205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the regulatory relaxation in this action does not include a federal mandate that may result in estimated costs of $100 million or more to those entities mentioned above.

The statutory authority for the action in this action today is granted to EPA by Sections 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7545 and 7601(a)).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedures, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution, Motor vehicle and motor vehicle engines, Penalties, Reporting and recordkeeping requirements.

Dated: April 4, 1996.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, Part 80 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for Part 80 continues to read as follows:

Authority: Sections 114, 211, and 301(a) of the Clean Air Act as amended, (42 U.S.C. 7414, 7545 and 7601(a)).

2. In § 80.27 the table in paragraph (a)(2) introductory text is amended by revising the entry for Colorado to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

* * * * *

(a) * * *

(2) * * *

APPLICABLE STANDARDS[1] 1992 AND SUBSEQUENT YEARS

State	May	June	July	August	Sept
* * * *	*	*	*	*	
Colorado[2]	9.0	7.8	7.8	7.8	7.8
* * * *	*	*	*	*	

[1] Standards are expressed in pounds per square inch (psi).

[2] The standard for 1992 through 1997 in the Denver-Boulder nonattainment area will be 9.0 for June 1 through September 15.

* * * * *

[FR Doc. 96–9176 Filed 4–12–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 9660; FCC 96122]

Cable Television Leased Commercial Access

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted an Order on Reconsideration of the First Report and Order and Further Notice of Proposed Rulemaking regarding implementation of the leased commercial access provisions of the 1992 Cable Act. The Further Notice of Proposed Rulemaking segment of this decision may be found elsewhere in this issue of the Federal Register. The Order on Reconsideration (''Order'') segment addresses several issues regarding leased commercial access, including the highest implicit fee formula, the provision of rate information, part-time rates, time increments, billing and collection services, security deposits, the calculation of statutory set-aside requirements, and reporting requirements. The Order is intended to respond to certain petitions for reconsideration of the Commission's current leased access rules.

DATES: Rule changes become effective May 15, 1996, except for § 76.970(e) which contains information collection requirements which are not effective until approved by the Office of Management and Budget (''OMB''). When approval is received, the agency will publish a document announcing the effective date. Written comments by the public on the proposed and/or modified information collections are due May 15, 1996. Written comments must be submitted by OMB on the proposed and/or modified information collections on or before June 14, 1996.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. A copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Lynn Crakes, Cable Services Bureau, (202) 416–0800. For additional information concerning the information collections contained in this Order, contact Dorothy Conway at (202) 418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order on Reconsideration of the First Report and Order, CS Docket 96–60 (formerly MM Docket 92–266), adopted March 21, 1996 and released March 29, 1996. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1919 M Street, N.W., Washington, D.C. 20554.

Synopsis of the Order on Reconsideration

I. Introduction

1. In the Order, the Commission addressed ten petitions for reconsideration of the cable television commercial leased access rules adopted in its Report and Order and Further Notice of Proposed Rule Making, MM Docket No. 92–266, FCC 93–177, 58 FR 29736 (May 21, 1993) (''Rate Order''),

pursuant to the provisions of the Cable Television Consumer Protection and Competition Act of 1992, Public Law No. 102–385, 106 Stat. 1460 (1992), 47 U.S.C. 521, et seq. (1992) (''1992 Cable Act''). The Order was adopted in conjunction with a Further Notice of Proposed Rule Making (''Further Notice'') that sought comment on certain leased access issues not resolved by the Order.

2. The statutory framework for commercial leased access was established by the Cable Communications Policy Act of 1984, Public Law No. 98–549, 98 Stat. 2779 (1984), 47 U.S.C. 521 et seq. (''1984 Cable Act'') and amended by the 1992 Cable Act. The 1984 Cable Act established commercial leased access to assure access to the channel capacity of cable systems by parties unaffiliated with the cable operator that wish to distribute video programming free of the editorial control of the cable operator. Channel set-aside requirements were established in proportion to a system's total activated channel capacity.

3. In the Rate Order in this docket, the Commission established initial regulations to implement the leased access provisions of the 1992 Cable Act. The Commission adopted the highest implicit fee formula as the method to set maximum reasonable rates, and adopted various standards governing access terms and conditions, tier placement, technical standards for use, technical support, security deposits, conditions based on program content, requirements for billing and collection service, and procedures for the expedited resolution of disputes. The Order further addresses several of these issues.

II. Maximum Rate Formula

4. *Background:* Section 612 of the Communications Act of 1934, as amended, (''Communications Act'') section 612, 47 U.S.C. section 532, directs the Commission to determine the maximum reasonable rates that a cable operator may impose for leased commercial access. Previously, the Commission adopted rules that base the maximum rate on an ''implicit'' fee paid by non-leased access program services that are being distributed. In the non-leased access context, cable system operators generally receive a payment from subscribers and pay contractual license fees to programmers for the channels the operators distribute. The differences between these dollar amounts may be thought of as the implicit fees that the programmers pay to have their services distributed to subscribers. The Commission determined that the implicit fee is the price per channel each subscriber pays the operator minus the amount per subscriber the operator pays the programmer. Section 76.970(c) of the Commission's rules provides that this difference is multiplied by the percentage of subscribers able to receive the unaffiliated programmer's service. The implicit fee for a contracted service may not include fees, stated or implied, for services other than the provision of channel capacity (e.g., billing and collection, marketing, or studio services). Section 76.970(d) of the rules states that maximum rates for shorter periods of time can be calculated by prorating the monthly maximum rate.

5. Under our current rules, the maximum rate is the highest of the implicit fees charged any unaffiliated programmer within the same programmer category. Cable operators are required to calculate the highest implicit fee for each of the following programmer categories: (a) Those charging subscribers directly on a per-event or per-channel basis; (b) those using a channel for more than 50 percent of the time to sell products directly to customers (e.g., home shopping networks, infomercials, etc.); and (c) all others. Under the rules, cable operators are required to calculate annually the maximum rates for each programmer category based on the contracts with unaffiliated programmers in effect in the previous calendar year. Operators are further required to provide rate schedules to prospective programmers upon request.

6. *Clarifications for Calculating the Highest Implicit Fee:* Through the Commission's complaint process as well as this reconsideration proceeding, it has come to the Commission's attention that the highest implicit fee formula may be unclear in some respects. Although the Further Notice proposes an alternative formula for determining maximum leased access rates, the highest implicit fee formula will continue to be in effect on an interim basis until any new rules become effective. The Order therefore clarified certain issues regarding the application of the highest implicit fee formula. We do not, however, believe that these clarifications will in any way solve the conceptual problems we perceive to be present with the highest implicit fee, as described in the Further Notice.

7. As a preliminary matter, we modified Section 76.970(c) to correct certain errors contained therein so that the calculation of the implicit fee is clear and easy to follow. Specifically, the rule states that the subscriber revenue is deducted from the program license fee when, in fact, the program license fee is supposed to be deducted from the average subscriber revenue. We therefore corrected the language in the rule accordingly. We also corrected the title of Section 76.977 of the Commission's rules.

8. In addition, we believe that the highest implicit fee calculation should not include the implicit fee for non-retransmission consent broadcast signal and PEG access channels in determining which channel has the highest implicit fee. For the carriage of local ''must carry'' broadcast signals, cable operators typically collect a fee from subscribers, but pay no direct charge for the programming. Because there is no sharing of subscriber revenues between the system operator and the programmer, the channel appears to be the most highly valued, i.e., the programmer is willing to permit the cable operator to retain the entire value of the channel and so these channels are often the basis for the highest implicit fee calculation. Because of the mandatory carriage rules and the compulsory copyright licensing system, this does not seem to be a calculation that reflects a marketplace decision as to the value of the channel. Similarly, where an operator is required by the local franchising authority to carry PEG channels, the cable operator has not made a marketplace decision to carry the channels. Accordingly, we concluded that the implicit fee for each must carry broadcast signal channel and PEG access channel should not be considered for purposes of determining which implicit fee is the highest. These channels should, however, be used to determine the monthly average subscriber revenue per channel for all the channels on the tier.

9. Furthermore, we believe that operators should calculate the highest implicit fees on a tier-by-tier basis; that is, if the leased access channel is to be on the BST, the calculation of the highest implicit fee should be based on the BST channels, and, if the leased access channel is to be on a CPST, the implicit fees should be determined for the channels on that CPST.

10. We also clarified that programming revenues received by the operator from an unaffiliated programmer, as opposed to programming costs paid by the operator to the unaffiliated programmer, should not be included in the highest implicit fee calculation. In certain circumstances, such as with direct sales or ''home shopping'' channels, the programmer pays the cable operator a percentage of its revenues, rather than the operator paying the programmer a license fee. We concluded that these

payments from the programmer to the operator should not be added into the implicit fee calculation.

11. The Rate Order specifies that the difference between the rate per month that the cable operator pays the programmer and the rate that the subscriber pays per month for the programming should be multiplied by the percentage of subscribers able to receive that channel or programming. Neither the Rate Order nor our current rule explicitly states that this number must then be multiplied by the number of subscribers on the system. We modified our rule to clarify that, for leased access programming on either the BST or a CPST, the highest per-subscriber implicit fee should be multiplied by the number of current subscribers who actually subscribe to the tier on which the leased access channel will be placed. However, for leased access programming in the per-channel/per-event program category, the highest per-subscriber implicit fee should be multiplied by the average number of subscribers that subscribe to the operator's premium services. Requiring the highest per-subscriber implicit fee to be multiplied by the actual number of subscribers to a leased access premium service would unfairly penalize the operator for low subscribership to the leased access programming. Using the average number of subscribers that subscribe to the operator's premium services derives an approximation that is equally fair for both the operator and the leased access programmer.

12. *Provision of Rate Information*: Section 76.970(e) of the Commission's rules provides that a schedule of commercial leased access rates shall be provided to prospective leased access programmers upon request. Our leased access complaint process has revealed that rate information is often not provided in a timely manner. We therefore modified our rule to require an operator to provide to a prospective leased access programmer within seven business days of such programmer's request: (a) A complete schedule of the operator's full and part time leased access rates; (b) how much of its set-aside capacity is available; (c) rates associated with technical and studio costs; and (d) if specifically requested, a sample leased access contract. Requests can be made by any reasonable means (in person, by telephone, by facsimile, or by mail), and the information will be deemed provided when the operator sends or gives the information to the programmer. Because this information must be provided within seven business days of the request, operators may not require that prospective programmers first provide any information (e.g., fill out an application) before the information listed above is provided. In this context, we affirmed that, as stated in the Rate Order, the Commission has the authority to, among other things, issue forfeitures for violations of the leased access statute and rules. Failure to provide the above information within the seven business day period will constitute a violation of our rules.

III. Part-Time Rates

13. The Rate Order stated that maximum rates for leasing less than a full-time channel could be calculated by prorating the monthly maximum rate. The Rate Order did not, however, address whether operators would be permitted to charge higher rates for part-time use during more desirable ''prime time'' viewing hours. In TV–24 *Sarasota, Inc.* v. *Comcast Cablevision of West Florida, Inc.*, 10 FCC Rcd 3512 (Cable Serv. Bur. 1994), the Cable Services Bureau stated that such time of day pricing is permitted.

14. The only restriction on cable operators' rates under the current rules is that they may not exceed the maximum monthly rate as calculated on a monthly basis from the highest implicit fee. We recognize, however, that the media industry places different values on the different hours of the day in recognition of the different values that different hours of the day have in the television marketplace (i.e., ''prime time'' and ''non-prime time''). We therefore affirmed the Cable Services Bureau's ruling in the TV–24 Sarasota case referenced above and did not construe our rule as requiring a cable operator to adhere to a rigid formula for determining its hourly leased access rate by prorating its maximum rate for a full-time channel into equal hourly amounts. We concluded that cable operators may charge different time-of-day rates, provided that the total of the rates for a day's schedule (i.e., a 24 hour block) does not exceed the maximum rate for one day of a full-time leased channel (prorated from the monthly rate) and provided that the overall pattern of time of day rates is otherwise reasonable and not intended to unreasonably limit leased access use. A reasonable time-of-day rate structure that is appropriately related to time-of-day pricing in the media industry and does not frustrate leased access channel use would not conflict with our rules.

15. Accordingly, the rules we adopted on reconsideration provide that operators may establish reasonable time-of-day pricing schedules. In order to ensure that operators' part-time rates do not exceed the maximum rate, we required operators to establish a schedule of rates, or rate card, for different times of day, pursuant to which, if all times were used, the sum of the part-time charges for any single leased access channel within a 24-hour period would not exceed its maximum rate for the leased access channel if the daily rate were prorated evenly from the monthly maximum rate and were calculated in accordance with Section 76.970 of our rules.

IV. Time Increments

16. In the Rate Order, we concluded that cable operators should be required to accommodate leases of any time increment (e.g., leasing an hour on a regular leased channel, leasing a whole channel, or leasing for use a subscription service) in a reasonable manner because neither Section 612, its legislative history nor the record indicated any reason to prevent part-time leased access. On reconsideration, we reaffirmed our conclusion that cable operators should be required to accommodate both full and part-time leases. We recognize the legitimate concern of cable operators that negotiating contracts for numerous small time intervals may be an administrative and financial burden. As a practical matter, however, the most common programming time increment is typically one half to one hour. Imposing a full-time only requirement could effectively preclude most leased access programmers from obtaining access. Thus, in order to balance these competing interests, we concluded that operators should not be required to accept leases which are for less than a one-half hour interval. This decision will allow programmers to lease time in relatively small increments, but will avoid the administrative burden of providing leased access in very small increments, such as one or two minutes. Although not required to do so, operators may accept requests for less than one-half hour.

V. Billing and Collection Services

17. Section 612(c)(4)(A)(ii) of the Communications Act requires the Commission to establish reasonable terms and conditions for billing of rates to subscribers and for the collection of revenue from subscribers for leased access channels (not including subscriber revenue generated from the sale of products promoted on leased access programs such as home shopping programs or infomercials). In the Rate Order, we required cable operators to provide billing and collection services

to leased access programmers unless operators could demonstrate the existence of third party billing and collection services which, in terms of cost and accessibility, offer leased access programmers an alternative substantially equivalent to that offered to comparable non-leased access programmers. We noted in the Order that the mere existence of third party billing and collection providers does not relieve the operator of its obligation to provide these services. Rather, the critical issue is whether, in terms of cost and accessibility, these alternatives are substantially equivalent, to what the operator offers non-leased access programmers. Operators have not demonstrated to us that such alternatives exist to such an extent that we should change our requirements adopted in the Rate Order. We remain convinced, therefore, that pursuant to Section 612(c)(4)(A)(ii), we have the authority to require cable operators to provide billing and collection services for leased access cable programmers and that there is a need for cable operators to provide such services.

18. In the Rate Order, we did not adopt specific rules relating to the rates that might be charged for billing and/or collection services. We stated that competition, where it exists, in the provision of services of this type will set an upper limit on charges by cable operators. On reconsideration, we did not believe that the adoption of specific rate rules at this time is warranted. Cable operators should have the incentive to quote reasonable and competitive rates in order to obtain the additional revenues that billing and collection services could generate for them. As we stated in the Rate Order, if a dispute arises, we will address what constitutes a maximum rate for billing and collection services on a case-by-case basis.

VI. Security Deposits

19. In the Rate Order, we agreed with cable operators that they should have discretion to require reasonable security deposits or other assurances from programmers that are unable to prepay in full for leased access channel capacity. On reconsideration, we declined to set specific monetary guidelines in this area and concluded that it is sufficient to state that the term ''reasonable'' should be interpreted in relation to the objective of such a deposit. That is, it should be sufficient to insure the payment of lease rates, without discouraging leased access. We clarified that operators may not demand a security deposit for channel time from a programmer that pays the full rate in advance. If carriage is not purchased for discreet or individual time spots, but is leased on a full-time or periodic basis, the full rate will be considered the full monthly rate (or whatever period of time is relevant if the programming is periodic). Determinations of what is a ''reasonable'' security deposit will be made on a case-by-case basis, taking into consideration the past relationship between the operator and the programmer, the amount of time to be leased, the credit history of the leased access programmer, the operator's practices with respect to security deposits in other, similar contexts, and any other relevant factors.

VII. Calculation of Statutory Set-Aside Requirements

20. Section 612 of the Communications Act requires a cable system to set aside up to 15 percent of its activated channels for leased commercial access. The statutory set-aside requirements for leased commercial access channels are expressed as a percentage of ''channels not otherwise required for use by federal law or regulation.'' 47 U.S.C. 532(b)(1). The Rate Order did not specify what channels are considered as required for use by federal law or regulation.

21. We clarified that, for purposes of calculating the set-aside requirements, only must-carry channels are excluded, as these channels are required for use by federal law. Retransmission consent and PEG channels, on the other hand, are not required by federal law, although federal statutory provisions permit local authorities to require operators to provide PEG channels and also require operators to obtain retransmission consent in some cases. Therefore, we determined that retransmission consent and PEG channels will be included among activated channels for purposes of determining a systems' leased access set-aside requirements.

VIII. Reporting Requirements

22. We did not require cable operators to make the contracts underlying their leased access rates public. We believe that this could be unnecessarily intrusive on business relationships between operators and non-leased access programmers. However, we noted that upon request from the Commission in the context of a leased access complaint, operators are required to justify fully their leased access rates, including by presentation of underlying contracts if necessary, subject to the operators' right under our rules to request confidentiality of this information.

IX. Regulatory Flexibility Analysis

23. Pursuant to the Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601–612 (''Regulatory Flexibility Act''), the Commission's final analysis with respect to this Order on Reconsideration is as follows:

24. Need and purpose of this action. The Commission, in compliance with Section 9 of the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. 532 (1992), pertaining to leased commercial access, is required to adopt rules and procedures intended to ensure the availability of and accessibility to leased commercial access on cable systems.

25. Summary of issues raised by the public in response to the Initial Regulatory Flexibility Analysis. There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

26. Significant alternatives considered and rejected. Petitioners for reconsideration did not submit comments analyzing the administrative burden of the leased access rules pursuant to the Regulatory Flexibility Act. The Commission nonetheless has attempted to minimize such burdens.

X. Procedural Provisions

27. Redesignation of Docket. We believe that it would facilitate consideration of leased commercial access issues by the Commission if they were separated from MM Docket 92–266 and redesignated as a separate docket. Accordingly, we are redesignating the Commission's consideration of leased commercial access issues as CS Docket No. 96–60. Parties are required to caption filings in response to this Order under this new docket number.

XI. Ordering Clauses

28. Accordingly, *It is ordered* that the Petitions for Reconsideration in MM Docket No. 92–266 which pertain to commercial leased access are granted in part and denied in part.

29. *It is further ordered* that Part 76 of the Commission's rules is hereby amended as indicated below. The amendments to 47 CFR 76.970 (a), (b), (c), (d), 76.971(g) and 76.977 shall go into effect 30 days following publication of this *Order on Reconsideration* in the Federal Register. The amendments to 47 CFR 76.970(e) impose information collections, and will therefore not go into effect until approved by OMB.

Paperwork Reduction Act

This Order contains either a proposed or modified information collection. The Commission, as part of its continuing

effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due May 15, 1996; OMB notification of action is due 60 days from date of publication of this Order in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0568.

Title: Section 76.970 Commercial leaesed access rates; 76.971 Commercial leased access terms and conditions.

Type of Review: Revision of existing collection.

Respondents: Business and other for profit.

Number of Respondents: 6,270 cable systems.

Estimated Time Per Response: 1 hour per respondent for recordkeeping and sending the leased access schedule and other information to prospective leased access programmers. 1 hour per respondent to implement 76.971 third party disclosure requirements. 12 hours per respondent for completing the proposed ''cost schedule'', instead of the existing ''maximum rate schedule''. If the proposed ''cost schedule'' is not adopted by the Commission, the burden for completing the ''maximum rate schedule'' is 4 hours per respondent.

Total Annual Burden: 87,780 hours. If the proposed ''cost schedule'' is not adopted, the Commission will further adjust the burden for this collection from 12 hours per respondent in completing the ''cost schedule'' to 4 hours per respondent to continue to use the existing ''maximum rate schedule''. This would result in an adjustment reduction of 50,160 hours (6,270 x 8 hours), leaving a total burden of 87,780 − 50,160=37,620 hours.

Estimated costs per respondent: We estimate the postage and stationery costs incurred by cable operators for record keeping activities and for sending out leased access information to prospective programmers, as required, to be roughly $4.00 per respondent. We therefore report a total annual cost of $25,000 for all respondents.

Needs and Uses: The information collected is used by the prospective leased access programmers and the Commission to verify rate calculations for leased access channels. The Commission's leased access requirements were designed to promote diversity of programming sources and competition in programming delivery as required by Section 612 of the Communications Act, and serve to eliminate uncertainty in negotiations for leased commercial access.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

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

PART 76—CABLE TELEVISION SERVICE

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

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

2. Section 76.970 is amended by revising paragraphs (a), (b), (c), (d), and (e) to read as follows:

§ 76.970 Commercial leased access rates.

(a) Cable operators shall designate channel capacity for commercial use by persons unaffiliated with the operator in accordance with the requirement of 47 U.S.C. 532. For purposes of 47 U.S.C. 532(b)(1)(A) and (B), only those channels that must be carried pursuant to 47 U.S.C. 534 and 535 qualify as channels that are required for use by Federal law or regulation.

(b) The maximum commercial leased access rate that a cable operator may charge is the highest implicit fee charged any unaffiliated programmer (excluding leased access programmers, non-retransmission consent broadcasters and public, educational and governmental access programmers) within the same programming category.

(c) The per subscriber implicit fee charged an unaffiliated programmer shall be calculated by determining the monthly price a subscriber pays to view the programming of the unaffiliated programmer and subtracting the monthly price per subscriber that the operator pays to carry the programming of the unaffiliated programmer. The implicit fee is determined by multiplying the per subscriber implicit fee by:

(1) If the leased access programming is carried on a programming tier, the number of subscribers that subscribe to the programming tier on which the leased access programming is carried; or

(2) If the leased access programming is carried as a premium service, the average number of subscribers that subscribe to unaffiliated non-leased access programming services that are carried as premium services. The implicit fee for a contracted service may not include fees, stated or implied, for services other than the provision of channel capacity (e.g., billing and collection, marketing, or studio services).

(d) For each of the three programming categories as defined in paragraph (f) of this section, the highest implicit fee charged any unaffiliated programmer (excluding leased access programmers, non-retransmission consent broadcasters and public, educational and governmental access programmers) in each category shall be the maximum monthly leased access rate per subscriber that the operator could charge a commercial leased access programmer in the same category. The highest implicit fee shall be based on contracts in effect in the previous calendar year. Maximum rates for shorter periods can be calculated either by prorating the monthly maximum rate uniformly, or by developing a schedule of and applying different rates for different times of day, provided that the total of the rates for a 24-hour period does not exceed the maximum rate for one day of a full-time leased access channel (prorated evenly from the monthly rate derived in accordance with paragraphs (b), (c), and (d) of this section).

(e) Within seven business days of a prospective leased access programmer's request, a cable system operator must provide such programmer with the following information:

(1) A complete schedule of the operator's full-time and part-time leased access rates;

(2) How much of the operator's leased access set-aside capacity is available;

(3) Rates associated with technical and studio costs; and

(4) If specifically requested, a sample leased access contract. Requests under this paragraph (e) may be made by any reasonable means (e.g., in person, by telephone, by facsimile or by mail), and the information shall be deemed provided when the operator sends or gives the information to the programmer. Operators shall maintain,

for Commission inspections, sufficient supporting documentation to justify the scheduled rates, including supporting contracts, calculations of the implicit fees, and justifications for all adjustments.

* * * * *

3. Section 76.971 is amended by adding new paragraph (g) to read as follows:

§ 76.971 Commercial leased access terms and conditions.

* * * * *

(g) Operators are not required to accept leases which are for less than a one-half hour interval.

4. Section 76.977 is amended by revising the heading to read as follows:

§ 76.977 Minority and educational programming used in lieu of designated commercial leased access capacity.

* * * * *

[FR Doc. 96–9194 Filed 4–12–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 620

[Docket No. 960126016–6105–03; I.D. 040896B]

General Provisions for Domestic Fisheries; Amendment of Emergency Fishing Closure in Block Island Sound

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

ACTION: Emergency interim rule; amendment.

SUMMARY: In response to a request from the State of Rhode Island, NMFS is amending further the emergency interim rule that closed a portion of Federal waters off the coast of the State of Rhode Island, in Block Island Sound subsequent to an oil spill. This amendment allows all legal fishing to resume with the exception of lobstering in a small portion of the previously closed area.

EFFECTIVE DATE: April 9, 1996 through May 01, 1996.

FOR FURTHER INFORMATION CONTACT: Daniel Morris at (508) 281–9388.

SUPPLEMENTARY INFORMATION: On January 19, 1996, an oil barge grounded and spilled more than 800,000 gallons (3.0 million liters) of heating oil into the waters of Block Island Sound, RI. On January 26, 1996, NMFS, at the request of and in conjunction with the State of Rhode Island, prohibited the harvest of seafood from an area of approximately 250 square miles (647 square km) in Block Island Sound. The original area of closure was announced and defined in an emergency interim rule published in the Federal Register on February 1, 1996 (61 FR 3602).

On March 13, 1996, NMFS opened the entire area to fishing for and landing finfish and squid by gear types other than bottom trawl gear. This same action, published in the Federal Register on March 19, 1996 (61 FR 11164), expanded by approximately 28 square miles (73 square km) the area in which fishing for and landing lobsters, clams, and crabs is prohibited. The use of lobster traps, bottom trawl or dredge gear was prohibited throughout the expanded closed area.

Following the oil spill, State officials, in consultation with Federal agencies and the responsible party, developed a protocol for reopening fisheries in the affected area. The protocol sets sampling, inspection, and analysis standards, which, if met, would ensure that seafood is wholesome and would provide a basis for reopening fisheries.

In accordance with the protocol, State and Federal agencies have been testing the water and marine life in and around the closed area since the closure began. Seafood species have been subjected to inspection by sensory experts and chemical analysis. Though all seafood from the area has been determined to be safe for consumption, certain lobsters from one particular sector still show some evidence of oil adulteration. Therefore, NMFS, at the request of the State, is opening all areas to all fishing with the exception of the one sector (described below) where oil adulteration has been detected in lobsters. This area remains closed to fishing for, or possessing or landing American lobsters from the closed area.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Fishery Conservation and Management Act and other applicable law.

Testing has determined that consumption of seafood from the previously closed area does not pose a threat to human health. Fishermen who operate in the area would suffer severe economic hardship unnecessarily if the current prohibition were to remain in effect. Hence, the AA finds that the foregoing constitutes good cause to waive the requirement to provide prior notice and the opportunity for public comment, pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be contrary to the public interest. Further, as this provision relieves a restriction, it is made effective immediately pursuant to authority at 5 U.S.C. 553(d)(1).

This emergency rule has been determined to be not significant for the purposes of E.O. 12866.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because this rule is not required to be issued with prior notice and opportunity for public comment.

List of Subjects in 50 CFR Part 620

Fisheries, Fishing.

Dated: April 9, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 620 is amended as follows:

PART 620—GENERAL PROVISIONS FOR DOMESTIC FISHERIES

1. The authority citation for part 620 continues to read as follows:

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

2. In § 620.7, paragraphs (j) and (k) are removed, and paragraph (i) is revised to read as follows:

§ 620.7 General prohibitions.

* * * * *

(i) Fish for American lobsters in, or possess or land American lobsters from, the Federal waters of Block Island Sound bounded as follows: From the point where LORAN line 14470 intersects with the 3–nautical mile (6–km) line south of Point Judith, RI, proceeding south-southeasterly to its intersection with the 43870 line, thence southwesterly along the 43870 line to its intersection with the 3–nautical mile (6–km) line east of Block Island, RI, thence northerly and along said 3–nautical mile (6–km) line to the northern intersection of the 3–nautical mile (6–km) line and the 14540 line, thence northwesterly along the 14540 line to the intersection of the 3–nautical mile (6–km) line, thence northeasterly along the 3–nautical mile (6–km) line to the starting point.

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