

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8663 (58 FR 46766, September 3, 1993), and by adding a new airworthiness directive (AD), amendment 39-8826, to read as follows:

93-16-06 R1 Canadair: Amendment 39-8826. Docket 94-NM-09-AD. Revises AD 93-16-06, Amendment 39-8663.

Applicability: All Model CL-215-1A10 series airplanes, certificated in any category. **Compliance:** Required as indicated, unless accomplished previously.

To prevent potential flutter of the rudder-aileron interconnect tab, which could result in reduced controllability of the airplane, accomplish the following:

(a) For Model CL-215-1A10 series airplanes: serial numbers 1001 through 1125 inclusive, not equipped with powered ailerons: Within 12 months after October 4, 1993 (the effective date of AD 93-16-06, amendment 39-8663), on the right wing install weights to the aileron balance weight mounting channel and washers to the interconnect tab mass balance arms, in accordance with Canadair Alert Service Bulletin 215-A435, dated August 14, 1990.

(b) For all other airplanes not subject to paragraph (a) of this AD: Within 12 months after the effective date of this AD, on the right wing install weights to the aileron balance weight mounting channel and washers to the interconnect tab mass balance arms, in accordance with Canadair Alert Service Bulletin 215-A435, dated August 14, 1990.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the

requirements of this AD can be accomplished.

(e) The installation shall be done in accordance with Canadair Alert Service Bulletin 215-A435, dated August 14, 1990. The incorporation by reference of this document was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of October 4, 1993 (58 FR 46766, September 3, 1993). Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York ACO, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 1, 1994.

Issued in Renton, Washington, on February 8, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 94-3349 Filed 2-11-94; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Part 900**

[Docket No. 93N-0351]

Requirements for Accrediting Bodies of Mammography Facilities and Quality Standards and Certification Requirements for Mammography Facilities; Corrections

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim rules with request for comments; corrections.

SUMMARY: The Food and Drug Administration (FDA) is correcting two interim rules that appeared in the *Federal Register* of December 21, 1993 (58 FR 67558 and 67565). These documents were published to implement the Mammography Quality Standards Act of 1992. The documents were published with some errors. This document corrects those errors.

DATES: These regulations are effective February 22, 1994. Written comments by January 20, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia M. Dubill, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301-594-4765.

In FR Doc. 93-30992, appearing on page 67558, and in FR Doc. 93-30991, appearing on page 67565, in the *Federal Register* of Tuesday, December 21, 1993, the following corrections are made:

§ 900.2 [Corrected]

1. On page 67563, in the 1st column, in § 900.2 *Definitions*, in paragraph (f), in the last line, the reference to "§ 900.14(a)(1)" is corrected to read "§ 900.12(a)(1)."

§ 900.12 [Corrected]

2. On page 67572, in the 1st column, in § 900.12 *Quality Standards*, in paragraph (d)(1), in the last line, the word "insurance" is corrected to read "assurance".

Dated: February 8, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94-3345 Filed 2-11-94; 8:45 am]

BILLING CODE 4160-01-F

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**36 CFR Part 1253**

RIN 3095-AA56

National Archives at College Park, MD; Location of Records and Hours of Use

AGENCY: National Archives and Records Administration.

ACTION: Interim final rule.

SUMMARY: The National Archives and Records Administration is updating its regulations on location of records and hours of use to add the National Archives at College Park (Archives II) facility which has opened in College Park, MD, and to delete the Pickett Street facility in Alexandria, VA, which is no longer open for research. The rule is being issued as an interim final rule so that the new facility hours will be established on the same date as the revised research room hours in the National Archives Building. This rule will affect the public.

DATES: The effective date of this rule is March 16, 1994. Comments on the interim rule must be received by April 15, 1994.

ADDRESSES: Submit comments to Director, Policy and Program Analysis Division (NAA), National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740-6001. Comments may also be faxed to (301) 713-7270.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard on (301) 713-6730.

SUPPLEMENTARY INFORMATION: The National Archives at College Park research complex opened to the public on January 3, 1994. Records will continue to be moved into the facility over the next two years as NARA completes a massive relocation of archival records from its facilities in the Washington, DC, area. Upon completion of the move, NARA will operate two archival research facilities in the Washington, DC, area: The National Archives Building and the National Archives at College Park, also known as Archives II. The Pickett Street facility in Alexandria, VA, which housed the Nixon Presidential materials and Cartographic research rooms, has closed; the Suitland Research Room will close for archival records research in 1996 when all archival records are relocated.

NARA is adopting the National Archives Building Central Research Room and Microfilm Research Room hours at Archives II. Uniform hours at the two facilities will allow adequate coverage in the research rooms. We considered selecting different days for the Archives II complex to have extended hours; however, we concluded that such an action would complicate staffing the research rooms during extended hours without providing significant benefit to most researchers. With the allocation of records between the National Archives Building and Archives II based on grouping of related records in one facility, most researchers will use either the National Archives Building or Archives II, but not both.

This rule is being issued as an interim final rule without prior notice of proposed rulemaking as permitted by the Administrative Procedures Act (5 U.S.C. 553(b)(B)) when the agency for good cause finds that notice and public procedure thereon are impractical, unnecessary, or contrary to the public interest. NARA finds that the public interest would be served by early establishment of extended research room hours at the new Archives II facility. Because NARA wishes to establish uniform hours for the Archives II research complex and the National Archives Building principal research rooms, NARA was unable to begin the rulemaking process for the Archives II facility until its rulemaking amending research room hours in the National Archives Building was completed. The final rule establishing hours for the National Archives Building is published elsewhere in today's *Federal Register*.

NARA will issue a final rule confirming or amending the Archives II research complex hours at the close of

the comment period for this interim rule.

This rule is not a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities.

List of Subjects in 36 CFR 1253

Archives and records.

For the reasons set forth in the preamble, chapter XII of title 36, Code of Federal Regulations, is amended as follows:

PART 1253—LOCATION OF RECORDS AND HOURS OF USE

1. The authority citation for part 1253 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

2. Section 1253.2 is revised to read:

§ 1253.2 National Archives at College Park.

The National Archives at College Park is located at 8601 Adelphi Road, College Park, MD 20740-6001. Research complex hours are 8:45 a.m. to 5 p.m., Monday and Wednesday; 8:45 a.m. to 9 p.m., Tuesday, Thursday, and Friday; and 8:45 a.m. to 4:45 p.m. Saturday.

Dated: February 7, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94-3361 Filed 2-11-94; 8:45 am]

BILLING CODE 7515-01-P

36 CFR Part 1253

RIN 3095-AA56

NARA Research Room Hours

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is modifying the hours that the Central Research Room, the Microfilm Research Room, and the Motion Picture, Sound and Video Research Room in the National Archives Building are open for research use. This rule affects researchers who use these research rooms in the evening. NARA is taking this action so that resources will be available for staffing the research rooms at the new National Archives at College Park (Archives II) facility.

EFFECTIVE DATE: March 16, 1994.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard on 301-713-6730.

SUPPLEMENTARY INFORMATION: NARA published a notice of proposed rulemaking on September 22, 1993 (58 FR 49251) proposing that certain research rooms in the National Archives Building that were open weekday evenings and on Saturday close at 8 p.m. instead of 10 p.m., Monday through Friday, and at 5 p.m. instead of 5:15 p.m. on Saturdays. Over 70 comments were received, most opposing the proposed change. Many of these commenters noted that the reduction in evening hours would adversely impact local researchers who conduct their research in the evening after their workday as well as visiting researchers who want to maximize their research time in as short a period as possible and local evening classes who visit the National Archives on night-time field trips. Commenters who use the Microfilm Research Room noted that the reduced hours would further limit access to microfilm readers, for which there is frequently a waiting period. Several commenters offered alternative research room schedules, such as a 9 p.m. weekday closing, later opening, or closing early on selected days of the week.

Commenters who favored the proposed change were primarily audiovisual archives researchers. Most of these commenters stated that extending the research hours for still pictures, cartographic, electronic and Nixon holdings at the National Archives at College Park facility (Archives II) would compensate for shortened hours in other research rooms.

After carefully considering all comments, NARA has developed a revised research room schedule that would accommodate the concerns of the commenters and provide adequate staff coverage in the research rooms. NARA held a public meeting on December 13, 1993, to discuss the comments received on the proposed rule and to solicit comments on the revised schedule. Notice of the meeting was provided individually to each commenter and a notice of the meeting was published in the *Federal Register* on November 30, 1993 (58 FR 63133). Twenty-one persons, including members of the public and NARA staff, attended the meeting. In addition, NARA received seven letters and three telephone calls from individuals who could not attend the meeting. These comments were also considered in the preparation of this final rule.

In this final rule, NARA is modifying research room hours in the Central Research Room and Microfilm Research Room in the National Archives Building to be 8:45 a.m. to 5 p.m., Monday and

Wednesday; 8:45 a.m. to 9 p.m., Tuesday, Thursday, and Friday; and 8:45 a.m. to 4:45 p.m., Saturday. The hours for the Motion Picture, Sound, and Video Research Room have been deleted from this final rule because that research room will close for relocation to Archives II before the effective date of this final rule. (That research room will be covered by a separate rulemaking on research room hours at Archives II.)

The days for 9 p.m. closing of the research rooms were chosen to include days when other research facilities, including the Library of Congress, do not have evening hours. To further minimize the impact of the changed hours on researchers in the Central and Microfilm Research Rooms, NARA will not invoke the 36 CFR 1254.12(a) provision that researchers must return records up to 15 minutes before closing time in those research rooms.

This rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993 and it has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small entities.

List of Subjects in 36 CFR Part 1253

Archives and records.

For the reasons set forth in the preamble, chapter XII of title 36, Code of Federal Regulations, is amended as follows:

PART 1253—LOCATION OF RECORDS AND HOURS OF USE

1. The authority citation for part 1253 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

2. Section 1253.1 is revised to read as follows:

§ 1253.1 National Archives Building.

The National Archives Building is located at Seventh Street and Pennsylvania Avenue, NW., Washington, DC 20408. Hours: For the Central Research Room and Microfilm Research Room, 8:45 a.m. to 5 p.m., Monday and Wednesday; 8:45 a.m. to 9 p.m., Tuesday, Thursday, and Friday; 8:45 a.m. to 4:45 p.m. on Saturday. For other research rooms, 8:45 a.m. to 5 p.m., Monday through Friday.

Dated: February 7, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94-3362 Filed 2-11-94; 8:45 am]

BILLING CODE 7515-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AG28

Procedural Due Process and Appellate Rights

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its regulations concerning procedural due process and appellate rights. The change adds three exceptions to the general requirement that a pretermination/reduction notice must be sent to a claimant prior to accomplishing an action adversely affecting benefit payments. The intended effects of the change are to allow earlier adjudicative response in certain situations and to reduce the amount of potential overpayments.

EFFECTIVE DATE: The effective date is March 16, 1994.

FOR FURTHER INFORMATION CONTACT:

Steven Thornberry, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 233-3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.103(b)(3) in the *Federal Register* of July 15, 1993 (58 FR 38104-06). Interested persons were invited to submit written comments on or before August 16, 1993. No comments were received, and the amendments are adopted as proposed.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

There is no affected Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: January 12, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended to read as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.103 [Amended]

2. Section 3.103(b)(3)(i) is amended by adding the words "to VA" after the word "provided."

3. In § 3.103 remove the word "or" at the end of paragraph (b)(3)(ii); remove the "." at the end of paragraph (b)(3)(iii) and add in its place a ","; and add paragraphs (b)(3)(iv), (b)(3)(v), (b)(3)(vi), and an authority citation to read as follows:

§ 3.103 Procedural due process and appellate rights.

* * * * *

(b) * * *

(3) * * *

(iv) An adverse action is based upon a written and signed statement provided by the beneficiary to VA renouncing VA benefits (see § 3.106 on renouncement).

(v) An adverse action is based upon a written statement provided to VA by a veteran indicating that he or she has returned to active service, the nature of that service, and the date of reentry into service, with the knowledge or notice that receipt of active service pay precludes concurrent receipt of VA compensation or pension (see § 3.654 regarding active service pay), or

(vi) An adverse action is based upon a garnishment order issued under 42 U.S.C. 659(a).

(Authority: 38 U.S.C. 501(a))

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[FR Doc. 94-3065 Filed 2-11-94; 8:45 am]

BILLING CODE 8320-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92-266; FCC No. 94-33]

Cable Television Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted an Order extending the freeze of regulated cable service revenues from February 15, 1994 until May 15, 1994. This Order will provide affected parties a sufficient amount of time to familiarize themselves with any modifications to the Commission's cable rate regulations before the freeze is lifted.

EFFECTIVE DATE: This document is effective February 14, 1994, and extends the effectiveness of § 76.1090 until May 15, 1994.

FOR FURTHER INFORMATION CONTACT: Lawrence A. Walke, (202) 416-0847.

SUPPLEMENTARY INFORMATION: The text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239) 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

Order

In the matter of implementation of sections of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation.

Adopted: February 8, 1994.

Released: February 8, 1994.

By the Commission: Commissioner Barrett issuing a separate statement.

I. Introduction

1. In this Order, on our own motion, we reconsider the expiration date of the freeze of regulated cable service revenues, and extend the expiration date of the freeze from February 15, 1994 until May 15, 1994. Later this month, the Commission will consider pending petitions to reconsider various aspects of its rate regulations. In considering the petitions for reconsideration and other issues outstanding in the rate regulation proceedings, the Commission will address, among other issues, the benchmark/price cap methodology, relief for small systems and so-called "going forward issues." The Commission also plans to adopt cost of service rules. This short extension of the freeze is the minimum amount of time required to enable affected parties to familiarize themselves with any modifications to the cable rate regulations before the freeze is lifted.

II. Background

2. In the Rate Order issued in May 1993, we established a comprehensive regulatory framework providing for rate

regulation of the basic service tier by local franchising authorities and of cable programming services tiers by the Commission as required under the Cable Act of 1992. We established June 21, 1993 as the effective date of our new rate regulations. At the same time, we were concerned that during the period between adoption of our rules and the earliest practical opportunity for local franchising authorities to establish regulation of the basic service tier, and for consumers to file complaints with the Commission concerning rates for cable programming services tiers, cable operators could raise rates, effectively undermining the statutory mandate that rates for cable services remain reasonable. In particular, we were concerned that cable operators could raise rates to potentially unreasonable levels, as determined under the rate regulations ultimately adopted. We determined that a freeze of regulated cable service revenues until August 3, 1993 would provide a reasonable opportunity for local franchise authorities to become certified to regulate the basic service tier and for consumers to invoke by complaint the Commission's regulatory oversight over cable programming services tiers. Accordingly, we established a freeze until that date of revenues for cable services subject to regulation under the Cable Act of 1992. Under the freeze, the average monthly subscriber bill for cable services and associated equipment subject to rate regulation under the Cable Act of 1992 may not increase above the level determined under rates in effect on April 5, 1993. The Commission provided for waivers of the rate freeze in particular cases where a cable operator can demonstrate that the freeze would impose severe economic hardship or threaten the viability of continued cable service.

3. Subsequently, the Commission reexamined the feasibility of implementing rate regulation by June 21, 1993 in view of the significant additional responsibilities imposed on the Commission by the Cable Act of 1992 and a severe funding shortfall faced by the Commission at that time. We extended the freeze until November 15, 1993. Our regulations establishing rate regulation of cable service became effective September 1, 1993. However, those regulations were subject to reconsideration. Because the rate regulations were pending reconsideration, by early November, 1993, the Commission had received applications for certification from local franchising authorities representing less than 20 percent of communities that

may regulate the basic service tier. Accordingly, on November 10, 1993, the Commission further extended the freeze on regulated revenues until February 15, 1994. We stated that, where local governments already have initiated rate regulation of the basic tier, we were not concerned that rates for the tier could raise to unreasonable levels after November 15, 1993. We noted that in the initial freeze order, we determined that a freeze on rates for the cable programming services tier was necessary to prevent operators from evading the freeze by moving programming from the basic to the cable programming service tier. We concluded in the Nov. 10 Extension Order that it was unnecessary to continue the freeze for cable programming service tiers where the basic tier has become subject to rate regulation. Accordingly, we amended the rule to make clear that the freeze would no longer apply to regulated cable services provided by cable operators whose basic cable service has become subject to rate regulation by a local franchising authority or the Commission. As a result, the number of cable systems subject to the freeze decreases as franchising authorities become certified.

III. Discussion

4. As of January 31, 1994, the Commission had received 4,896 applications for certification from local franchising authorities covering approximately 7,534 communities served by cable. Although these figures for certifications are significant increases from the last time we extended the freeze, they still represent only a small percentage of the nearly 30,000 communities that are potentially eligible to regulate the basic service tier. We continue to believe that it is important to provide franchising authorities and other affected parties sufficient time to become familiar with any modifications to our rate regulations before the freeze is lifted. We expect to act on reconsideration by the end of this month, and we believe that it is important that the statutory goal of ensuring reasonable rates not be undermined in the interim.

5. The Administrative Procedure Act requires that new substantive rules be published in the *Federal Register* at least 30 days prior to their effective date. In the event that we adopt any substantive changes to our rules on reconsideration, we anticipate that such revised rules would be released approximately 30 days after adoption and that these regulations would be published in the *Federal Register* within 15 days thereafter. In addition,

we will be adopting rules addressing issues raised in the Third Notice of Proposed Rulemaking, 58 FR 46737 (Sep. 2, 1993). Thus, under this schedule, any new regulations adopted would become effective approximately 75 days after adoption. Extension of the freeze for that period of time is the minimum amount of time required to enable the Commission to adopt modified rules, should it choose to do so, and for such rules to become effective before the freeze is lifted.

6. We believe that this brief extension of the freeze will ensure that local regulators have been afforded a sufficient opportunity to file for certification and prepare for rate regulation under any modified rules that may be adopted. This extension should provide sufficient time for local regulators to become familiar with their rights and obligations under any such new regulations before cable operators are free to raise rates absent regulation. We emphasize that we will continue to provide cable operators the opportunity to file petitions for relief which demonstrate, in individual cases, that the freeze is causing severe economic hardship or threatens the viability of continued provision of cable service. Throughout the duration of the rate freeze, we have received only five such petitions for relief. Thus, we conclude that only a small percentage of cable operators believe that the freeze has imposed hardship sufficient to compel them to seek relief from the freeze.

7. We also note that the Commission has acted expeditiously in addressing petitions for reconsideration of its rate regulation rules. In adopting rate regulations for the cable television industry, the Commission recognized that the rules would require further refinement based on survey data of the cable television industry to be gathered and analyzed by the Commission. Shortly after the new rules became effective, the Commission conducted a survey to collect the data necessary to help it assess the rate regulations. The Commission has analyzed this survey data and is now in a position to resolve the pending petitions for reconsideration by the end of this month. In addition to analyzing the survey data during the period since adoption of the rate rules, the Commission has accommodated the requests of numerous cable operators, franchise authorities, programmers and many other interested parties, to meet with the Commission's new Chairman, who assumed office on November 29, 1993, for the purpose of expressing their views on the issues which the

Commission will address on reconsideration of the rate rules.

8. We find good cause under the Administrative Procedure Act to make this freeze effective with less than 30 days advance publication in the *Federal Register*. As explained, an extension of the freeze from February 15, 1994 until May 15, 1994 is necessary to afford local franchising authorities a sufficient period in which to familiarize themselves with any revised regulations governing regulated cable service rates that the Commission may adopt on reconsideration later this month. We will make this *Order* and implementing rule changes effective upon publication in the *Federal Register* to prevent an expiration of the freeze that would otherwise occur with 30 days advance publication in the *Federal Register*. Such a result would seriously undermine the statutory goals of cable rate regulation and would be contrary to the public interest.

IV. Ordering Clauses

9. Accordingly, *it is ordered*, Pursuant to sections 4(i), 303(r), and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 543, that the freeze of cable service rates established in *Order*, 8 FCC Rcd 2921, 58 FR 17530 (April 5, 1993), *clarified*, 8 FCC Rcd 2917, 58 FR 21929 (April 26, 1993), *extended*, FCC 93-304 (released June 15, 1993), 58 FR 33560 (June 18, 1993), *extended*, FCC 93-494 (released November 10, 1993), 58 FR 60141, is extended until May 15, 1994.

10. *It is further ordered*, That § 76.1090 of the Commission's rules, 47 CFR 76.1090, is amended as set forth below.

11. *It is further ordered*, That this *Order* is effective February 14, 1994.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

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

PART 76—CABLE TELEVISION SERVICE

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

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552, as amended, 106 Stat. 1460.

2. The effectiveness of section 76.1090 is extended until May 15, 1994, and the

section is amended by revising paragraph (a) to read as follows:

§ 76.1090 Temporary Freeze of Cable Rates.

(a) The average monthly subscriber bill for services provided by cable operators subject to regulation under section 623 of the Communications Act shall not increase above the average monthly subscriber bill determined under rates in effect on April 5, 1993, until May 15, 1994.

* * * * *

[FR Doc. 94-3355 Filed 2-11-94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93-17; Notice 2]

RIN 2127-AE77

Federal Motor Vehicle Safety Standards; Air Brake Systems; Air Applied, Mechanically Held Brake Systems

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

ACTION: Final rule.

SUMMARY: This rule amends Standard No. 121, Air Brake Systems, with respect to the requirements related to the application and holding of parking brake systems and the requirements related to the supply line pressure retention for trailer brakes. NHTSA initiated rulemaking to respond to concerns raised by International Transquip Industries (ITI) which manufactures air-applied, mechanically held parking brakes. These amendments provide regulatory relief by removing unnecessary restrictions to facilitate the use of alternative brake systems, without adversely affecting safety.

DATES: *Effective Date:* The amendments in this notice become effective March 16, 1994.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than March 16, 1994.

ADDRESSES: Petitions for reconsideration of this rule should refer to Docket 93-17; Notice 2 and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-5274).

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Notice Of Proposed Rulemaking And Comments On The Proposal
- III. Agency Decision
 - A. Grade Holding Requirements
 1. Background Considerations
 2. Diaphragm Failure Modes
 3. Test Procedure
 - B. Supply Line Pressure Requirements for Trailers
- IV. Leadtime
- V. Rulemaking Analyses and Notices
 1. Executive Order 12688 (Federal Regulation) and DOT Regulatory Policies and Procedures
 2. Regulatory Flexibility Act
 3. Executive Order 12612 (Federalism)
 4. National Environmental Policy Act
 5. Civil Justice Reform

I. Introduction

Manufacturers typically comply with the parking brake requirements in Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems*, by equipping their air-braked vehicles with spring brake systems. With these brake systems, air pressure holds the spring in the released position when a vehicle is being driven. Upon parking, the air pressure is vented, allowing the springs to apply the parking brakes. Consistent with NHTSA's policy to issue Federal safety standards that are not unnecessarily design restrictive, the agency has conducted a number of rulemakings to ensure that the standard does not unnecessarily prevent the manufacture of parking brake systems other than conventional spring brake systems (e.g., air-applied, mechanically held parking brake systems). See 44 FR 46850, August 9, 1979; 51 FR 10641, March 28, 1986; 56 FR 26927, June 12, 1991.

In 1992, International Transquip Industries, Inc. (ITI), a manufacturer of an air-applied, mechanically held parking brake system, informed NHTSA that it believed two of Standard No. 121's current requirements are unnecessarily design restrictive or otherwise inappropriate for its brake system design. One of these requirements specifies that a vehicle must meet parking brake grade holding requirements on a 20 percent grade (or other equivalent requirements), with "any single leakage-type failure" of certain parts, including a failed diaphragm. See S5.6 of Standard No. 121. ITI argued that this requirement is unnecessarily restrictive with respect to

its air-applied, mechanically held single diaphragm brake system. That company argued that its brake system is designed so that the diaphragm will never experience a major failure, and that vehicles equipped with its brake system can be parked on a 20 percent grade in the presence of the types of diaphragm failures that typically occur.

The other requirement that ITI believed is inappropriate for its brake design is the supply line pressure requirement for trailers. See S5.8.2. This requirement addresses brake drag. According to ITI, it is inappropriate for its brake system, which is designed so that its brakes are either fully applied or fully released.

II. Notice of Proposed Rulemaking and Comments on the Proposal

After considering ITI's arguments, NHTSA issued a notice of proposed rulemaking (NPRM) that proposed certain changes to Standard No. 121. (58 FR 13437, March 11, 1993). Specifically, the agency proposed to amend the requirements related to the application and holding of parking brake systems and the requirements related to the supply line pressure retention for trailer brakes. In that notice, the agency tentatively concluded that these amendments would remove unnecessary restrictions, thus facilitating the use of air-applied, mechanically held parking brake systems. The agency further explained that the Standard should not unnecessarily prevent parking brake systems that are different than conventional spring brake systems. The agency believed that this proposal would provide regulatory relief by removing a restriction affecting the use of non-spring brake systems, while continuing to ensure appropriate grade holding performance of air braked heavy vehicles.

NHTSA received twelve comments on the proposal. Among the commenters were ITI, which commented twice; the Motor Equipment Manufacturers Association (MEMA), a trade association that represents heavy duty brake manufacturers; spring brake manufacturers and spring brake rebuilders, including Midland-Grau, MGM Brakes, Neway Anchorlok, Allied Signal, TSE Brakes, and Ferodo America; heavy vehicle manufacturers including GM/Volvo White and Freightliner; and the American Trucking Associations (ATA). There was no consensus among the commenters about whether the proposal should be adopted. While ITI favored the proposal which it believed would eliminate an unnecessary design restriction, the

manufacturers of spring brake systems opposed it. The spring brake manufacturers would experience increased competition from the additional use of air-applied, mechanically held systems, which, according to ITI currently represent 2 percent of the air brake chamber market. The ITI system would provide weight savings but would cost an additional \$28 more per axle than spring brake chambers. The spring brake manufacturers argued that the proposal poses significant safety problems since they believe that brake diaphragms can and do experience rapid catastrophic failures. The commenters also addressed specific issues about the proposed test procedure for air-applied, mechanically held parking brake systems and the need to retain the supply line pressure requirement for vehicles equipped with these systems. The agency has analyzed the comments and responds to the significant ones below.

III. Agency Decision

A. Grade Holding Requirements

1. Background Considerations

Standard No. 121 currently requires an air-braked vehicle to have a parking brake system that enables it to meet certain grade holding requirements. Manufacturers have the option of complying with either a 20 percent grade holding test or an equivalent static drawbar pull test. The purpose of the parking brake requirement is to ensure that an air-braked vehicle has adequate parking brake performance on a grade.

The standard provides that the parking brake grade holding requirements must be met with "any" single leakage-type failure of certain parts, including service brake diaphragms. The purpose of this provision is to ensure that a driver can safely park a vehicle in the event of a leakage-type failure in the service brake system. The standard specifies "any" failure because leakage-type failures of many types, sizes, and locations can occur in vehicle brake systems. To ensure that a vehicle has adequate grade holding performance regardless of the specific nature or extent of a leakage-type failure, the agency intentionally did not limit the size or location of such failures.

In the NPRM, NHTSA explained that most brake systems are designed with two diaphragms, one for the service brake function and one for the parking brake function. Further, most brake systems incorporate a spring brake for parking. These brake systems can easily meet the parking brake holding requirements with a failure in the

service brake diaphragm, because a failure in that diaphragm does not adversely affect parking brake performance. In contrast, the ITI air-applied, mechanically held brake system has only one diaphragm that provides both the parking brake and service brake functions. A hole in that diaphragm can therefore affect both parking brake and service brake performance.

According to ITI, it is inappropriate to require vehicles to meet grade holding requirements with "any" failure in the common diaphragm of its brake system, because its system is designed so that a hole in the diaphragm will not get any larger than $\frac{1}{8}$ inch during real-world use. ITI further stated that a vehicle equipped with its brake system will hold on a 20 percent grade and can never be driven with a failure larger than $\frac{1}{8}$ inch. This is because, according to ITI, diaphragm failures begin as very small holes, develop very slowly, and its brakes will not release once the hole gets larger than $\frac{1}{8}$ inch. Thus, once a hole gets that large and the driver parks the vehicle at the end of the day, it will not be possible to drive the vehicle without repairing the brakes.

As explained in the NPRM, NHTSA evaluated the issues raised by ITI through tests of the air-applied, mechanically held system conducted at the agency's Vehicle Research and Test Center (VRTC). (See, Evaluation of Mini-Max Parking Forces with Chamber Diaphragm Failures, December 17, 1992, which has been placed in Docket No. 93-17, Notice 1.) That testing confirmed that vehicles equipped with the ITI system could not be unparked in the presence of a relatively small failure.

In the NPRM, NHTSA sought comment on two primary issues related to air-applied, mechanically held brake systems: (1) Whether the current requirement is appropriate for an air-applied, mechanically held brake system like ITI's system and (2) whether it is possible to develop a test procedure that will identify the "worst case" diaphragm failure that might be experienced in the real world.

2. Diaphragm Failure Modes

In the NPRM, NHTSA discussed whether air-applied, mechanically held brake systems only experience small, gradual failures or whether they can experience catastrophic failures.¹ If

¹ By "catastrophic failure," the agency means one in which a service brake application is made and the diaphragm fails, for any reason, to an extent that the brake chamber will not generate sufficient torque to add significantly to the vehicle's braking. Types of catastrophic failures include puncturing the diaphragm with a broken spring, pulling the

diaphragms do in fact experience catastrophic failures, then the proposed requirement would not ensure the safety of air-braked vehicles. However, based on information provided by ITI and the agency's analysis of that information, NHTSA assumed, for purposes of this rulemaking, that diaphragm failures begin small and develop very slowly. Accordingly, the proposed test procedure was designed to evaluate the small, gradual leakage-type failures that, according to ITI, occur with its system. Notwithstanding NHTSA's decision to propose requirements that would be appropriate only if diaphragms only experience small, gradual leakage-type failures, the agency sought comment about whether catastrophic diaphragm failures occur in the real world.

The commenters expressed conflicting views about the nature of diaphragm failures. On the one hand, ITI reiterated its view that diaphragm failures begin small and develop very slowly because the diaphragms use a rip stop nylon fabric. This led ITI to conclude that long before a hole becomes large enough to affect parking capabilities, it is no longer possible to release the parking brakes. ITI accordingly requested that diaphragms be excluded from failure testing. On the other hand, the spring brake manufacturers (Midland-Grau, MGM Brakes, Neway Anchorlok, Allied Signal, MEMA, and Ferodo) stated that diaphragms can and do experience rapid massive failure in addition to the gradual failure discussed by ITI. The spring brake manufacturers alleged that there were several catastrophic failure modes, including: (1) The piston plate wearing a hole through the diaphragm, (2) air permeating between the rubber or neoprene compound causing it to balloon out and then blow, (3) the effects of exposing the diaphragm to oil which causes the compound to delaminate from the fabric, (4) broken springs or piston plates cutting into the diaphragm, (5) and manufacturing defects in the nylon fabric. Neway Anchorlok believed that because these catastrophic failure modes can occur between parking brake applications, they may significantly and suddenly impair the service brake's capabilities. The potential for catastrophic failures led the spring brake manufacturers to recommend that the agency retain the "any leakage" requirements.

After reviewing the conflicting comments, NHTSA decided to examine further the failure modes experienced by diaphragms. To this end, the agency

diaphragm loose from the air brake chamber clamp ring, or blowing a large hole in the diaphragm.

visually inspected failed diaphragms submitted by Bendix, Ferodo, and MGM. In addition, the agency contacted diaphragm manufacturers. In its examination of diaphragms submitted by various manufacturers, NHTSA found no evidence of catastrophic failure; rather, the agency found that failures typically involved slow deterioration through extended use. The only time the agency found a catastrophic failure was when there was a rapid air loss resulting from a spring puncture or a pull-out from the clamp band area. Spring puncture failures are not relevant to the present rulemaking about air-applied, mechanically held systems which do not have springs. With respect to possible pull-out, ITI has stated that if, in servicing its units, the diaphragm is installed improperly, the brakes cannot be released upon air-up of the system. The agency has placed the findings of its inspection of failed diaphragms in the docket.

In response to agency inquiries, Longwood Elastomers and Goodyear, two large diaphragm manufacturers, stated that diaphragms do not fail catastrophically. While they acknowledge that some failure modes mentioned by the spring brake manufacturers do occur (e.g., spring puncture, plate chaff, unseating, flex cracking in the bead area, accelerated degradation caused by exposure to oil), they contended that such failures either happen so infrequently that they do not raise safety concerns or would not happen with an air-applied, mechanically held brake system (e.g., a single diaphragm brake system has no heavy spring brake that can pierce the diaphragm after failing from fatigue). With respect to failure rates, one diaphragm manufacturer informed the agency that it had returns of about 20 units from an annual production of between 2,000,000 to 2,500,000 units. This failure rate translates to a reliability of about 99.999 percent. These reliability figures are for the useful lifecycle before wearout begins. All diaphragms would eventually wear out. Therefore, diaphragms in air-applied, mechanically held systems and in the service side of spring brake systems are typically replaced after between four and five years of service. The diaphragm manufacturers further stated that they have never encountered a catastrophic failure during cycle testing of their production runs.

Based on NHTSA's review of the failed diaphragms, contacts with diaphragm manufacturers and other available information, the agency has concluded that diaphragms used with air-applied, mechanically held parking

brake systems do not fail catastrophically. Rather, the typical failure mode with these systems is a gradual deterioration through extended use. The agency further notes that GM/Volvo White and Freightliner, which use ITI air brake chambers as original equipment on their vehicles when ordered by a customer, have not experienced any catastrophic failures with these systems. Accordingly, the agency concludes that the current requirement to require vehicles to meet the parking brake requirements with "any" single leakage type failure is unnecessarily design-restrictive with respect to air-applied, mechanically held air brake systems.

ITI requested that NHTSA exclude diaphragms entirely from failure testing with respect to the parking brake requirements. However, NHTSA has decided that an exclusion would be inappropriate. A diaphragm is an integral part of the parking brake system, and the failure of a diaphragm can have adverse safety consequences. Therefore, excluding diaphragms from such testing would be inconsistent with the safety purposes of the standard. Such an exclusion would be inconsistent with the underlying purpose of the parking brake requirements which serve to ensure that a driver can safely park a vehicle in the event of a leakage-type failure in the service brake system. Because diaphragms do fail, as ITI readily admits, it would be inconsistent with the parking brake requirements to exclude such an important component in the brake system from the relevant test requirements.

3. Test Procedure

In the NPRM, NHTSA proposed a test procedure that it tentatively concluded would identify the "worst case" leakage-type diaphragm failure that is likely to occur with brake systems using common diaphragms. Under the proposed procedure, the first step would be to determine the threshold level of diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) at which the vehicle's parking brakes become unreleasable. A measurement would then be taken of the leakage rate associated with that level of failure. The proposal explained that the "threshold maximum reservoir leakage rate" is the rate of reservoir air pressure decrease, for whichever of the vehicle's reservoirs that is experiencing the most rapid decrease in pressure level, that results from that threshold level of leakage. The agency proposed that a vehicle would be required to meet grade holding

requirements with a level of diaphragm leakage-type failure that results in a reservoir leakage rate that is three times the threshold maximum reservoir leakage rate. This "three times" safety factor was included to account for the possibility that a small diaphragm failure could grow larger between parking brake applications.

Midland-Grau, ITI, and Allied Signal believed that the proposed test procedure was unnecessarily complex. Midland-Grau stated that the procedures were difficult to follow and could be interpreted in many ways. Midland-Grau requested that NHTSA modify the test procedure so that it could be easily followed. Moreover, it stated its preference for testing parameters that are concise, and lead to consistent test results that allow easy assessment of whether the system passes or fails. ITI requested that the agency simplify the test to make it less complicated. Allied Signal criticized the proposal for being overly complex, claiming that multiple attempts would be necessary to establish the size of diaphragm failure for both release and application.

After reviewing the proposal in light of the comments, NHTSA believes that the proposed test procedure, with minor adjustments, is appropriate to evaluate brake systems that incorporate a common diaphragm. The agency further believes that the test procedure is not unreasonably complicated. In particular, the agency's experience at VRTC in running the tests indicates that the tests are not overly burdensome and that with a valving meter in place, various pressure levels of leakage can be obtained relatively quickly and without much difficulty. The agency notes that to simplify testing, it could have specified a fixed orifice size to be used for all systems. However, such an approach would have prevented certain parking brake systems and thus have been unnecessarily design restrictive, since the size of leak at which sufficient force is generated to park the vehicle varies for different systems. In contrast, the variable leak rate procedure that the agency is adopting in this final rule may be used to evaluate any brake system regardless of its design.

In response to specific comments and further analysis of the regulatory text, NHTSA has made some minor changes to the proposed test procedures applicable to air-applied, mechanically held brake systems. For instance, in response to criticisms by Midland-Grau of terminology that it believed was ambiguous, NHTSA has deleted reference to "certain level" of failure as proposed in S5.6(b). In addition, as explained below, the agency has

modified the terminology related to the concept of parking brake "release." Nevertheless, NHTSA has decided to retain the following terms that Midland-Grau criticized: "increasing or decreasing," "threshold level of diaphragm leakage," "threshold maximum reservoir leakage associated with that level of failure," and "threshold of allowable leakage." With respect to finding the leakage rate at which the parking brake system becomes unreleasable, the agency believes it is necessary for the test evaluator to find the appropriate threshold level with "progressively increasing or decreasing levels" of failure because each brake configuration is different. While this procedure will require some searching for the leakage rate at which the system becomes unreleasable, the agency believes the appropriate level of failure can be ascertained without too much difficulty by using metering valves. NHTSA notes that in VRTC's testing to develop this rule's requirements and procedures, the agency installed an adjustable metering valve in the brake chamber housing to simulate a leak in the brake chamber diaphragm. The "threshold level of common diaphragm leakage type failure" at which the parking brakes become unreleasable was determined by increasing the leakage rate, by "opening" the metering valve, from one test to the next in relatively large increments until the parking brakes would not release. Then, the metering valve was "closed," to decrease the leakage rate, in smaller increments until the parking brakes would release. The leakage rate was then increased by even smaller increments until the parking brakes were again unreleasable. The precision with which the final determination of the "threshold level of common diaphragm leakage-type failure" at which the parking brakes become unreleasable is determined by the number of times the direction of leakage rate change, e.g., from increasing to decreasing and vice versa, and the magnitude of the increments by which the leakage rate is increased or decreased.

With respect to various references to the concept of the "threshold," the agency has modified these provisions slightly to use just two terms: "Threshold level of common diaphragm leakage-type failure" in S5.6.7.1.1 and S5.6.7.2.1 and the "threshold maximum reservoir leakage rate" in S5.6.7.1.2 and S5.6.7.2.2. NHTSA, nevertheless, disagrees with Midland-Grau's more general concern that the term "threshold" is ambiguous. The agency notes that the dictionary defines

"threshold" to mean "a level, point, or value above which something is true or will take place and below which it is not or will not."² Applying this definition to the parking brake test for systems with common diaphragms, the agency believes that "threshold level of common diaphragm leakage-type failure" is an objective term that means the initial level at which the parking brake can no longer be released. Similarly, the meaning of the phrase "threshold maximum reservoir leakage rate" was discussed in the NPRM and means the rate of reservoir air pressure decrease that results at that threshold level of leakage.

With respect to the concept of "release," NHTSA has decided to clarify the term so that it covers brake applications that involve a vehicle being parked on a grade or a drawbar pull test. NHTSA notes that in addressing a similar issue in an earlier rulemaking about what was meant by "release," the agency stated that "NHTSA considers a brake to be released at the point where it no longer exerts any torque." (37 FR 12495, June 24, 1972). The agency believes that this discussion of release is pertinent to the procedure set forth in S5.6(b). Accordingly, in the final rule, the agency has specified that the relevant consideration is when the parking brakes "become unreleasable." Since the final rule specifies the criteria in terms of "becom(ing) unreleasable," Midland-Grau's concerns about when the released condition exists or about the status of a partial release are no longer relevant.

Midland-Grau requested that the agency provide an acceptable leakage value for each brake component. It further stated that statements about "compressor shut-off points" and "air flow" should be pinned down to definitive values.

NHTSA disagrees with Midland-Grau's request to provide a specific level of leakage for each brake component. The agency's goal in this rulemaking is to establish a performance test for the entire brake system, because the agency's concern is to test for and prohibit system-wide failures that may pose safety problems. The agency therefore is not concerned with the leakage level of any particular component. Nor does the agency believe it is necessary or appropriate to specify definitive values for the compressor shut-off points. Such an action might be unnecessarily design restrictive and serve to prohibit some manufacturers from selecting a higher cut off value

than would be appropriate for its system.

Allied and Midland-Grau expressed concern that the rate of reservoir pressure drop is influenced by valving, plumbing, and air supply capability. NHTSA acknowledges that these variables exist; however, the agency believes that they are not large enough to adversely affect the test results. Specifically, as long as testing is done at three times the leak rate, the actual numerical value of the leak rate is not overly important, because the value for the safety factor is measured in the same way, which results in factoring out most of the variability. The agency further notes that these variables are part of the manufacturing process and thus, if necessary, they can be controlled by the brake system manufacturer. Moreover, alternative methods of testing would have necessitated using expensive flow meters that would not significantly reduce the level of variability or otherwise improve the test results. NHTSA notes that while the rate of air flow through the system may be affected by slight variations in air hose lengths from vehicle to vehicle, internal size variations in the castings used in the hose fittings, and differences in valve tolerances; the leak rates at issue are not sufficiently large to be significantly affected by this type of variability from vehicle to vehicle. Internal drag on air flow does not become a factor until the flow rates become substantially higher than those being measured here.

In the NPRM, NHTSA proposed that a vehicle would be required to meet grade holding requirements with the level of diaphragm leakage failure of three times the threshold maximum reservoir leakage rate. The agency reasoned that a safety factor was necessary to address the situation when a small diaphragm failure grows larger between parking brake applications, prior to the time the vehicle is parked (at which point the parking brakes would be unreleasable).

Midland-Grau, ITI, and Allied objected to including a safety factor "three times the threshold maximum reservoir leakage." Midland-Grau stated that the rationale for this test is not easily visualized and is questionable as to why it was selected as a test parameter. ITI stated that the safety factor should be eliminated to avoid additional time and cost in compliance testing. Allied stated that it was not aware of any information or data that the agency used to establish the three times reservoir pressure drop rate as being a "worst case" type of failure for a brake chamber diaphragm.

After reviewing the comments, NHTSA continues to believe that it is necessary to include a safety factor in the application and holding requirements for air-applied, mechanically held parking brake systems. The agency notes that including the provision for grade holding at "three times the failure rate" is essential to ensure the brake system's safety since the hole associated with a diaphragm failure grows larger during the day. In addition, including a safety factor serves to prevent marginal systems from being manufactured. The agency selected a safety factor of three based on general engineering principles and the agency's testing at VRTC. In general, a safety factor needs to be as large as possible to ensure safety, while not be too large to make it unreasonable, impracticable, and unaffordable. In agency tests at VRTC, NHTSA determined that the ITI system would still produce sufficient parking force with a diaphragm leak over ten times larger than the system would detect and still not release the parking brakes. Based on its understanding of diaphragm failures associated with air-applied, mechanically held braking systems, NHTSA determined that a safety factor of three was the most appropriate level of safety for inclusion in a FMVSS. The agency believes that this level of safety will not require manufacturers to "over-design" their parking brake systems, but will ensure appropriate brake system performance. NHTSA disagrees with ITI's comment that inclusion of a safety factor would add needless complexity to the requirement. Agency testing at VRTC indicates that inclusion of a safety factor will not significantly add to the time and cost of compliance testing. Essentially, as a result of the safety factor, a test evaluator needs to establish the threshold value for the maximum reservoir leakage rate and then triple it. Based on its experience at VRTC, the agency believes that this will add only five to ten minutes to the compliance testing (at only nominal additional cost.)

B. Supply Line Pressure Requirements for Trailers

Section S5.8.2 of Standard No. 121 currently requires that any single leakage type failure in the service brake system must not result in the pressure in the supply line falling below 70 p.s.i., measured at the forward trailer supply coupling. (See 56 FR 50666, October 8, 1991). The purpose of this provision is to prevent brake drag caused by the automatic application of trailer parking brakes while the minimum trailer supply line pressure is maintained.

² Webster's Ninth New Collegiate Dictionary, 1986.

In a June 5, 1992 letter to the agency, ITI requested that the agency "exempt" its brake system from S5.8.2. It argued that this provision relates to problems caused by brake drag, a situation that it contends is not applicable to ITI's brake system, which, by design, can only be in the fully applied or fully released positions.

After considering ITI's arguments, NHTSA, in the NPRM, tentatively concluded that no safety purpose would be served to apply this provision to non-towing trailers using air-applied, mechanically held parking brakes that use a common diaphragm. The agency noted that these vehicles do not use spring brakes and thus the requirement which addresses the safety problem of brake drag is not relevant to them. Accordingly, the agency proposed to amend section S5.8.2 to clarify that this provision would not apply to non-towing trailers equipped with air-applied, mechanically held parking brakes that use a common diaphragm. Nevertheless, NHTSA emphasized that section S5.8.2 would continue to apply to towing trailers, since the 70 psi requirements may be necessary for other vehicles in the train.

Midland-Grau, ITI, ATA, and Allied Signal addressed the issue of whether the 70 psi supply line pressure requirement should be retained for trailers, particularly towing trailers, equipped with air-applied, mechanically held parking brakes. Midland-Grau stated that making the 70 psi requirement optional for towing trailers with air-applied mechanically held brake systems introduces a detriment to the couple vehicles in the event of system failure. This led Midland-Grau to conclude that it is necessary to apply failure. This led Midland-Grau to conclude that it is necessary to apply the supply line pressure requirements to trailers since a towing trailer will experience brake degradation if it is not properly protected from towed trailer system failures.

In contrast, ITI stated that this requirement should not be applied to either towing or non-towing vehicles equipped with air-applied, mechanically held vehicles since they do not experience brake drag. This led ITI to state that S5.8.4 was not necessary, because it claimed that partial application or brake drag is not an issue with its brake systems. Thus, it requested that towing trailers with air-applied, mechanically held systems be permitted without the 70 psi supply line protection feature, even though it acknowledge that this may result in some mismatches. In response to

Midland-Grau's comment, ITI stated that trailers equipped with spring brakes manufactured before and after the October 1992 rule that specified these requirements (56 FR 50666, October 8, 1991) will experience compatibility problems. Therefore, ITI believed that the problem raised by Midland-Grau will exist with spring brake equipped trailers as well as trailers equipped with air-applied, mechanically held equipped trailers.

ATA commented that the existing 70 psi supply line requirement is inappropriate and prevents tractor low air pressure warning systems from warning drivers of the loss of service pressure in trailers. Therefore, it requested that the agency either exempt all trailers from the 70 psi supply line requirement or modify the requirement. Allied Signal similarly stated that the 70 psi requirement has undermined the effectiveness of the low pressure warning system, especially for doubles and triples.

After reviewing the comments, NHTSA has decided not to apply the supply line pressure requirements to single trailers equipped with air-applied, mechanically held brake systems. Such trailers, which do not experience brake drag, also do not affect the braking of any other vehicle because they are not connected to other trailers. Therefore, as discussed in the NPRM, this requirement would not benefit this type of trailer.

Nevertheless, the agency has decided that the supply line pressure requirements are relevant to air-applied, mechanically held brake systems on towing trailers used in double and triple trailer combinations.³ The agency is not convinced by ITI's argument that trailers equipped with their system should not have to comply with the 70 psi requirement because there are older spring brake-equipped trailers that will pose similar compatibility problems. The agency believes that there would be a safety problem if it were to apply the supply line pressure requirements to certain vehicles in double or triple combinations but not others. Specifically, if ITI's request were adopted, a trailer being towed by a trailer equipped with air-applied, mechanically held brakes would not necessarily receive adequate air pressure and therefore could experience brake drag. The agency's decision to apply these requirements to towing

³ A towing trailer is one that is equipped with a pintle hook and air line connections at the rear to tow another air braked trailer. In doubles and triples operations, nearly all trailers are so equipped, regardless of the position they may occupy in any particular trailer train.

trailers is consistent with recent legislation and the efforts of the agency, manufacturers, and end-users to standardize operating conditions to improve compatibility. Specifically, section 4012 of the Intermodal Surface Transportation Efficiency Act (ISTEA) directs the agency to initiate rulemaking to improve compatibility of truck tractors, trailers, and their dollies. The agency further notes that a specialized trailer protection valve could be developed for ITI's system that would permit compliance with the requirements of S5.8.2 and S5.8.3.

With respect to concerns expressed by ATA and Allied about the 70 psi supply line pressure requirement, NHTSA notes that it is reviewing this provision in the context of a rulemaking petition submitted by the California Highway Patrol. The agency anticipates issuing another notice addressing the supply line pressure requirements in 1994.

IV. Leadtime

Section 103(c) of the Vehicle Safety Act requires that each order shall take effect no sooner than 180 days from the date the order is issued unless "good cause" is shown that an earlier effective date is in the public interest. NHTSA has determined that there would be "good cause" not to provide the 180 day lead-in period given that this amendment will not impose any mandatory requirements on manufacturers. The public interest will also be served by not delaying the introduction of the requirement. Based on the above, the agency has determined that there is good cause to have an effective date 30 days after publication in the final rule.

V. Rulemaking Analyses and Notices

1. Executive Order 12688 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this rulemaking and determined that it is neither "significant" within the meaning of the Department of Transportation's regulatory policies and procedures nor "significant" within the meaning of Executive Order 12688. This rulemaking document was not reviewed under E.O. 12688, "Regulatory Planning, and Review." A full regulatory evaluation is not required because the rule will have no mandatory effects. Rather, the rule will provide regulatory relief to facilitate the introduction of alternative brake systems. Therefore, the agency does not believe that this rulemaking will result in significant additional costs or cost savings.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendments will not have a significant economic impact on a substantial number of small entities. Vehicle and brake manufacturers typically will not qualify as small entities. This amendment will also affect small businesses, small organizations, and small governmental units to the extent that these entities purchase air-braked vehicles. As discussed above, the agency's assessment is that this amendment will have no significant cost impact to the industry. For these reasons, vehicle manufacturers, small businesses, small organizations, and small governmental units which purchase motor vehicles will not be significantly affected by the requirements. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule will not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws will be affected.

4. National Environmental Policy Act

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that the rule will not significantly affect the human environment.

5. Civil Justice Reform

This rule will not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, title 49 part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.121 is amended by revising S4 to add a new definition; revising S5.6; removing S5.6.3.5; adding a new S5.6.7 through S5.6.7.2.3; revising S5.8.2; and adding a new S5.8.4. The revised and added paragraphs read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S4 Definitions.

* * * * *

Common diaphragm means a single brake chamber diaphragm which is a component of the parking, emergency, and service brake systems.

* * * * *

S5.6 Parking brake system.

(a) Except as provided in S5.6(b) and S5.6(c), each vehicle other than a trailer converter dolly shall have a parking brake system that under the conditions of S6.1 meets the requirements of:

(1) S5.6.1 or S5.6.2, at the manufacturer's option, and

(2) S5.6.3, S5.6.4, S5.6.5, and S5.6.6.

(b) At the option of the manufacturer, for vehicles equipped with brake systems which incorporate a common diaphragm, the performance requirements specified in S5.6(a) which must be met with any single leakage-type failure in a common diaphragm may instead be met with the level of leakage-type failure determined in S5.6.7. The election of this option does not affect the performance requirements specified in S5.6(a) which apply with single leakage-type failures other than failures in a common diaphragm.

(c) At the option of the manufacturer, the trailer portion of any agricultural commodity trailer, heavy hauler trailer, or pulpwood trailer may meet the requirements of § 393.43 of this title instead of the requirements of S5.6(a).

* * * * *

S5.6.7 *Maximum level of common diaphragm leakage-type failure/ Equivalent level of leakage from the air chamber containing that diaphragm.* In the case of vehicles for which the option in S5.6(b) has been elected, determine

the maximum level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) according to the procedures set forth in S5.6.7.1 through S5.6.7.2.3.

S5.6.7.1 Trucks and buses.

S5.6.7.1.1 According to the following procedure, determine the threshold level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) at which the vehicle's parking brakes become unreleasable. With an initial reservoir system pressure of 100 psi, the engine turned off, no application of any of the vehicle's brakes, and, if the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir connected to the supply line coupling, introduce a leakage-type failure of the common diaphragm (or equivalent leakage from the air chamber containing that diaphragm). Apply the parking brakes by making an application actuation of the parking brake control. Reduce the pressures in all of the vehicle's reservoirs to zero, turn on the engine and allow it to idle, and allow the pressures in the vehicle's reservoirs to rise until they stabilize or until the compressor shut-off point is reached. At that time, make a release actuation of the parking brake control, and determine whether all of the mechanical means referred to in S5.6.3.2 continue to be actuated and hold the parking brake applications with sufficient parking retardation force to meet the minimum performance specified in either S5.6.1 or S5.6.2. Repeat this procedure with progressively decreasing or increasing levels (whichever is applicable) of leakage-type diaphragm failures or equivalent leakages, to determine the minimum level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) at which all of the mechanical means referred to in S5.6.3.2 continue to be actuated and hold the parking brake applications with sufficient parking retardation forces to meet the minimum performance specified in either S5.6.1 or S5.6.2.

S5.6.7.1.2 At the level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) determined in S5.6.7.1.1, and using the following procedure, determine the threshold maximum reservoir rate (in psi per minute). With an initial reservoir system pressure of 100 psi, the engine turned off, no application of any of the vehicle's brakes and, if the vehicle is designed to tow a vehicle equipped with

air brakes, a 50 cubic inch test reservoir connected to the supply line coupling, make an application actuation of the parking brake control. Determine the maximum reservoir leakage rate (in psi per minute), which is the maximum rate of decrease in air pressure of any of the vehicle's reservoirs that results after that parking brake application.

S5.6.7.1.3 Using the following procedure, introduce a leakage-type failure of the common diaphragm (or equivalent leakage from the air chamber containing that diaphragm) that results in a maximum reservoir leakage rate that is three times the threshold maximum reservoir leakage rate determined in S5.6.7.1.2. With an initial reservoir system pressure of 100 psi, the engine turned off, no application of any of the vehicle's brakes and, if the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir connected to the supply line coupling, make an application actuation of the parking brake control. Determine the maximum reservoir leakage rate (in psi per minute), which is the maximum rate of decrease in air pressure of any of the vehicle's reservoirs that results after that parking brake application. The level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) associated with this reservoir leakage rate is the level that is to be used under the option set forth in S5.6(b).

S5.6.7.2 Trailers.

S5.6.7.2.1 According to the following procedure, determine the threshold level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) at which the vehicle's parking brakes become unreleasable. With an initial reservoir system and supply line pressure of 100 psi, no application of any of the vehicle's brakes, and, if the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir connected to the supply line coupling, introduce a leakage-type failure of the common diaphragm (or equivalent leakage from the air chamber containing that diaphragm). Make a parking brake application by venting the front supply line coupling to the atmosphere, and reduce the pressures in all of the vehicle's reservoirs to zero. Pressurize the supply line by connecting the

trailer's front supply line coupling to the supply line portion of the trailer test rig (Figure 1) with the regulator of the trailer test rig set at 100 psi, and determine whether all of the mechanical means referred to in S5.6.3.2 continue to be actuated and hold the parking brake applications with sufficient parking retardation forces to meet the minimum performance specified in either S5.6.1 or S5.6.2. Repeat this procedure with progressively decreasing or increasing levels (whichever is applicable) of leakage-type diaphragm failures or equivalent leakages, to determine the minimum level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) at which all of the mechanical means referred to in S5.6.3.2 continue to be actuated and hold the parking brake applications with sufficient parking retardation forces to meet the minimum performance specified in either S5.6.1 or S5.6.2.

S5.6.7.2.2 At the level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) determined in S5.6.7.2.1, and using the following procedure, determine the threshold maximum reservoir leakage rate (in psi per minute). With an initial reservoir system and supply line pressure of 100 psi, no application of any of the vehicle's brakes and, if the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir connected to the rear supply line coupling, make a parking brake application by venting the front supply line coupling to the atmosphere. Determine the maximum reservoir leakage rate (in psi per minute), which is the maximum rate of decrease in air pressure of any of the vehicle's reservoirs that results after that parking brake application.

S5.6.7.2.3 Using the following procedure, a leakage-type failure of the common diaphragm (or equivalent leakage from the air chamber containing that diaphragm) that results in a maximum reservoir leakage rate that is three times the threshold maximum reservoir leakage rate determined in S5.6.7.2.2. With an initial reservoir system and supply line pressure of 100 psi, no application of any of the vehicle's brakes and, if the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir

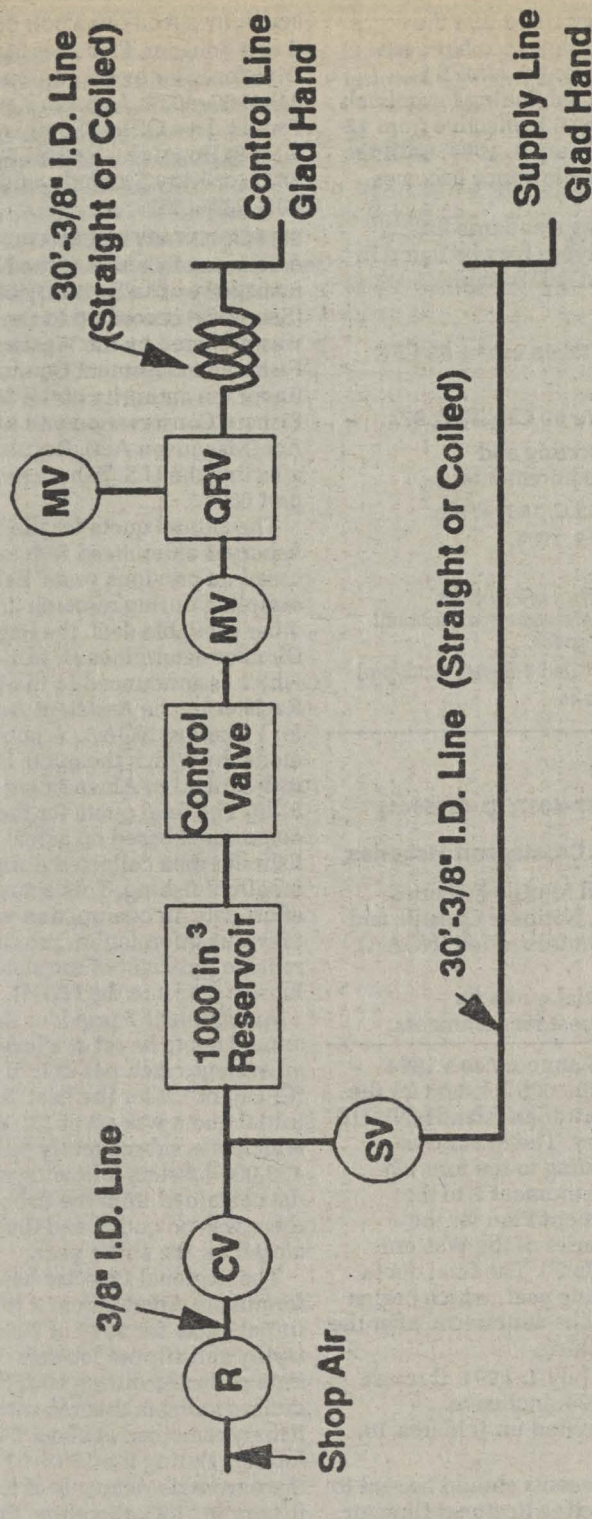
connected to the rear supply line coupling, make a parking brake application by venting the front supply line coupling to the atmosphere. Determine the maximum reservoir leakage rate (in psi per minute), which is the maximum rate of decrease in air pressure of any of the vehicle's reservoirs that results after that parking brake application. The level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) associated with this reservoir leakage rate is the level that is to be used under the option set forth in S5.6(b).

S5.8.2 Supply Line Pressure Retention. Any single leakage type failure in the service brake system (except for a failure of the supply line, a valve directly connected to the supply line or a component of a brake chamber housing) shall not result in the pressure in the supply line falling below 70 p.s.i., measured at the forward trailer supply coupling. A trailer shall meet the above supply line pressure retention requirement with its brake system connected to the trailer test rig shown in Figure 1, with the reservoirs of the trailer and test rig initially pressurized to 100 p.s.i. and the regulator of the trailer test rig set at 100 p.s.i.; except that a trailer equipped with an air-applied, mechanically-held parking brake system and not designed to tow a vehicle equipped with air brakes, at the manufacturer's option, may meet the requirements of S5.8.4 rather than those of S5.8.2 and S5.8.3.

S5.8.4 Automatic Application of Air-Applied, Mechanically Held Parking Brakes. With its brake system connected to the supply line portion of the trailer test rig (Figure 1) and the regulator of the trailer test rig set at 100 psi, and with any single leakage type failure in the service brake system (except for a failure of the supply line, a valve directly connected to the supply line or a component of a brake chamber, but including failure of any common diaphragm), the parking brakes shall not provide any brake retardation as a result of complete or partial automatic application of the parking brakes.

3. Figure 1 of § 571.121 is revised to appear as follows:

BILLING CODE 4910-59-M



SV - Shut-off Valve

R - Regulator (set at 100 psi for service brake actuation tests;

95 psi for service brake release tests;

100 psi for parking brake tests in S5.6.3.3, S5.6.3.4, S5.6.5.4, and S5.6.6.5,

and for the supply line pressure retention test in S5.8.2; and any

pressure above 70 psi for parking brake test in S5.6.5.3.)

CV - Check Valve

MV - Metering Valve (Variable or Fixed)

QRV - Quick Release Valve

Figure 1. Trailer Test Rig.

Issued on: February 9, 1994.

Howard M. Smolkin,
Executive Director.

[FR Doc. 94-3364 Filed 2-9-94 3:11 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 931199-3299; I.D. 020994A]

Groundfish of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 62 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim specification for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.L.T.), February 9, 1994, until the second quarter's allowance becomes available.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The interim specification of pollock in Statistical Area 62 was established by interim specifications (58 FR 60575, November 17, 1993) as 4,563 metric tons (mt), determined in accordance with § 672.20(c)(1)(ii)(A).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1994 interim specification of pollock in Statistical Area 62 soon will be reached. The Regional Director established a directed fishing allowance of 4,163 mt, and has set aside the remaining 400 mt as bycatch to support other anticipated groundfish fisheries. The Regional

Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 62, effective from 12 noon, A.L.T., February 9, 1994, until the second quarter's allowance becomes available.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: February 9, 1994.

David S. Crestin,

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

[FR Doc. 94-3352 Filed 2-9-94; 12:06 pm]

BILLING CODE 3510-22-M

50 CFR Part 681

[Docket No. 940237-4037; ID. 010594A]

Western Pacific Crustacean Fisheries

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

ACTION: 1994 initial quota for crustaceans; request for comments.

SUMMARY: NMFS announces a 1994 initial quota of 200,000 lobsters for the Northwestern Hawaiian Islands (NWHI) crustacean fishery. The quota was calculated according to the formula contained in Amendment 7 to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP). The final quota for the 1994 fishing year, which begins July 1, 1994, will be announced after the first month of fishing.

DATES: Effective July 1, 1994, through December 31, 1994, inclusive. Comments are invited until March 16, 1994.

ADDRESSES: Comments should be sent to Gary Matlock, Acting Regional Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802-4213. Copies of Amendment 7 and the associated background material for determining the quota may be obtained from Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, 310-980-4034; Alvin Z. Katekaru, Pacific Area Office, Southwest Region, NMFS, Honolulu, Hawaii 808-955-8831; or Kitty Simonds, address above, 808-523-1368.

SUPPLEMENTARY INFORMATION: The crustacean fisheries of the NWHI are managed by the Secretary of Commerce (Secretary) according to the FMP, which was prepared by the Western Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations affecting the U.S. fishery are at 50 CFR part 681.

The annual quota for the crustacean fishery is announced in two steps. First, based on previous years' fishery data, sampling during research cruises, and other available data, the Regional Director determines an initial quota, which is announced in the *Federal Register* by the Assistant Administrator for Fisheries, NOAA. A population model by which the quota is determined is described in Amendment 7 to the FMP. The final quota for the year is then determined based on actual commercial fisheries data collected during the first month of fishing. This actual catch and effort data, in conjunction with the previous information, provides a more reliable indicator of the status of the lobster stocks in the NWHI.

Amendment 7 provides that an annual quota be set at a level permitting an average catch per unit of effort (CPUE) of 1.0 for the fleet. In 1992, the initial quota was set at 750,000 lobsters, which was subsequently reduced to 438,000 lobsters following an analysis of data obtained from the fishery. In 1993, there was no quota, and the fishery was closed for the entire year.

The Regional Director has used the formula in Amendment 7 to set an initial quota for 1994 of 200,000 lobsters (spiny and slipper lobsters combined). Data collected during NMFS survey cruises indicate that recruitment to the fishery remained at about 840,000 lobsters during the 1992-93 period, and there were no removals of lobster by the fishery in 1993; therefore, there is a net addition to the stock to support a fishery in 1994. The model projects a commercial CPUE of 1.0 at the start of the fishing year with an initial quota of 200,000 lobsters. The final quota, to be announced in the *Federal Register* as soon as practicable after August 15, 1994, may increase or decrease substantially from the initial quota. The Southwest Region, NMFS, will monitor

landings against the quota and issue timely reports of summary data. The Southwest Region also will attempt to promptly notify participants in the fishery of any changes in the fishery; however, participants are advised to contact the Southwest Region (see ADDRESSES) periodically to stay of changes in the quota and progress of the fishery toward attaining the quota. Announcement of a closure of the

fishery due to reaching the quota will follow the procedures set forth in 50 CFR 681.31(c).

Classification

This action is authorized by 50 CFR part 681.

This rule is not subject to review under Executive Order 12866.

List of Subjects in 50 CFR Part 681

Fisheries, Reporting and recordkeeping requirements.

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

Dated: February 8, 1994.

Roland A. Schmitten,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

[FR Doc. 94-3370 Filed 2-11-94; 8:45 am]

BILLING CODE 3510-22-M