will be decided whether the preparation of a final regulatory flexibility analysis is warranted. Accordingly, based on available information, the Commission hereby certifies under the Regulatory Flexibility Act (at 5 U.S.C. 605(b)) that the proposed regulations will not have a significant economic impact on a substantial number of small entities. This notice serves as certification to that effect for the purposes of the Small Business Administration.

Section G. Paperwork Reduction Act

Questions 32 and 37 solicit comments on the need for and scope of possible recordkeeping requirements that, if adopted, would constitute "collections of information" as defined under the Paperwork Reduction Act, 44 U.S.C. 3501–3520. See 44 U.S.C. 3502 and 5 CFR 1320.7. Such requirements would entail the maintenance of certain records under the sections of the proposed rule regarding Commission access to such information (§ 308.6) and billing and collection for pay-per-call services (§ 308.7). If, on the basis of comments received, it is determined that such recordkeeping requirements may be appropriate, OMB review will be sought pursuant to the provisions of that Act.

Section H. Effective Date

The Telephone Disclosure Act directs the Commission to "prescribe" the regulations required under the Act within 270 days of enactment. An

effective date for these rules will be announced by the Commission when it publishes these regulations in final form.

Section I. Questions on the Proposed Rule

The Commission is seeking comments on various aspects of the proposed rule. Without limiting the scope of issues it is seeking comment on, the Commission is particularly interested in receiving comments on the questions that follow. Responses to these questions should be itemized according to the numbered questions in this Notice.

Section 308.2 Definitions

1. Are the definitions of the following terms, included in the proposed rule in § 308.2, clear, meaningful, and appropriate:

a. "Presubscription or comparable arrangement;"
b. "Program-length commercial;"
c. "Provider of pay-per-call services;"
d. "Reasonably understandable volume;"
e. "Slow and deliberate manner;" and
f. "Sweepstakes"?

2. The proposed rule defines the statutory term "bona fide educational service," which delimits the only pay-per-call services and related advertising that may be directed to children under the age of 12, in terms of the content of the service offered.

a. Is this definition clear, meaningful, and appropriate? What are the advantages and disadvantages of defining the term in this manner? Is the definition as drafted sufficiently narrow so as not to allow the exception to swallow the rule?

b. Would it be useful for the definition to include, as an additional standard for determining whether a program is a "bona fide educational service," the nature of the party offering the service? If so, what are the indicia of a bona fide educational organization? How should an organization or individual who offered such services be described so that it: (1) would include only those having a legitimate connection to education; and (2) would not be overly restrictive?

c. Are there other approaches to defining the term "bona fide educational service" that would be more useful?

Section 308.3 Advertising of Pay-Per-Call Services

3. Section 308.3(a) of the proposed rule requires that the disclosure of the cost of the call occur in conjunction with every display of the pay-per-call number in television advertisements and print advertisements. Would such a requirement be appropriate for radio advertisements also? Does the proposed rule provide adequately for disclosing to consumers the charges for the call, before they make the call? This section requires that every letter and numeral of the cost of the call be in the same type as the pay-per-call number. What are the advantages and disadvantages of this requirement? Does this specification result in disclosures that are larger than necessary to be "clear and conspicuous"? Is there a more appropriate measure for ensuring that the disclosure is "clear and conspicuous"? What costs, if any, are likely to arise from requiring cost disclosures of this, as opposed to some other, definite size?

4. Section 308.3(a)(ii) of the proposed rule requires that if a call is billed on a time-sensitive basis (*i.e.*, per minute charges instead of a flat fee), the advertisement must state the cost per minute and the total charge if the caller stays on the line for the full period of a fixed-length program (*i.e.*, a program whose duration can be determined in advance). If the duration of the program cannot be determined in advance (*e.g.*, calls involving a live conversation, or dependent upon options selected by the caller), the advertisement must disclose that the length of the call is subject to the caller's discretion, unless it is otherwise clear from the context that such is the case. Is it necessary and appropriate to require advertisers to disclose, if it is not clear from the context, that the length of the call is subject to the caller's discretion? Absent such a disclosure, will consumers know that there is no set time in which a complete program may be heard? Is further guidance required as to when it will be clear from the context that the caller determines the length of the call? Are there preferable, alternative ways to alert consumers that there is no set time in which a complete program may be heard and, consequently, that there is no maximum charge?

5. Sections 308.3 and 308.5 require, in the case of calls billed on a time-sensitive basis, that both pay-per-call service advertisements and preambles disclose either the maximum charge for the call in the case of programs whose duration can be determined in advance, or disclose that the length of the call is subject to the caller's discretion in the case of programs where it is not clear from the context that the duration cannot be determined in advance. To what extent is it unnecessarily duplicative or costly to require these disclosures in both advertisements and preambles?

6. Under §§ 308.3 (a) through (c), (e) of the proposed rule, in the case of television advertisements that are 15 seconds or less in length, if the pay-per-call number is presented only in the video portion, the disclosures are required to be made only in the video portion of the advertisement, instead of in both the audio and video portions. Does this requirement provide for adequate disclosures to consumers?

7. Section 308.3(b)(1) of the proposed rule requires that pay-per-call services that advertise prizes, awards, services, or products at no cost, or for a reduced cost, disclose the odds of winning the prize, award, service or product. In addition, if the odds are not calculable in advance, the factors used in determining the odds must be disclosed. The proposed rule limits the application of this provision to sweepstakes, including games of chance. Are there other types of promotions, such as lotteries, or games of skill, that should be subject to this provision? Is the proposed rule sufficiently clear as to the types of promotions subject to the rule? In addition to the required disclosures, what would be the advantages and disadvantages of additionally requiring that:

a. Advertisements for games of chance disclose limitations on the game-of-chance program's availability, such as geographical restrictions, time-of-day availability, or touch-tone phone requirements?

b. Advertisements for games of chance disclose the name, city, state, and customer service phone number of the promoter or provider of the pay-per-call service?

c. Advertisements for games of chance disclose the value of the prize? If such a disclosure were required, should "value" be based on the cost of the prize to the promoter, on the retail value of the prize, or on some other measure?

d. Promoters of games of chance have a "reasonable basis" for the disclosed odds of winning?

8. Section 308.3(b) requires disclosure of a free alternative method of entry and instructions on how to enter a game of chance in all advertisements. Absent a free method of entry, the game might be an illegal lottery. To the extent that criminal penalties would already attach for violation of the lottery laws, is this provision necessary and appropriate? If so, what would be the advantages and disadvantages of allowing pay-per-call service providers the option of disclosing the alternative method of entry and the instructions on how to enter in the pay-per-call service preamble instead of in the television or radio advertisement. Would informing

consumers of the free method of entry only during the preamble provide adequate notice to consumers of that option?

9. Section 308.3(b) requires that the odds of winning in games of chance be disclosed in all advertisements, including radio and television advertisements. Are the required disclosures of the odds of winning sometimes too complex or lengthy (for instance, where many different prizes are to be awarded) to be practical in television and radio advertisements? If so, what would be the costs and benefits of limiting the required disclosures of the odds of winning for television and radio advertisements to apply to those prizes exceeding a specified value, such as $25.00, $50.00, $75.00, or $100.00? What would be the advantages and disadvantages of allowing game promoters to aggregate prizes having a value of less than $5.00, $25.00, $50.00, or some other value, into one category for the purposes of disclosing odds of winning? What would be the advantages and disadvantages of allowing pay-per-call service providers the option of disclosing the odds in the pay-per-call service preamble instead of in the television or radio advertisements?

10. The proposed rule sets forth detailed requirements for disclosures in television, radio and print advertising with respect to placement, size, length and timing of the disclosures. What are the advantages and disadvantages of each particular requirement? Are there any modes of advertising in which the requirements would not be feasible? In addition, please comment on the following:

a. Are the size requirements, in particular those requiring disclosures to be one-tenth of the vertical field of the television screen, feasible for television advertisements?

b. Would it be useful for the rule to be more specific with respect to certain disclosures? For instance, is the requirement that disclosures be at least 12-point type sufficiently specific, or should the rule require a certain type style as well?

c. Are there any modes of print advertisements in which use of 12-point type for the cost or other disclosure would not be feasible or adequate (e.g., a matchbook or a billboard)? If so, how should the rule implement the statute's disclosure requirement in such advertisements?

d. Are particularized specifications for the placement, size, length and timing of disclosures necessary to ensure clarity of the disclosures, or would a more general standard (e.g., clear and conspicuous) be equally or more effective?

11. The statue bans directing advertisements for pay-per-call services (except those qualifying as "bona fide educational services") to children under the age of 12. To implement this requirement, the proposed rule, in § 308.3(d)(2), defines the phrase "advertisements directed to children under 12" in terms of a rebuttable presumption.

a. Is this definition clear, meaningful, and appropriate?

b. Is it useful for the definition to be in the form of a rebuttable presumption? What are the advantages and disadvantages of defining the phrase in this manner?

c. Does the definition provide sufficient guidance as to the standard and type of evidence required to rebut the presumption?

d. Is the rebuttable presumption defined too narrowly? Should pay-per-call providers be permitted to use forms of evidence other than evidance relating to audience composition to demonstrate that an advertisement is not directed to children under 12? For example, should evidence such as subject matter, visual content, age of models, language, characters, tone, or message be permitted to rebut the presumption that an advertisement is directed to children under the age of 12? What are the advantages and disadvantages of allowing reliance on such evidence to rebut the presumption? Would this standard provide sufficient guidance as to the type of evidence required to rebut the presumption?

12. The statute bans directing advertisements "primarily to individuals under the age of 18" unless they disclose that before calling the service the caller must obtain permission from a parent or guardian. To implement this requirement, the proposed rule, in § 308.3(e)(5), defines the phrase "advertisements directed primarily to individuals under 18" in terms of a rebuttable presumption.

a. Is this definition clear, meaningful, and appropriate?

b. Is it useful for the definition to be in the form of a rebuttable presumption? What are the advantages and disadvantages of defining the phrase in this manner?

c. Does the definition provide sufficient guidance as to the standard and type of evidence required to rebut the presumption?

13. The proposed rule contains two rebuttable presumptions. To rebut the presumption that an advertisement is directed to children under 12, an advertiser must show that the audience is predominantly composed of individuals 12 or older, while to rebut the presumption that an advertisement is directed primarily to individuals under 18, an advertiser must show that the audience is primarily composed of individuals 18 or older. The Commission contemplates that in order to rebut the presumption that an advertisement is directed primarily to individuals under 18, an advertiser would need only to show that more than half of the receiving audience is 18 or older. At that point, the advertisement would not appear to be "directed primarily" to those under 18. In contrast, the Commission contemplates that in order to rebut the presumption that an advertisement is directed to children under the age of 12, an advertiser would have to show that significantly more than half—perhaps two-thirds to three-quarters—of the audience is 12 years of age or older.

a. Is the use of the words "predominantly" and "primarily" clear, meaningful and appropriate to implement the statutory requirements? If not, are there other words or phrases that would more accurately describe those percentages? Is the rule's reliance on percentage of audience composition appropriate? If not, are there measures that could be used more effectively?

b. Is it appropriate to interpret the statutory ban on advertisements of non-excepted pay-per-call services to children under the age of 12 as prohibiting pay-per-call service advertisements if one-quarter to one-third of the receiving audience is composed of children under 12? Is this cut-off too low? Is it too high? If the percentages chosen are believed not to be appropriate, please submit any data, including data on audience composition and demography, on how often such a requirement would affect advertisements on television, cable, radio and in magazines. Based on available data (either cited or submitted), is there a percentage of audience composition that would reflect accurately a "children's audience?"

14. The proposed rule also bases its definitions of "advertisements directed to children under 12" and "advertisements directed primarily to individuals under 18" on the medium in which the pay-per-call advertisements appear and the nature and content of the advertisements themselves. In relying, in part, on content to define advertisements directed to a particular age group, does the definition sweep too broadly? If the definition were not based on advertising content, would the rule provide sufficient guidance as to the type of

advertisement that would be presumed to be directed to a particular age group?

15. The proposed rule sets forth detailed requirements for disclosures in television, radio and print advertising with respect to placement, size, length and timing of the disclosures. What are the advantages and disadvantages of this type of disclosure requirement? Are the specifications appropriate across-the-board, or are there instances in which they are unnecessarily overboard or, alternatively, not stringent enough? Should the proposed rule set forth a performance standard instead? For example, should providers of pay-per-call services be given the option of demonstrating, through tests, market surveys, or other evidence, that the required disclosures are reasonably understood by the receiving audience? What are the advantages and disadvantages of a performance standard? What performance standard should be applied to demonstrate that the disclosures are reasonably understood? Would it be preferable to set forth a performance standard while offering a safe harbor [17] to firms that choose to comply with detailed requirements such as those contained in the proposed rule? Alternatively, would it be preferable to require simply that the disclosures be "clear and conspicuous" and to structure the detailed requirements for placement, size, length, and timing as safe harbors?

16. Section 201(a)(2)(J) of the Telephone Disclosure Act states that the Commission may prescribe additional standards to prevent abusive practices.

a. A number of abusive practices have come to the Commission's attention in the course of its investigations of 900-number services. What would be the advantages and disadvantages, including the costs to pay-per-call service providers, if the rule required providers of pay-per-call services that advertise a service or product through a pay-per-call number to disclose in the advertisement all of the material terms, conditions, and obligations upon which receipt or retention of the service or product is contingent? These conditions could include the number of calls necessary to receive the service or product, if more than one; a clear and accurate description of the service or product; the full cost of obtaining or using the service or product; any requirement that the caller disclose personal information, such as the caller's Social Security number or income level; and any other information material to the caller's ability to take advantage of the offer of the service or product by calling the pay-per-call number.

b. Is a provision requiring disclosure of some or all of these conditions needed to prevent deceptive practices in the advertising of pay-per-call services, particularly in light of the Commission's ability to seek injunctive relief and consumer redress for such practices under § 13(b) of the Federal Trade Commission Act? If so, are there other material terms, conditions, or obligations that are imposed upon consumers by some pay-per-call providers that should specifically be named in a disclosure requirement? If such disclosure requirements are necessary, what are the relative costs and benefits of allowing the disclosures to be made in the preamble rather than in advertising?

c. Does the fact that the statute provides for enforcement by state law enforcement agencies as well as by the Federal Trade Commission render use of a nonspecific term such as "all material terms" without further definition so vague as to risk generating confusion over what terms should be included? Are there any particular advantages or disadvantages to including such a provision in the rule?

Section 308.4 Special Rule for Infrequent Publications

17. The proposed rule, in § 308.4, provides an exemption, with respect to cost disclosures, for advertisements that appear in "infrequent publications."

a. Is the definition of "infrequent publications" contained in § 308.4(b) clear, meaningful and appropriate? What are the advantages and disadvantages of such an exemption? Is it an appropriate exemption?

b. The proposed rule requires that the publication must have a written policy of not publishing specific prices in advertisements in order to qualify as an "infrequent publication." Is this a necessary requirement, or would it be sufficient if a publication has an established, but unwritten, policy of not publishing prices?

c. If any additional material terms (such as those described in question 16 above) are required by the rule, should infrequent publications be exempted from disclosure of any of those terms?

Section 308.5 Pay-Per-Call Service Standards

18. Under the preamble requirements set forth in § 308.5(a) of the proposed rule, a provider of pay-per-call services must disclose certain information in a preamble to the pay-per-call service.

a. Is it useful and appropriate to require a provider of pay-per-call services to identify its name during the preamble? Is it necessary to include this information in the preamble given the fact that common carriers providing billing and collection services for pay-per-call service providers will be required, pursuant to proposed FCC regulations, to establish a local or toll-free telephone number to provide to callers the name and mailing address of any provider of pay-per-call services offered by that carrier?

b. Should a provider of pay-per-call services also be required to identify its address, or city and state, in the preamble? Should this identifying information also be required in the billing statements, discussed in § 308.5(i) of the proposed rule?

19. Are the preamble cost disclosure requirements for calls billed on a time-sensitive and variable rate basis, set forth in §§ 308.5(a)(2) (ii) and (iii) of the proposed rule, sufficient and appropriate?

20. Section 308.5(a)(4) of the proposed rule requires that the preamble to each pay-per-call service inform the caller that anyone under the age of 18 must have the permission of a parent or legal guardian in order to complete the call. Should the rule mandate specific language, or provide safe harbor language, for this portion of the message? If yes, what language might effectively communicate to individuals under the age of 18 that they must have permission prior to calling a pay-per-call service.

21. The proposed rule, in § 308.5(b), prohibits the provider of pay-per-call services from charging a caller for the pay-per-call service if the caller hangs up at any time prior to five seconds after the end of the preamble.

A. Is this prohibition useful and appropriate?

B. What are the costs and benefits of this requirement, and to whom would they accrue?

C. Is five seconds a sufficient length of time to assure that consumers who hang up at the end of the preamble will not be billed for the call?

d. The proposed rule does not preclude the pay-per-call service from beginning its program immediately following the signal or tone that indicates the conclusion of the preamble, even though billing to the caller cannot begin until five seconds after that signal or tone. Should the rule require 2 or 3 seconds of silence between the preamble and the program to indicate to consumers that this is the appropriate time to exercise their discretion to hang up if they so choose?

[17] A "safe harbor" provides an example of a disclosure that satisfies the requirements of the rule.

22. Section 308.5(c) of the proposed rule exempts from the preamble requirements pay-per-call services with a nominal charge of $2.00 or less, whether billed on a flat rate or on a time-sensitive basis. What are the advantages and disadvantages of such an exemption? Is such an exemption useful and appropriate? Is a $2.00 fee level appropriate for this exemption? Should the exemption amount be adjusted periodically to reflect inflation? To assist the Commission in its evaluation of the suitability of setting the nominal charge at the $2.00 level, information is requested in the following areas:

a. Currently, what is the cost of including a preamble in a pay-per-call service program? How will the proposed rule affected this cost?

b. In 1992, for the industry as a whole, what were the total number of calls placed to pay-per-call services? In what proportion of these calls did the callers hang up during the preamble? Has this proportion increased or decreased over time, and why?

c. Is there a relationship between the cost of the call and the proportion of callers who hang up during the preamble? Are callers more likely to hang up during the preamble of more expensive calls?

d. Is information available on the reasons callers hang up during the preamble? If so, do the reasons differ according to the cost of the call? That is, are the reasons for hanging up during the preamble of a nominally-priced call different from the reasons for hanging up during an expensive call? Please explain.

e. Is information available on the proportion of callers who hang up during the preamble because they discover that the cost of the call exceeds what they had initially anticipated?

f. In what proportion of calls are charges contested? Is there a relationship between the cost of a call and the likelihood that its charges will be contested? Why do callers contest charges? Do the reasons differ according to the cost of the call? If the call is more expensive, are callers more likely to contest charges?

g. What is the relationship between the demand for pay-per-call services and the price of those services? To what extent can increases in the cost of the preamble be passed on to consumers, in the form of higher charges?

h. What is the current distribution of pay-per-call services in terms of the cost of the call? For example, what proportion of calls cost less then $1.00; $1.00 to $1.99; $2.00 to $2.99; $3.00 to $3.99; $4.00 to $4.99; $5.00 to $5.99; and $6.00 or more?

23. Section 308.5(d) of the proposed rule exempts from the preamble requirements pay-per-call services that offer frequent callers or regular subscribers the option of activating a bypass mechanism.

a. What are the advantages and disadvantages of such an exemption? Is such an exemption useful and appropriate?

b. The proposed rule requires this bypass mechanism to be disabled for a 30-day period after the institution of a price increase or a change in the nature of the service offered. Is this period of time sufficient? Is it too long? What other possible changes to the preamble should trigger disabling of the bypass mechanism? Is there a more efficient mechanism to ensure that frequent callers are informed of such material changes in the preamble?

c. Is it possible for common carriers to rate calls differentially when the preamble has been bypassed, so that billing to the caller can begin once the bypass has been triggered?

24. Should the rule exempt from the preamble requirements of § 308.5(a) data services, *i.e.*, pay-per-call services that transmit data from one computer to another, with no individual present to receive the information in the preamble? What would be the advantages and disadvantages of such an exemption? What is an appropriate and useful definition of such "data services?"

25. Should the provider of pay-per-call services be required to disconnect automatically a call after one full cycle of the pay-per-call program?

26. Should a provider of pay-per-call services be required to include a beep tone or other appropriate signal during a live interactive group program so that callers will be altered to the passage of time or accrued charges?

27. In order to address the potential problem of the billing of pay-per-call services through the use of fraudulent billing tapes, should the rule include a requirement that all billing for pay-per-call services be based on the call detail records provided by the certified carrier of the call?

28. Are there other ways in which the requirements of the proposed rule might be circumvented by providers of pay-per-call services? If so, what additional provisions might the Commission adopt in order to prevent such circumvention?

29. Should service bureaus be required to monitor all pay-per-call services that operate on their equipment to assure that such pay-per-call services comply with the provisions of this rule? Should service bureaus be held liable for violations of some or all of the provisions of the rule by pay-per-call services which operate on their equipment? What costs would arise from such requirements?

30. Should the rule include protection against the unauthorized use of a consumer's telephone to call pay-per-call services? Is it technically feasible to require all consumers to have an access code or PIN number which they must dial before being able to access any pay-per-call service? What are the advantages and disadvantages or costs to requiring such an access code? Is such a requirement useful and appropriate?

31. The Commission has been authorized to prescribe additional standards deemed necessary to prevent abusive practices or to prevent evasion of the rule. What specific additional standards might be desirable, or necessary, to prevent such practices, or to prevent evasion of the requirements and prohibitions set forth in this rule? What are the costs and benefits of these additional standards?

Section 308.6 Access to Information

32. Section 308.6 of the proposed rule requires common carriers that provide telephone services to any provider of pay-per-call services to make available to the Commission, upon written request, certain records and financial information concerning the arrangements between such carrier and the provider of pay-per-call services. Should the rule include a list of the types of records which common carriers must maintain for this purpose? If so, what information should be included in this listing? Should the final rule indicate the length of time such records must be maintained?

Section 308.7 Billing and Collection for Pay-Per-Call Services

33. Is the term "preexisting agreement" as used in § 304(1)(A) of the Telephone Disclosure Act synonymous with "presubscription or comparable arrangement" as defined in § 308.2(d) of the proposed rule?

34. To be considered a "billing error" under § 308.7(a)(2)(i), a telephone-billed purchase must not have been "made by the customer nor made from the telephone of the customer who was billed for the purchase."

a. Should a customer be permitted to assert as a "billing error" a telephone-billed purchase that was not made by that customer but made by another resident of the customer's household using the customer's telephone?

b. Should the answer differ depending on whether the person making the purchase is a minor?

c. What if the purchase was made from the customer's telephone by someone other than a member of the customer's household?

d. What if the purchase was made from outside of the customer's residence by someone other than a member of the customer's household who charged the call to the customer's telephone?

35. a. Section 308.7(b) of the proposed rule would not require the customer to provide written notice of a billing error. Any method of notification would be acceptable. Should written notification be specifically required? What are the advantages and disadvantages of requiring written notification?

b. Section 308.7(d)(1) of the proposed rule would require a billing entity to acknowledge the customer's billing error notice in writing. What are the advantages and disadvantages of requiring written acknowledgement? If written notification were not required how would compliance be verified?

c. Section 308.7(d)(3)(ii) of the proposed rule would require the billing entity to notify the customer in writing of the time when payment is due and to warn the customer in writing that a failure to pay might be reported to a credit reporting agency or subject the customer to a collection action. What is the economic impact on providing carriers and billing entities of requiring written notification?

36. Section 308.7(h) of the proposed rule allows a billing entity, providing carrier, or vendor to charge its customers for investigating billing errors. Should the rule provide an absolute prohibition on charges related to billing errors? How might such a prohibition affect the incidence of frivolous billing error complaints?

37. Section 308.7 of the proposed rule does not require billing entities, providing carriers, or vendors to maintain records with respect to the billing and collection of pay-per-call services.

a. Should the rule include a record retention provision?

b. Are there reasons why billing entities, providing carriers, or vendors should not be subject to record retention requirements similar to those imposed upon creditors under the Truth in Lending Act and Fair Credit Billing Act? (12 CFR 226.25).

c. What are the current record retention policies and practices of billing entities, providing carriers, and vendors with respect to billing, customer complaints and inquiries, collection activity, and related actions?

d. Are records currently retained for a sufficient period of time to demonstrate compliance with § 308.7? What would be the costs and benefits of any additional requirements that might be needed? What would be the economic impact on billing entities, providing carriers, and vendors of such additional record retention requirements?

e. If record retention is not required, how could compliance be verified?

f. What has been the experience of state and local law enforcement agencies with respect to record retention requirements? Have such requirements been useful? If yes, how? If no, why not? What types of enforcement issues could arise if record keeping were not required?

38. Should there be a provision limiting customer liability for unauthorized calls to pay-per-call services? If "yes," how could one determine whether a call to a pay-per-call service was "unauthorized"? Would use of an access code or PIN number assist in such a process?

39. The use of third-party billers is increasing in the pay-per-call industry. The practices of some of those third party billers may not offer the same billing protection to consumers that are currently offered by the common carriers. Identify any protections now offered to consumers by the common carrier that are neither presently offered by third-party billers, nor required by the proposed rule. Should the proposed rule be modified to include such additional protections? What costs might arise from doing so?

Other

40. Are there new types of services, other than 900 number line services, that may fall within the statutory definition of "pay-per-call services" and hence fall under these regulations? Will the proposed disclosure requirements be appropriate and/or feasible for such new types of services?

41. What kinds of technological changes may be anticipated in the near future in the area of pay-per-call services? Will the proposed disclosure requirements be appropriate and/or feasible after these technological changes are implemented?

42. As already noted in section F, comment is also invited on the effect of the proposed rule with regard to costs, profitability, competitiveness, and employment of small business entities.

43. What will be the impact of the proposed rule on non-profit organizations?

44. In addition, to the extent not otherwise addressed by the questions above, are there any regulatory alternatives that would reduce any adverse economic impact of the proposed rule, yet fully implement the Telephone Disclosure Act?

45. What are the aggregate costs and benefits of the proposed rule? Are there any provisions in the proposed rule that are not necessary to implement the statute or that impose costs not outweighed by benefits? Who will benefit and who will bear the cost? Can we expect either the costs or benefits of the rule to dissipate over time?

List of Subjects in 16 CFR Part 308

900 telephone numbers, Pay-per-call services, Trade practices.

Accordingly, it is proposed that chapter I of 16 CFR be amended by adding a new part 308 to read as follows:

PART 308—REGULATIONS UNDER THE TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT OF 1992

Sec.

Authority: 15 U.S.C. 5711–14, 5721–24.

§ 308.1 Scope of regulations in this part.

This rule implements Titles II and III of the Telephone Disclosure and Dispute Resolution Act of 1992, to be codified in relevant part at 15 U.S.C. 5711–14, 5721–24.

§ 308.2 Definitions.

(a) *Bona fide educational service* means any pay-per-call service that provides information or instruction relating to education, subjects of academic study, or other related areas of school study.

(b) *Commission* means the Federal Trade Commission.

(c) *Pay-per-call services* has the meaning provided in § 228 of the Communications Act of 1934, 47 U.S.C. 228.[1]

[1] Section 228 of the Communications Act of 1934 states that:

(1) The term "pay-per-call services" means any service—(A) in which any person provides or purports to provide—

(i) audio information or audio entertainment produced or packaged by such person;

(ii) access to simultaneous voice conversation services; or

(iii) any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;

(d) *Person* means any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

(e) *Presubscription or comparable arrangement* means a contractual agreement established prior to the initiation of a pay-per-call service between a provider of pay-per-call services and a consumer. No action taken by the consumer during the course of a call to a pay-per-call service can be construed as creating such a contractual agreement.

(f) *Program-length commercial* means any commercial or other advertisement fifteen (15) minutes in length or longer or intended to fill a television or radio broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer.

(g) *Provider of pay-per-call services* means any person who sells a pay-per-call service.

(h) *Reasonably understandable volume* means at an audible level that renders the message intelligible to the receiving audience, and, in any event, at least the same audible level as that principally used in the advertisement or the pay-per-call service.

(i) *Slow and deliberate manner* means at a rate that renders the message intelligible to the receiving audience, and, in any event, at a cadence or rate no faster than that principally used in the advertisement or the pay-per-call service.

(j) *Sweepstakes,* including games of chance, means a game or promotional mechanism that involves the elements of a prize and chance and does not require consideration.

§ 308.3 Advertising of pay-per-call services.

(a) *Cost of the call.* (1) The provider of pay-per-call services shall clearly and conspicuously disclose the cost of the call, in Arabic numerals, in any advertisement for the pay-per-call service, as follows:

(i) If there is a flat fee for the call, the advertisement shall state the total cost of the call.

(ii) If the call is billed on a time-sensitive basis, the advertisement shall state the cost per minute and any minimum charges. If the duration of the program can be determined in advance, the advertisement shall also state the total cost for the complete program. If the duration of the program cannot be determined in advance (because it involves a live conversation or is dependent upon options selected by the caller), the advertisement shall state that the length of the call is subject to caller discretion, unless it is otherwise clear from the context that such is the case.

(iii) If the call is billed on a variable rate basis, the advertisement shall state, in accordance with §§ 308.3(a)(1) (i) and (ii), the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on the options chosen by the caller.

(iv) The advertisement shall disclose any other fees that will be charged for the service.

(v) If the caller may be transferred to another pay-per-call service, the advertisement shall disclose the cost of the other call, in accordance with §§ 308.3(a)(1) (i), (ii), (iii), and (iv).

(2) The disclosures in § 308.3(a)(1) shall be made in the same language as that principally used in the advertisement.

(3) For purposes of § 308.3(a), disclosures shall be made "clearly and conspicuously" as follows:

(i) In a television or videotape advertisement, the disclosures shall be presented simultaneously in both the audio and video portions of the advertisement, except that in an advertisement fifteen (15) seconds or less in length in which the pay-per-call number is not presented in the audio portion, no audio presentation of the disclosure is required. When required, the audio disclosure shall be made at least once, and shall be delivered in a slow and deliberate manner and in a reasonably understandable volume. The video disclosure shall appear adjacent to each video presentation of the pay-per-call number. Each letter or numeral of the video disclosure shall be at least as large as each letter or numeral of the pay-per-call number to which it is adjacent, shall be of a color or shade that readily contrasts with the background, and shall appear on the screen for the duration of the presentation of the pay-per-call number.

(ii) In a print advertisement, the disclosure shall be parallel with the base of the advertisement and shall be placed adjacent to each presentation of the pay-per-call number. Each letter or numeral of the disclosure shall be at least as large as each letter or numeral of the pay-per-call number to which it is adjacent. The disclosure shall be of a color or shade that readily contrasts with the background of the advertisement.

(iii) In a radio advertisement, the disclosure shall be made at least once, and shall be delivered immediately following the first delivery of the pay-per-call number. In any program-length commercial, the disclosure shall be delivered immediately following each delivery of the pay-per-call number. The disclosure shall be delivered in a slow and deliberate manner and in a reasonably understandable volume.

(4) Nothing contrary to, inconsistent with, or in mitigation of, the above-required disclosures shall be used in any advertisement in any medium; nor shall any audio or video technique be used that is likely to detract significantly from the communication of the disclosures.

(b) *Sweepstakes; games of chance.* (1) The provider of pay-per-call services that advertises a prize or award or a service or product at no cost or for a reduced cost, in connection with the offering of any sweepstakes, including games of chance, shall clearly and conspicuously disclose in the advertisement the odds of being able to receive the prize, award, service, or product at no cost or reduced cost. If the odds are not calculable in advance, the advertisement shall disclose the factors used in calculating the odds. The advertisement shall clearly and conspicuously disclose that no purchase (i.e., no call to the pay-per-call service) is required to participate, and shall also disclose a free alternative method of entry and instructions on how to enter. The advertisement shall also disclose the scheduled termination date of the offer of the prize, award, service, or product.

(2) The disclosures in § 308.3(b)(1) shall be made in the same language as that principally used in the advertisement.

(3) For purposes of § 308.3(b), disclosures shall be made "clearly and conspicuously" as follows:

(i) In a television or videotape advertisement, the disclosures shall be presented simultaneously in both the audio and video portions of the advertisement, except that in an advertisement fifteen (15) seconds or less in length in which the pay-per-call number is not presented in the audio portion, no audio presentation of the disclosure is required. When required, the audio disclosure shall be made at least once, and shall be delivered in a slow and deliberate manner and in a

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(B) for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

(C) which is accessed through the use of a 900 telephone number or other prefix or area code designated by the [Federal Communications] Commission in accordance with subsection (b)(5) [47 U.S.C. 228(b)(5)].

(2) Such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliates, or any service the charge for which is tariffed, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service.

reasonably understandable volume. Each line of the video disclosure shall occupy at least one-tenth of the vertical field of the television screen, shall be of a color or shade that readily contrasts with the background, and shall appear on the screen for sufficient time to allow consumers to read the disclosure.

(ii) In a print advertisement, the disclosure shall be parallel with the base of the advertisement, in at least 12-point type, and of a color or shade that readily contrasts with the background of the advertisement.

(iii) In a radio advertisement, the disclosure shall be delivered in a slow and deliberate manner and in a reasonably understandable volume.

(4) Nothing contrary to, inconsistent with, or in mitigation of, the above-required disclosures shall be used in any advertisement in any medium; nor shall any audio or video technique be used that is likely to detract significantly from the communication of the disclosures.

(c) *Federal programs.* (1) The provider of pay-per-call services that advertises a pay-per-call service that is not operated or expressly authorized by a Federal agency, but that provides information on a Federal program, shall clearly and conspicuously disclose in the advertisement that the pay-per-call service is not authorized, endorsed, or approved by any Federal agency.

(2) The disclosures in § 308.3(c)(1) shall be made in the same language as that principally used in the advertisement.

(3) For purposes of § 308.3(c), disclosures shall be made "clearly and conspicuously" as follows:

(i) In a television or videotape advertisement, the disclosures shall be presented simultaneously in both the audio and video portions of the advertisement, except that in an advertisement fifteen (15) seconds or less in length in which the pay-per-call number is not presented in the audio portion, no audio presentation of the disclosure is required. When required, the audio disclosure shall be made at least once, and shall be delivered in a slow and deliberate manner and in a reasonably understandable volume. The disclosure shall begin within the first fifteen (15) seconds of the advertisement. Each line of the video disclosure shall occupy at least one-tenth of the vertical field of the television screen, shall be of a color or shade that readily contrasts with the background, and shall appear on the screen for sufficient time to allow consumers to read the disclosure.

(ii) In a print advertisement, the disclosure shall be parallel with the base of the advertisement and shall appear in the top one-third of the advertisement. Each letter of the disclosure shall be in at least 12-point type. The disclosure shall be of a color or shade that readily contrasts with the background of the advertisement.

(iii) In a radio advertisement, the disclosure shall begin within the first fifteen (15) seconds of the advertisement, and shall be delivered in a slow and deliberate manner and in a reasonably understandable volume.

(4) Nothing contrary to, inconsistent with, or in mitigation of, the above-required disclosures shall be used in any advertisement in any medium; nor shall any audio or video technique be used that is likely to detract significantly from the communication of the disclosures.

(d) *Prohibition on advertising to children.* (1) The provider of pay-per-call services shall not direct advertisements for such pay-per-call services to children under the age of 12, unless the service is a bona fide educational service.

(2) For the purposes of this regulation, advertisements directed to children under 12 shall be presumed to include the following:

(i) Advertisements appearing in publications, including, but not limited to, books, magazines and comic books, that are directed to children under 12;

(ii) Advertisements appearing during or immediately adjacent to television programs, including, but not limited to, children's programming as defined by the Federal Communications Commission, animated programs, and after-school specials, that are directed to children under 12;

(iii) Advertisements broadcast during or immediately adjacent to radio programs directed to children under 12;

(iv) Advertisements appearing on the same video as a commercially-prepared video directed to children under 12;

(v) Advertisements or promotions appearing on product packaging directed to children under 12; and

(vi) Any advertisement, regardless of when or where it appears, that is directed to children under 12 in light of its subject matter, visual content, age of models, language, characters, tone, message, or the like.

(3) The presumption contained in § 308.3(d)(2) may be rebutted with competent and reliable audience composition data or other competent and reliable evidence demonstrating that the receiving audience is composed predominantly of individuals aged 12 or older.

(e) *Advertising to individuals under the age of 18.* (1) The provider of pay-per-call services shall ensure that any pay-per-call advertisement directed primarily to individuals under the age of 18 shall contain a clear and conspicuous disclosure that all individuals under the age of 18 must have the permission of such individual's parent or legal guardian prior to calling such pay-per-call service.

(2) The disclosure in § 308.3(e)(1) shall be made in the same language as that principally used in the advertisement.

(3) For purposes of § 308.3(e), clear and conspicuous shall mean the following:

(i) In a television or videotape advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement, except that in an advertisement fifteen (15) seconds or less in length in which the pay-per-call number is not presented in the audio portion, no audio presentation of the disclosure is required. When required, the audio disclosure shall be made at least once, and shall be delivered in a slow and deliberate manner and in a reasonably understandable volume. The video disclosure shall appear adjacent to the largest presentation of the pay-per-call number. Each line of the video disclosure shall occupy at least one-tenth of the vertical field of the television screen, shall be of a color or shade that readily contrasts with the background, and shall appear on the screen for sufficient time to allow consumers to read the disclosure. In any program-length commercial, the video disclosure shall appear simultaneously with and for the duration of each presentation of the pay-per-call number.

(ii) In a print advertisement, the disclosure shall be parallel with the base of the advertisement and shall be placed adjacent to the largest presentation of the pay-per-call number. Each letter of the disclosure shall be in at least 12-point type. The disclosure shall be of a color or shade that readily contrasts with the background of the advertisement.

(iii) In a radio advertisement, the disclosure shall be delivered in a slow and deliberate manner and in a reasonably understandable volume. In any program-length commercial, the disclosure shall be delivered immediately preceding each delivery of the pay-per-call number.

(4) Nothing contrary to, inconsistent with, or in mitigation of, the above-required disclosures shall be used in any advertisement in any medium; nor shall any audio or video technique be used that is likely to detract

significantly from the communication of the disclosures.

(5) For the purposes of this regulation, advertisements directed primarily to individuals under 18 shall be presumed to include the following:

(i) Advertisements appearing in publications, including, but not limited to, books, magazines and comic books, that are directed primarily to individuals under 18;

(ii) Advertisements appearing during or immediately adjacent to television programs, including, but not limited to, mid-afternoon weekday television shows, that are directed primarily to individuals under 18;

(iii) Advertisements broadcast on radio stations that are directed primarily to individuals under 18;

(iv) Advertisements appearing on the same video as a commercially-prepared video directed primarily to individuals under 18; and

(v) Any advertisement, regardless of when or where it appears, that is directed primarily to individuals under 18 in light of its subject matter, visual content, age of models, language, characters, tone, message, or the like.

(6) The presumption contained in § 308.3(e)(5) may be rebutted with competent and reliable audience composition data or other competent and reliable evidence demonstrating that the receiving audience is composed primarily of individuals aged 18 or older.

(f) *Electronic tones in advertisements.* The provider of pay-per-call services is prohibited from using advertisements that emit electronic tones that can automatically dial a pay-per-call service.

(g) *Telephone solicitations.* The provider of pay-per-call services shall ensure that any telephone message that solicits calls to the pay-per-call service discloses the cost of the call in a slow and deliberate manner and in a reasonably understandable volume, in accordance with §§ 308.3(a)(1) (i) through (v).

(h) *Referral to toll free telephone numbers.* The provider of pay-per-call services is prohibited from referring in advertisements to an 800 telephone number, or any other telephone number advertised as or widely understood to be toll free, if callers to that number may be connected to an access number for, or may otherwise be transferred to, a pay-per-call service.

§ 308.4 Special rule for infrequent publications.

(a) In lieu of the cost disclosures required by § 308.3(a), the provider of any pay-per-call service that advertises in a publication that meets the requirements set forth in § 308.4(b) may include in any advertisement in such publication for such pay-per-call service, a clear and conspicuous disclosure that a call to the advertised pay-per-call service may result in a substantial charge above the long-distance charge.

(b) The publication referred to in § 308.4(a) must be:

(1) Widely distributed;

(2) Printed annually or less frequently; and

(3) One that has an established and written policy of not publishing specific prices in advertisements.

§ 308.5 Pay-per-call service standards.

(a) *Preamble message.* The provider of pay-per-call services shall include, in each pay-per-call message, an introductory disclosure message ("preamble") in the same language as that principally used in the pay-per-call message, that clearly, in a slow and deliberate manner and in a reasonably understandable volume:

(1) Identifies the name of the provider of the pay-per-call service and describes the service being provided;

(2) Specifies the cost of the service as follows:

(i) If there is a flat fee for the call, the preamble shall state the total cost of the call;

(ii) If the call is billed on a time-sensitive basis, the preamble shall state the cost per minute and any minimum charges; if the duration of the program can be determined in advance, the preamble shall also state the total cost for the complete program; if the duration of the program cannot be determined in advance (because it involves a live conversation or is dependent upon options selected by the caller), the preamble shall state that the length of the call is subject to caller discretion, unless it is otherwise clear from the context that such is the case;

(iii) If the call is billed on a variable rate basis, the preamble shall state, in accordance with §§ 308.5(a)(2) (i) and (ii), the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on the options chosen by the caller;

(iv) Any other fees that will be charged for the service shall be disclosed, as well as fees for any other pay-per-call service to which the caller may be transferred;

(3) Informs the caller that charges for the call begin at the end of the preamble, after a clearly discernible signal or tone, and that the caller may avoid any charge for the call by hanging up at or before the sound of the tone;

(4) Informs the caller that anyone under the age of 18 must have the permission of a parent or legal guardian in order to complete the call; and

(5) Informs the caller, in the case of a pay-per-call service that is not operated or expressly authorized by a Federal agency but that provides information on a Federal program, that the pay-per-call service is not authorized, endorsed, or approved by any Federal agency.

(b) *No charge to caller for preamble message.* The provider of pay-per-call services is prohibited from charging a caller any amount whatsoever for such a service if the caller hangs up at any time prior to five seconds after the signal or tone indicating the end of the preamble described in § 308.5(a).

(c) *Nominal cost calls.* The preamble described in § 308.5(a) is not required when the entire cost of the pay-per-call service, whether billed as a flat rate or on a time sensitive basis, is $2.00 or less.

(d) *Bypass mechanism.* The provider of pay-per-call services that offers to frequent callers or regular subscribers to such services the option of activating a bypass mechanism to avoid listening to the preamble during subsequent calls shall not be deemed to be in violation of § 308.5(a), *provided that* any such bypass mechanism shall be disabled for a period of no less than 30 days immediately after the institution of an increase in the price for the service or a change in the nature of the service offered.

(e) *Billing limitations.* The provider of pay-per-call services is prohibited from billing consumers in excess of the amount described in the preamble for those services and from billing for any services provided in violation of any section of this rule.

(f) *Stopping the assessment of time-based charges.* The provider of pay-per-call services shall stop the assessment of time-based charges immediately upon disconnection by the caller.

(g) *Prohibition on services to children.* The provider of pay-per-call services shall not direct such services to children under the age of 12, unless such service is a bona fide educational service. A pay-per-call service directed to children under the age of 12 shall be presumed to include the following:

(1) Any pay-per-call service, regardless of when or where it is advertised, which is produced or designed for children under the age of 12, in light of its subject matter, content, language, featured personality, characters, tone, message, or the like. This presumption may be rebutted with competent and reliable evidence that

recipients of the service are predominantly individuals aged 12 or older.

(2) Any pay-per-call service that is advertised in the manner set forth in § 308.3(d)(2), unless that presumption is rebutted in accordance with § 308.3(d)(3).

(h) *Prohibition concerning toll free numbers.* The provider of pay-per-call services is prohibited from providing such services through an 800 number or other telephone number advertised as or widely understood to be toll free.

(i) *Disclosure requirements for billing statements.* The provider of pay-per-call services shall ensure that any billing statement for such provider's charges shall:

(1) Display any charges for pay-per-call services in a portion of the consumer's bill that is identified as not being related to local and long distance telephone charges; and

(2) For each charge so displayed, specify the type of service, the amount of the charge, and the date, time, and duration of the call.

(j) *Refunds to consumers.* The provider of pay-per-call services shall be liable for refunds to consumers who have been billed for pay-per-call services, and who have paid the charges for such services, pursuant to pay-per-call programs that have been found to have violated any provision of this rule or any other Federal rule or law.

§ 308.6 Access to information.

Any common carrier that provides telephone services to any provider of pay-per-call services shall make available to the Commission, upon written request, any records and financial information maintained by such carrier relating to the arrangements (other than for the provision of local exchange service) between such carrier and any provider of pay-per-call services.

§ 308.7 Billing and collection for pay-per-call services.

(a) *Definitions.* For the purposes of this section, the following definitions shall apply:

(1) *Billing entity* means any person who transmits a billing statement to a customer for a telephone-billed purchase, or any person who assumes responsibility for receiving and responding to billing error complaints or inquiries.

(2) *Billing error* means any of the following:

(i) A reflection on a billing statement of a telephone-billed purchase that was not made by the customer nor made from the telephone of the customer who was billed for the purchase or, if made, was not in the amount reflected on such statement.

(ii) A reflection on a billing statement of a telephone-billed purchase for which the customer requests additional clarification, including documentary evidence thereof.

(iii) A reflection on a billing statement of a telephone-billed purchase that was not accepted by the customer or not provided to the customer in accordance with the stated terms of the transaction.

(iv) A reflection on a billing statement of a telephone-billed purchase for a call made to an 800 or other toll free telephone number.

(v) The failure to reflect properly on a billing statement a payment made by the customer or a credit issued to the customer with respect to a telephone-billed purchase.

(vi) A computation error or similar error of an accounting nature on a billing statement of a telephone-billed purchase.

(vii) Failure to transmit a billing statement for a telephone-billed purchase to a customer's last known address if that address was furnished by the customer at least twenty days before the end of the billing cycle for which the statement was required.

(viii) A reflection on a billing statement of a telephone-billed purchase that is not identified in accordance with the requirements of § 308.5(i).

(3) *Customer* means any person who acquires or attempts to acquire goods or services in a telephone-billed purchase, or who receives a billing statement for a telephone-billed purchase charged to a telephone number assigned to that person by a providing carrier.

(4) *Preexisting agreement* means a "presubscription or comparable arrangement," as that term is defined in § 308.2(e).

(5) *Providing carrier* means a local exchange or interexchange common carrier providing telephone services (other than local exchange services) to a vendor for a telephone-billed purchase that is the subject of a billing error.

(6) *Telephone-billed purchase* means any purchase that is completed solely as a consequence of the completion of the call or a subsequent dialing, touch tone entry, or comparable action of the caller. Such term does not include:

(i) A purchase by a caller pursuant to a preexisting agreement with a vendor;

(ii) Local exchange telephone services or interexchange telephone services or any service that the Federal Communications Commission determines by rule—

(A) Is closely related to the provision of local exchange telephone services or interexchange telephone services; and

(B) Is subject to billing dispute resolution procedures required by Federal or state statute or regulation; or

(iii) The purchase of goods or services that is otherwise subject to billing dispute resolution procedures required by Federal statute or regulation.

(7) *Vendor* means any person who, through the use of the telephone, offers goods or services for a telephone-billed purchase.

(b) *Initiation of billing review.* A customer may initiate a billing review with respect to a telephone-billed purchase by providing, no later than 60 days after the billing entity transmitted the first billing statement that contains a charge for such telephone-billed purchase,[2] notice to that billing entity in which the customer:

(1) Sets forth or otherwise enables the billing entity to identify the customer's name and the telephone number to which the charge was billed;

(2) Indicates the customer's belief that the statement contains a billing error and the type, date, and amount of such error; and

(3) Sets forth the reasons for the customer's belief, to the extent possible, that the statement contains a billing error.

(c) *Disclosure of method of providing notice; presumption if oral notice is permitted.* A billing entity shall clearly and conspicuously[3] disclose on each billing statement or on other material accompanying the billing statement the method (oral or written) by which the customer may provide notice to initiate review of a billing error in the manner set forth in § 308.7(b). If oral notice is permitted, any customer who orally communicates an allegation of a billing error to a billing entity shall be presumed to have properly initiated a billing review in accordance with the requirements of § 308.7(b).

(d) *Response to customer notice.* A billing entity that receives notice of a billing error as described in § 308.7(b) shall:

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[2] If the billing error is the reflection on a billing statement of a telephone-billed purchase not provided to the customer in accordance with the stated terms of the transaction, the 60-day period begins to run from the time the goods or services are delivered or, if not delivered, should have been delivered, if such time is later than the time the billing statement was transmitted.

[3] The standard for "clear and conspicuous" as used in this section shall be the standard enunciated by the Board of Governors of the Federal Reserve System in its Official Staff Commentary on Regulation Z, which requires simply that the disclosures be in a reasonably understandable form. See 12 CFR part 226, Supplement I, Comment 226.5(a)(1)–1.

(1) Send a written acknowledgement to the customer including a statement that any disputed amount need not be paid pending investigation of the billing error. This shall be done no later than thirty (30) days after receiving the notice, unless the action required by § 308.7(d)(2) is taken within such 30-day period; and

(2)(i) Correct the billing error and credit the customer's account for any disputed amount and any related charges, notify the customer of the correction and that removal of the charge does not prevent the vendor, its agent, or the providing carrier, as applicable, from electing to pursue collection of the charge, and provide the names, mailing addresses, and business telephone numbers of the vendor and providing carrier, as applicable, that are the subject of the telephone-billed purchase; or

(ii) Transmit an explanation to the customer, after conducting a reasonable investigation (including, where appropriate, contacting the vendor or providing carrier),[4] setting forth the reasons why it has determined that no billing error occurred or that a different billing error occurred from that asserted, make any appropriate adjustments to the customer's account, and, if the customer so requests, provide a written explanation and copies of documentary evidence of the customer's indebtedness.

(3) The action required by § 308.7(d)(2) shall be taken no later than two complete billing cycles of the billing entity (in no event later than ninety (90) days) after receiving the notice of the billing error and before taking any action to collect the disputed amount, or any part thereof. After complying with § 308.7(d)(2), the billing entity shall:

(i) If it is determined that any disputed amount is in error, promptly notify the appropriate providing carrier or vendor, as applicable, of its disposition of the customer's billing error and the reasons therefor; and

(ii) Promptly notify the customer in writing of the time when payment is due of any portion of the disputed amount determined not to be in error, which time shall be at least twenty (20) days after the date of such notification, and promptly notify the customer in writing that failure to pay such amount may be reported to a credit reporting agency or subject the customer to a collection action.

(e) *Withdrawal of billing error notice.* A billing entity need not comply with the requirements of § 308.7(d) if the customer has, after giving notice of a billing error and before the expiration of the time limits specified therein, agreed that the billing statement was correct.

(f) *Limitation on responsibility for billing error.* After complying with the provisions of § 308.7(d), a billing entity has no further responsibility under that section if the customer continues to make substantially the same allegation with respect to a billing error.

(g) *Customer's right to withhold disputed amount; limitation on collection action.* Once the customer has submitted notice of a billing error to a billing entity, the customer need not pay, and the billing entity, providing carrier, or vendor may not try to collect, any portion of any required payment that the customer reasonably believes is related to the disputed amount until the billing entity receiving the notice has complied with the requirements of § 308.7(d). The billing entity, providing carrier, or vendor are not prohibited from taking any action to collect any undisputed portion of the bill, or from reflecting a disputed amount and related charges on a billing statement, provided that the billing statement clearly states that payment of any disputed amount or related charges is not required pending the billing entity's compliance with § 308.7(d).

(h) *Charges for initiating billing review.* If a billing error occurred, whether as alleged or in a different amount or manner, the billing entity, providing carrier, or vendor may not impose on the customer any charge related to the billing review (including charges for documentation or investigation). If it is determined that no billing error occurred, any charges imposed must be reasonable in light of the costs involved in conducting the billing review and must not be of such an amount as to discourage customers from asserting their rights under this section.

(i) *Restrictions on credit reporting—*(1) *Adverse credit reports prohibited.* Once the customer has submitted notice of a billing error to a billing entity, a billing entity, providing carrier, vendor, or other agent may not report or threaten directly or indirectly to report adverse information to any person because of the customer's withholding payment of the disputed amount or related charges, until the billing entity has met the requirements of § 308.7(d) and allowed the customer twenty (20) days thereafter to make payment.

(2) *Reports on continuing disputes.* If a billing entity receives further notice from a customer within the time allowed for payment under § 308.7(i)(1) that any portion of the billing error is still in dispute, a billing entity, providing carrier, vendor, or other agent may not report to any person that the customer's account is delinquent because of the customer's failure to pay that disputed amount unless the billing entity, providing carrier, vendor, or other agent also reports that the amount is in dispute and notifies the customer in writing of the name and address of each person to whom the vendor, billing entity, providing carrier, or other agent has reported the account as delinquent.

(3) *Reporting of dispute resolutions required.* A billing entity, providing carrier, vendor, or other agent shall report in writing any subsequent resolution of any matter reported pursuant to § 308.7(i)(2) to all persons to whom such matter was initially reported.

(j) *Forfeiture of right to collect disputed money.* Any billing entity, providing carrier, vendor, or other agent who fails to comply with the requirements of §§ 308.7 (c), (d), (g), (h), or (i) forfeits any right to collect from the customer the amount indicated by the customer, under § 308.7(b)(2), to be in error, and any late charges or other related charges thereon, up to $50 per transaction.

(k) *Prompt notification of returns and crediting of refunds.* When a vendor other than the billing entity accepts the return of property or forgives a debt for services in connection with a telephone-billed purchase, the vendor shall, within seven (7) business days from accepting the return or forgiving the debt, either:

(1) Mail or deliver a cash refund directly to the customer's address, or

(2) Transmit a credit statement to the billing entity through the vendor's normal channels for billing telephone-billed purchases. The billing entity shall, within three (3) business days after receiving a credit statement, credit the customer's account with the amount of the refund.

(l) *Right of customer to assert claims or defenses.* Any billing entity or providing carrier who seeks to collect charges from a customer for a telephone-billed purchase that is the subject of a dispute between the customer and the vendor shall be subject to all claims

[4] If a customer submits a billing error notice alleging either the nondelivery of goods or services or that information appearing on a billing statement has been reported incorrectly to the billing entity, the billing entity shall not deny the assertion unless it conducts a reasonable investigation and determines that the goods or services were actually delivered as agreed or that the information was correct. There shall be a rebuttable presumption that goods or services were actually delivered to the extent that a vendor or providing carrier produces documents prepared and maintained in the ordinary course of business showing the date on, and the place to, which the goods or services were transmitted or delivered.

(other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute that the customer could assert against the vendor, if the customer has made a good faith attempt to resolve the dispute with the vendor or providing carrier (other than the billing entity). The billing entity or providing carrier shall not be liable under this paragraph for any amount greater than the amount billed to the customer for the purchase (including any related charges).

(m) *Retaliatory actions prohibited.* A billing entity, providing carrier, vendor, or other agent may not accelerate any part of the customer's indebtedness or restrict or terminate the customer's access to pay-per-call services solely because the customer has exercised in good faith rights provided by this section.

(n) *Notice of billing error rights.*—(1) *Annual statement.* (i) A billing entity shall mail or deliver the billing rights statement set forth below with the first billing statement for a telephone-billed purchase mailed or delivered to a customer after the effective date of these regulations. Thereafter, the billing entity shall mail or deliver the billing rights statement at least once per calendar year to each customer to whom it has mailed or delivered a billing statement for a telephone-billed purchase during the previous twelve months.

(ii) A billing entity that is a common carrier may comply with § 308.7(n)(1)(i) by, within 60 days after the effective date of these regulations, mailing or delivering the billing rights statement set forth below to all of its customers and, thereafter, mailing or delivering the billing rights statement at least once per calendar year, at intervals of not less than 6 months nor more than 18 months, to all of its customers.

Your Pay-Per-Call Billing Rights

Keep This Notice For Future Use

This notice contains important information about your rights and our responsibilities under the Telephone Disclosure and Dispute Resolution Act.

Notify Us in Case of Errors or Questions About Your Bill

If you think you have been incorrectly billed for a 900 [or other pay-per-call] number telephone call, or if you need more information about a 900 [or other pay-per-call] number transaction appearing on your bill, let us know as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You must call us at the telephone number [or write us at the address] listed on your bill and give us the following information:

Your name and telephone number.
The dollar amount of the suspected error.
Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

If we specify that you must notify us in writing, and you do not, we are not obligated to respond to your complaint or inquiry. If we permit you to call in your billing error and a question arises about whether you properly notified us, we will assume you did, unless we can show you did not.

Your Rights and Our Responsibilities After We Receive Your Notice

We must acknowledge your notice within 30 days, unless we have corrected the error or notified you of the results of our investigation by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct. You have the right to request a written explanation if we find that the bill was correct.

After we receive your notice, you do not have to pay any questioned amount, and no one may try to collect it, until we are finished investigating. We can continue to bill you for the amount you question, and you are still obligated to pay the parts of your bill that are not in question.

If we find that we made a mistake on your bill, you will not have to pay any charges related to any questioned amount. If we didn't make a mistake, you may have to pay late charges, and you will have to make up any missed payments on the questioned amount. In any case, we will send you a statement of the amount you owe and the date it is due.

After we have completed our investigation, if you fail to pay the amount that we think you owe, we may report you as delinquent. However, if you do not agree with our explanation and let us know within 20 days, we must tell anyone we report you to that you still dispute your bill. We must tell you the name of anyone we reported you to. We must also tell anyone we report you to that the matter has been settled between us when it finally is.

If we don't follow these rules, we can't collect the first $50 of the questioned amount, even if your bill was correct.

(2) *Alternative summary statement.* As an alternative to § 308.7(n)(1), a billing entity may mail or deliver, on or with each billing statement, a statement substantially similar to the following:

Pay-Per-Call Billing Rights Summary

In Case of Errors or Questions About Your Bill

If you think your 900 [or other pay-per-call] number telephone bill is wrong, or if you need more information about a 900 [or other pay-per-call] number call billed to your account, let us know as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. Call us at the telephone number [or write us at the address] listed on your bill and give us the following information:

Your name and telephone number.
The dollar amount of the suspected error.
Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

Unless we tell you to notify us in writing, you may call in your billing error. Should any question arise about whether you properly notified us, we will assume you did, unless we can show you did not.

You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. While we investigate your question, no one can report you as delinquent or take any action to collect the amount you question.

(o) *Multiple billing entities.* If a telephone-billed purchase involves more than one billing entity, only one set of disclosures need be given, and the billing entities shall agree among themselves which billing entity must comply with the requirements that this regulation imposes on any or all of them. The billing entity designated to receive and respond to billing errors shall remain the only billing entity responsible for complying with the terms of § 308.7(d). If a billing entity other than the one designated to receive and respond to billing errors receives notice of a billing error as described in § 308.7(b), that billing entity shall either: (1) promptly transmit to the customer the name, mailing address, and business telephone number of the billing entity designated to receive and respond to billing errors; or (2) transmit the billing error notice within fifteen (15) days to the billing entity designated to receive and respond to billing errors. The time requirements in § 308.7(d) shall not begin to run until the billing entity designated to receive and respond to billing errors receives notice of the billing error, either from the customer or from the billing entity to whom the customer transmitted the notice.

(p) *Multiple customers.* If there is more than one customer involved in a telephone-billed purchase, the disclosures may be made to any customer who is primarily liable on the account.

§ 308.8 Severability.

The provisions of this rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Commissioner Deborah K. Owen in the Matter of Telephone Disclosure and Dispute Resolution Rulemaking

File No. R311001

March 3, 1993

I have voted to issue the proposed rule in this matter for public comment, even though I am particularly troubled by the fact that the proposed rule would impose a size requirement for cost disclosures that may be larger than necessary to meet the "clear and conspicuous" standard of the statute. According to the proposed rule, each letter or numeral of the disclosure must be at least as large as each letter or numeral of the pay-per-call number. This is twice the size of the disclosures mandated by our orders concerning pay-per-call numbers directed at children. There, each line must be half the size of the number, a requirement which, presumably, also meets a "clear and conspicuous" standard. Although I agreed to some provisions of the proposed rule for purposes of public comment, and although other provisions may be the best we can do with what we currently know, I do not believe that the size specifications for cost disclosures were appropriate, based on available evidence. However, I am hopeful that the public comment will provide more enlightenment on this (and other subjects) so that any necessary modifications can be made.

[FR Doc. 93–5432 Filed 3–9–93; 8:45 am]

BILLING CODE 6750–01–M